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DOPING IN SPORT: FROM LANCE ARMSTRONG TO THE AFL AND NRL

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Introduction

The issue of doping in sport is always a topical one, but never has it been more so than in the last year or so. Firstly, in October 2012, the United States Anti-Doping Authority (USADA) released a 200 page report outlining its case against seven time Tour de France winner, Lance Armstrong. In February, 2013, meanwhile, the Australian Crime Commission (ACC) announced that its year long investigation had found evidence of the use of performance enhancing drugs in both the Australian Football League (AFL) and the National Rugby League (NRL). The report has led to a continuing investigation by the Australian Sport Anti-Doping Authority (ASADA).

This paper will therefore examine the Lance Armstrong doping scandal, and those now being investigated in the AFL and NRL. First, however, it will examine the relevant Articles of the World Anti-Doping Code.

The WADA Code

The World Anti-Doping Agency (WADA) was established in November, 1999, and it is now the world body responsible for the testing of drugs in sport. Its present President is former NSW Premier and Federal MP, John Fahey. In March 2003, WADA produced a document called the World Anti-Doping Code (WADA Code) which sets out to harmonise the rules relating to drug testing, with the banned substances being listed in its the WADA Prohibited List. Another feature of the WADA Code is that each country is expected to have its own national anti-doping organisation, and in Australia, it is ASADA.

Article 2 of the Code sets out the various violations, Article 2.1 being the main one as it involves the presence of prohibited substances in the athlete's sample. It states that it is the athlete's personal duty to ensure no prohibited substance enters his or her body. Article 2.3 makes it an offence to refuse to submit, without compelling justification, a sample when requested. Article 2.6 makes possession of prohibited substances an offence while Article 2.7 makes trafficking of prohibited substances an offence. Article 2.8 makes the administration, or the attempted administration, of prohibited substances, an offence.

Article 3.1 sets out that it is the anti-doping organisation which has the burden of proof that an anti-doping rule violation has occurred, with the standard of proof being comfortable satisfaction which is then defined as being 'greater than a mere balance of

probability but less than proof beyond a reasonable doubt.’ Article 3.2 states that violations ‘may be established by any reliable means’ with 3.2.1 stating that ‘WADA accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories.’ It also states that the sportsperson can rebut this presumption.

Article 4.3 sets out the criteria for including substances on the Prohibited List with 4.3.1 stating that a substance can be on the list if it fulfils two of the following three criteria:

- There is medical or other scientific evidence, pharmacological effect or experience that indicates that the substance has the potential to, or does, enhance sport performance.
- That there is medical or other scientific evidence, pharmacological effect, or experience that indicates the use of the substance will represent an actual, or potential, health risk to athletes.
- The use of the substance violates the spirit of sport.

The WADA Code also has a collateral document that outlines, and updates, the list of prohibited substances, the current version being The 2010 Prohibited List. It separates the substances and methods into a number of categories. The first are those which are prohibited at all times such as anabolic steroids (S1), and peptide hormones, growth factors and related substances (S2). It should be noted that in regard to the S2 group there is a clause stating ‘and other substances with similar chemical structure or similar biological effects.’

The second group are those which are prohibited in-competition, such as stimulants (S6) and narcotics (S7), which will be tested on match or race days, but will not be tested by the anti-doping agencies out-of-competition. The third category are those substances that are only prohibited in particular sports during competition, and these include alcohol (P1) in sports such as archery and the shooting discipline in Modern Pentathlon, and beta-blockers (P2) in sports such as gymnastics and shooting. There are also a number of listed prohibited methods, the most significant being blood doping (M1).

A feature of the present rules is that after a positive test, competitors can now be disqualified from previous events and any medals won can be taken from the athletes involved, or teammates if it was a team event. Marion Jones, for instance, had been one of the great female athletes of all times after her performances in the 2000 Sydney Olympic Games. In 2006, however, she gave a positive drug test to the blood boosting hormone, EPO, then confessed to steroid use prior to the 2000 Sydney Olympic Games. She was therefore forced to return the five Olympic medals she won in Sydney, three gold and two bronze. Two of these events were relays, 4 x100m and 4 x 400m, which meant that her teammates also lost the medals they had won in those events. It was on the same basis that Lance Armstrong was recently stripped of his Tour de France victories.

Lance Armstrong and the Tour de France

In regard to the Lance Armstrong case, it should be acknowledged that there were rumours and accusations regarding the fact that he was taking performance drugs since

his very first win back in 1999. Well known and respected sports writer, David Walsh, for instance published a book in 2007 entitled *From Lance to Landis*¹ which presented evidence to support this, mainly in the form of testimonial evidence from those who had witnessed first hand what Armstrong had been doing during his seven year Tour wins.

The USADA Report on the Lance Armstrong case², likewise, relied heavily on testimonial evidence, much of it from people involved in Armstrong's US Postal Service and Discovery Channel teams, including some of his teammates, such as Floyd Landis and Tyler Hamilton. While their evidence also incriminated themselves, the incentive was in the form of reduced suspensions, namely six months, rather than the usual two years, or the potential lifetime ban that was imposed on Lance Armstrong. This includes any event in sports that are signatories to WADA and therefore its Code, with Armstrong for instance, being recently prevented from competing in a regional masters swimming competition.

The charges against Armstrong involved the use, possession, trafficking and administration of prohibited substances, USADA claiming that the evidence it had proved the offences 'beyond reasonable doubt.'³ Evidence from members of his team was that Armstrong was using EPO in 1999. Armstrong, for instance, had effectively admitted this to team masseur, Emma O'Reilly, with there also being evidence the US Postal team hired someone to make deliveries of EPO during the 1999 Tour.⁴ While a prohibited substance at the time, there was no test for it, though a short time later one was created and in 2004 when the test was applied Armstrong's samples from 1999, they tested positive to EPO. However, there were technical problems with how the tests were carried out which meant they could not used against Armstrong.⁵

USADA states in its report that on the first day of the 1999 Tour Armstrong had also tested positive to cortisone, but that team doctor, Dr de Moral, had backdated a prescription stating it had been prescribed for a saddle sore with this being accepted by the officials.⁶ In 2000, meanwhile, there is testimonial evidence that Armstrong turned to blood doping, once it became known that a test for EPO had been developed.⁷ Blood doping is a process whereby around 500cc of blood would be removed from the cyclist body and put back into the cyclist during the actual Tour. Tyler Hamilton gave evidence that both he and Armstrong received such a blood transfusion during the 2000 Tour.⁸ Similar other testimonial evidence was given in regard to the other Tours in regard to blood doping and other doping offences, offences Armstrong eventually admitted to in early 2013. However, Armstrong denied that he was involved in doping during his two

¹ David Walsh, *From Lance to Landis*, 2007, Ballantine Books, New York.

² Report of Proceedings Under the World Anti-Doping Code and the USADA Protocol: USADA v Lance Armstrong, 24 August, 2012, www.usada.org

³ Ibid, 164 .

⁴ Ibid, 30.

⁵ Ibid, 142.

⁶ Ibid, 31-32.

⁷ Ibid, 37.

⁸ Ibid, 42.

comeback Tours in 2009 and 2010. USADA, however, claims it has evidence that he did, including analytical evidence from Armstrong's samples taken at this time.⁹

The most obvious sanction against Armstrong has been his lost titles, most notably his seven Tour de France victories and his bronze medal from the 2000 Sydney Olympic Games. However, he is also now banned from all competitions involving sports that are signatories to the WADA Code, and is now facing a number of law suits which may will see him lose most of his estimated \$119m earned from his cycling exploits. The case, it is suggested, is a long way from being over for Lance Armstrong.

The National Rugby League

The allegations in the NRL involve 14 players from Cronulla-Sutherland, with a further 31 players from other clubs also being under investigation by ASADA. This is in relation to the use of peptides, human growth hormones, administered during the 2011 and 2012 seasons, with sports scientist, Stephen Dank, being involved at Cronulla. Manly, another team that employed Dank, is also facing investigation. While it appears it involves substances that may not, at the relevant time, been prohibited substances, the problem for those involved is that's they may well fit in to the 'and similar substances' clause contained in the WADA Code.

The alleged offences are still presently being investigated, and if there is any evidence of a player taking banned substances, this player will receive an infraction notice and a proposed ban by ASADA. Since no positive test was ever returned by a player at the relevant time, evidence will need to come from other sources, such as statements from witnesses, including players and officials, as it was in the Lance Armstrong case. Like in that case, any player who decides to co-operate with the investigation can receive as little as a six month suspension, rather than a potential two year one.¹⁰

However, there have been recent suggestions that some of the NRL players may take combined legal advice and representation as a sign of solidarity, indicating an unwillingness to co-operate in the investigation. But as Jeffrey suggests, ASADA is not the common enemy, and that 'it is an authority trying to uphold the integrity of their sport and prevent cheats from prospering amongst them.'¹¹ It should also be remembered that under the WADA Code, players are ultimately responsible for what goes into their bodies, even in a team sport like rugby league.

The Australian Football League

At present, the investigation in the AFL is limited to one club, Essendon, and it use of supplements in 2012. It appears Essendon players were subjected to up to 40 injections during the course of that season, and like Cronulla, Stephen Dank was involved at the relevant time. One of the sources of evidence that has recently been revealed is a series of emails between Essendon coach, James Hird, and Dank. These emails have indicated that

⁹ Ibid, 140.

¹⁰ Stuart Honeysett, 'Armstrong clause to catch NRL cheats,' *The Australian*, April 11, 2013, 32.

¹¹ Nicole Jeffrey, 'ASADA not the enemy here, guys,' *The Weekend Australian*, 13 April, 2013, 39.

Hird was aware his players were given these injections,¹² and make direct mention of a peptide, Thymosin Beta 4, that was also allegedly given to Cronulla players. The reason why peptides were used by Essendon was to add in recovery, particularly during the arduous pre-season, and again the problem is that they may well fit in to the other similar substance clause in the WADA Code. There are also allegations Hird himself was injected, though as a coach, he would not be subject to any sanctions.¹³ It does, however, raise further issues about what was going on at Essendon which is also subject to an internal as well as the external ASADA investigation.

Conclusion

While it is difficult to draw definite conclusions in regard to both the NRL and AFL while the ASADA investigation is still ongoing, it is clear that the clubs involved were operating very much on the edge of what was legal under the WADA Code, as were any individual player taking similar products. One positive outcome is that both these football codes are now going to be far more vigilant in regard to what is taken by players. The USADA investigation into Lance Armstrong is likewise an important step in ensuring that cycling becomes a sport clean of performance enhancing drugs.

¹² Courtney Walsh, 'Hird defies pressure to step down', *The Weekend Australian*, 13 April, 2013, 35.

¹³ Greg Denham and Courtney Walsh, 'Hird green light to supplements,' *The Australian*, 12 April, 2013, 36.