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BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER
PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE
U. S. HOUSE OF REPRESENTATIVES

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Chairman Rush, Congressman Whitfield and Members of the Subcommittee:

The use by athletes of steroids and other performance-enhancing substances is an issue implicating the fundamental integrity of all athletic competition. The NBA, as a result, has a strong and continuing interest in ensuring that these drugs are not used by our players and that our games are conducted on a fair and legitimate basis. Steroids and performance-enhancing drugs also pose serious risks to the health of our players, which provides a separate and compelling rationale for preventing their use in the NBA. Finally, we cannot ignore the fact that young people – especially young athletes – look up to and attempt to emulate professional athletes. It is therefore incumbent on the NBA and its players to keep performance-enhancing substances out of our game in order to send the message to all our young fans that these substances have no legitimate place in athletic competition.

THE NBA'S ANTI-DRUG PROGRAM

Through the process of collective bargaining, the NBA and the Players Association adopted our first anti-drug program in 1983, with a focus on drugs of abuse – in particular, cocaine and heroin. In 1999, the NBA and the Players Association agreed to include steroids and performance-enhancing substances in that program, and from 1999 to 2004, through agreement with the Players Association, we added additional performance-enhancing substances to our list of banned drugs and expanded our on-going program to educate players about the dangers of these substances.

I should point out that the NBA, during this time, had no evidence of even minimal use of steroids or performance-enhancing drugs by NBA players. Nor are we aware of any such evidence today. But we believed then – and still believe today – that a strong and effective anti-drug policy is the best way to ensure that these substances never enter the culture of the NBA, and to demonstrate to our fans the collective commitment of NBA teams and players to fair and legitimate competition.

In May of 2005, I appeared before this Committee and separately before the House Committee on Oversight and Government Reform, both of which had questions and concerns about performance-enhancing substances. Later that year, the NBA also provided information about our anti-drug program to the House Judiciary Committee. Not long after these events, the NBA and the Players Association entered into a new labor agreement, effective with the start

of the 2005-06 NBA season, that included important modifications to our drug program.

Under our current collective bargaining agreement, all NBA players are tested four times between October 1 and June 30 of each season on a random, unannounced basis. Testing is conducted during the pre-season, regular season, and post-season, and players whose teams do not make the playoffs or are eliminated from the playoffs are subject to testing throughout the entire post-season.

The penalties for violators have also been increased. A first-time offender of the steroids and performance-enhancing drugs policy is suspended from his team for 10 games; a second offense results in a suspension of 25 games; a third offense results in a suspension of one (1) year; and the fourth offense results in the player's dismissal and disqualification from the NBA. Because the average player salary is now \$5.35 million, these suspensions have substantial financial consequences, and, because suspensions are publicly announced, they can also affect the player's off-the-court income and standing.

The foregoing penalties, we submit, are strict enough to punish violators appropriately, deter the use of steroids and performance-enhancing drugs in the NBA, and provide fair opportunities for players to conform their conduct appropriately. Indeed, since these drugs were first added to our Program in 1999, we have never had a player commit a second violation.

The NBA utilizes several independent entities and individuals to oversee and administer the Program. Dr. Stephen M. Taylor, who was educated at

Harvard and Howard Universities and honed his skills as an addiction medicine specialist at New York University, is our Medical Director. In this capacity, Dr. Taylor serves as the medical review officer for all positive tests, confirms all positive tests, develops and implements treatment programs for players who need counseling or other medical intervention, and leads our efforts to educate players about the dangers of prohibited substances.

All urine specimens collected under the Program are analyzed by the Doping Control Laboratory at the INRS-Institut Armand-Frappier in Montreal, which is one of only three WADA-accredited laboratories in North America. The Director of the Laboratory, Dr. Christiane Ayotte, has been extensively involved with the anti-doping efforts of both the IOC and WADA for more than a decade, including her recent membership on WADA's Health, Research and Science Committee.

The scheduling and collection of specimens is performed by The National Center for Drug Free Sport (DFS), an independent company that also performs collections for the NCAA and other sports organizations. The NBA and the Players Association have no involvement whatsoever in DFS's scheduling of random drug tests or its selection of players for testing, and are provided no advance notice by DFS of when teams or specific players are scheduled to be tested. Random tests, which involve no advance notice to NBA players, are conducted on both non-game days and game days (both at shoot-arounds and pre-game).

The NBA also utilizes a Prohibited Substances Committee to review the Program's list of banned substances and address other anti-doping issues, such as advances in drug testing science and technology, on a regular basis. The Committee is comprised of three drug testing experts, as well as one representative from both the NBA and the Players Association. Those experts include Dr. Barry Sample, who served as the Director of the Anti-Doping Laboratory for the 1996 Summer Olympics in Atlanta, and Dr. Doug Rollins, who served as the Medical Director of the Doping Control Program for the 2002 Winter Olympics in Salt Lake City.

The NBA's list of banned substances has also been expanded to include more than 120 substances, including all of the steroids made illegal by the Anabolic Steroids Control Act of 2004 and additional steroids, stimulants and other substances banned by WADA. In addition, the initial threshold for a possible positive testosterone result was lowered to 4:1 (from 6:1), following a change that was made by WADA.

Human Growth Hormone (HGH), a substance whose use seems to be increasing among athletes as well as among the population as a whole, was one of the substances added to our banned substances list in 2005. Since that time, the Prohibited Substances Committee has been monitoring the development of a legitimate and valid urine test for HGH. Currently, such a test is not available. While we understand that a blood-based HGH test will be available later this year in certain WADA-accredited laboratories, our current agreement with the Players Association does not provide for the collection of blood samples from players.

The Anti-Drug Program also includes several additional components that are worthy of mention here. For example, the Program provides for “reasonable cause” testing when evidence comes to light that a player has used or possessed a banned substance. This evidence is submitted to an Independent Expert, who determines whether there is “reasonable cause” for an authorization for testing for the player in question. If an authorization for testing is issued, the player is then tested randomly four times over the next six-week period, and these tests are supplemental to the requirement that the player be tested randomly four times each season.

The Program also includes a mechanism to discipline players for so-called “non-analytical positives” – *i.e.*, a finding that a player has used or possessed a prohibited substance that is not based on a positive drug testing result. Such findings are made by an independent arbitrator under our labor agreement, who is also the person who hears and resolves any appeals filed by players who are disciplined under the Program.

Finally, players are automatically penalized for a criminal conviction involving the use or possession of a banned substance.

THE NBA’S EDUCATIONAL EFFORTS

The NBA’s Anti-Drug Program contains a substantial education and counseling component. A brochure describing the Program is distributed to each NBA player during training camp, and a poster-sized list of the NBA’s banned substances is displayed in each team locker room. During the season, each NBA player is required to attend a “team awareness” meeting, at which the

Program and substance abuse issues are addressed by the Medical Director and other members of the Program's professional staff. In addition, prior to entry into the NBA, rookie players must attend a week-long "Rookie Transition Program," during which the dangers of drug and steroids use – among other topics – are addressed in full. And an anti-drug presentation is made at the NBA's Pre-Draft Camp in June of each year, where prospective NBA draftees are gathered.

The NBA and the Players Association have also emphasized the dangers of dietary supplements, which are not currently subject to regulation by the federal government. A special notice regarding dietary supplements is distributed to players at the start of each season and is displayed as a poster in each team locker room. The warning states in part:

"Use of supplements has been associated with high blood pressure, heart attack, stroke, seizure, and sudden death. These events have occurred in young adults, including elite athletes, in otherwise good health. . . . Because supplements are not regulated, their quality and potency may vary significantly from product to product. In fact, supplements may be contaminated with ingredients not listed on the label. Some of these ingredients may be harmful; others may be banned by the NBA/NBPA Anti-Drug Program, and could lead to a positive drug test."

We recognize that one of the Committee's concerns is the extent to which young people, both athletes and non-athletes, are using steroids and other performance-enhancing substances today. The NBA is fully supportive of efforts to better educate our young fans about the dangers of these substances, as well as the dangers of drugs of abuse such as marijuana and cocaine. Indeed, the NBA, its teams, and its players have made numerous contributions to organizations and initiatives that counsel against substance abuse.

The NBA has a long-standing relationship with the Partnership for Drug-Free America, and has generously supported their anti-drug programs throughout the years -- including through the regular airing of public service announcements involving NBA players. The NBA has also worked with the Partnership in developing its "Training With Integrity" materials for members of the Jr. NBA and Jr. WNBA, a nationwide support program for youth basketball leagues that reaches approximately 2 million children annually. The "Training With Integrity" materials, which discuss the dangers of both recreational and performance-enhancing drugs, and encourage good health and proper training, are distributed to participating children, parents, and coaches.

Together with the National Federation of High Schools, the NBA, through its "NBA Cares" initiative, has contributed to the development and creation of a DVD focusing on the dangers of steroid abuse. This DVD has been made available to the more than 16,000 high schools nationwide that are Federation affiliates.

NBA teams are also involved in educating the public, particularly young people, about the dangers of drug use. For example, for more than 15 years, the San Antonio Spurs have sponsored the Drug-Free Youth Basketball League, an eight-week basketball league which offers over 20,000 at-risk youth the opportunity to play basketball and learn the importance of team work, sportsmanship, and discipline in a drug-free and safe environment. The Spurs also run Spurs Night Hoops, a basketball league for teenagers, in which volunteer coaches provide education to the players about the dangers of, among

other substances, performance-enhancing drugs. The Miami Heat have hosted the Heat Steroids Seminar for middle and high school students and physical education instructors from the Miami-Dade County public schools. Heat personnel, including players, participate in this seminar, which provides an anti-drug message and focuses on healthy training alternatives. The Indiana Pacers have recently developed a Be Drug Free grant fund that is open to all organizations whose mission is to help young people remain drug-free.

Since 2005, in addition to these educational efforts, the NBA has become involved in other initiatives intended to prevent and combat the use of steroids and performance-enhancing drugs. Last year, for example, we joined with the other major sports leagues in initiating a dialogue with several agencies of the federal government, including the Drug Enforcement Agency and the Department of Justice, designed to foster additional communication and cooperation about performance-enhancing drugs. Two meetings were held in 2007, and the parties intend to continue to work together to foster stronger relationships and to educate the public about the dangers associated with the use of these substances.

The NBA has also joined The Partnership for Clean Competition, the recently-launched collaboration between the United States Olympic Committee and certain professional and amateur sports organizations, by pledging an initial contribution of \$500,000. The collaboration's mission is to support independent scientific research on the scientific implications of sports doping and the development of the most effective tests to detect the use of banned substances. Specifically, the Partnership will fund research concerning the detection of HGH,

the analysis and examination of genetic technologies in doping, and the development of tests that can be made available to colleges, high schools, and youth sports organizations on a cost-effective basis.

COMMENTS ON POTENTIAL LEGISLATION

I believe that the NBA's current anti-drug program is strong, effective, and appropriate for our sport, and remain committed to ensuring that it remains state-of-the-art. I am confident that any necessary modifications to our program can be made through the collective bargaining process with the Players Association, as we have successfully done in the past. Indeed, a drug program that is the product of agreement between management and labor will always be superior to one that is imposed from the outside, as the parties to the agreement will be invested, as we are, in its success.

For this reason, federal legislation in this area is not necessary for the NBA. Nor do I believe that a uniform, federally-mandated approach to drug testing for all sports leagues would be appropriate. For example, while we believe it is important to prohibit a broad list of performance-enhancing substances, as we do in our Program, we do not believe that the entire WADA list of prohibited substances is right for the NBA. Similarly, while stiff penalties are necessary for the legitimacy of any anti-drug program, we believe that the penalties contained in our labor contract – and not the excessive penalties that were previously proposed by Congress – are fair and appropriate for our sport. And finally, we do not believe that the involvement of an entity like WADA will improve our Program in any respect. As discussed above, the NBA's Program is

already managed by independent entities and individuals with substantial expertise and integrity. Moreover, because the NBA and the Players Association jointly created our Program, NBA players have confidence in its legitimacy and impartiality, and that trust is critical to making the Program run smoothly.

I thank the Committee for the opportunity to present the NBA's views on this matter.