

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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January 28, 2013

Mr. DeMaurice Smith
Executive Director
National Football League Players Association
1133 20th Street, NW
Washington, D.C. 20036

Dear Mr. Smith:

The Committee on Oversight and Government Reform has long been committed to addressing the use of performance enhancing drugs in professional sports, as the abuse of these substances places athletes at risk, compromises the integrity of the game, and sends a dangerous message to America's youth. That is why we have worked to bring the National Football League (NFL) and the NFL Players Association (NFLPA) together to implement a test for human growth hormone (HGH), as the sides agreed to do in their August 2011 collective bargaining agreement (CBA). Now, nearly two full seasons after that agreement was ratified, progress towards implementing a test for HGH has been virtually nonexistent, despite the fact that independent scientists have determined that the test is safe and reliable.

We are disappointed with the NFLPA's remarkable recalcitrance, which has prevented meaningful progress on this issue. We intend to take a more active role to determine whether the position you have taken—that HGH is not a serious concern and that the test for HGH is unreliable—is consistent with the beliefs of rank and file NFL players.

Background

On August 4, 2011, the NFL and NFLPA agreed to a new CBA that included specific language regarding the implementation of HGH testing. Both sides agreed that "over the next several weeks" the NFL and NFLPA would develop a protocol for HGH testing "with the goal of beginning testing by the first week of the 2011 regular season."¹ The 2011 and 2012 regular seasons have come and gone, yet no HGH testing is in place.

Shortly after the CBA was signed, the NFLPA questioned the reliability of the existing HGH test. You and your staff expressed concern that since the test, developed and approved by

¹ Collective Bargaining Agreement between the National Football League and the National Football League Players Association (Aug. 4, 2011) (online at nflabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf).

the World Anti-Doping Agency (WADA), was designed for Olympic athletes, it may not be adequate for NFL players. Despite the fact that the WADA test was developed by studying athletes of diverse ethnic backgrounds and physical characteristics, the Players Association insisted on an NFL-player specific “population study” to determine whether NFL players have a higher level of naturally-occurring HGH than Olympic athletes.² To date, the NFLPA has not produced a single credible study or scientific opinion to support the position that a player-specific population study is necessary. To the contrary, the sport and science communities have concluded resoundingly that your position is meritless.

Committee Efforts

In October 2011, two months after the CBA was signed, we met with Commissioner Roger Goodell and NFLPA representatives. We hoped that this initial meeting would move both sides to negotiate in good faith toward the implementation of HGH testing. Instead, the NFLPA proposed a comprehensive drug testing program that actually took the testing regime backwards. We outlined the various flaws and loopholes built into that proposal in a letter to you and Commissioner Goodell on August 7, 2012.³

Since the October 2011 meeting, and despite subsequent meetings at the principal and staff levels over the past year, there has been little progress. In fact, the NFLPA’s lawyers and public relations staff have repeated the same arguments over and over again.

In December 2012, the Committee held a hearing to obtain testimony from scientific experts about the reliability of the existing HGH tests. The hearing also examined the dangerous health effects of using HGH as a performance enhancer, and the impact that the lack of a test in the NFL could have on young athletes. At the hearing, we heard testimony from experts at the United States Anti-Doping Agency (USADA), the National Institutes of Health (NIH), and health and safety advocates, including Hall of Fame linebacker Dick Butkus.

The message to the Committee was clear—existing tests for HGH are as reliable for NFL players as they are for Olympic weightlifters and endurance athletes and basketball players; false positives do not pose a threat to NFL athletes; abuse of this drug places athletes at risk; and failure to address the issue of HGH use in professional sports sends a dangerous message to young athletes. Dr. Larry Bowers, USADA’s Chief Science Officer, testified that “the chances of an athlete who has not used synthetic growth hormone testing positive are comparable to the chance of that same athlete being struck by lightning during his or lifetime.”⁴ He added that those questioning the tests were “lawyers, not scientists.”⁵

² Letter from DeMaurice Smith, Executive Director, NFL Players Association, to Chairman Darrell E. Issa & Ranking Member Elijah E. Cummings (Aug. 27, 2012).

³ Letter from Chairman Darrell E. Issa & Ranking Member Elijah E. Cummings to Roger Goodell, Commissioner, NFL, and DeMaurice Smith, Exec. Dir., NFLPA (Aug. 7, 2012). Among the weaknesses with the players’ proposal identified in the letter were: there would have been no in-season testing for HGH; only ten percent of players would be tested for HGH; the proposal would have allowed players to game the system; there would be 24 hours advance notice for offseason testing; and no-notice testing was eliminated for all substances during the NFL season.

⁴ House Committee on Oversight and Government Reform, Testimony of USADA Chief Science Officer Dr. Larry Bowers, *Hearing on HGH Testing in the NFL: Is the Science Ready*, 112th Cong. (Dec. 12, 2012).

⁵ *Id.*

Other experts agreed with this characterization. NIH Deputy Director Lawrence Tabak testified that “the scientific validity and robustness of this test has been upheld by numerous studies, carried out around the world by HGH experts and with different populations.”⁶ Dr. Linn Goldberg, a noted endocrinologist who has spent his career studying drug prevention, testified that testing for HGH is “like testing for alcohol. It is going to be very difficult to find positive tests. But when you find a positive test, it is probably a true positive.”⁷

This broad consensus was not limited to the individuals who testified before the Committee. Scott Blackmun, the CEO of the U.S. Olympic Committee (USOC), wrote to the Committee that “given the stringent review process, the USOC has the utmost confidence in the WADA-approved testing methods to detect HGH.”⁸ The Committee also received a letter from the Partnership for Clean Competition Research Collaborative stating that “the current HGH test is scientifically sound and valid and should therefore be deployed as soon as possible.”⁹

On January 4, 2013, we sent letters to Major League Baseball (MLB) and the Major League Baseball Players Association (MLBPA), as well as the National Basketball Association (NBA) and National Basketball Players Association (NBPA), to ascertain the status of HGH testing in professional baseball and basketball. We were eager to learn whether the NFLPA’s counterparts share its concerns about HGH. We found that they do not.

On January 10, 2013, MLB and MLBPA announced a landmark agreement to expand the existing HGH testing program. Under the expanded program, players will be subject to random unannounced in-season blood tests for HGH.¹⁰ On January 16, 2013, we learned that the NBA and NBPA have also made significant progress toward implementing an HGH test. Both the MLB and MLBPA, and the NBA and NBPA, appear to have productive working relationships regarding HGH testing. Your working relationship with the NFL on this issue, however, has resulted in scant progress so far. Despite being the first of the major professional sports leagues to agree to test for HGH, the NFL has now fallen far behind its counterparts in implementing the agreement.

Going Forward

The Players Association’s resistance to implementing an HGH test has led us to question whether the NFLPA leaders actually believe that HGH is a problem in the sport. For that reason, we intend to pursue a fact-finding agenda to determine whether NFL players consider HGH a problem in the league.

⁶ House Committee on Oversight and Government Reform, Testimony of NIH Deputy Director Lawrence Tabak, *Hearing on HGH Testing in the NFL: Is the Science Ready*, 112th Cong. (Dec. 12, 2012).

⁷ House Committee on Oversight and Government Reform, Testimony of Director of Health Promotion and Sports Medicine at Oregon Health and Science University Linn Goldberg, *Hearing on HGH Testing in the NFL: Is the Science Ready*, 112th Cong. (Dec. 12, 2012).

⁸ Letter from Scott Blackmun, CEO, U.S. Olympic Committee, to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings (Dec. 11, 2012).

⁹ Letter from Charlene Boudreau, Executive Director, Partnership for Clean Competition Research Collaborative, to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings (Dec. 12, 2012).

¹⁰ Paul Hagen, *In-season HGH testing to begin this year*, MLB.com (Jan. 10, 2013) (online at mlb.mlb.com/news/article.jsp?ymd=20130110&content_id=40916028&vkey=news_mlb&c_id=mlb).

Many players have spoken publicly in favor of HGH testing. For example, Green Bay Packers center Jeff Saturday, a member of the NFLPA Executive Committee, stated: “We want our game to be as pure as it can possibly be. If guys can’t do it naturally, then they’re not good enough to play.”¹¹

Similarly, New York Jets cornerback Antonio Cromartie stated via Twitter: “Jus[t] was reading an article about HGH testing in the NFL. I’m for it I’m not against it. If [you] against that mean you hiding something.”¹² Washington Redskins linebacker London Fletcher said, “Hopefully the NFL & the NFLPA will implement the new HGH test that has been endorsed by the international anti-doping officials!”¹³ These are only a few of many examples of NFL players urging action to ensure that the game is clean.¹⁴

Not only has the NFLPA disregarded calls from its members to implement a test for HGH, you apparently are not concerned as to whether HGH use is even a problem in the NFL. In an interview with Jarrett Bell of *USA Today*, you stated that, “If someone were going to tell me they knew of a player in the NFL taking HGH and it’s going undetected, yes, I’d be concerned. So far, no one has said that.”¹⁵

To the contrary, in 2011, former Indianapolis Colts wide receiver Anthony Gonzalez stated:

How many guys are on it, that’s hard to say. It could be 10, it could be a hundred or more; either way, it’s too much. But around the league, you see guys on Sunday, and things don’t add up; they don’t look right. I see guys I saw in college, now they’re in the NFL and they look totally different. I don’t know how prevalent it is at this point, but **to say that it’s not being used, that’s wrong.**¹⁶

¹¹ *Pro Football Talk Live*, NBC Sports (Aug. 12, 2011). On Friday January 25, 2013, Saturday announced his intention to retire following the 2013 Pro Bowl. Gregg Rosenthal, *Jeff Saturday ready to retire after 14 seasons in NFL*, NFL.COM (Jan. 25, 2013) (online at <http://www.nfl.com/news/story/0ap1000000130905/article/jeff-saturday-ready-to-retire-after-14-seasons-in-nfl>).

¹² Twitter (Apr. 6, 2011).

¹³ Twitter (Oct. 3, 2011).

¹⁴ E.g., Anthony Gonzalez: “It’s a huge step for our league, and I know talking to other guys (in the Colts’ locker room), they’re in favor of it, too. A lot of the rules in the new CBA are safety-oriented, and this is as important, or more important, than anything else.” Bob Kravitz, *HGH Testing Can Lead to Safer Football*, INDIANAPOLIS STAR, Aug. 9, 2011; Kevin Mawae: “We’re ready for any time that there’s testing that will ensure that there is fair play in the NFL. Anybody that cheats the game – whether it’s steroids or HGH or anything like that – they cheat the game, they cheat the players and they cheat themselves.” *Mike & Mike*, ESPN RADIO (July 26, 2010); Tedy Bruschi: “It is the right thing to do. It is HGH now, but later on down the road, it is going to be something else and proper blood testing is the only way that you are going to be able to detect these [Performance Enhancing Drugs]. You want to level the playing field.” *NFL Live*, ESPN (Mar. 25, 2011); Marcellus Wiley: “It may be invasive, but at the same time, I wouldn’t have a problem with it because it is my livelihood. Anytime there is a situation where I have to bite the bullet just do something to protect the integrity of the game, I am all for it.” *NFL Live*, ESPN (Mar. 25, 2011).

¹⁵ Mike Florio, *NFLPA Again Says Players Would Accept MLB-style HGH Testing*, PRO FOOTBALL TALK (Jan. 17, 2013) (online at profootballtalk.nbcsports.com/2013/01/17/nflpa-again-says-players-would-accept-mlb-style-hgh-testing/).

¹⁶ Bob Kravitz, *HGH Testing Can Lead to Safer Football*, INDIANAPOLIS STAR, Aug. 9, 2011 (emphasis added).

While NFLPA management may not believe that HGH is a problem in the NFL, the words of your athletes suggest otherwise. We hope the facts collected by the Committee will provide you and the NFL with the information necessary to resolve this matter. Although you have requested previously that we communicate directly with the NFLPA on these matters, we now ask that you and your staff not interfere with our efforts to communicate directly with the players or their personal counsel.

For the reasons outlined above, we request that you produce the following documents and information:

1. The information that WADA has already provided to you for your review of its HGH test;
2. The additional information you claim to need from WADA in order to evaluate the reliability of the population study that established the decision limit for the current version of WADA's HGH test;
3. Communications referring or relating to proposals by the NFLPA to identify a scientist to conduct a player-specific population study;
4. The NFLPA's most recent proposal for the comprehensive drug testing policy; and
5. A description of any proposals exchanged during the next scheduled meeting between the NFL and NFLPA that was tentatively scheduled for the end of the week of January 21-25.

Please produce these materials as soon as possible, but no later than February 8, 2013. Thank you for your attention to this important matter.

Sincerely,



Darrell E. Issa
Chairman



Elijah E. Cummings
Ranking Member