*Journal of Legal Aspects of Sport*, **4(1)**, 1994, 59-65

# AIDS in the Sports Arena: After Magic Johnson, Where Do We Go From Here?

***Mary A. Hums***
***Kennesaw State College***
***Marietta, Georgia***

## ■ INTRODUCTION

The world of sport and the issue of HIV status are no longer separate from each other. If one accepts that sport is a mirror of society, then all the complications that accompany an HIV positive individual in society are present for that individual if he or she chooses to enter the sport arena. Within the last two years, two major sport figures, Magic Johnson and Arthur Ashe, have illustrated this point for us.

Medical authorities examining the potential for HIV transmission via sport have stressed the minimal risks involved. Only one case of suspected on-field transmission has been reported (Miller, 1992). That case involved two Italian soccer players who collided during a match and suffered head wounds. One of the players was a known intravenous drug user who was HIV positive. The other player was previously HIV negative, however no test was performed at the time of the injury. Physicians cannot confirm that his change to HIV positive status was a direct result of the injury (Seltzer, 1993). Even before this single isolated incident, in *Doe v. Dolton Elementary School District No. 148* (694 F.Supp. 440, 449 (N.D. Ill. 1988)), the courts permitted a school to exclude a child with AIDS from participating in contact sports without any medical testimony concerning the risk of AIDS transmission during such activities.

As a reaction to these situations, we have seen the development and implementation of policies dealing with HIV infection and sport participants. This has been most notably done by the major professional and amateur sport organizations. One purpose of this article is to present the policy statements of these sport organizations. A second purpose is to provide guidelines for the development of a model confidentiality policy within a sport organization. Finally, some future considerations will be presented.

## ■ SAMPLE POLICIES

Information on HIV policies was collected by contacting the league offices. The NBA is considered in the forefront of development of guidelines, and recently, hired David Rogers, MD, who is a vice chairperson of the National Commission on AIDS, as a league consultant and has begun mandatory HIV and AIDS education for all its players (Seltzer, 1993). For example, the NBA's guidelines have ben used as a basis for development of policies for the NFL.

The NFL policy is based on materials developed by the National Basketball Association Players' Association. The NFL very clearly states that, "The best current scientific evidence suggests that the risk of HIV transmission due to participation in contact sports is infinitesimally small. HIV is transmitted in very limited and well-understood behaviors. There is presently no basis for excluding a player from participation in the NFL solely because he is HIV-infected" (NFL, 1992a). Additionally, the NFL's AIDS Fact Sheet states, "If I am found to be HIV-infected, am I protected from losing my job? Currently, NFL policies prohibit the exclusion of any player from participating just because he is HIV-infected" (NFL, 1992b). The NFL is also very clear regarding HIV testing, saying "There is presently no scientific or other persuasive evidence to support mandatory or routine testing in the NFL. HIV tests may not be administered to players under member club auspices unless such testing is (1) known to the player in advance, (2) purely voluntary on the player's part, and (3) done in strict accordance with all applicable state laws" (NFL, 1992a).

The NHL issued a statement from past Commissioner John A. Ziegler on the issue of the HIV virus. The document contains the statement, "I have recently circulated to the clubs the observations of doctors who have been studying this with respect to sports and relating it to contact sports, etc., and have given them the benefit of that opinion which is - the risk of contracting the HIV virus by reason of contact sports is very, very remote" (Ziegler, 1991). Regarding testing, a statement from the National Hockey League office by Commissioner Ziegler directed to all governors, alternate governors, and general managers states, "I urge and recommend each one of you to provide to your players the opportunity to be tested voluntarily and confidentially, if they so choose. There must be no mandatory testing" (NHL, 1991).

Not only professional sports leagues are attempting to deal with policy development; so too are the major intercollegiate athletics associations, the National Collegiate Athletic Association (NCAA) and the National Association for Intercollegiate Athletics (NAIA). In addition to spelling out the universal precautions to be used for handling bodily fluids, the NCAA guidelines state, "The precise risk of transmission during exposure of open wounds or mucous membranes to contaminated blood is not known, but evidence would suggest that it is extremely low. Therefore, while the theoretical possibility of HIV transmission from one student-athlete to the open wound or mucous membrane of another student athlete exists, the probability of this occurring is extremely low" (NCAA, 1992a). On the issue of participation by an HIV positive individual, the NCAA states "The team physician has the final responsibility in determining when a student-athlete should be removed or withheld from participation due to an injury or illness. However, the NCAA recommends that student-athletes should not be restricted from participating in any sport merely because they infected with the HIV virus" (NCAA, 1992b).

The guidelines go on to specifically mention that wrestlers, even given the close body contact of the sport, should not be restricted merely because of HIV infection. However, collegiate wrestling rules prohibit participation if there is a skin infection or open sore, without reference to HIV status (NCAA, 1992b). Additionally, the NCAA recommends that "individual sports committees examine current practices

in an effort to minimize the risk of transmission of AIDS and all other blood- borne infectious diseases" (NCAA, 1992a). Regarding testing, the guidelines suggest that, "Mandatory testing should not be considered as an alternative to a sound educational program that emphasizes prevention...Routine testing of student-athletes is not recommended at this time; however, in cases where exposure to blood has occurred to an open wound or mucous membrane of another person, HIV counseling should be made available to both individuals" (NCAA, 1992a).

The NCAA has drawn much attention for the "aggressive- treatment statement" which emanated from the Men's and Women's Basketball Rules Committees. This statement called for the "aggressive-treatment" of student-athletes who are openly bleeding in a practice or contest. In addition, the NCAA Executive Committee has directed each rules committee to adopt the "aggressive-treatment statement" and to determine how it would be implemented based on the particular circumstances of each sport. It was projected that it may take as long as nine- months for each sports committee with rules-making responsibilities to address the guidelines and develop procedure for implementation (Renfro, 1992).

The guidelines set forth by the NAIA closely parallel those of the NCAA. The basic information provided about universal precautions in handling bodily fluids, the statements regarding transmission risk, the recommendation of further study by individual sports committees, and testing are identical to those used by the NCAA (National Association of Intercollegiate Athletics, 1992).

From boxing, some policies regarding testing for athletes are being implemented. One organization which is advocating an HIV testing policy is Top Rank, Inc., which is requiring all fighters on its boxing cards to undergo HIV testing. Currently, the state of Nevada requires HIV testing for boxers, while several states are following the lead of the New Jersey State Athletic Control Board and instituting regulations requiring corner workers and referees who work boxing matches to wear gloves (Seltzer, 1993).

## ■ BUILDING A MODEL POLICY

These policies illustrate how various sport organizations have responded to the requests for policy development in this ever changing area. There are many commonalities to these policies, as they touch on universal precautions, testing, and, to an extent, confidentiality. If a sport organization decides to develop a policy which would deal with AIDS/HIV infection, what should be included in a model policy, especially in the area of confidentiality? This is a difficult issue, because the legal obligations of confidentiality vary widely, and there is no federal law mandating confidentiality about HIV-related information (Leonard, 1990).

A Model AIDS/HIV Confidentiality Policy has been developed by Rennart (1991). The general topics included in this policy is illustrated in Table 1. The purpose of the model policy is to assist programs and agencies in formulating their own confidentiality policies. Its application is broad, but is geared towards "any type of public or private institution, program, agency, or department (including schools) that provide any type of service, treatment or benefit to persons who have (or may have) HIV infection" (Rennart, 1991).

**Table 1.** Considerations in Constructing a Model AIDS/HIV Confidentiality Policy for a Sport Organization

1. General Principles
2. Information Covered by Confidentiality Policy
3. Individuals Subject to the Confidentiality Policy
4. Competency and Informed Consent for Disclosure of HIV-Related Information
5. Intra-Agency Access To and Disclosure Of HIV-Related Information
6. Extra-Agency Disclosure of HIV-Related Information
7. Penalties for Unauthorized Disclosures

(Adapted from: Rennart, S. (1990). *AIDS/HIV and Confidentiality: Model Policy and Procedures.* Washington, DC: American Bar Association.)

The sections of this policy which could be applicable in a sport organization include the following (1) General Principles, (2) Information Covered by Confidentiality Policy, (3) Individuals Subject to the Confidentiality Policy, (4) Competency and Informed Consent for Disclosure of HIV-Related Information, (5) Intra-Agency Access To and Disclosure Of HIV-Related Information, (6) Extra-Agency Disclosure of HIV-Related Information, and (7) Penalties for Unauthorized Disclosures (Rennart, 1991). Application of each of these to a sport organization follows.

When attempting to put a policy such as this in place, there are several considerations to remember. First, consult with legal counsel to insure that all policy guidelines are in line with state laws regarding privacy and confidentiality. These are relatively broad guidelines, but it is not possible to draft a policy which could specifically take into account all 50 states laws and statutes. Note, too, that these guidelines apply to participants' HIV status, and not employee HIV status, although many of these principles could be adapted for use in that manner (Rennart, 1991).

The General Principles section should include basic information about the importance of confidentiality, and about the right to privacy. Assuring that confidentiality is of utmost importance encourages athletes to be tested if they feel they are at risk. This enables athletes to have access to the necessary help if they do test positive. This section helps explain to athletes and athletic staff members the importance of assuring confidentiality.

The Information Covered by Confidentiality section defines HIV-related information as any information that is likely to identify, directly or indirectly someone who actually is HIV positive or suffers from any AIDS related illnesses. Access to or disclosure of this information is governed by this section. This includes, but is not limited to, athletes' test result information or about treatment for HIV-related illnesses.

The Individuals Subject to the Confidentiality section clearly outlines which persons are included in the policy. It is not limited to full-time employees, but could include part-timers, volunteers, temporary employees or anyone else who must maintain confidentiality. This could include athletic directors, athletic counselors, team physicians, athletic trainers, student trainers, head and assistant coaches and student managers. Any of these persons should receive a copy of the policy, be required to read and sign that they have read and do understand the policy.

The Competency and Informed Consent for Disclosure of HIV- Related Information section outlines that a person, or his/her legal guardian if a minor, must give specific written consent for disclosure of any HIV-related information. A person's health information belongs to that person, except in very limited circumstances. Here, an athlete would sign consent to disclose HIV status to those persons in the organization who need to know that information. This does not give those persons the right to disclose the information to others.

The Intra-Agency Access To and Disclosure Of HIV-Related Information defines who "needs to know" within an organization. What is most important here is determining "need to know" based on the infected person's needs and best interests, not necessarily the needs of the staff people. The sole purpose of this standard is to limit the number of persons with automatic access to the information. This is an area where many athletic departments understandably struggle, and a question to which there is no easy answer - who should have automatic access to HIV status and who should not?

The Extra-Agency Disclosure of HIV-Related Information section deals with who, outside of the immediate organization, should have access to this information. The risk of unauthorized disclosure grows when information is shared with people outside an immediate organization. For example, who, outside of athletic department personnel, needs to know about an athlete's HIV status? Should Student Health know, in case there is a non-athletic medical emergency with that student? There should be, designated within the department, one individual whose responsibility it is to be in contact with any outside group. This could be the head athletic trainer. The information should only be released after getting written consent from the athlete.

Finally, the Penalties for Unauthorized Disclosures outlines what happens if procedures of the policy are violated. These penalties reinforce the importance of maintaining confidentiality. The athletic department must have procedures for dealing with unauthorized disclosures, which could include disciplinary action, up to and including termination of employment.

## FUTURE CONSIDERATIONS

When dealing with the issues surrounding HIV status, we face multi-faceted questions cutting across legal, ethical and moral dimensions. AIDS and HIV infection are now well established concerns in our society. In attempting to strike a balance, we must ask the questions: what does justice require society to do for persons with AIDS, and what may persons with AIDS justly be asked to do for society? Or put another way, what concrete bundle of special rights and responsibilities associated with HIV status would constitute a just relationship between persons with AIDS and the rest of society? (Moore, 1990) One could say that a basic rule governing our conduct would suggest that everyone behave in such a way as to neither contract or transmit AIDS (Bateson & Goldsby, 1988), yet that does seem to make the problem too simplistic. The moral problems associated with AIDS are complicated by the social stigma and deviance labeling imposed on the self-respect of people with AIDS. People who are HIV positive face discrimination on two fronts - first because they carry an extremely dreaded and infectious disease, and second

because the virus and its manifestations have traditionally been associated with socially marginalized groups (Douard, 1990).

When developing policies concerning participation by HIV positive individuals in sport, we must consider a number of factors. First, current medical knowledge about the disease must be considered so that the most current definition of universal precautions may be incorporated. Second, we must attempt to clearly delineate the rights and responsibilities of both the HIV positive individual and the persons in charge of their care. Finally, we must do both of these not just by the letter of the law, but in the spirit of justice. While we can apply universal precautions to protect against disease transmissions, we must ask if there is a way to apply universal precautions to protect one's dignity.

## References

Bateson, M. C., & Goldsby, R. (1988). *Thinking AIDS: The social response to the biological threat.* Reading, MA: Addison- Wesley.

*Doe v. Dolton Elementary School District No. 148*, (694 F.Supp. 440, 449 (N.D. Ill. 1988)). Douard, J. W. (1990). AIDS, stigma, and privacy. *AIDS and Public Policy Journal, 5*(1), 37-41.

Leonard, A. S. (1990). Ethical challenges of HIV infection in the workplace. *Notre Dame Journal of Law, Ethics and Public Policy, 5*, 53-73.

Miller, K. E. (1992). Doctors believe HIV transmited during European soccer game. *Atlanta Journal Constitution*, Nov. 5, p. H5.

Moore, M. H. (1990). Towards just social relationships between society and persons with AIDS. In C. C. Abt & K. M. Hardy (Eds.) *AIDS and the courts.* Cambridge, MA: Abt Books, Inc.

National Association of Intercollegiate Athletics (1992). *AIDS and Intercollegiate Athletics.* Brochure provided by the NAIA.

National Collegiate Athletic Association (1992a). *1992 NCAA Sports Medicine Handbook*, p. 24-25.

National Collegiate Athletic Association (1992b). *AIDS and Intercollegiate Athletics.* Brochure distributed by the NCAA.

National Football League (1992a). *National Football League HIV/AIDS Related Policies*, p. 2.

National Football League (1992b). *National Football League AIDS Fact Sheet*, p. 5.

National Hockey League (1991). Memo provided by National Hockey League office.

Renfro, W. I. (1992). Blood-treatment guidelines mailed. *The NCAA News*, p. 1,8, Dec. 30, 1992.

Rennart, S. (1991). *AIDS/HIV and confidentiality: Model policy and procedures.* Washington, DC: American Bar Association.

Seltzer, D. G. (1993). Educating athletes on HIV disease and AIDS. *The Physician and Sportsmedicine, 21*(1), 109-114.

Ziegler, J. A. (1991). Memo provided by National Hockey League Office, p. 1.