



NATIONAL HOCKEY LEAGUE
PLAYERS' ASSOCIATION

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

**STATEMENT OF STEVEN FEHR
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(NHLPA)**

DECEMBER 2, 2014

My name is Steven Fehr, and I am Special Counsel to the National Hockey League Players Association (NHLPA). I appear today in response to the Chairman's invitation to testify. The Executive Director of the NHLPA, Donald Fehr, is unavailable due to a longstanding commitment overseas.

We want to thank the Chairman and the Committee for the invitation, as well as for taking the time to focus on this important issue. We all share the common goal of doing whatever we can to reduce the incidence of domestic violence in this country. Given some recent cases that have drawn great public attention from the realm of sports, today's discussion is both warranted and timely.

Professional athletes face extraordinary public scrutiny both on and off their field of play. These athletes are often thrust into the public spotlight at a young age with pressures few people ever experience during their lifetime. Our society expects them to be "role models," but in many cases their background and training in high-performance athletics has done little to assist them in assuming this role. In light of this, the NHLPA has worked with the NHL to develop procedures, policies and programs to help these young men and their families deal with these pressures. Those will be discussed in more detail below. We believe that our efforts have met with some success. But it is a never-ending project.

The issue of player discipline in this area is a complex one. When an employer disciplines an employee for misconduct away from the workplace, it raises a host of concerns on its own. But when you add the prospect of discipline for allegations that have yet to be proven, the issues become even more difficult. The careers of athletes are very short and all games are precious. Of course, the NHLPA wants to do all that it can to eliminate domestic violence that involves our members. At the same time, we cannot accept the proposition that a player should, as a matter of course, be punished until he has had his "day in court," or in neutral arbitration as the case may be. And in instances in which there is an actual or potential criminal proceeding in

addition to the prospect of employer discipline, the legal issues can be very complicated to navigate.

We should also make a point regarding the number of domestic violence incidents involving our members. We do not have data to compare to the numbers in society in general, or in other sports, but it would seem that such incidents involving NHL players are few and far between, as Commissioner Bettman has said. Indeed, with respect to the number of instances in recent years when NHL players were subject to prosecution for domestic violence, we are only aware of two such allegations against NHL players over the last nine years. In one, the charges were ultimately dropped, and the other is currently pending.

With that background let me give you more detail about the efforts of the NHLPA in this area.

The NHLPA is the exclusive collective bargaining representative of the more than 700 professional hockey players who play for the 30 clubs in the NHL, 23 of which are in the US and the remaining 7 in Canada. As such, we negotiate the players' terms and conditions of employment, including the bases upon which "off-ice" misconduct may be addressed by the League, and to represent our members in any disciplinary proceedings. Over the years, and particularly during the 2012-2013 bargaining that culminated in the parties' new collective bargaining agreement (CBA), we have negotiated with the NHL over policies and procedures related to the authority of the League and the Clubs to discipline players for off-ice personal misconduct, which would of course include instances of domestic violence or other crimes. In addition, and perhaps more important, for many years we have worked closely with the NHL to provide our members and their families with a comprehensive program of education and personal and family support in the form of the Substance Abuse and Behavioral Health Program (SABH). As will be explained below, the successful operation of this program may well have contributed to the infrequency of incidents of domestic violence.

Player Representation

The CBA provides the NHL Commissioner with the authority to discipline players for off-ice misconduct to the extent that such behavior is found to be detrimental to the game of hockey or to the welfare of the League. In addition, under the terms of the "Standard Player Contract" between individual players and their Clubs, which is also part of the CBA, NHL Clubs are authorized to discipline their players for conduct "detrimental to the best interest of the Club, the League or professional hockey generally." Such discipline, of course, is subject to the conditions as well as the procedural and substantive protections set out in the CBA, including a player's right to have his League or club discipline for off-ice misconduct reviewed by a neutral arbitrator. The NHLPA's role in the off-ice discipline process is rooted in our statutory duty to represent our members. Under the *National Labor Relations Act* unions owe all bargaining unit employees a duty of fair representation. Thus, the NHLPA attempts to ensure that the procedural protections of the Collective Bargaining Agreement are complied with; that the discipline assessed by the League or Clubs is consistent with the relevant provisions of the CBA; and that the discipline which results comports with traditional notions of fundamental fairness and due process.

A critical component of the negotiated disciplinary process, and central to the effort to achieve fairness and protect due process, is the aforementioned right to review by a neutral, independent arbitrator. This procedure has been available for many years to players who are the subject of Club discipline; in the 2013 CBA it was extended to apply to cases of Commissioner discipline. Upon the exercise of this contractual appeal right, the arbitrator is asked to review, among other things, whether the discipline imposed by the Commissioner for off-ice conduct was “supported by substantial evidence” and “proportionate to the gravity of the offense.” The right to appeal should encourage the fair and consistent application of disciplinary policies and of results that can withstand objective scrutiny. The fact that the arbitrator is independent, i.e., not an NHL official or representative, adds considerable credibility to the process and strengthens the perception that any penalties imposed are just.

Substance Abuse and Behavioral Health Program

The NHLPA and NHL work together through the Substance Abuse and Behavioral Health (SABH) program to ensure that players receive education, support and, where necessary, professional counseling and treatment. As I indicated previously, the training and background of the young men, who many expect to be role models, often does little to prepare them for this role. The program teaches and encourages players to make appropriate choices in their personal lives, including in their relationships with family members. The SABH program provides such counseling, treatment and support not only to players, but also to wives, spouses, girlfriends, and other family members. Both the League and the NHLPA are highly committed to this approach, which in this context may be considered preventative.

The parties established the SABH program in 1996. Since its inception, the primary aim of the program has been to provide a comprehensive system of professional support for players in order to promptly and effectively address behavioral issues, including conduct that might lead to criminal charges. The SABH program, which is staffed by dedicated health care professionals selected by the NHL and the NHLPA, provides players with education and information regarding the entire range of behavioral, personal, and relationship issues, including spousal abuse. The SABH “Program Doctors” are available on a 24-hour basis throughout the year to provide confidential assistance to players who may be experiencing personal or family crises.

At the commencement of each season, the SABH Program Doctors visit each of the 30 clubs and meet with players to discuss personal conduct issues and familiarize them with the array of available program services. Players are encouraged by NHLPA staff and representatives to reach out to the program before a situation gets out of hand, and are reminded that the Program Doctors are immediately available, either by telephone or in person, to assist in the management of personal crises. Considerable emphasis is placed on the confidentiality of player consultations with the Program Doctors. We believe that the players’ ready access to the highly skilled and trusted professional counseling services offered by the SABH program significantly reduces the incidence of violent outcomes related to personal issues.

The SABH program also aims to resolve behavioral issues on a long-term basis. Where appropriate, Program Doctors refer players to counseling or treatment offered by a network of health professionals established for this purpose. The progress of the players who receive such

counseling and treatment is monitored by the Program Doctors and, as deemed appropriate and necessary, follow-up care is available to players. As a general approach, the SABH program places emphasis on the resolution of issues within the player's family as a whole; family members, especially spouses, are involved in counseling and treatment, either on a separate basis or in conjunction with that provided to the player.

Rookie Orientation Program

More recently, the NHLPA and NHL have instituted an annual multi-faceted Rookie Orientation Program (ROP) that, among other objectives, is designed to serve as an important introduction to the SABH program for new players coming into the League. The ROP is a three-day seminar held before the commencement of training camp. Those players deemed likely to be playing in the NHL for the first time in the approaching season are required to attend. The players receive intensive education in the whole range of life-style issues confronting younger professional athletes, including the development of appropriate coping mechanisms within relationships. They are introduced to the professionals engaged in the SABH, who explain how they can utilize the program services.

Thank you again for the opportunity to be here today. I look forward to answering any questions.