



CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE: SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

WADA RESPONSES TO SUBCOMMITTEES' LETTER OF 29 MARCH 2017

Responses to The Honorable Tim Murphy

- 1. On March 1, the day after the Subcommittee's hearing, Vladimir Putin pledged to establish an "independent" system in Russia to tackle doping. This system will transfer its anti-doping program from the nation's sports ministry to an independent organization. What role will the World Anti-Doping Agency (WADA) have in overseeing this transition?**
 - a. Does WADA believe that this will adequately address the problems that occurred at Sochi and London?**

WADA has established an ISO-accredited compliance review system. The Russian Anti-Doping Organization (RUSADA), like all anti-doping organizations (ADOs), falls under the scrutiny of this compliance system. The system includes a review by an independent committee, the Compliance Review Committee (CRC); which in turn, makes recommendations to WADA's Foundation Board as it relates to declaring an ADO non-compliant or re-instating an ADO that was previously declared non-compliant.

This means that Russia's reform will undergo a careful review by the CRC; which, in total independence, will provide recommendations to the WADA Foundation Board. WADA management is currently working with RUSADA to assist them in rebuilding a transparent and credible organization. To this end:

- Two independent experts have already been posted in Russia for a year; and, are working every day in the RUSADA office to assist them in this process.
- The CRC has made it a provision of compliance that RUSADA put in place an independent Supervisory Board.
- Russia has also transferred funding of RUSADA from the Ministry of Sport to the Finance Ministry.
- The CRC will scrutinize the operations of the Supervisory Board; and, as indicated above, provide recommendations to the WADA Foundation Board.

The structure we are expecting from RUSADA is similar to that found in many countries where National Anti-Doping Organizations (NADOs) are funded mainly by governments. RUSADA needs to operate independently from undue influence. This structure is intended to provide for adequate safeguards within the Russian anti-doping system, just as it does in other countries.

Having said this, going forward, the Russian system will continue to be scrutinized by the WADA compliance system for a number of years; until, the Agency is satisfied that



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efficient and transparent procedures have been put in place and that they are being carried out in line with expectations.

a. WADA does believe that the above-noted approach adequately addresses the problems that occurred at Sochi and London.

2. With the 2018 Winter Olympics in PyeongChang less than a year away, what is WADA doing to ensure that the systemic weaknesses identified before and after the Rio games are addressed in advance?

a. In addition, what is WADA doing to ensure that all of the athletes implicated in the Russian doping scheme are adequately tested leading up to and during competition?

As was the case for Rio, WADA is not responsible for the organization of the 2018 PyeongChang Winter Olympic Games; nor, is it responsible for the testing that will take place during the event. Testing at Olympic Games is the responsibility of the IOC.

As indicated in Response 1 above, we are working with Russia to re-establish a credible anti-doping system. In the meantime, testing in Russia is being conducted by the United Kingdom Anti-Doping organization (UKAD). It is UKAD that decides which athletes are to be tested; and, that manages therapeutic use exemptions in Russia. UKAD is working hand in hand with WADA to ensure that an appropriate number of tests take place in Russia.

Furthermore, all samples are being analyzed outside of Russia given that they no longer have a WADA-accredited laboratory.

a. A taskforce comprised of WADA, the International Olympic Committee (IOC), and a number of NADOs have been invited to ensure that an adequate worldwide testing program is carried out, as it relates to all countries and sports, in the lead up to the PyeongChang Games. This will include recommending target testing, which will be required for certain athletes participating in the Games.

3. It is no secret that some have criticized the pace of WADA's investigation into allegations of widespread doping by Russian athletes. For example, according to reports, WADA began receiving information from whistleblowers as early as 2010 but did not launch an independent investigation until after the release of a documentary in 2014. Further, after the conclusion of that investigation - which suggested a potentially larger issue across multiple sports - it took months and two prominent media stories before WADA commissioned a broader independent investigation. Can you please explain the timing of these decisions?

a. Did WADA need the public pressure to pursue these investigations? If so, why? If not, then why did it take so long to begin the investigations?

b. Did the involvement of the International Olympic Committee (IOC) in WADA's governing structure influence the timing of these investigations?

i. If so, please explain how this impeded your work

ii. If not, why did it take so long to initiate these investigations?

For the record, WADA strongly disagrees with the allegations that it could have begun its investigation earlier and that it could have acted on evidence as early as 2010. This viewpoint, which has been taken in particular in the U.S. by the United States Anti-Doping Agency (USADA) is, in WADA's view, entirely misleading and does not reflect the reality, and the facts, of how events unfolded.

In 2010, WADA was approached by the Russian Whistleblower, Vitaly Stepanov, who started a dialogue with WADA; principally, via Jack Robertson, who is a former U.S. DEA agent and was WADA's Chief Investigator at the time. Mr. Stepanov explained the situation concerning his wife, Yuliya Stepanov; specifically, that she was subject to an institutionalized doping regime in Russia. At the time, Vitaly told us that he had yet to tell his wife that he was talking to WADA; and that, he had no concrete evidence whatsoever to support his statements, that they were his words and his words alone.

This dialogue continued until 2013, which is when Yuliya Stepanov got caught for doping and was suspended in Russia. Ms. Stepanov getting caught was a game changer for the relationship with the Stepanovs. It was then that Yuliya and Vitaly, together, decided to collaborate with WADA by gathering evidence that could lead to a meaningful investigation with meaningful outcomes.

It is important to note that, under the 2009 World Anti-Doping Code (Code), which was in force until the end of 2014, WADA's role and authority as it relates to investigations was stipulated under provision 20.7.8 of the Code, as follows:

"To conduct anti-doping controls as authorized by other anti-doping organizations and to cooperate with relevant national and international organizations and agencies including but not limited to, facilitating inquiries and investigations."

To be clear, WADA's role and authority under the 2009 Code was clearly defined as a facilitator, to pass on information to relevant organizations and to facilitate the conduct of investigations. At the time, not only was the information from Vitaly Stepanov insufficient to take definitive action; the Code also required WADA to pass the information on to RUSADA and/or the International Athletics Federation (IAAF). As you can appreciate, because the Stepanovs' information included allegations of doping cover-ups against RUSADA and the IAAF, this would have been a disaster.

It was only effective 1 January 2015, when the 2015 Code came into force, that WADA's role and authority vis-à-vis investigations increased as indicated under provision 20.7.10 that empowered WADA to:

“Initiate its own investigations of anti-doping rule violations and other activities that may facilitate doping.”

In January 2015, a few days after the new Code came into force, WADA established the first independent Pound Commission which, in December 2015, confirmed allegations of widespread doping in Russian Athletics.

It is WADA’s view that the Agency did all it could under the Code rules applicable at the time. It is also our view that, if we had exposed the initial, weak, information that had been provided by Vitaly Stepanov, between 2010 and 2013, it would have been dismissed as being the words of one individual (Vitaly Stepanov) against the strong denial of Russia. We are convinced that we would not have had anywhere near the success that we ultimately had; in fact, we believe that the international community wouldn’t even be talking about doping in Russia today.

Following the release of the first Pound Commission Report in November 2015, WADA was called upon to conduct further investigations into other sports in Russia and other countries. WADA’s response was that, ‘as a matter of course, we ensure that all information/intelligence that we uncover, and/or is received from whistleblowers, is properly assessed by our Intelligence and Investigations Team; and that, when believed to be credible, we would not hesitate to launch the appropriate form of investigation.’

This is exactly what we did as it relates to the independent McLaren Investigation. As soon as Dr. Rodchenkov’s information was made available to WADA, via the New York Times in May 2016, the Agency initiated the investigation. It should be noted that Dr. Rodchenkov was heard three times by the Pound Commission in 2015; and, was never forthcoming with the information that he later revealed to the New York Times.

Therefore, to summarise, WADA’s position following the Pound Commission was that further evidence was needed before the Agency could possibly embark on a new investigation, knowing that the Agency had no legal means to obtain further cooperation from anyone; particularly, in Russia. This was also the publicly expressed view of Richard Pound following publication of his Report. This view was also shared by professional investigators who did not see how an organization like WADA, without any law enforcement powers, could meaningfully launch an investigation in Russia without receiving further collaboration by whistleblowers. The fact is that Dr. Rodchenkov opted not to talk to WADA until May 2016, which is after he spoke to the New York Times. It is difficult for WADA to understand how, with these facts, the Agency can be accused of taking too much time to act.

WADA therefore does not agree that it was public pressure that prompted the Pound and McLaren investigations, but rather the:

- New powers of investigation that came about via the 2015 Code;
- Provision of further evidence by Dr. Rodchenkov in 2016; and
- Letters from National Anti-Doping Organizations and other WADA partners, requesting an investigation. We welcomed these letters and as the responsible global regulatory body, took their requests seriously as we always do.

The conspiracy theory that has been propagated by some to the effect that this investigation would have been impeded by some force within our governance structure is simply unfounded.

The timing of the Pound Commission and the McLaren Investigation has been fully explained above. The Pound Commission was initiated as soon as it was possible under the Code and made relevant by the information/evidence available. Both investigations were conducted in total independence and the Reports were made public as soon as they were completed. We don't know what else could have been done/be done to prove the independence with which WADA acted in both cases.

4. You stated in your testimony that it was not until 2015 - when the World Anti-Doping Code ("the code") was revised - that WADA officially obtained investigative powers. Though WADA did not have the power to launch formal investigations, at the time of the Russian doping scandal, did WADA have the power to hold NADO's and other organizations compliant to the code?

a. If so, why didn't WADA make compliance decisions in regards to doping violations leading up to the 2016 Rio Games?

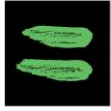
WADA did take a number of decisions in relation to non-compliance prior to the 2016 Rio Games. In particular, RUSADA was declared non-compliant in November 2015 by WADA prior to the Games (that declaration of non-compliance is still in effect) and the laboratory in Moscow had its WADA accreditation revoked in April 2016 (that accreditation is still revoked today).

b. Why were these decisions passed on to the International Federations, instead of going through WADA or the NADOs?

Under the Code, WADA has limited jurisdiction regarding the consequences of non-compliance. In November 2015, WADA publicly declared RUSADA non-compliant. In April 2016, WADA revoked accreditation of the Moscow Laboratory. WADA also removed the Russian Sports Minister from the Agency's Foundation Board and recommended that action be taken by other organizations as a result of the situation.

It is not WADA that passed the decision on to the International Federations as to whether or not Russian Athletes should be eligible to compete at the Rio Games. WADA asked the International Olympic Committee (IOC) and the International Paralympic Committee (IPC) to consider, under their respective Charters, to decline entries, for Rio 2016, of all athletes submitted by the Russian Olympic Committee (ROC) and the Russian Paralympic Committee.

The IOC decided to pass the decision on to the International Federations; while, the IPC decided to heed WADA's recommendation. The Agency was not involved in the respective decisions of the IOC and the IPC.



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5. I understand that WADA established a panel to examine potential reforms to global antidoping efforts.

Further to stakeholder consultation with NADOs, the IOC, Athletes, Governments and others, WADA established, and communicated at the November 2016 Foundation Board meeting, a road map aimed at strengthening WADA and the anti-doping system. As part of this road map, a number of Working Groups have been formed. The WADA Governance Working Group is likely the working group that is the most relevant to this question.

a. What is the current status of this review?

The Governance Working Group is comprised of representatives from Sport and Government; as well as Athletes and NADOs. It is chaired by an independent judge from Burkina Faso and is assisted by two experts -- one with a background in governance, Akaash Maharaj; and, the other with a sports background, Huw Roberts. The Committee met for the first time in Lausanne on 11 March and had fruitful discussions. An interim report will be provided to the WADA Foundation Board in May 2017; and, further meetings of this Group are anticipated going forward.

b. Are there specific options under consideration?

The discussions include WADA governance reform; and general principles of good governance that need to apply to all ADOs, including International Federations and National Anti-Doping Organizations. Many options are on the table, including, in particular, the composition of WADA's Foundation Board, the relationship between the Foundation Board and the WADA Executive Committee, the selection of the WADA President and Vice-President, the selection of the WADA Working Committees, the involvement of athletes, etc.

There are many questions that require thorough review and guidance from experts in order to develop the optimal solution. This is the focus of this Working Group going forward.

c. What is the process for evaluating or acting upon the recommendations of this review?

Once the Working Group has made definite recommendations, it is likely that some of the recommendations will be implemented through a change of WADA's Statutes; while others, might make their way into the Code so that they not only apply to WADA, but all other ADOs as well.

d. During the hearing, you indicated that WADA plans to finalize these reforms within a year. Can you provide a more specific timeframe as to when these reforms will be finalized?

We are unable to estimate how much time this work will take. Changes to the WADA Statutes can be done relatively quickly by a decision of the WADA Foundation Board. Changing the Code however requires significantly more time as thorough stakeholder

consultation is required. Timing for Code changes is particularly difficult to predict as some of the stakeholders are sovereign nation-states.

6. The IOC has suggested the establishment of an independent testing authority, separate from national interests. What is WADA's opinion on this proposal?

Establishment of an independent testing authority (ITA), as proposed by the IOC, is currently being studied by another Working Group that was assembled by WADA. The Agency does not have an opinion per se on this proposal. Rather, we are waiting for the recommendations of our Working Group regarding how such an entity could be established and the implications it would have for the global anti-doping system.

What is clear to us is that, whilst an ITA may address issues for some stakeholders, the reform being called for goes well beyond simply creating another body. In particular, stakeholders are calling for good governance that applies to all organizations and that a robust compliance program is enforced by WADA.

a. As the organization responsible for ensuring the independence, integrity, and compliance with the Code for national anti-doping organizations, does WADA have concerns about the independence or integrity of national anti-doping organizations, including established and tested organizations such as those in the United States, United Kingdom, Japan, Canada, and elsewhere?

All organizations must be looked at as part of WADA's compliance monitoring program; which includes review of established NADOs such as those in the United States, the United Kingdom, Japan, Canada and elsewhere. No country is immune from conflicts of interest. How these conflicts of interest are addressed and what safeguards are in place is what WADA will look at as part of its compliance monitoring program. Having said this, as mentioned above, what is key to the work going forward is that principles of good governance be embedded within the Code so that all organizations are accountable for ensuring that those principles are enforced.

b. Do these organizations provide a valuable resource in the global fight against doping?

NADOs are a key resource in the global fight against doping. Having established and performing NADOs around the world is the only way to raise the level of anti-doping worldwide. WADA must rely heavily on its NADO partners to ensure that robust anti-doping programs are established at the national level, including on international level athletes falling within a NADO's jurisdiction.

c. Based on WADA's experience to date, would a centralized testing authority be financially and logistically feasible and/or practical? Please elaborate on any specific challenges or benefits to this model.

As indicated above, the ITA is an IOC proposal; accordingly, they are best suited to address its feasibility and cost.

7. The IOC recently suggested that the Court of Arbitration in Sport (CAS) should be responsible for sanctioning athletes. What is WADA's reaction to and position regarding this proposal?

This question refers to an IOC proposal to have CAS acting as a first-instance entity for disciplinary cases from International Federations. Please note that, while WADA has a right of appeal, it does not intervene in first-instance cases. It will therefore be a matter for International Federations to discuss with the IOC as to whether or not they agree to have all cases heard by CAS at first instance; and, what the impact would be in terms of timing and cost. WADA will maintain its right of appeal on such decisions.

8. In your testimony, you stated that WADA now has a system in place to hold countries and sports organizations compliant to the code. Specifically, you testified, "Now there's a call by athletes, by the anti-doping community, to go in and audit, to go in and make people accountable, and if they are not doing it we have appointed an independent compliance review committee to make a call on countries, on sports that are deemed not doing the work to make them compliant."

a. Is this independent compliance review committee a part of WADA?

i. If not, why isn't WADA conducting compliance review itself?

As indicated above, WADA has started an ISO-accredited compliance program, which includes auditing ADOs to ensure, not only that Code rules are in place but, that good practice of the rules is being followed. The CRC was established as part of this ISO-accredited process and is an advisory body to WADA's Executive Committee and Foundation Board.

WADA is conducting compliance work itself, which includes a review of rules; organization of audits with the assistance of external experts; and, requesting corrective actions from ADOs. We are optimistic that, through this process, most of the non-compliance issues can be resolved through dialogue between ADOs and WADA.

The CRC's role is to deal with problematic cases when WADA management is confronted with issues that need to be escalated to the CRC either because they are not resolved in time or because wrongdoings have been identified. In such situations, it was felt that having a recommendation from an independent body to the WADA Executive Committee and Foundation Board would ensure that an independent expert and non-biased view would be provided to the Foundation Board; and, would add weight to the recommendation being put forward. This system has been in place for over a year; and, thus far, each CRC recommendation has been accepted by the Board.

b. Are there any WADA representatives or employees on this committee?

i. If yes, who? What are their roles on WADA and on the compliance review committee?

There is no WADA staff member serving on the CRC. For reasons of efficacy, the CRC receives support from WADA staff; such as, provision of pertinent information in order to feed their evaluation and recommendations. The current composition of the Committee is as follows:

- Mr. Jonathan Taylor, Chair
- Mr. Henry Gourджи, Vice Chair
- Mr. Tom Dielen
- Ms. Barbara Leishman
- Ms. Beckie Scott
- Ms. Bente Skovgaard Kristensen

The CRC is supported by our compliance team; including: WADA's Chief Operating Officer, Frédéric Donzé and WADA's Compliance Manager, Emiliano Simonelli. Depending on the specific issues at stake, other WADA staff members may be involved in providing information to the CRC.

9. You testified that WADA is about to launch a new whistleblower program called 'Speak Up' in the coming days. Please elaborate on the specifics of this program and the reforms it includes.

a. Will there be any policies included that will mandate that WADA document and consider the information brought forward by whistleblowers? If so, please describe these policies.

The WADA Speak Up! program was launched in March 2017 and is available to athletes, athlete support personnel and anyone around the world who would choose to report doping misconduct. Speak Up! is administered by the Agency's independent Intelligence and Investigations Department and guarantees confidentiality to all Informants and Whistleblowers using the system.

The status of Informant or Whistleblower triggers different rights and responsibilities. Any person reporting misconduct to WADA will be considered an Informant. The Informant may decide not to pursue further cooperation with WADA once they have provided the information. However, an informant can become a Whistleblower if they wish to further cooperate with WADA. In this case, an agreement is signed between WADA and the Informant outlining each party's rights and obligations. There is no obligation for the Informant to become a Whistleblower. However, this status offers additional rights to the person willing to cooperate further with WADA's Intelligence and Investigations Department. The Whistleblower must maintain strict confidentiality at all times during the investigation. Therefore, if the Whistleblower goes public, the agreement is terminated and the Whistleblower cannot benefit from any protection or financial assistance from WADA.

Speak Up! also comprises a secure IT platform. Of note, the identity of Whistleblowers will never be recorded on the platform itself so that, even in the worst-case scenario of a hacking incident, Whistleblower identities cannot be exposed.

Of course, all information provided through Speak Up! will trigger action from our Intelligence and Investigations Department. This Department acts in total independence from WADA management, prioritizing and taking action based on information provided by informants and whistleblowers.

It should also be noted that an Intelligence and Investigations Policy will be proposed to the WADA Foundation Board in May 2017 to ensure that WADA's Intelligence and Investigations Department can act in total independence from WADA management; whilst, ensuring that it is regularly audited by outside experts to ensure that the Department doesn't operate in a vacuum.

- 10. According to information available on WADA's website, the principle of WADA's strict liability is applied in situations where urine or blood samples collected from an athlete have produced adverse analytical results. Further, it means that each athlete is strictly liable for the substances found in his or her bodily specimen, and that an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or markers) is found in bodily specimen, whether or not the athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault. Is there any flexibility to take into consideration the circumstances or intention of the athlete when it comes to strict liability?**

- a. If so, please give examples of circumstances that would allow for flexibility and how that would be handled.**

Article 10 of the Code outlines how the strict liability principle applies in conjunction with a lot of other provisions when it comes to sanctioning athletes.

The strict liability principle is only restricted to the fact that when a substance is found in a bodily specimen of an athlete, it is the athlete who has the burden of explaining how the substance entered his/her body. It is not the ADO's responsibility; which, as you can imagine, would be impossible in most cases.

This is where the principle of strict liability stops. Each athlete then has the possibility to clear the circumstances of the case by showing that it was either by no fault or no significant fault; or, that it is as a result of a contaminated product, and so on.

All this is articulated in the Code; and, allows flexibility and, depending on the kind of substances, between a reprimand and a four-year suspension. To receive a four-year sanction, depending on the kind of substance, it is either the athlete or the ADO that has the burden of proving the intentional nature of the infraction.

- b. How is the strict liability principle put into practice?**

- i. Who is responsible for enforcing it?**

There is plenty of case law in relation to how this principle of strict liability has been enforced. WADA reviews every decision taken around the world and, exercises its right of appeal if it feels that the principles of the Code have not been appropriately applied.

11. The fundamental principle of the Athlete Biological Passport (ABP) is to monitor selected biological variables over time that indirectly reveal the effects of doping rather than attempting to detect the doping substance or method itself. There are concerns that bad actors are always trying to stay one step ahead of the testing and technology. Does the athlete biological passport alleviate some of those concerns? Why or why not?

The Athlete Biological Passport (ABP) is, and will be going forward, a very powerful tool in the fight against doping. The ABP allows for detection of the effects of doping rather than of a substance itself.

It does indeed reduce the risk of new substances being used that are not yet detectable. It should be noted that this gap has been reduced as a result of WADA having established agreements with several pharmaceutical companies and the industry on the whole. Essentially, companies inform WADA during compound development if there is potential for future abuse in sport with new molecules being provided to WADA-accredited laboratories for testing before being put on the market. In turn, the Agency commits to inform them should it uncover evidence of black market supply involving their compounds. This partnership acknowledges that the impacts of doping extend well beyond elite athletes to include society on the whole.

a. Is the Biological Passport widely utilized?

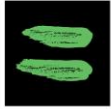
With the ABP, one must understand the distinction between the 'Blood Passport' (which is commonly referred to as 'the ABP'), which looks at parameters found in blood from the 'Steroid Passport', which looks at steroid markers found in urine. The Blood Passport is mainly used in sports that are most at risk for using substances to enhance the transfer of oxygen in blood. The Blood Passport is used by almost all International Federations around the world; and, to a lesser degree NADOs.

The Steroid Passport derives from regular urine analyses; and therefore, de-facto every athlete should have a Steroid Passport (albeit not always activated).

At the moment having a 'Blood Passport' is not mandatory; however, it is certainly something that WADA is considering going forward. Logically however, a mandatory requirement should only be applied to sports where there is an identified risk. In other words, it is not likely logical to require a Blood Passport for a sport such as archery.

b. How accurate is the Biological Passport?

The ABP (Blood Passport) has proven to be very robust and there is a lot of case law that supports Passport findings. The Passport can be used, not only for



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sanctioning athletes but, even when the evidence might not yet be at a level that would allow for a case to be prosecuted. It can be used to ensure that testing programs are more targeted and applied immediately when the risk is identified. The Passport requires a combination of statistical indications and profile review by independent experts before an adverse Passport finding can be rendered. The independent review by experts is a key requirement of the Passport in order to avoid any bias that could result from application of a statistical model without such review.