

BEFORE THE UNITED STATES SUBCOMMITTEE  
ON COMMERCE, TRADE AND CONSUMER PROTECTION

STATEMENT OF ROBERT W. GOODENOW  
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Mr. Chairman and Members of the Committee:

My name is Robert W. Goodenow, and I serve as the Executive Director and General Counsel of the National Hockey League Players' Association. I appreciate the opportunity to provide this Committee with our perspective on the proposed H.R. 1862 Drug Free Sports Act of 2005.

Given that this is my first opportunity to appear before your Committee, I thought it would be useful for me to spend a few minutes providing some background on how we have addressed substance abuse and the use of steroids and other performance enhancing drugs in our sport. I will then provide my comments on your proposed legislation.

However, before I address those two matters I want to clearly and emphatically state to the Committee that the NHLPA membership, and officials in our organization including myself, are strongly opposed to the use of improper or unlawful performance enhancing substances by anyone in our sport. There are three main reasons for this position. First, the NHLPA is keenly concerned with protecting its members' personal health. Second, NHLPA members want to protect the competitive integrity and fairness of their sport. Third, because NHLPA members are seen by young aspiring hockey players and fans around the world as important role models, they want to leave no doubt about their opposition to performance enhancing substances and the possibility of their use of such substances.

#### **NHLPA/NHL SUBSTANCE ABUSE AND BEHAVIOURAL HEALTH PROGRAM**

In 1995, and in conjunction with our last Collective Bargaining Agreement ("CBA"), the NHLPA and NHL jointly implemented the "NHL/NHLPA Substance Abuse and Behavioral Health Program ("Program"). The Program was broadly designed to address any potential substance abuse among NHL players and their families and to treat those problems in a confidential, fair and effective way. The Program incorporates education, counseling, inpatient and outpatient treatment and testing, follow-up care and, where appropriate, punitive sanctions, up to and including permanent suspension from play.

To further the Committee's goal today to obtain information through testimony in an efficient manner I will avoid further describing details of the Program's purposes, design and operation

over the past 10 years. Instead I will refer you to the League's submission on the Program's background because I understand the information they have submitted to be accurate.

Our Program has worked very well for the purposes it was designed for. Both the NHLPA and NHL have been pleased with its operation and results. However, over the past 10 years, and in particular in recent years, the focus on the use of performance enhancing drugs in sport has dramatically changed.

Since the current version of our Program does not include random mandatory steroid testing, our Program and our sport could be seen by some as "void" of the appropriate current testing protocols when contrasted against other professional and international sport groups. I acknowledge that we have work to do, work that we will do, in order to bring our Program up to current levels. I will provide you with the following two points to assist your perspective in understanding our sport's past approach on this issue:

- 1.) We have been addressing the issue of steroids. Our Program Doctors have developed and presented educational materials to the players specifically highlighting the dangers of steroid use in at least 4 of the last 7 years. Our Program Doctors have confirmed to us that there is virtually no steroid use in hockey which is not surprising when one considers that the alleged benefits of such steroid use (enhanced bulk muscle mass) do not benefit elite hockey players. The purported benefits of steroid use are simply not applicable to skilled NHL players. This viewpoint is strongly supported by the fact that, despite the absence of a regular or mandatory testing program for performance enhancing drugs during an NHL season, we are not aware of a single instance

over the 10 years the Program has been in effect in which an NHL player has tested positive for performance enhancing drugs during any of the many International Ice Hockey competitions our players have participated in where there has been mandatory testing.

Specifically, in the past 10 years, hundreds of NHL players have participated in the International Ice Hockey Federation World Championships, the 1998 and 2002 Olympics and the 2004 World Cup of Hockey Competition. These NHL players were subject to the drug testing protocols in connection with their participation in these events. These protocols utilized a substance list and testing procedures equivalent to the current WADA Code. We are aware of only 3 positive tests for performance enhancing drugs. Of these 3, one of the players tested positive for Salbutamol, a drug that was being used for asthma as a Proventil inhaler and may be used with a therapeutic use exemption. A second player tested positive for Tramadol, a substance which is designated as an “allowed narcotic.” The third player established a “mistake in use defense” in connection with his use of over the counter nutritional supplements.

2.) In short, we have been fortunate to have no issue to date with any use of performance enhancing drugs by hockey players. Having said that, our Association and the NHL do recognize the need to include a new drug testing policy that is specifically directed at performance enhancing drugs. On a going forward basis, and in connection with any new Collective Bargaining Agreement which we are able to negotiate, we will be putting into place a program that will feature, in addition to enhanced and focused educational efforts, appropriate random testing coupled with mandatory discipline for the use of any performance enhancing drugs. Given the fact that we are over eight months into the Owners’ most recent lockout, which

has cost the sport the loss of an entire season, and are still without a new collective agreement, the details of any new drug testing program have yet to be finalized. I can give this Committee my complete assurance that our new Program will have a strong commitment to deal effectively and meaningfully with these very important issues. We fully recognize the importance of an effective Program. The players I represent see no place for the use of performance enhancing substances in our sport and are sensitive to their position as role models to many aspiring hockey players and fans around the world.

### **COMMENTS ON H.R. 1862, THE DRUG FREE SPORTS ACT of 2005**

My overriding initial comment, which is given with the greatest of respect to the good intentions behind this proposed Legislation, is that this is an area that is best left for the individual sports leagues and player associations to address through collective bargaining so that the specific and different circumstances of each sport can be taken into account. As I noted earlier, while we are currently focused on many issues in our CBA negotiations, I am fully confident that we will be able to agree on the terms of an appropriate and effective program uniquely tailored to the sport of hockey.

Now, with respect to the specifics of proposed Act, H.R. 1862, the Drug Free Sports Act of 2005, I would make the following comments:

1. Section 3(1) provides for random and no-notice testing. While any program we develop would contemplate random and no-notice testing, the scheduling challenges faced by a

professional hockey player and his team would have to be taken into account. For example, it can oftentimes take several hours to provide a urine sample after a player has become dehydrated following completion of a hockey game. Travel requirements to upcoming games will often require that players leave an arena within one hour of completing a game to board a flight to their next city. There should therefore be flexibility and practical parameters to testing protocols, such as no testing on any game days to avoid any disruption that could occur to the entire team's schedule if a player were dehydrated and unable to provide an appropriate sample for several hours.

2. Section 3(2) outlines how prohibited substances should be determined. The list of prohibited substances should be developed on a basis that is relevant to the particular sport and not simply by adopting the list formulated by the World Anti Doping Agency ("WADA") for Olympic competitions. Some of the substances prohibited on the WADA lists are not performance enhancing and should therefore not be tested for in this Legislation. Further, the WADA list bans different substances for different sports and doesn't distinguish between the different sports, so any reference to the WADA list would have to be more specific.

3. Section 3(4) contemplates a penalty of a minimum 2 year suspension. The penalty of 2 years for a first offence is an extraordinary and unreasonably long punishment. Unlike the Olympics, which take place every 4 years, and are mainly a forum for amateur athletes, the National Hockey League represents a career opportunity that can only be obtained after many years of hard work and a substantial amount of good fortune. A 2 year suspension would seriously undermine any hockey player's ability to resume his career and you could therefore, in

effect, be taking away the livelihood of an individual on a first offence. We agree that meaningful punishment should be part of any future program. However, we believe a lesser suspension for first-time offenders, coupled with the negative public coverage such an individual will receive, would have a significant effect on his future behavior and the behavior of all players. There should be a range of penalties that takes into account whether the athlete used a legal or illegal performance enhancing substance, with a more severe penalty for any use of an illegal substance

4. The appeal process contemplated in Section 3(5) should be to an independent arbitrator and not to the League. All enforcement provisions should include appropriate due process protections. In this regard, this legislation should not provide for a strict liability offence. Regulations would have to be in place to ensure that the athlete was afforded adequate opportunity to advance a mistake in use defense or any other appropriate defense, particularly where the regulations governing labeling on nutritional supplements do not ensure that banned substances cannot be found in certain supplements, even when its listed ingredients are carefully scrutinized by the athlete before taking it. Furthermore, there should be specific provisions for therapeutic use exemptions.

To close I want to again share the NHLPA members' sentiment that they want to do their part to maintain the public's confidence that our sport is free of the use of performance enhancing drugs.

Thank you for inviting us to appear today.