

Q&A: Strict Liability in Anti-Doping

What is strict liability?

The principle of strict liability is applied in situations where urine/blood samples collected from an athlete have produced adverse analytical results.

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.

Where does this principle come from?

Prior to the January 1, 2004, implementation of the World Anti-Doping Code (Code)—the core document that provides the framework for harmonized anti-doping policies, rules, and regulations within sports organizations and among public authorities—, the principle of strict liability had been applied by the International Olympic Committee in its Anti-Doping Code as well as by the vast majority of pre-Code anti-doping sports rules. In accordance with WADA's stakeholders' wishes, the Code continues to apply the same principle.

This rule sounds severe. Is there any flexibility to take into consideration the circumstances or intention of the athlete?

Yes, there is flexibility when a sanction is being considered.

The rule is the starting point so that, while an anti-doping rule violation occurs regardless of the athlete's intention, there is flexibility in the sanctioning process to consider the circumstances.

How is the principle put into practice?

If the sample came from an in-competition test, then the results of the athlete for that competition are automatically invalidated. This rule helps to establish fairness for the other athletes in the competition.

As relates to subsequent sanctions (Art. 10 of the Code), the athlete has the possibility to avoid or reduce sanctions if he or she can establish to the satisfaction of the tribunal how the substance entered his or her system, demonstrate that he or she was not at fault or significant fault or in certain circumstances did not intend to enhance his or her sport performance. This means that the burden of proof is on the athlete.

The strict liability principle set forth in the Code has been consistently upheld in the decisions of the Court of Arbitration for Sport (CAS) and the Swiss Federal Court.



Did WADA make any change in relation to the strict liability principle as part of the World Anti-Doping Code review?

No. The strict liability principle remains in the 2009 Code.

As consistently confirmed by CAS, the strict liability rule for the finding of a prohibited substance in an athlete's specimen, with a possibility that sanctions may be modified based on specified criteria, provides a reasonable balance between effective anti-doping enforcement for the benefit of all clean athletes and fairness in the exceptional circumstance where a prohibited substance entered an athlete's system through no fault or negligence on the athlete's part.