

BEFORE THE UNITED STATES SENATE COMMITTEE
ON COMMERCE, SCIENCE, AND TRANSPORTATION

STATEMENT OF TED SASKIN
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Mr. Chairman and Members of the Committee:

My name is Ted Saskin and I serve as the Executive Director and General Counsel of the National Hockey League Players' Association (NHLPA). I appreciate the opportunity to provide this Committee with our perspective on the proposed S. 1114 Clean Sports Act of 2005 (S. 1114) and S. 1334 Professional Sports Integrity and Accountability Act (S. 1334).

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 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.

NHLPA/NHL PERFORMANCE ENHANCING SUBSTANCES PROGRAM

The strong commitment of the NHLPA membership to keep hockey free of performance enhancing substances is best evidenced by the testing program that was recently adopted as part of the new Collective Bargaining Agreement (CBA) between the NHLPA and the National Hockey League (NHL). The Performance Enhancing Substances Program (the Program), which went into effect with the execution of the CBA on July 15, 2005, is the first attempt to deal specifically with the issue of performance enhancing substances through a system of testing and discipline. It is my firm belief that when this Program is fully developed and operational, it will serve as an effective deterrent to the use of performance enhancing substances. The Program features a comprehensive educational component, the prohibition of substances that would actually enhance performance in the sport of hockey and strong sanctions designed to rid the sport of these substances. We believe that by tailoring the Program to the specific circumstances of professional hockey, including the unique realities of playing in the NHL and the international nature of the sport, we have significantly enhanced the Program's effectiveness.

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. Instead I will refer you to the NHL's submission on the Program because I understand that information to be accurate.

NHLPA/NHL SUBSTANCE ABUSE AND BEHAVIOURAL HEALTH PROGRAM

While the Program represents a dramatic and important new step in dealing with performance enhancing substances, it should be noted that the NHLPA and the NHL have a long-standing commitment to addressing the issues of substance abuse and the use of performance enhancing substances. In 1995, in conjunction with the negotiation of our previous CBA, the NHLPA and NHL jointly implemented the "NHL/NHLPA Substance Abuse and Behavioral Health Program (SABH Program). The SABH 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 SABH 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.

Our SABH 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 particularly in recent years, the issue of performance enhancing drugs in sport has become more prominent. In response to this change, our SABH Program Doctors 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 SABH 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 we are not aware of a single instance over the last 10 years 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 “mistaken use defense” in connection with his use of over the counter nutritional supplements.

In short, we have been fortunate to have no issue to date with the use of performance enhancing drugs by elite hockey players. Having said that, I can give this Committee my complete assurance that our new Program is designed to prevent the use of performance enhancing substances by any Players, however rare and isolated those cases may be. 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 S. 1114 CLEAN SPORTS ACT OF 2005 AND S. 1334 PROFESSIONAL SPORTS INTEGRITY AND ACCOUNTABILITY ACT

My initial comment, which is given with the greatest of respect to the good intentions behind the 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. We believe that the recently adopted NHLPA/NHL Program offers strong support for the proposition that collective bargaining is the appropriate avenue for producing effective and workable programs in professional sports.

Now, with respect to the specifics of the proposed legislation, I would make the following comments:

Frequency of testing. Consistent with the NHL/NHLPA Program, both S. 1114 and S. 1334 provide for random, no-notice testing. With respect to testing frequency, Section 4(b)(1)(A) of S. 1114 mandates 5 tests in each calendar year that a player competes and Section 5(d)(1)(A) of S. 1334 mandates 3 such tests. These requirements would not be practicable in our sport given the unique nature of hockey and the way Players pass in and out of the League over the course of a season. For example, during the 2003-04 season there were 1,433 Players under contract to an NHL Club, but only 1,105 actually competed in an NHL game. Of these Players, 32 played in only one game, 145 played in 5 or less games and 205 played in 10 or less games. These numbers reflect the reality that Players under NHL contract may spend the entire season in the minor leagues, play only a handful of NHL games or come up to play in a single game as a fill-in before flying right back to the minor league club the next day. It is difficult to see how a program mandating three to five tests for such Players could be implemented. It is with this reality in mind that the NHLPA and NHL adopted a more flexible policy on frequency of testing

– a policy that will allow regular NHL Players to be tested with sufficient frequency to ensure the effectiveness of the Program.

Timing of testing. With respect to timing, both pieces of proposed legislation mandate testing during the off-season, with Section 4 (b)(1)(B)(ii) of S. 1114 requiring at least 2 such tests. Once again, the reality of NHL hockey would render these requirements unworkable. More than four fifths of NHL Players are from outside the United States and many of these Players return to their home countries in the off-season, making year-round testing impracticable. In addition, we believe that timing parameters should take into account the scheduling difficulties faced by Players and Clubs. For example, it can often times 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. The newly adopted NHLPA/NHL Program prohibits game day testing in recognition of these hockey-specific challenges.

Prohibited substances. Section 4(b) of S. 1114 and Section 5(b) of S. 1334 specify that the list of prohibited substances should be equivalent to the list established by the United States Anti Doping Agency (USADA). It is our view that the list of substances prohibited in the NHL should be developed on a basis that is relevant to the particular sport and not simply by adopting the list formulated by USADA or the World Anti Doping Agency (WADA) for Olympic competitions. Some of the substances prohibited on the USADA/WADA lists are not performance enhancing and should not be included as part of any testing regimen governing hockey players.

Penalties. Section 4(b)(7)(A)(i) of S. 1114 and Section (5)(e)(1)(A) of S. 1334 contemplate a minimum 2 year suspension for a first offense. We believe that 2 years is an unreasonably long punishment for a professional hockey player. 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 effectively end a hockey player's career, stripping him of his livelihood on the basis of a first offence. We agree that meaningful punishment is an important part of any testing regimen and we believe that our recently adopted Program finds the correct balance. The prescribed 20-game suspension for a first-time offender, coupled with the negative public coverage such an individual will receive, will have a significant effect on the offender's future behavior and the behavior of all players. In addition, the 60-game suspension for a second offense and the lifetime ban for a third offense are very substantial penalties that should operate to prevent repeat offenses.

Public Disclosure. Both pieces of legislation call for public disclosure of an offending player's identity within a defined time period from the date of a positive test or notice of a positive test (30 days under Section 4(b)(9) of S. 1114 and 10 days under Section 5(e)(2)(A) of S. 1334). We believe that in the interests of due process, no disclosure should be made until the applicable appeal process has run its full course. A Player who is able to exonerate himself should not be subject to premature and possibly mistaken identification as an offender.

Therapeutic use exemptions. Both pieces of proposed legislation provide for therapeutic use exemptions (TUE's), which are also an important component of the NHLPA/NHL Program. However, Section 4(b)(4) of S. 1114 and Section 5(d)(3)(B)(iii) of S.1334 require that the substance in question be prescribed by a doctor licensed in the United States. This requirement

would not be appropriate for the NHL, where the six Clubs based in Canada employ Canadian doctors, who administer to mostly Canadian and European Players. These Players should be able to seek TUE's on the basis of their Canadian doctors' prescriptions. Once again, we believe that the collective bargaining process provides parties with the ability to achieve the same goals as the proposed legislation, but in a manner that is consistent with the unique realities of their sports.

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.