

Ethics of Regulating Competition for Women with Hyperandrogenism



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KEYWORDS

• Hyperandrogenism • Fairness • IAAF • Medicalization • Caster Semenya
• Dutee Chand

KEY POINTS

- IAAF Hyperandrogenism Regulations are flawed on a scientific level because it has not been proved that testosterone confers an advantage in competition.
- IAAF Hyperandrogenism Regulations raise issues of consistencies on two levels: other molecular and genetic variations that confer an advantage in competition are not considered unfair; and there is no upper limit for testosterone in the male category.
- IAAF Hyperandrogenism Regulations raise ethical issues at the level of implementation because the trigger for testing is visual perception and hence they pressure female athletes into conforming to stereotypical feminine standards.
- IAAF Hyperandrogenism Regulations raise medical concerns because they unnecessarily medicalize a condition (hyperandrogenism) in female athletes with long-term side effects.
- We need to be critical of the grounds on which the Court of Arbitration for Sport (CAS) has suspended the IAAF Hyperandrogenism Regulations on July 27, 2015, because CAS is buying into the IAAF flawed assumption that if there were a sufficient body of evidence to demonstrate a correlation between testosterone and competitive advantage, this would be unfair and would constitute grounds to reinstate the hyperandrogenism regulations.

INTRODUCTION

This article first briefly presents the case of Caster Semenya, which triggered the drafting of the International Association of Athletics Federations (IAAF; the international governing body regulating athletics competition worldwide) regulations on eligibility of female athletes with hyperandrogenism to compete in the female category. Then the IAAF regulations are critically analyzed from a scientific and ethical point of view. Finally the Court of Arbitration for Sport (CAS; international body that settles

Disclosure Statement: The author has no competing statements to disclose.

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Clin Sports Med 35 (2016) 293–301

<http://dx.doi.org/10.1016/j.csm.2015.10.003>

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sports disputes worldwide) landmark decision (July 2015) to suspend the regulations pending further evidence, and what this means for the future of sports, is discussed.

THE CASE OF CASTER SEMENYA

One cannot discuss the IAAF guidelines for regulating competition of women with hyperandrogenism without recalling the case of Caster Semenya, which prompted the guidelines. Caster Semenya competed at the Berlin IAAF Track Championship in 2009, where she won the 800 m with a time of 1:56.72, a total of 2.5 seconds ahead of the runner up. Only a few hours after the race the IAAF started an investigation into her gender. The IAAF reported that the “incredible improvement in the athlete’s performance” triggered the investigation and compared her improvement with “the sort of dramatic breakthroughs that usually arouse suspicion of drug abuse.”¹

Complaints from Semenya’s competitors not only to the large margin of her win, but also to her “butch appearance” were a trigger for investigation.¹ The IAAF banned Semenya from competitions during the investigation. Semenya was eventually reinstated to compete after an 11-month investigation but the results of her tests were never made public.

In 2009 there were no guidelines regulating gender testing, because the IAAF had abandoned all in 1991, as did the International Olympic Committee (IOC) in 1999.² As reported,³ the IAAF argued that gender testing was no longer necessary because “modern sportswear was now so revealing that it seemed unfeasible that a man could masquerade as a woman,”^{4(p7)} which had been the main concern underlying the gender testing regulations. After concerns for false-positive results at the Atlanta Olympic Games in 1996, in 1999 the IOC also removed the requirements for gender testing.

Semenya’s case triggered the IAAF, in coordination with the IOC, to revisit the guidelines for when a woman should be allowed to compete as a woman. The new IAAF Regulations Governing Eligibility of Females with Hyperandrogenism to Compete in Women’s Competition came into force in May 2011, shortly followed by similar IOC policies.⁴ Although neither the IAAF nor IOC mention explicitly a relationship between Caster Semenya and the regulations, this is apparent and an extensive body of critical literature has been written on the subject.⁵

THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS REGULATIONS

Hyperandrogenism is the result of a set of naturally occurring conditions, such as polycystic ovary syndrome, where genetically female individuals produce higher levels of androgens. This condition may confer several phenotypic traits typically associated with masculinity, such as hirsutism and an increased muscle bulk.⁶ Hyperandrogenism does not pose an immediate threat to the health of the person affected.

The IAAF and IOC policies require female athletes who do not fall within the limits of 100 ng/dL of testosterone to undergo androgen-suppressive therapy for up to 2 years to reduce the level of testosterone to compete as females. The unfair advantage thesis is the pervasive assumption underlying the construction of female categories in elite sports. Paragraph 6.5 of the IAAF policies on eligibility of women with hyperandrogenism to compete in women’s competition states this quite clearly³:

The Expert Medical Panel shall recommend that the athlete is eligible to compete in women’s competition if: (i) She has androgen levels below the normal male range; or (ii) She has androgen levels within the normal male range but has an

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