

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

STATEMENT OF PAUL V. KELLY

EXECUTIVE DIRECTOR

NATIONAL HOCKEY LEAGUE PLAYERS' ASSOCIATION

27 FEBRUARY 2008

Mr. Chairman and Members of the Subcommittee:

My name is Paul Kelly and I serve as the Executive Director of the National Hockey League Players' Association (NHLPA). I would like to thank you for the opportunity to speak on behalf of the players with regard to the important issue of performance enhancing substances in sports. Having served ten years as federal prosecutor, including one term as the Chief of the New England Organized Crime Drug Enforcement Task Force, I am no stranger to the hazards and risks associated with drugs, and I want to clearly and emphatically state that the NHLPA strongly opposes the use of performance enhancing substances by anyone in our sport. This issue affects the competitive integrity of our sport, the personal health of our players, and indeed, the health of the millions of young hockey fans across the world that look up to our players as role models. The stakes are high, and we are fully committed to seeing that drugs have no place in hockey.

Fortunately, hockey players have historically steered clear of performance enhancing substances. This is first and foremost a credit to the players, but it is also a

simple reflection of the nature of our sport. Anabolic steroids, human growth hormone, and other muscle-enhancing substances do little to augment the performance of our athletes, whose success depends primarily on hand-eye coordination, speed, agility, endurance, communication, and most of all – teamwork. Of course, the fact that we have virtually no history of performance enhancing substance abuse does not free us of the responsibility to keep drugs out of hockey. And we are fully aware that performance enhancing substances have been used by some, not just to build muscle mass, but also as a means to speed recovery from injury and/or muscle fatigue. It is with that in mind that the NHLPA and National Hockey League (NHL) have implemented a league-wide drug policy that not only tests the players, but educates them as well. Because the results we have seen have been so encouraging, I would like to take this opportunity to share some of the history and details of our policy.

NHLPA/NHL Substance Abuse and Behavioral Health Program

In 1996, as a part of the previous Collective Bargaining Agreement, the NHLPA and NHL jointly implemented the “Substance Abuse and Behavioral Health Program” (SABH Program). This wide-ranging program was designed to identify and address all potential substance abuse issues among NHL players in a confidential, fair, and effective manner. We accomplished this by incorporating education, counseling, in-patient and outpatient treatment and testing, follow-up care and, where appropriate, punitive sanctions, up to and including permanent suspension from play. Though we have since modernized and updated our testing and disciplinary procedures – which I will discuss in

more detail later – the educational and treatment components of the SABH Program remain.

What the SABH Program doctors learned over several years is that, to the extent NHL players have exhibited substance abuse issues at all, those limited cases are typically associated with alcohol, as opposed to steroid or performance enhancing substances. Moreover, NHL players' long history of participation in international hockey competitions – and the accompanying track record the players have accumulated with respect to drug testing performed at such competitions – provide empirical evidence showing performance enhancing substances are not to date a prevailing issue.

Over the past twelve years, no fewer than 1,000 NHL players have participated in the IIHF World Championships; the 2004 World Cup of Hockey; and the 1998, 2002, and 2006 Winter Olympics – all of which used testing procedures and banned substance lists consistent with the World Anti-Doping Agency (WADA) Code. Over this entire time span we are aware of only a handful of positive tests for performance enhancing drugs. And in more than half of those cases there were extenuating circumstances – a mistaken use defense or therapeutic use exemption, for example – that accounted for the player having tested positive. In sum, neither the SABH Program doctors, who have had intimate access and involvement with our players, nor the more than ten years of drug testing performed in conjunction with international hockey competition have uncovered any steroid or other performance enhancing substance abuse problem in our sport.

NHLPA/NHL Performance Enhancing Substances Program

Nevertheless, because the issue of performance enhancing substances has gained prominence over the past few years, and in an abundance of caution with regard to any potential problems that might develop specific to our sport, we decided with the NHL to update our testing and disciplinary procedures during our last round of collective bargaining. As part of the Collective Bargaining Agreement (CBA) executed in July 2005, the NHLPA and NHL implemented the Performance Enhancing Substances Program (the Program), a comprehensive drug testing and control policy that is specifically aimed at discouraging the use of performance enhancing substances in hockey. The purposes of this Program include: educating players regarding the health risks posed by the use of performance enhancing substances; treating players found to have used such substances; and deterring future use through random no-notice testing and the imposition of disciplinary penalties for noncompliance. The Program is jointly administered by a committee that includes the NHLPA General Counsel, NHL Deputy Commissioner, and two consulting expert doctors.

In order to keep my testimony from running beyond the Subcommittee's limits, I will refrain from providing an in-depth description of our Performance Enhancing Substances Program, and instead refer you to the NHL's submission on the Program because I understand that information to be accurate. However, I would like to take a couple brief moments to share with you, first, a few of our testing Program's key features, and second, the encouraging results we have seen since implementing the Program some two and a half years ago.

Key Testing Features. Our main goal when structuring the Program was to implement a testing regimen that was both independent and thorough. To further this goal:

- The Program is managed by an independent entity that: (1) determines when random, no-notice tests will occur; and (2) hires independent collectors to gather test samples;
- The performance enhancing substances tested under the Program are those included on the WADA out-of-competition panel;
- NHL players are subject to up to three no-notice tests each season: ten teams undergo one no-notice test; ten teams undergo two no-notice tests; and ten teams undergo three no-notice tests; and
- All test samples are analyzed by an independent, WADA-certified laboratory.

Moreover, any player who tests positive for a banned substance receives mandatory discipline as follows:

- For a first positive test, a player is suspended twenty games – roughly one quarter of an entire regular season – without pay;
- For a second positive test, a player receives a 60-game suspension without pay; and
- For a third positive test, a player is permanently suspended from the NHL, the one caveat being that such a player is eligible to apply for reinstatement after sitting out two years.

Program Results. The results we have seen in the first two and a half seasons of testing under this system have been quite encouraging. During the 2005/2006 and 2006/2007 seasons and the first half of this current season, 3,570 no-notice drug tests were conducted of NHL players. Of that number, only one player was determined to have violated the terms of the Program. That player was suspended for twenty games without pay, and since then no players have tested positive. These numbers offer compelling evidence that our Program is comprehensive and thorough, but even more important than that, the numbers show our program is working.

As I mentioned before, this track record is a reflection of our players' integrity, hard work, and dedication. It also speaks to our continuous joint efforts with the League to make sure the players, trainers, and other team staff members are educated about the dangers associated with performance enhancing drugs. Because we are committed to continuing our work with the NHL to fulfill this mission, the players' position is that there is no need for drug testing legislation insofar as it would relate to the NHL. Again, I want to be clear that we recognize drugs in sports is a crucial issue to players and fans in all sports, at all levels and ages, and I greatly appreciate you inviting the NHL players to be involved in the national dialogue surrounding this important issue. In the end, however, we have the utmost confidence in our players and in our Program, and we believe sincerely that our numbers speak for themselves.

Thank you again for inviting me to take part in today's hearing.

**Statement of Paul V. Kelly
February 27, 2008**

Respectfully Submitted,

**Paul V. Kelly
Executive Director
National Hockey League Players' Association**