

**TESTIMONY OF ROGER GOODELL  
COMMISSIONER,  
NATIONAL FOOTBALL LEAGUE,  
AND GENE UPSHAW  
EXECUTIVE DIRECTOR,  
NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION,  
BEFORE THE  
SUBCOMMITTEE ON CONSUMER PROTECTION  
OF THE  
COMMITTEE ON ENERGY AND COMMERCE  
UNITED STATES HOUSE OF REPRESENTATIVES  
FEBRUARY 27, 2008**

Chairman Rush and Members of the Subcommittee:

We are Roger Goodell, Commissioner of the National Football League, and Gene Upshaw, Executive Director of the NFL Players Association. We have submitted this joint statement to emphasize that our organizations – representing the 32 NFL Member Clubs and approximately 1,800 current NFL players – have a shared view that steroids and other performance-enhancing substances have no place in our game, or anywhere in sports. We have been committed to keeping them out of the NFL since the late 1980s and will continue to work together, along with government and private parties, to remove them from American life. It is true that we sometimes confront difficult economic issues in collective bargaining. But on this issue, there is no division between us. Each of us strongly supports the current NFL Program on steroids and other performance-enhancing drugs; each of us is committed to its continued vitality and improvement; and each of us is committed to ensure that it will remain a model for professional and amateur sports.

### **Summary of NFL Policy**

The title of today’s hearing – “Drugs in Sports: Compromising the Health of Athletes and Undermining the Integrity of Competition” – sums up the essence of the National Football League’s programs and policies to ban the use of steroids and other performance-enhancing substances. The General Statement of the NFL Policy on Anabolic Steroids and Related Substances makes it plain these prohibited substances “have no legitimate place in professional football.” (A copy of the 2007 Policy is attached to our testimony.)

The program has been among the highest priorities of the NFL for a number of reasons:

First, these substances threaten the fairness and the integrity of the game on the field. To allow the use of steroids and banned substances would not only condone cheating, but also

compel others to use them to remain competitive. Our own players want to rid the League of these substances so they can compete on a level playing field.

Second, we have a responsibility to protect our players from the demonstrated adverse health effects of steroids and other banned substances. Medical literature is replete with research linking the use of these substances to a wide range of serious health problems.

Third, we take seriously our role in educating and leading young people. The use of performance-enhancing drugs is dangerous and sends the wrong message that there are shortcuts to success and that performance at any price is more important than integrity. We recognize a responsibility to send the right message to young people. High school and college students – both athletes and non-athletes – are using these substances and NFL players by their own conduct should not suggest this is either acceptable or safe.

For many years, the NFL was the only professional sports league to test players for steroids and to impose significant discipline on players who tested positive for these prohibited substances. The testing program was first implemented by Commissioner Pete Rozelle in 1987. Prior to the 1989 season, Commissioner Rozelle took a further step, and publicly announced the suspension of active players who had tested positive for steroids during the preseason.

In 1990, Commissioner Paul Tagliabue took a number of steps to enhance the program. He initiated random, unannounced testing for all players throughout the year; retained Dr. John Lombardo as the League's independent Advisor on Anabolic Steroids (a position Dr. Lombardo continues to hold today); recruited other prominent scientists to advise the League in developing its program; and directed that all testing for steroids be conducted at laboratories certified by the International Olympic Committee. Players testing positive would be suspended without pay for a minimum of 30 days or four regular season games (25% of the season) for a first offense.

Since 1993, the NFL and the NFL Players Association have jointly administered the program through the collective bargaining process, and the program has benefited from the strong support the Union's leadership has given to eliminating these substances from the game. Each of the key elements of the policy has been endorsed through collective bargaining, and we have worked together to administer the program in a fair and effective way.

## Key Elements of NFL Policy

Our program is founded on a number of key principles, including the following:

1. **Year-round, random, unannounced testing – in season and out.** This testing takes the following form:
  - A. Annual/Preseason – All players are tested at least once each year. This test occurs during training camps or in mini-camps prior to the season. In addition, players are subject to random tests during each week of the preseason.
  - B. Regular Season – Ten players on each team per week are randomly selected for testing. These tests are conducted on different days of the week, and scheduled in a way to identify both substances that would be taken on a game day (such as stimulants) and substances that can be detected for a longer period of time, such as more traditional steroids. Players are randomly selected for testing via a computer program. There is no limit on the number of times a player may be randomly selected for testing. This testing continues for teams that qualify for the playoffs.
  - C. Off-Season – Each player is subject to as many as six off-season tests. Players are required to give their off-season locations to the Medical Advisor so that they can be located and tested, again on a random and unannounced basis.
  - D. Reasonable Cause – A player may be placed on reasonable cause testing, which subjects him to as many as 24 tests per year for the balance of his NFL career. Players are subject to reasonable cause testing based on prior positive tests (including while in college), or based on other documented involvement with prohibited substances.

On a combined basis, the NFL conducts approximately 12,000 random, unannounced tests each year. This is far more testing than is conducted in any other amateur or professional sport or competition including the Olympic Games.

2. **Strict Liability** – A central principle of our program is that players are responsible for what is in their bodies. Lack of intent, inadvertence, or accidental use of a tainted supplement is no excuse.
3. **Comprehensive List of Banned Substances** – The NFL prohibits nearly 90 substances including steroids, precursors, growth hormones, masking agents and stimulants. It is tailored to our NFL athlete population, is regularly reviewed by the NFL and the NFL Players Association, and has been revised and expanded over the years. In addition, the banned substance list includes a general prohibition of “related substances,” so that minor chemical alternatives cannot excuse the use of what would otherwise be a prohibited substance.

As a result, our Program is often ahead of both government and other sports organizations. Examples include androstenedione, ephedra, and THG, all of which were banned by the NFL well before they were prohibited by other sports organizations or the federal government. In addition, we meet regularly with leading scientists and pay close attention to developments in other anti-doping programs to ensure that our list remains both current and comprehensive.

4. **Administrative Independence** – Dr. John Lombardo serves as the independent Medical Advisor and has held that position since 1990. Under the program, Dr. Lombardo has full authority to supervise all aspects of testing, including the following:

- selecting which players will be tested each week (using a randomized computer draw in the case of the regular 10-per-team-per-week tests);
- deciding when the specimens will be collected;
- determining the number of reasonable cause tests to be administered (subject to the collectively-bargained maximum of 24 tests per player per year);
- determining the number of off-season tests to be administered (subject to the collectively-bargained maximum of six off-season tests per player);
- analyzing test results over time, particularly with respect to naturally-occurring substances such as testosterone;
- performing any medical evaluations associated with possible use of prohibited substances, so-called “therapeutic use exemptions,” and reinstatement following a suspension;
- communicating with, giving instructions to, and overseeing the work of the independent specimen collection firm;
- deciding whether a player has failed to cooperate with testing, or attempted to dilute, tamper with, or substitute a specimen to defeat testing, or otherwise violated testing protocols; and
- certifying a positive test for disciplinary action

**Neither the NFL, the NFLPA, nor any NFL Member Club directs, has prior knowledge of, or influences in any way the testing schedule, the identity of players who are tested, or the initial determination whether a violation has occurred, either as a result of a positive test or for some other reason.**

The NFL and NFLPA do not become involved in the process until a positive test or other violation has been determined by Dr. Lombardo, at which point disciplinary consequences will follow, subject to the player's right to appeal.

5. **Adherence to strict collection and analytical standards** – Specimens are collected by independent, specially-trained collectors who work for an independent company, not for the NFL or NFLPA. All specimen collection is performed under strict rules, the most important of which is the requirement of direct frontal observation, a step which gives substantial assurance of the authenticity and genuineness of the sample. The collectors ensure accurate completion of change-of-custody documentation, and package and ship specimens to the testing lab, using tamper-resistant seals and unique control identification numbers. The chain-of-custody documents conform to standards developed and used by the federal government, WADA, and other organizations. The validity of the documentation is independently confirmed at the testing lab when the samples are received.

All specimens are analyzed at either the UCLA Olympic Analytical Laboratory in Los Angeles or the Sports Medicine Research and Testing Laboratory (“SMRTL”) at the University of Utah. These labs are certified by both the International Standards Organization and the World Anti-Doping Agency. They are also subject to independent blind quality control checks under the direction of Dr. Bryan Finkle, a certified toxicologist jointly retained by the NFL and NFL Players Association.

The SMRTL was developed by the NFL in partnership with the United States Anti-Doping Agency and the University of Utah. Over and above testing costs, the NFL has to date invested approximately \$3 million to establish and equip this lab, retain and train personnel, and meet international standards. Consistent with its mission, the SMRTL will



perform testing not only for the NFL, USADA and WADA, but for the NCAA and other sports organizations as well.

Every specimen is screened for all banned substances that can be identified in urine. The analysis is performed by highly sophisticated GC/MS and LC/MS/MS equipment. Where issues arise concerning potentially elevated levels of testosterone or epi-testosterone, the labs employ a highly sensitive technique called Carbon Isotope Ratio testing which can conclusively identify exogenous testosterone. In addition, a percentage of specimens is randomly screened using CIR technology to identify and deter testosterone use.

The testing laboratories do not know which players have been tested or who provided any specific specimen being analyzed. Accordingly, the analysis of specimens cannot be affected by that information.

6. **Respect for Player Rights** –Through collective bargaining we have designed an appeal system that provides due process and confidentiality for players and resolves appeals in a timely way.
7. **Mandatory Penalties** –Any player who tests positive is suspended without pay for a minimum of four games, subject to the right of appeal. He thus loses one-fourth of his salary. A player who has a second positive test is suspended without pay for a minimum of eight games. A third positive test results in a suspension without pay of at least one year.

The penalties for an established violation are mandatory and may not be reduced or modified on appeal. No consideration of intent is necessary and a lack of intent cannot be cited as a mitigating factor.

The mandatory penalties, combined with frequent, on-going testing of violators, have effectively deterred any repeat use. Over the history of the policy, three players have tested

positive and been disciplined a second time; two of those players elected to retire rather than face a second suspension.

Discipline can also be imposed in the absence of a positive test. For example, in 2007, three players and a coach were suspended as a result of law enforcement activity that established their use of a prohibited substance. The NFL cooperated fully with law enforcement officials in their investigation.

In addition, a failure or refusal to test; an effort to dilute, substitute, or tamper with a urine specimen; or otherwise manipulate a test result will result in disciplinary action.

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One other key element of our program is that we regularly review its operation and make appropriate modifications. In recent years, for example, we have reduced the threshold for a positive test for testosterone; greatly increased our use of highly sensitive Carbon Isotope Ratio testing; increased in-season random testing by 40%; increased the penalty for repeat violators; added many new substances to our prohibited list; tripled the number of times a player may be tested in the off-season; and have agreed to special procedures under which anyone who enters the NFL with a prior suspension from another sports organization will be treated as a repeat offender in our Program. And we have funded a wide range of research, including on improved testing methods for substances such as human growth hormone.

We have also initiated constructive dialogue with law enforcement at all levels, and we applaud the outstanding work of federal and state prosecutors in breaking up illegal steroid and growth hormone distribution rings. We have also instituted a comprehensive program of education for players and teams through literature, videos, a toll-free hotline, and mandatory meetings.

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We will now comment on two points that we know are of particular concern to the Committee: the status of testing for human growth hormone; and our views on possible federal legislation.

### **Testing for Human Growth Hormone**

Human growth hormone is a naturally occurring substance that is found in all healthy individuals. It is now widely – and unlawfully – available through a variety of sources, including Internet-based pharmacies and so-called “anti-aging” clinics. Its use is by no means restricted to athletes. To the contrary, it is used by movie stars, students, and many others. In short, the issue of growth hormone is one that extends far beyond sports.

No reliable urine test has been developed for growth hormone, although research is underway to develop such a test, and the NFL has contributed funds to support that research. A blood test has been developed, and has been used in very limited ways. The new head of WADA said last week, “There’s been progress on the test for HGH and we’re hoping that it is ready soon.” And, as Senator George Mitchell stated in his recent report, the limitations of the current blood test are such that “its practical utility is doubtful.” There are many reasons for this, including that the existing test is available only in extremely limited quantities, that no lab in the United States is presently certified to conduct growth hormone testing, and, importantly, that the window of detection is so brief that the ability to identify growth hormone is severely limited. These factors may explain why no athlete in any sport or competition has ever tested positive for growth hormone. However, when other information has established the use of growth hormones, the NFL has taken disciplinary action.

We have, in conjunction with the United States Olympic Committee, Major League Baseball, and the USADA, joined a newly-established research consortium which will support further research into improved testing methods. The NFL has pledged \$3 million in support of this effort. We have been giving this subject the most careful consideration, and if and when a scientifically-validated test becomes available on a widespread basis, we will discuss how to incorporate such a test into our program. In the meantime, we will continue to support research and law enforcement efforts to address this important issue. As part of this support, we have endorsed legislation that would amend the Controlled Substances Act by adding human growth hormone to the list of "Schedule III Substances."

### **Is Federal Legislation Necessary?**

The NFL and the NFLPA are proud of our testing and discipline program and how it is operating. Is it perfect? Does it catch every offender? Probably not. But the players overwhelmingly support the program, recognize its value, and believe it applies to all players in a fair and even-handed way.

A collectively-bargained program offers significant advantages. Most importantly, it ensures that the program has the support of the very people who are being tested and disciplined, and that it operates in a manner that is fair and uniform, without regard to whether the player is a future Hall of Famer or a journeyman hoping for one more season. It allows for a rapid response to changing conditions -- it is no accident that our collectively-bargained program banned androstenedione and ephedra long before the federal government, or that we were able to retest every specimen in the laboratory's possession (more than 2,000) when the designer steroid THG was first identified. It avoids legal issues that might otherwise limit the effectiveness of a drug testing program. A management-labor agreement allows for reasonable limits on individual

privacy and other rights, and for an appeals process that protects player confidentiality and due process rights, while also deciding appeals in a timely way.

When the FDA banned ephedra, the effect of the ban was sharply limited by a federal judge. When the NFL and NFLPA agreed to ban ephedra, it stayed banned. While Congress may limit FDA's authority to regulate nutritional supplements, we were able to agree on a simple rule – you are responsible for what is in your body, and it is of no consequence if you accidentally ingested a tainted supplement.

Accordingly, we do not believe that there is a demonstrated need for federal legislation to supersede our collectively-bargained Policy. The bargaining process appears to be the most suitable means for dealing with the issue. We recognize that use of steroids and related substances presents an important public health issue and believe that government has an important and constructive role to play. That role includes law enforcement activity, support for research and education programs, and oversight of private industry programs. Where private industry has failed to address a problem, or has done so in a demonstrably ineffective way, legislation can both encourage and support appropriate private action; or at times displace private action altogether.

If the Subcommittee should elect to consider possible legislative approaches, our organizations are fully prepared to consult with you and your staff on the scope and content of legislation. If legislation is to be pursued, we believe that it should embrace and not supplant effective collectively-bargained approaches. Consistent with that belief, we would offer the following general principles to guide the development of any federal legislation.

First, Congress should encourage private-sector initiatives and solutions that meet its public policy objectives in addressing the issue of performance-enhancing drugs in professional sports, and any legislation should be reserved for circumstances in which Congress's public policy needs have not been met by these private-sector initiatives.

Second, legislation should recognize and respect the longstanding national policy favoring collective bargaining and should build upon the successes of collectively-bargained programs rather than discard them and substitute other administrative frameworks.

Third, collectively-bargained solutions that meet the public policy purposes set forth by Congress should not be replaced with federal regulations. A federal regulatory process will foster court and administrative challenges; and such challenges will likely weaken the effectiveness and increase the administrative complexity of any program.

Fourth, penalties and appeals should be sufficient to deter use; sanction violators appropriately; avoid extended litigation; and send an appropriate message to fans and young people. Strict liability and escalating sanctions with limited grounds for appeal are superior to draconian penalties for first offenses with discretionary exemptions and extended rights of appeal.

Fifth, legislation should recognize and account for the differences among sports in establishing testing protocols and adjudicatory and appeal policies, among other matters. In developing a list of banned substances, legislation should take into account those substances currently banned by professional sports associations in addition to other scientifically valid lists. It should not prohibit collectively-bargained arrangements to expand the list of banned substances.

Finally, legislation should provide that a professional sports association is in compliance with federal standards when through collective bargaining it has adopted and implemented a testing program for steroids, other performance-enhancing substances and masking agents that meets or exceeds the federal requirements.

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In summary, Mr. Chairman, we modestly believe that our organizations have been leaders in the fight against steroids and performance-enhancing drugs, and our Program – while certainly not perfect – has been a model for others and can be built upon to achieve further successes.

Once again, thank you for inviting us to appear today. We look forward to responding to your questions.