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NFL compromises on new doping, substances policy

On Sept. 17, the National Football League and the NFL Players Association reached an agreement on the terms of its new doping and substance abuse policy. The new policy culminated a lengthy negotiations period which featured many key contentions from both players and league executives.

As a sign of a fair compromise, both sides can claim victory for many of the new provisions of the policy.

The significant changes within the new policy include the introduction of human growth hormone testing and discipline, a heightened threshold for marijuana testing and a modified discipline schedule for positive tests regarding recreational drugs, a strengthened DUI discipline schedule and a modified appeals process for policy violations.

The NFL doping policy first recognized blood testing of HGH in its recently replaced agreement. The previous policy, which was ratified under the NFL's current collective bargaining agreement in August 2011, did not include specific HGH testing provisions.

Instead, it stated an intention to continue negotiations "with the goal of beginning testing by the first week of the 2011 regular season." Despite this extension, testing for HGH was never agreed upon.

The new doping policy, however, will finally commence HGH blood testing throughout the league before, during and after the NFL season.

In addition, players will face pre-employment and reasonable-cause HGH testing. Violations of the new HGH testing standards will result in multiple-game suspensions, depending on the nature of the violation. The most serious first-offender punishment — six games — will be reserved for players found guilty of attempting to manipulate a test.

Players who actually test positive for HGH will be suspended for four games following a first offense. Second violations for HGH will result in 10-game suspensions, and third violations will result in a two-season banishment from the league.

One of the biggest concerns for the players during the policy negotiations was a reduction in stringency of marijuana and recreational drug testing and punishment. Long-recognized as using the strictest marijuana testing standards, the NFL's new doping policy raises the threshold for a positive test from 15 nanograms per milliliter to 35 ng/ml. The gravity of this increased threshold is particularly meaningful in light of public scrutiny focused on a recent case of policy abuse for marijuana use.

In August, Cleveland Browns wide receiver Josh Gordon was suspended for the entirety of the 2014 season for, among other violations, a positive marijuana test. Under the new policy, Gordon, who alleged that his positive test results were only due to being a victim of second-hand marijuana smoke inhalation, would not have been punished for a positive test.

Gordon's test results of 16 and 13.63 ng/ml, respectively, would both fall well below the increased threshold. While this heightened threshold is a success for NFL players, it is still far below the levels used by Major League Baseball (50 ng/ml) or the international standard implemented by the World Anti-Doping Agency at 150 ng/ml.

Parallel to the raised marijuana threshold is a lightening in the punishment schedules for policy violations regarding marijuana and other recreational drugs — including amphetamines, cocaine, opiates and MDMA. For marijuana and offseason recreational drug violations, the new doping policy requires a player to be referred to the league's intervention program.

Entry into the program is a significant departure from the mandatory, multi-game suspensions that had previously been levied against those testing positive for certain drugs, including amphetamines.

If the new policy had been in place prior to the 2014 NFL season, Denver Broncos wide receiver Wes Welker would not have been suspended for four games for testing positive for amphetamines. Because Welker's positive test occurred during the offseason and was his first offense, he would have merely been referred to the intervention program. It should be noted that in-season offenses for other recreational drugs will still result in fines and/or suspensions.

Another point of compromise within the new doping and substance abuse policy is reflected by the institution of a mandatory suspension schedule for DUI convictions. The NFL had pushed for immediate, pretrial punishment for players arrested on charges for DUI or DWI; however, the players would not concede.

Instead, the two sides settled on a minimum of a two-game suspension for all convictions and plea agreements for violations of any law involving alcohol and driving. The commissioner reserves authority to impose increased discipline for particularly serious misconduct.

Mandatory drunken driving punishment is a win for the NFL, but the players also succeeded in maintaining due process within the legal system.

Finally, and perhaps most significantly, the players were able to wrest away some of the league's centralized control over the appellate and confidentiality measures within doping policy procedures. Under the performance enhancing drug and substance abuse policies, an independent, third-party arbitrator will now hear appeals.

This policy revision is a major departure from the former doping policy, which allowed the commissioner to be the lone trier-of-fact. The new policy confirms the impartiality by allowing either side to investigate and assign liability for any breaches of confidentiality within the testing or appeals process. Discoveries of impermissible leaks could result in punishment of fines of up to $500,000 and termination of employment for liable parties.

While some of the new provisions of the NFL's doping and substance abuse policy were long delayed and overdue, the agreement recognizes successes for and concessions from both the NFL and the NFLPA. The revised doping policy is an important culmination of negotiations that focused on correcting a policy that was both too strict and too lenient in different ways.

The league and its players each had contentions related to testing, punishment and appellate measures, many of which were included in some form within the new policy.

Neither party is able to claim a single-sided victory, but each side is able to point to key provisions that reflect wins — the sign of a successful negotiation.

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