

Original paper

# A Comparison of Current Drug Testing Programs in the MLB, NBA and NFL

Michael KREMENIK\*

*(Accepted May 1, 2002)*

Key words: drug testing, collective bargaining, program comparison

## Abstract

Drug testing of athletes has become common in the present day sports world. Major League Baseball (MLB), the National Basketball Association (NBA) and the National Football League (NFL) all have drug testing programs in place. However, they are not the same. This paper will explain each league's drug testing program and then compare specific aspects. Special attention will be paid to four categories: administration, testing, treatment and discipline. The MLB program is the newest and weakest program (it only tests for steroids), while the NFL program is the most detailed (it separates its substance of abuse and steroid testing programs). The NBA program has a completely separate program for marijuana. These are just a few examples of the differences between each league's drug testing program.

The definition of what constitutes a "clean ballplayer" is different from league to league. Each league's players are represented by player unions. They have an interest in protecting their players first. Also, team owners have an interest in keeping their players playing. They have big investments in both the player and the team. For the owner, professional sports is a business and while not wanting drugs in sport both sides, unions and ownership, have made the "2nd chance" an integral part of their drug testing programs for players.

## Introduction

Major League Baseball (MLB), the National Basketball Association (NBA) and the National Football League (NFL) all have drug testing programs for their players. However, they are not the same. Each professional league has implemented their own drug testing program in cooperation with each league's player's union. The program for each league has been spelled out in detail in the collective bargaining agreement each league has signed with its player's union.

A collective bargaining agreement is an understanding between an employer and its union over the terms of that union's working conditions for the employer. Such agreements often include language identifying a drug testing program for employees.

The MLB collective bargaining agreement runs from 2003–2006. The NBA agreement's option was just picked up extending the agreement by a year from 1999 to the end of the 2004–2005 season. The NFL agreement runs from 2002–2008.

Four areas within the respective drug testing agreements will be explained and compared:

---

\* Department of Health and Sports Sciences, Faculty of Medical Professions  
Kawasaki University of Medical Welfare  
Kurashiki, Okayama 701-0193, Japan

1. Administration of the program
2. The testing program: What illegal substances do the drug tests look for? What are the procedures and what triggers reasonable cause testing?
3. Treatment
4. Discipline: Suspensions. Contract termination.

## MLB

The Major League Baseball (MLB) testing program mandatorily tests for steroids. It was first implemented in the 2003 season. All 1,200 players on forty man major league rosters were tested. These players are members of the MLB Player's Union (MLBPA) and are subject to testing under the Collective Bargaining Agreement (CBA) signed by the player's union and the MLB. The program is administered by the Health Policy Advisory Committee (HPAC). It is made up of two physicians and two attorneys, one each selected by the office of the Commissioner (the president of the MLB ) and the MLBPA. All decisions of HPAC will attempt for unanimity. In the case of a tie (for example a case for reasonable cause testing) the two physicians will jointly add another physician to an ad hoc committee and then BREAK the tie.

Players were initially tested in 2003 for steroids without any disciplinary consequences for a positive test. This kind of testing is called "Anonymous Survey Testing". The test will take place during spring training or the regular season and be unannounced. This means that if a player tests positive for steroids he will receive no penalty, for example no fine or suspension. Only if more than 5% of all players test positive would a second phase of testing begin, called "Program Testing" the following year with disciplinary consequences. This 5% threshold was crossed in 2003 so the 2004 season will have Program Testing for steroids. However, if, under Program Testing, less than 2.5% of players test positive for steroids for two consecutive seasons the Anonymous Survey Testing will return.

Under Program Testing, each player will be subject to one unannounced test during spring training or the regular season. This is in contrast to "Anonymous Survey Testing" where 200 players were randomly selected to go through a second round of tests. Under Program Testing a player is tested once, told to stop using over the counter supplements, and is re-tested within the next 5–7 days. (Over the counter supplements may cause a positive test so the player is told to discontinue them so he can "pass" the re-test.) A player must fail BOTH tests to be considered positive.

If, during Program Testing, the player tests positive for BOTH tests he is subject to discipline. Discipline falls into four categories. However, a player is not immediately disciplined for a first positive. The player is put into a treatment program.

The treatment program has two tracks, clinical and administrative. Most players enter the clinical track. They are evaluated by HPAC, prescribed a treatment program (counseling, inpatient treatment, outpatient treatment and follow-up testing are all possible) and guaranteed confidentiality unless another team inquires about acquiring the player. The administrative track is for those players who HPAC determines have not cooperated with the evaluation phase of the treatment program or later with the clinical treatment program. Also, a player will enter this track if he is convicted or pleads guilty to the sale or use of any prohibited substances or participates in the sale or distribution of prohibited substances. The administrative track is also confidential unless another team inquires about his acquisition.

If the player does not comply with his treatment program he is subject to fines and suspensions depending on how many times he fails to comply with the program. For example, if a player fails to comply the first time he can be suspended for 15- to 25 days or be fined up to \$10,000. If a player fails to comply a fourth time with the treatment program the suspension is for a minimum of one year or a fine of up to \$100,000.

The second time a player tests positive for steroid use he is subject to a fine of up to \$10,000 or a 15 day suspension. If a player tests positive for a FIFTH time he is subject to a fine of \$100,000 or a one year suspension.

A player who is convicted for steroid use or for selling or distributing steroids faces league discipline. A steroid use conviction brings a 15- to 30- day suspension or a fine of up to \$10,000 for a first conviction and a two year suspension for a FOURTH conviction. A first conviction for selling or distributing steroids brings a 60- to 90-day suspension and a fine of up to \$100,000. A second conviction brings a two year suspension.

Each category under the steroid testing agreement gives the Commissioner of Major League Baseball the right to impose more severe discipline BEYOND those listed in the agreement.

The agreement also calls for reasonable cause testing. If one of the HPAC members receives information that gives him/her reasonable cause to suspect a player is using, possessing, selling or distributing a prohibited substance, HPAC can call for immediate testing, to take place no more than 48 hours after authorization. Prohibited substances of abuse are cocaine, LSD, marijuana, opiates, MDMA, GHB (date-rape drug) and PCP.

If the player tests positive under reasonable cause testing he will be placed in one of the treatment programs as if he had tested positive for steroids. He then will be subject to the same treatment guidelines and discipline as any player would be who is either in the clinical or administrative tracks of the treatment program.

## NBA

The National Basketball Association (NBA) drug testing program for prohibited substances tests for amphetamine and its analogs, cocaine, LSD, opiates (heroin, codeine and morphine), PCP, marijuana and steroids.

The NBA drug program is administered by a Medical Director. The Medical Director is jointly selected by the NBA and the National Basketball Player's Association (NBPA). However, an Individual Expert issues the authorizations for reasonable cause testing. The Individual Expert is also selected by the NBA and NBPA.

No public information is made available about testing or treatment of a player, unless disclosed by the player himself, his representative(s), or sources outside the NBA and NBPA.

A player may voluntarily come forward for using a prohibited substance. No penalty will be enforced but the player must enter the treatment program. If a player voluntarily comes forward a second time a penalty will occur.

A positive drug test is one that reaches the concentration levels set out in the Collective Bargaining Agreement (CBA) or the player fails or refuses to submit to a drug test or adulterates his urine sample.

In the case of reasonable cause testing, a hearing is set with the Independent Expert, the NBA and the NBPA. The Independent Expert will decide if information is strong enough to allow for testing. The player will be tested four times during the next six weeks.

Testing is separated between first year and veteran players. First year players are tested once in training camp and three times during the regular season. All tests are unannounced. Veteran players are tested once during training camp. The test is unannounced.

If a player tests positive during reasonable cause, first year or veteran testing, or is convicted, pleads guilty or no contest to possession of amphetamine and its analogs, cocaine, LSD, opiates, or PCP, that player will be dismissed or disqualified from the NBA.

If a player tests positive for steroid use he will be suspended for five games and entered into the treatment program. A second positive will result in a ten game suspension and re-entry into the program. A third positive or any subsequent positive will lead to a twenty-five game suspension and re-entry into the program.

A player will be disqualified or dismissed if he is convicted or pleads guilty or no contest to charges of steroid use or possession.

If a player tests positive for marijuana or is convicted, pleads guilty or no contest to use or possession of marijuana, the player will enter the treatment program. A second violation will result in a \$15,000 fine and re-entry into the program. All subsequent violations will lead to a five game suspension and re-entry into the treatment program.

The NBA treatment program is separated into three: Drugs of abuse, marijuana and steroids.

The drugs of abuse treatment program has two stages and is voluntary. If a player fails a drug test during stage one he can be put in stage two or his team can terminate his contract and he is dismissed from the NBA. If the player fails a test in stage two he will be dismissed from the NBA.

The marijuana program is for players who have tested positive for or broken the law in relation to marijuana. If a player in the treatment program violates the marijuana program again the player will be fined \$15,000 and re-entered in the program. A third or subsequent violation will lead to a five game suspension and re-entry into the program.

The steroid program is for players who have tested positive or broken the law related to steroids. For a first violation the player will be suspended for five games and required to enter the program. A second violation will result in a ten game suspension and re-entry into the program. A third or subsequent violation will lead to a 25 game suspension and re-entry into the program.

If a player fails to comply with his treatment program he will be subject to fines and suspensions until that player can comply with the treatment program. While in treatment the player is subject to random testing for prohibited substances and alcohol.

A veteran player dismissed or disqualified from the NBA will be out of NBA basketball for not less than two years; a first year player for not less than one year. Reinstatement can only occur if both the NBA and NBPA approve. Reinstatement may also be conditioned upon random drug testing for as long as the player is participating in the NBA.

## NFL

The NFL has two drug testing programs, one for substances of abuse and one for steroids.

### Substances of Abuse Testing

The policy for substances of abuse refers to the illegal use of drugs and/or the abuse of prescription drugs, over the counter drugs and alcohol. The program has been set up jointly by the football players union, the NFL Players Association (NFLPA) and the NFL Management Council (team owners) in the Collective Bargaining Agreement (CBA) signed by both the union and owners May 1, 2002.

The NFL drug testing program is officially called the Intervention Program. In it, players are tested, evaluated, treated and monitored for substance abuse. The Commissioner of the NFL (the president of the NFL, chosen by team owners) imposes the discipline in the program.

The NFLPA and the Management Council jointly appoint a Medical Director to oversee the program. The Medical Director is assisted by an Administrator chosen in the same way.

A Medical Adviser is chosen by the Commissioner and oversees the actual drug testing of the players.

The advisor also schedules all the tests. All tests will occur within 24 hours of notification. A player has four hours to produce a specimen.

All drug testing results are confidential. The only exceptions to this are when the player himself or his representative (agent) make public the situation, or another NFL team is making an inquiry about acquiring the player. In the case of a proposed acquisition only the team inquiring can receive the confidential information.

The drug test is an observed urine test. It is split into A and B samples. A positive test is determined by the concentration level in the urine for each drug as set out in the CBA. A player testing positive has two days to ask for the B sample to be tested. The B sample test then must be carried out within ten working days of the request.

Testing is divided into different categories. There is a pre-employment test. This is given to a veteran player not under contract to a team as of the last game of the previous season or to a rookie who has not had a drug test in the four month period prior to the pre-employment test. Also, a veteran player under contract at the time of the last game of the previous season can agree to a drug test before signing his new contract. Lastly, draft eligible players at the annual Timing and Testing sessions are subject to this pre-employment test.

One pre-season drug test is given to all players between April 20th and August 9th. The Medical Adviser chooses the actual test day.

Unannounced testing will occur if a player is in one of the three Intervention Stages of the program. A player will be entered into stage one of the program by a positive drug test, self-referral or behavior. Behavior could be a substance abuse related arrest. It could also be, in the opinion of the Medical Director, physical, behavioral or psychological signs or symptoms of substance abuse.

In the case of a self-referral, the player personally notifies the Medical Director that he wants to enter stage one voluntarily. The player must do this before a test is conducted or before the Medical Director notifies the player of a behavioral reason for being entered in stage one.

Reasonable cause testing can occur if a player and his team agree to it at the time the player signs his NFL player contract.

Testing in stage one will occur as often as the Medical Director requires. The timeframe will not exceed 60 days. However, the Medical Director and Advisor may extend testing up to six months at their mutual discretion and under extraordinary circumstances even longer. Any player who fails to cooperate will be subject to a fine and placed into stage two. The Medical Director determines how long a player remains in stage one, whether he is moved to stage two or not, or whether he is released from the Intervention Program.

In stage two all players undergo unannounced testing. However, the maximum a player can be tested is ten times per month. If a player fails a test or does not comply with the treatment program he is subject to a fine. The player will be suspended four games without pay, however, if he also failed to complete stage one. A second failure will occur if the player fails two drug tests or fails to comply two times or one of each. The player will then be suspended for four games without pay or six games without pay if he was suspended under the first failure provisions for stage two. The stage two program lasts for 24 months or two NFL seasons, whichever is shorter.

The player will automatically be put into stage three if, while in stage two, he has two positive tests or fails to comply with the program twice or has one of each. If stage two is completed successfully, however, the player may leave the Intervention Program entirely.

If a player is entered into stage three he must remain in the Intervention Program for the rest of his career. He will be subject to unannounced testing for up to ten times a month for three years. After three

years the player may request a reduction, but the Medical Adviser has the final say.

In stage three, if a player fails a drug test or does not comply with the program he will be banned from playing in the NFL for a minimum of one year. The player must, however, adhere to the program if he wants to be re-instated. The Commissioner rules on all re-instatements and if re-instated the player continues in stage three of the program.

If a player violates the law related to substances of abuse, use, possession, acquisition, sale or distribution he is subject to discipline. For a first time law violation the player will be suspended for four games without pay; for a second law violation the player will be suspended for six games without pay. Also, the Medical Director will have the right to enter that player into the Intervention Program.

For alcohol related violations of the law a first offense will draw a fine not to exceed \$20,000. Second offense discipline is not explicitly spelled out, only referred to as a "likely" suspension for a second violation or subsequent violations.

A player informed that he is subject to a fine or suspension can appeal it to the Commissioner, in writing, within five days of being notified of discipline. A player can be represented by a lawyer at his appeal hearing before the Commissioner. The Commissioner has final authority to resolve all appeal issues and his final decision is binding on all parties.

### Steroid Testing

Steroids are Prohibited Substances and refer to anabolic/androgenic steroids, some stimulants, human/animal growth hormone and masking agents and diuretics used to hide their presence.

Steroid testing began in 1993 and is administered by the NFL Management Council and directed by the NFL Adviser on anabolic steroids and related substances.

There are many categories of steroid testing. Pre-employment testing is for free agents and draft eligible players. Pre-season testing is for all players at training camp and pre-season games. Regular season testing is random (players are chosen by a computer program and may be randomly tested more than once) and includes the post-season. Off-season testing is also random (a maximum of two tests per player). Reasonable cause testing may be administered to any player who has tested positive for steroids in the past, or, in the opinion of the adviser, shows a medical or behavioral reason for being tested.

Regular season testing will occur on the same day that the player is notified of his test. The test is a urine test, observed. If a player fails or refuses to appear, or alters his specimen in any way, he is subject to discipline.

If a player tests positive he will be notified by the Advisor. The player then has the right to have his B sample tested. The player cannot observe the re-test but he can employ an outside toxicologist to observe. Players who test positive will automatically be subject to reasonable cause testing.

A conviction or violation of the law related to steroids will lead to discipline by the Commissioner and may include suspension or termination. Suspended players will be entered into the three-step treatment program.

A first time violation will be met with a minimum four game suspension without pay. A second violation will lead to a minimum six game suspension without pay. A third violation will lead to a minimum twelve month suspension without pay and the player must petition to the Commissioner for re-instatement.

If the total concentration of testosterone to epitestosterone in the urine is 10:1 the test will be considered conclusively positive. Also, the use of epitestosterone to lower the ratio is prohibited. If a player's epitestosterone level exceeds 300 ng/ml, it will be considered a positive test.

A player can appeal any disciplinary decision for violation of the steroid policy. The player can employ

counsel and the NFLPA can be represented at the appeal hearing. The Commissioner will preside and his decision is final and binding.

A player not in the three step program can still face testing for reasonable cause if the player has tested positive before entering the NFL, or been arrested on a charge related to a prohibited substance, or, in the judgment of the Advisor, shows behavior consistent with the use of a prohibited substance.

If a club breaches a player's confidentiality it can be fined up to \$500,000 by the Commissioner.

## Comparison

### 1. Administration

The administration of each drug program is different. The MLB program has a four member appointed committee (HPAC) overseeing the program. The NBA has one appointed person overseeing the program and the NFL has one appointed administrator for each of its programs. All administrators are jointly appointed by the player's union and the league. The MLB, however, appoints its administrators separately as part of the joint committee HPAC while the NBA and NFL appoint single persons to administer their programs. In addition, the MLB HPAC committee is more unwieldy than the other administrators in that it must set up an ad hoc committee when faced with a tie vote on anything related to executing the program.

### 2. Testing

The actual drugs being tested for also differ from league to league. The MLB only tests for steroids. The NBA and NFL test for steroids and also test for drugs of abuse. In addition, the NFL is the only league that mentions the abuse of prescription and over the counter drugs as part of its testing program.

All three leagues have reasonable cause testing provisions in their programs. The MLB, in addition to steroids, can test for what it calls "Prohibited Substances" under its reasonable cause testing rules. In the the NBA and NFL programs these drugs are a part of the entire drug testing program.

Authorization for reasonable cause testing varies from league to league. Again the MLB rules are the most unwieldy because of the four member system. Again, in case of a tie an ad hoc committee of five members must gather and break the tie. In the NBA a special person called the Individual Expert decides who is to be tested, not the Medical Director. In the NFL the Medical Adviser decides who will be tested for steroids, not the Medical Director. As for substances of abuse in the NFL testing program, reasonable cause testing may occur if the team and the player agree to it when the player signs his contract. Reasonable cause testing is administered by each league in the above manner so as to spread responsibility and not leave all decisions to one person. This allows for more objectivity and fairness in the system.

Year round unannounced testing varies from league to league. In the MLB year round unannounced testing is theoretically possible but unlikely. A player in one of the two track treatment programs could be put under what the MLB calls "follow-up" testing as part of any treatment program. But it would take a number of treatment failures to get to the point of a player being put under year round unannounced testing. An NBA player in the treatment program is subject to random testing. If the player is in treatment for more than a year than he would theoretically be under year round unannounced testing. In addition, any NBA player seeking re-instatement under terms of the drug testing program is subject to random unannounced testing for the rest of his career. Any NFL player in the three stage Intervention Program will be subject to random unannounced testing. If an NFL player is in stage three he will be subject to

unannounced testing for up to ten times a month for three years. In all three professional leagues a player must have first failed a drug test and/or be entered into a treatment program for the possibility of random year round unannounced testing to be possible.

### 3. Treatment

The treatment programs differ as well. The MLB has a two track program, the NBA and the NFL have stage programs. The MLB has separated their program into a track for those players who follow their treatment program (clinical) and another track for those players who show an unwillingness to either enter the clinical track or once in it fail to follow its terms (administrative). The administrative track is also used for those players who have violated the law in any way related to drugs. The NBA has a two stage drugs of abuse program and separate treatment programs for marijuana and steroids. The NFL uses an all-inclusive treatment program. It includes three stages and a player who can't or won't adhere to his program in stage one is put into stage two and so on. Also, a player who breaks a law related to drugs is also placed into this same program.

If an MLB player completely fails his treatment program he is subject to a minimum one year suspension and a fine of up to \$100,000. If an NBA player fails to completely comply with his substance of abuse treatment program he will be put into stage two or his team can terminate his contract. If he fails to comply with stage two he will be dismissed from the NBA. An NBA player who fails to comply with the marijuana treatment program will be subject to fines and suspensions and re-entered into the program. An NBA player who fails to comply with the steroid treatment program will be suspended and re-entered into the steroid treatment program. If an NFL player completely fails his treatment program he will be banned for one year and must continue in stage three of the program if he wants to be re-instated.

These treatment programs all provide second chances; often more than that. The goal is to get the player back into the league and playing again. Only a chronic or belligerent offender faces suspension of one year or more or possible dismissal.

### 4. Discipline

If you are an NBA or NFL player you may voluntarily enter the drug treatment program. The MLB has no provision for voluntary entry into its treatment program.

A player in the NBA or NFL can be subject to dismissal or a ban from the league under the terms of the treatment program. The MLB program allows for harsh suspensions but no dismissal or ban. There is a clause that allows the MLB Commissioner to impose more severe discipline beyond what is lay out in the agreement but it is not explicitly stated.

Players in all leagues are given second chances for failed drug tests. In the MLB program a player must test positive for steroids FIVE times before he is subject to a one year suspension. The NBA program dismisses a player for a positive test for a prohibited substance but for steroids and marijuana a player can test positive over and over again and be sure that he can stay in the league. A player is suspended to be sure but the threat of dismissal is not there. In the NFL substance of abuse program the player faces dismissal after a positive test in stage three of the program. In the NFL steroid program a third positive test results in a twelve month suspension and the player must petition for re-instatement.

If a player in the MLB program breaks the law in relation to steroids he is fined and suspended. But it takes a fourth CONVICTION for steroid use to be handed a two year suspension by the MLB and a second conviction for steroid sale or distribution to be given a two year suspension by the league. If a player in the

NBA is convicted one time of possessing prohibited substances or steroids he is dismissed from the NBA. A marijuana conviction, however, no matter the number of times, will not result in dismissal. If an NFL player violates the law related to substances of abuse he is suspended without pay but not dismissed. If an NFL player violates the law related to alcohol he is fined and MAY be suspended but not dismissed. If an NFL player violates the law related to steroids he MAY be suspended or even terminated at the discretion of the NFL.

## Conclusion

The main criticism of all the drug testing programs is that they are too lenient. Critics compare them to the Olympic drug testing program and come away lamenting the weaknesses found in the MLB, NBA and NFL drug testing programs. But MLB, NBA and NFL players are professional athletes under contract to their teams. They are also members of a union. These unions are set up to protect players and their own teams have a monetary investment to protect, too. So the drug testing programs have been set up to allow for failure and re-instatement that is less severe.

If a professional athlete fails a drug test he is not only hurting his team, he is also jeopardizing the investment the owner has made by signing him to a contract. An Olympic athlete is hurting himself, his team, his fellow competitors and his country. Any investment, however, is negligible when compared to the multi-million dollar contracts in professional sports. A professional sports team is a business enterprise and the team stands to be hurt more severely by a positive drug test under Olympic rules than a country would be under the same situation. The country loses its athlete, is embarrassed and maybe has lost a medal. The professional team is hurt financially. Alex Rodriguez of the New York Yankees has a 252 million dollar contract. No team would pay this kind of money to a player and then have to deal with the risk posed by a positive test for drugs like the one under the Olympic drug testing program. So, for now, the MLB, NBA and the NFL have agreed to give players a second (even a FIFTH) chance when it comes to failing drug tests.

## Works Consulted

Major League Baseball. 2003–2006 Basic Agreement. <http://mlb.mlb.com>

National Basketball Association. CBA Online. <http://www.nbpa.com>

National Football League. Collective Bargaining Agreement Between the NFL Management Council and the NFL Players Association 2002–2008. <http://www.nflpa.org>