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Ethical challenges and responsibilities in the production, regulation, prohibition and use of supplements

Discussion paper by R. Butcher, Ph.D., May 2004

1. Introduction

The problems of supplement use for athletes are many and tangled. Not only are there multiple players, each with different responsibilities and roles there are also extremely important vested and competing interests. It is clear that no one player in this situation is capable of shaping the outcome. The tangled responsibility results in the requirement that each player or stakeholder does its part. But what is that part – and what are the responsibilities of the different stakeholder groups?

2. Elite sport

Sport is many things to many people, from a recreational activity engaged in primarily for fun, to entertainment, to the pursuit of success at the very highest level. Some features of sport, however, give it its moral character – and apply at all levels of sport. Sport is competitive. Sport is necessarily contested. In a sport event one player or team tries to perform the activity in question better than his or her opponents. This leads to the second feature of sport, it is defined and limited by its rules. One cannot win a sporting contest by shooting one's opponent, only by performing the sport better (as measured by the score or time) than the opponent.

The character of elite sport thus gives rise to two background facts in the discussion of the use of sport supplements. The first is that the drive to improve performance is relentless. Elite sport requires that its practitioners are constantly looking for ways to improve performance. Elite athletes are the people who accept that burden, the people who are prepared to go to extreme lengths – perhaps any lengths, to wring the best possible performances from their bodies. Limits on the pursuit of performance will not come from athletes, or from those who work within the sport system as presently constituted. An athlete that seeks to do less than the maximum possible, or a coach that counsels athletes to perform below their very best would have no place in elite sport.

But there is still a requirement to set limits. Limits in sport are set by the rules and there are different responsibilities for setting different types of rules. Sport governing bodies set the constitutive rules of their sports. They determine what actions are permissible, what constitutes a goal, point, or a penalty, and so on. Sport governing bodies have a responsibility to be mindful of the health and safety of athletes as they create the rules of their sports. Could there be sports, or sporting events that are too demanding – races, or seasons that are too long, events that are too dangerous, sporting activities that almost require athletes, to do well, to push themselves beyond the limits of reasonable safety? As sport governing bodies set their rules they have an ethical obligation to athletes to try to create sporting events that would allow athletes to compete well, at the highest levels, yet safely.

The second set of limits in sport is set by anti-doping agencies. Rules against doping in sport limit the permissible means that athletes may use in order to enhance performance. There is a responsibility here too. Those limits must be grounded in a desire to make sport, even elite sport, as safe and consistent with the health of athletes, as possible.

These are the tensions at the heart of elite sport and doping control. On the one hand the drive in sport is to constantly push back the boundaries of human performance, on the other hand the role of anti-doping

agencies is to set limits and then to ensure that everyone can compete fairly within those limits. Now, how do supplements fit?

3. Supplements

Supplements are taken by athletes because they are believed either to enhance performance or to maintain health, and hence maintain the capacity to train and perform. Athletes may take a number of risks in using supplements, risks which include risks of harm to health and safety, and risks of inadvertently testing positive for doping.

So what are the ethical obligations of those involved in this system – to reduce, or minimize the risks faced by athletes?

4. Doping control agencies

The standard response by doping control agencies has been to say to athletes – “Just say no.” That is, athletes use supplements at their own, unshared, risk and athletes are strictly liable for any resulting positive test. This approach has the merit of protecting anti-doping agencies from potential liability and responsibility should an athlete test positive after having used an “approved” supplement. But it is increasingly recognized that this stance is ethically untenable. Because anti-doping agencies create the rules that limit athlete action they share some responsibility in ensuring that athletes are able to compete, to their limits, but without running the risk of inadvertently testing positive. To the extent that some supplements enhance health it is unfair that athletes should be denied access to those benefits without good reason. This has led some anti-doping agencies to create education programs and in some cases to try to work with the supplement industry to identify products that can be used without the fear of inadvertent positive tests.

The ethical challenge facing doping control agencies is to ensure that athletes can compete well and safely, without the fear of inadvertent positives, while establishing reasonable limits to their own liability and responsibility.

5. The supplement industry

In a free market willing sellers connect with willing buyers in mutually agreeable arrangements. The task of the seller is to maximize profit, and there is no particular requirement that sellers act in the common good. It doesn't matter if the product is useless, all that counts is that people are willing to buy it at a price that makes the enterprise worthwhile. That free market operates within a set of regulations (and we will deal with that below) but within those regulations buyers and sellers are free to come to the arrangements they wish. Are there, however, some ethical obligations that fall on the supplement industry? Is there an obligation only to sell “effective” products?

Generally, we have not tended to insist that a product be effective in order to permit its sale. Rather we have concentrated on claims of effectiveness. In addition, a seller cannot be held responsible for the use to which a product may be put. Apparently, the lubricant WD40 is sometimes used by people as a remedy for arthritis. This is not the fault of the manufacturer, but we would be ethically concerned if the product was marketed as a cure for arthritis.

Honesty in labeling and marketing – There is an obligation to be honest in marketing claims and labeling. A decision to purchase a product is a form of contract or agreement. For that agreement to be ethically defensible the purchaser must be able to rely on the information provided to him or her by the manufacturer or seller. This means that claims to efficacy must be supported by evidence and especially that ingredients be accurately labeled.

Honesty in information requires a second responsibility, that of consistently good manufacturing processes. Manufacturers are not able to guarantee the honesty of their packaging claims without the assurance of good quality control.

The supplement industry is not a single thing but rather a loose collection of widely different companies with vastly different approaches. There may well be good, self-interested reasons for leading players in the supplement industry to take steps to self-regulate, and raise the standards for the entire industry, before additional external regulation is imposed.

In any event, consumers are entitled to honesty in the description, marketing and labeling of products.

6. Sport sciences

Sport scientists are naturally looked to for good, evidence-based advice. That brings with it a set of ethical obligations. The principal of these is that the advice that is given by sport scientists must indeed, be based in the evidence. The public power of science lies in its independence from other vested interests. Scientists, as such, should not be seen as spokespeople for the industry, or indeed, spokespeople for anti-doping agencies. The responsibility of the sport scientist is to be as objective as possible.

7. Governments

Governments are also stuck with competing interests. On the one hand, there is an interest in free markets and the promotion of enterprise as unfettered as possible by interference and regulation; on the other hand there is the desire to protect consumers. This is true of all regulation in the marketplace. Then there is the issue of safeguarding public health. An unregulated supplement industry poses of the risk of not just introducing products that do not work, but also of introducing products that actually cause harm. The special challenge, however, concerns the extent to which governments should include in their deliberations an explicit concern about anti-doping regulations. Governments have made a commitment to anti-doping in sport. It follows, therefore that they will need to consider the impact of that commitment in other areas of their jurisdictions – in this case the potential regulation of the supplement industry. As governments consider regulation of the supplement industry they should explicitly consider the role of that regulation (or lack thereof) on elite athletes subject to government mandated doping control.

8. Sport

And finally, to return to the obligations facing the sport community. In the struggle to promote elite sport, some sport agencies have entered into sponsorship agreements with supplement manufacturers. These relationships have the potential to be mutually beneficial, however, some dangers exist. A sponsorship agreement, whatever an agency might say to the contrary, carries with it the connotations of endorsement. If a sport, or sporting event, carries the logo of a supplement manufacturer, the intended message, from the perspective of the manufacturer is that the sport approves of, and endorses its products. The challenge for sport governing bodies is to ensure that they can carry the risks associated with appearing to endorse the supplements concerned.

The sport community must also get its own house in order as it creates sport as a human enterprise. Sport governing bodies have to take into account the way in which the rules and definitions of sport create the activities and hence create the demands faced by athletes. Do some sports ask too much of athletes? Can some sports and sporting events be modified to enhance athlete safety and health? Surely the answer is yes. It is therefore incumbent on the sport community to be self-reflective as they craft the activities pursued by elite athletes – and loved by us all.

9. Moving on

The responsibility for action is shared amongst the stakeholders, each of which must act individually and in concert. The first step towards ethically grounded outcomes is a willingness to look critically and self-reflectively at one's own actions and responsibilities. Each of the stakeholders should first identify its role and responsibilities in dealing with this issue, and then demonstrate the willingness to act. The second step is to identify what must be done together, and again demonstrate the willingness to act, this time in partnership. The alternative – a variant of the status quo, where athletes are left without any access to possibly useful supplements, but with total responsibility for any positive test, is simply unsustainable.