

Replacement of Doped Olympic Medalists

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A summary of the outcomes of the IOC Re-Testing programme from 2008-2012 to date was recently released (1). Key outcomes include 104 offenses, of which 86 cases were related to the territory of the former Soviet Union. Russia lost 19 medals, Kazakhstan 9, Belarus 6, the Ukraine 5, Armenia and Moldova 2 each, Azerbaijan and Uzbekistan 1 each. China lost 3 medals, Turkey 2, Cuba and Greece 1 medal. 5 athletes tested positive for both the 2008 and 2012 Olympic Games (2). However, it remains to be determined who has received or will receive these medals. This uncertainty is due to the fact that the responsibility for changing the results lies with the respective International Federation (IF) and the responsibility for redistributing the medals lies with the International Olympic Committee (IOC). The most common scenario is that the next-placed athlete is moved up, although this can cause difficulties and there are precedents not to award these medals. In the 94 kg men’s weightlifting competition in the 2012 London Olympic Games, the 5th, 8th and 9th ranked athletes, theoretically at least, remain in contention for the medal positions (3). With the present system, it is difficult to determine whether all of these potentially “eligible” athletes have undergone doping-control. The International Weightlifting Federation (IWF) has published on its web site a list of all male and another of all female competitors who underwent doping control in 2012 Olympic Games and this data reveals the originally 9th and now 3rd position athlete was subject to doping control at the 2012 Olympic Games (4). Nevertheless, there is the theoretical possibility that the re-distribution of Olympic medals could lead to non-tested athletes becoming holders of medals.

The IOC recently presented details of the independent anti-doping system to be applied at the 2018 PyeongChang Olympic Winter Games (5). This system is stated to include fully transparent International Test Distribution Plans. However, there appears to be no

provision for dealing with the redistribution of medals following doping violations. The IOC rules in force at the 2016 Rio Olympic Games (6) but also at previous Olympic Games, do not deal at all with the replacement of doped Olympic medalists. Article 9 provided for the automatic disqualification of the result in case of an anti-doping rule violation “*in Individual Sports in connection with an In-Competition test ... obtained in the Competition in question (and any other subsequent Competitions in the same Event for which the Athlete only qualified as a result of his participation in the Competition in question) with all resulting Consequences, including forfeiture of any medals, points and prizes.*” Article 10.1 of the Rio IOC Anti-Doping Rules entitled the CAS Anti-Doping Division to decide on “*Disqualification of all of the Athlete's individual results obtained in the Rio 2016 Olympic Games (or in one or more Events or Competitions) with all Consequences, including forfeiture of all medals, points and prizes,*” unless No Fault or Negligence and other conditions laid down by Article 10.1.1 were given. This is likely to be the situation for 2018 Winter Olympics in PyeongChang as it is typically the case that the IOC Anti-Doping Rules for the Olympic Winter Games follow the model of the previous Olympic Games.

The Olympic Charter itself by Rule 43 declares the World Anti-Doping Code mandatory for members of the Olympic Movement, but does not tackle matters not included in the Code (6). It does not provide a rule for transfer of Olympic medals from athletes having committed an anti-doping rule violation some time after the end of the Games. Paragraph 4 of By-Law to Rule 44 of the Olympic Charter only shifts the responsibility that a competitor is fully aware of and complies with the World Anti-Doping Code to the National Olympic Committee (NOC), which enters the respective competitor. However, this is not a legal guarantee that all competitors at Olympic Games are, in fact, tested for prohibited substances and methods. Also the Olympic entry form (paragraph 6 of By-Law to Rule 44), to be signed by each competitor, refers to respect of the World Anti-Doping Code and does not oblige all competitors to undergo a doping control during the Games' period.

The Olympic Charter through paragraph 1.2 of Bylaw to Rule 46 assigns to the authority of IFs to establish the final results and ranking of their Olympic competitions. Rule 59 para 2.1 makes sure that medals withdrawn inter alia for violation of the World Anti-Doping Code shall be returned to the IOC but does not go beyond and set a

provision on how to deal with such returned medals. It follows from both provisions that unless the rules of an IF concerned include a respective provision, it falls into the full discretion of the IOC and IFs whether at all and, if so, to whom to assign a withdrawn medal.

When considering the example of the sport of weightlifting hit most by the withdrawal of medals after 2008 and 2012, Articles 9 and 10.1 IWF Anti-Doping Policy (7) simply incorporate the respective provisions of the World Anti-Doping Code. In fact, the obligation under Article 23.2.2 World Anti-Doping Code, binding both the IOC and the IWF as signatories to the Code, does not allow for any substantial amendment or supplement. The prohibition of a supplement is, however, restricted to such “*that change the effect of the articles enumerated ...*”. The effect of Articles 9 and 10.1 would not be changed, if an IF or the IOC adds a provision on what shall happen with a medal withdrawn. It is, of course, also possible, that the World Anti-Doping Agency (WADA) itself provides for a rule on how to proceed as to the replacement of results and medals withdrawn in a case of an anti-doping rule violation. Rule 6.8 of the IWF Technical and Competition Rules & Regulations dealing with the classification of athletes and teams does not address the issue of replacement of an Olympic medal withdrawn, nor does Regulation to Rules 6.6.6 and 6.8 (8).

In light of the above, three options seem to be open for the future:

- To stay with the current “status quo” described as “*Byzantine and complex*” and depending on “*word from both the IF and the IOC*”(1).
- To introduce a provision into the IOC Anti-Doping Rules for the 2018 PyeongChang Olympic Winter Games making sure that an Olympic medal withdrawn can be re-assigned only to a next placed athlete who was subject to a doping control during the Games. If the next placed athlete has not undergone a doping control, the medal position remains empty and will not be re-assigned. To agree with the Olympic Winter IFs that they proceed accordingly as to the recalculation of results. For the next edition of the World Anti-Doping Code and implementation by the IFs to include the model of the IOC Anti-Doping Rules.

- To introduce a provision into the IOC Anti-Doping Rules for the 2018 PyeongChang Olympic Winter Games that in case of withdrawal of an Olympic medal, no replacement and no correction of results will take place. The withdrawn placements remain empty. To agree for the same with the Olympic Winter Federations and to include the same provision into the next edition of the World Anti-Doping Code and implementation by the IFs.

Summarizing, options 2 and 3 would meet all aims of IOC and WADA not only to support the health of the athletes by avoiding any doping procedure, but also to protect and to reward the clean athletes.

References

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