



**OHIO DOMINICAN UNIVERSITY
PUBLIC INFRACTIONS DECISION
December 6, 2019**

I. INTRODUCTION

The NCAA Division II Committee on Infractions (COI) is an independent administrative body of the NCAA comprised of individuals from the Division II membership and public. The COI is charged with deciding infractions cases involving member institutions and their staffs. This case involved ethical conduct and responsibility to cooperate violations by a former assistant football and strength and conditioning coach at Ohio Dominican University (ODU), who jeopardized student-athlete well-being when he directed student-athletes to use a banned substance.¹ The COI considered this case through the cooperative summary disposition process in which all participating parties agreed to the primary facts and violations as fully set forth in the summary disposition report (SDR). The COI proposed additional penalties for ODU and a show-cause order for the assistant football coach. ODU accepted the penalties but the assistant coach did not respond to the correspondence proposing the show-cause order or otherwise participate in the summary disposition process. Neither party has the opportunity to appeal.

The violations center on conduct that undermined the NCAA Collegiate Model and threatened the health and safety of student-athletes who trusted the assistant coach with their well-being. Near the end of the 2017 football season, the assistant coach identified four football student-athletes who he wanted to be stronger. He then instructed and pressured the student-athletes into using a banned anabolic agent. Three of the student-athletes ultimately purchased and used the substance. The assistant coach failed to follow institutional procedures regarding drug abuse when these student-athletes told him that they purchased and used the substance. Although there were no warning signs for ODU, the assistant coach's behavior violated the NCAA principles of ethical conduct and put student-athlete well-being at risk. ODU agrees that the violations occurred and they are major.

The assistant coach resigned shortly after ODU discovered the violations. He then further violated NCAA ethical conduct legislation and failed to cooperate when he knowingly provided false or misleading information to the enforcement staff regarding his knowledge of and involvement in the student-athletes' use of the banned substance and refused to participate in a second interview. These are also major violations. Full candor and cooperation are paramount to the infractions process and allow it to properly function. The assistant coach, however, impeded the process.

¹ A member of the Great Midwest Athletic Conference, ODU has an enrollment of approximately 900 students. It sponsors eight men's and eight women's sports. This is the institution's first major infractions case.

The COI accepts the participating parties' factual agreements and concludes that major violations occurred. Utilizing NCAA bylaws authorizing penalties, the COI adopts and prescribes the following principal penalties: one year of probation for ODU and a ten-year show-cause order for the assistant coach.

II. CASE HISTORY

In April 2018, three ODU football student-athletes tested positive for a banned substance during a drug test administered as part of the NCAA's year-round drug testing program. ODU immediately initiated an internal review. During the review, two of the student-athletes informed ODU that the former assistant football coach for the defensive line who was also the strength and conditioning coach (assistant coach) advised them to use the banned substance. The assistant coach subsequently resigned on May 4, 2018, during ODU's internal review.

All three student-athletes appealed the test results, two on the basis that the assistant coach encouraged them to use the substance and the third on the basis that he inadvertently ingested the substance. The NCAA granted the appeals in July 2018. In August 2018, the NCAA Sport Science Institute referred the matter to the enforcement staff for further review due to the involvement of the assistant coach.

ODU submitted a self-report and the enforcement staff subsequently provided a notice of inquiry in November 2018. The enforcement staff conducted interviews from December 2018 through March 2019. The participating parties submitted the SDR on July 23, 2019.² The COI initially reviewed the SDR on August 16, 2019. Following this review, the COI requested additional information from the parties regarding the agreed-upon violations. The participating parties responded with the requested information on September 4, 2019. On September 18, 2019, the COI evaluated the additional information and continued its review of the SDR. The COI accepted the agreed-upon facts, violations and type of violations, adopted the one-year probationary period proposed by ODU and ODU's corrective actions, and determined that the violations warranted additional penalties. On September 27, 2019, the COI proposed public reprimand and censure and the standard reporting and publication requirements for probation for ODU and a ten-year show-cause order for the assistant coach. ODU accepted its additional penalties on October 4, 2019. The assistant coach did not respond to the correspondence proposing the show-cause order.

² Pursuant to COI Internal Operating Procedure (IOP) 5-15-4, the COI in future cases may view this decision as less instructive than a decision reached after a contested hearing because violations established through the summary disposition process constitute the parties' agreements.

III. PARTIES' AGREEMENTS

PARTIES' AGREED-UPON FACTUAL BASIS, VIOLATIONS OF NCAA LEGISLATION AND TYPE OF VIOLATIONS

The participating parties jointly submitted an SDR that identified an agreed-upon factual basis, violations of NCAA legislation and type of violations.³ The SDR identified:

1. [NCAA Division II Manual Bylaws 10.01.1, 10.1 and 10.2 (2017-18)]

ODU and the enforcement staff agree that, during the 2017-18 academic year, the assistant coach violated the NCAA principles of ethical conduct when he failed to deport himself in accordance with generally recognized high standards of honesty and sportsmanship normally associated with the conduct and administration of intercollegiate athletics, when he did not follow institutional procedures dealing with drug abuse as required by NCAA legislation. Specifically, the assistant coach instructed and/or pressured at least four football student-athletes to use an anabolic agent, which was included on the NCAA banned drugs list, and failed to follow institutional procedures when three student-athletes told him they purchased and used the substance.

2. [NCAA Division II Manual Bylaws 10.1, 10.1-(a), 10.1-(c) and 19.01.3 (2018-19)]⁴

ODU and the enforcement staff agree that, from December 2018 to the present, the assistant coach failed to cooperate with the enforcement staff when he knowingly furnished false or misleading information and refused to provide information relevant to an investigation of a possible NCAA violation. Specifically, in an interview with the enforcement staff on December 20, 2018, the assistant coach denied any knowledge of or involvement in the student-athletes' use of a banned drug. Subsequently, the enforcement staff requested a second, in-person interview with the assistant coach on March 12, 2019, and, to date, the assistant coach has refused.

³ This decision provides the agreed-upon factual basis, violations and type of violations as exactly stated in the SDR, except for shortening references to the parties and clarifying the bylaws cited in Violation No. 2. The SDR initially indicated that the assistant coach violated Bylaw 32.3.7.2. In a September 4, 2019, letter, the enforcement staff clarified that the assistant coach violated Bylaw 19.01.3 instead of Bylaw 32.3.7.2. The COI considers this correspondence an addendum to the SDR and replaced Bylaw 32.3.7.2 with Bylaw 19.01.3 in Violation No. 2.

⁴ In a September 4, 2019, letter, ODU and the enforcement staff clarified that although Violation No. 2 indicates that ODU agreed with the post-separation violations, ODU is not responsible for the violations because it did not employ the assistant coach at the time of the violations.

IV. REVIEW OF CASE

The SDR fully detailed the participating parties' positions and included the agreed-upon primary facts, violations and type of violations. After reviewing the participating parties' principal factual agreements and respective explanations surrounding those agreements, the COI accepts the SDR and concludes that major violations occurred. Specifically, the COI concludes that the assistant coach engaged in unethical conduct and failed to cooperate in violation of Bylaws 10 and 19.

During the 2017-18 academic year, the assistant coach violated the NCAA principles of ethical conduct when he instructed and pressured four football student-athletes to use a banned anabolic agent. He then failed to follow institutional procedures regarding drug abuse when three of these student-athletes told him that they purchased and used the substance.

NCAA Bylaw 10 sets ethical standards for individuals employed by and associated with member institutions.⁵ In accordance with Bylaw 10.01.1, these individuals must act with honesty and sportsmanship at all times. Bylaw 10.2 further requires athletics staff members who know that a student-athlete is using a banned substance to follow institutional procedures dealing with drug abuse. Bylaw 10.1 provides a non-exhaustive list of behaviors that constitute unethical conduct.

Near the end of the 2017 football season, the assistant coach identified four freshman and sophomore football student-athletes who he wanted to be stronger before the following season. The assistant coach instructed and pressured these student-athletes—both in person and via text message—to purchase and use selective androgen receptor modulators (SARMs), which are anabolic agents banned by the NCAA. He told the student-athletes that they would earn more playing time if they used SARMs. He assured them that SARMs were safe to use and would not cause them to test positive on a drug test. He pressured the student-athletes until they ultimately purchased Ostarine, a type of SARM. His conduct violated Bylaws 10.01.1 and 10.1.

Three of the student-athletes used the Ostarine that they purchased at the assistant coach's direction. Despite ODU policy discouraging supplement use, the assistant coach did nothing to stop the student-athletes from using Ostarine after he learned that they were using it. When one of the student-athletes told the assistant coach that the Ostarine label indicated that the substance was "not for human use," the assistant coach responded that the "label is just there to scare you." Two of the student-athletes submitted for a drug test in accordance with the NCAA's year-round drug testing program and tested positive. When one of these student-athletes confronted the assistant coach about the test results, the assistant coach told him that he should have cleaned his system to avoid a positive test and encouraged him to continue using the substance. The assistant coach's failure to follow institutional procedures dealing with drug abuse violated Bylaw 10.2.

The assistant coach abused his position of trust with the student-athletes. They viewed him as a mentor and confidant who had their best interests in mind. Likewise, because he was also the

⁵ The full text of all bylaws violated in this case is at Appendix Two.

strength and conditioning coach, the student-athletes thought that he knew about supplements and would provide advice consistent with the institution's policy. Instead, his conduct threatened their health and safety.

The COI has never previously encountered a case of this nature. In other cases, however, the COI has warned of the seriousness of violations involving the unsupervised provision of prescription drugs to student-athletes. *See University of California, San Diego* (2013) (concluding that a head coach, who was not licensed to prescribe medication, violated ethical conduct legislation and provided impermissible benefits when the coach gave a prescription anti-inflammatory drug to student-athletes); *Wingate University* (2013) (same); and *University of the Incarnate Word* (2009) (same). This case involved more egregious conduct than these other cases—an assistant football coach who was also the strength and conditioning coach directed multiple student-athletes to use a banned substance. The participating parties agree that the violations were major pursuant to Bylaw 19.02.2 because they were not isolated or inadvertent and provided more than a minimal advantage. Even more, the assistant coach's conduct threatened student-athlete well-being and undermined the Collegiate Model.

The assistant coach further violated ethical conduct legislation and failed to cooperate during the investigation. In a telephone interview he denied any knowledge of or involvement in the student-athletes' use of a banned drug. He then refused to participate in a second, in-person interview with the enforcement staff. This conduct violated Bylaws 10.1 and 19.01.3.

As specified in Bylaws 10.1-(a) and (c), unethical conduct includes refusing to furnish information relevant to an investigation of possible violations and knowingly furnishing false or misleading information concerning involvement in or knowledge of matters relevant to a possible violation. Relatedly, Bylaw 19.01.3 requires all representatives of member institutions to cooperate fully with the enforcement staff to further the objectives of the infractions program.

The assistant coach knowingly provided false or misleading information during the investigation. As part of its investigation, the enforcement staff interviewed the assistant coach by telephone in December 2018. In that interview, the assistant coach denied that he encouraged student-athletes to use SARMs or had knowledge of or discussed SARMs with student-athletes prior to the failed drug tests. All four student-athletes who purchased Ostarine at the assistant coach's direction, however, contradicted his account. Yet another football student-athlete reported that he heard the assistant coach discussing SARMs with student-athletes. The assistant coach's false or misleading information violated Bylaw 10.1-(c).

As a result of the contradictory information provided by the student-athletes, the enforcement staff sought to interview the assistant coach in person. While the assistant coach indicated that he would be willing to participate in a second phone interview, he refused an in-person interview. The enforcement staff tried to schedule the interview multiple times but the assistant coach did not respond. His failure to participate in a second, in-person interview violated Bylaws 10.1-(a) and 19.01.3.

The cooperative principle is a core tenet on which the entire infractions process depends. Failing to give truthful information and then refusing to cooperate substantially weakens the enforcement staff's ability to conduct a thorough and timely investigation. Because of this detrimental impact on the process, the COI has consistently concluded that individuals violate ethical conduct and responsibility to cooperate legislation when they provide false or misleading information or decline to interview during the investigation. *See Lynn University* (2019) (concluding that the athletics compliance officer violated ethical conduct and responsibility to cooperate legislation when she gave the institution false information and refused to sit for an interview during the investigation) and *West Texas A&M University* (2016) (concluding that a head coach and assistant coach violated ethical conduct legislation when they provided false or misleading information to the institution during its investigation). Likewise, the COI has emphasized that the responsibility to cooperate means *full* cooperation *throughout* the process. Even after a first interview, individuals must still participate in additional interviews when requested by the enforcement staff. *See San Diego* (concluding that a head coach violated ethical conduct and responsibility to cooperate legislation when she refused to participate in a second interview with the enforcement staff) and *University of West Georgia* (2010) (concluding that a head coach violated ethical conduct and responsibility to cooperate legislation when she refused to participate in a follow-up interview with the enforcement staff and clarify her involvement in violations). Like in these cases, the assistant coach was not truthful or cooperative. When he presented false or misleading information regarding his knowledge of the violations and refused to sit for a second, in-person interview he impeded the infractions process, resulting in major violations of Bylaws 10 and 19 pursuant to Bylaw 19.02.2.

V. PENALTIES

For the reasons set forth in Sections III and IV of this decision, the COI concludes that this case involved major violations of NCAA legislation. Major violations are not isolated or inadvertent and provide an extensive advantage.

In accordance with Bylaw 32.7, no parties have the opportunity to appeal. ODU agreed to the facts and its violations and accepted the proposed additional penalties. The assistant coach did not respond to the proposed show-cause order, thus waiving the opportunity to contest the show-cause order.

In prescribing penalties, the COI evaluated relevant mitigating factors pursuant to Bylaw 32.7.1.3. The COI recognizes that ODU outlined its policy on supplement use in the student-athlete handbook and provided regular education on the policy to athletics staff and student-athletes. Despite these and other controls in place, the assistant coach acted on his own without regard to ODU's policy. There were no warning signs to alert ODU athletics staff about the assistant coach's actions. However, once ODU learned that student-athletes tested positive for a banned substance, it immediately investigated the issue. As part of its evaluation, the COI also considered ODU's cooperation in all parts of the case and determines it was consistent with ODU's obligation under Bylaw 32.1.3. Likewise, the COI considered ODU's corrective actions as set forth in Appendix One. As corrective action, the COI notes that ODU substantially

increased education on banned substances to student-athletes and their parents through updates to the student-athlete handbook, preseason meetings with student-athletes and orientation activities. After considering all information relevant to the case, the COI prescribes the following penalties:

Penalties for Major Violations (Bylaw 19.5.2)

1. Public reprimand and censure through the release of the public infractions decision.
2. One year of probation from December 6, 2019, to December 5, 2020.⁶
3. During this period of probation, ODU shall:
 - a. Continue to develop and implement a comprehensive compliance and educational program on NCAA legislation to instruct coaches, the faculty athletics representative, all athletics department personnel and all institutional staff members with responsibility for ensuring compliance with NCAA legislation on certification and recruiting;
 - b. Submit a preliminary report to the Office of the Committees on Infractions (OCOI) by January 30, 2020, setting forth a schedule for establishing this compliance and educational program;
 - c. File with the OCOI a final compliance report indicating the progress made with this program by October 30, 2020. Particular emphasis shall be placed on rules education regarding ethical conduct and knowledge of use of banned drugs;
 - d. Inform football prospects in writing that ODU is on probation for one year and detail the violations committed. If a prospect takes an official paid visit, the information regarding violations, penalties and terms of probation must be provided in advance of the visit. Otherwise, the information must be provided before a prospect signs a National Letter of Intent; and
 - e. Publicize specific and understandable information concerning the nature of the infractions by providing, at a minimum, a statement to include the types of violations and the affected sport program and a direct, conspicuous link to the public infractions decision located on the athletics department's main webpage "landing page" and in the media guides for football. The institution's statement must: (i) clearly describe the infractions; (ii) include the length of the probationary period associated with the case; and (iii) give members of the general public a clear indication of what happened in the case to allow the public (particularly prospects and their families) to make informed, knowledgeable decisions. A statement that refers only to the probationary period with nothing more is not sufficient.

⁶ ODU proposed a one-year probationary period. Institutions may propose probation but the authority to prescribe probation rests solely with the COI. Periods of probation always commence with the release of the infractions decision.

4. Following the receipt of the final compliance report and prior to the conclusion of probation, ODU's president shall provide a letter to the COI affirming that ODU's current athletics policies and practices conform to all requirements of NCAA regulations.
5. Show-cause order: The assistant coach violated the principles of ethical conduct when he instructed and pressured four student-athletes to use a banned anabolic agent and failed to follow institutional procedures regarding drug abuse when three of these student-athletes told him that they purchased and used the substance. This conduct threatened the health and safety of the student-athletes and is antithetical to the Collegiate Model. He then failed to cooperate with the enforcement staff when he knowingly furnished false or misleading information and refused to provide information relevant to an investigation of potential violations. Therefore, the assistant coach shall be subject to a ten-year show-cause order from December 6, 2019, to December 5, 2029. Pursuant to Bylaw 19.5.2.2.1 and COI IOP 5-16-1-1, if the assistant coach seeks employment or affiliation with any athletically related position at an NCAA member institution during the ten-year show-cause period, any employing institution shall be required to contact the OCOI to make arrangements to show cause why restrictions on all athletically related activity should not apply.

As required by NCAA legislation for any institution involved in a major infractions case, ODU shall be subject to the provisions of Bylaw 19.5.2.3 concerning repeat violators for a five-year period beginning on the effective date of the penalties in this case, December 6, 2019. The COI further advises ODU and the assistant coach that they should take every precaution to ensure that they observe the terms of the penalties. The COI will monitor ODU while it is on probation to ensure compliance with the penalties and terms of probation and may extend the probationary period, among other action, if ODU does not comply or commits additional violations. Likewise, any action by ODU or the assistant coach contrary to the terms of the penalties or any additional violations shall be considered grounds for prescribing more severe penalties and/or may result in additional allegations and violations.

NCAA DIVISION II COMMITTEE ON INFRACTIONS

John David Lackey
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APPENDIX ONE

**ODU'S CORRECTIVE ACTIONS AS IDENTIFIED IN THE
JULY 23, 2019, SUMMARY DISPOSITION REPORT**

1. The athletics director and head football coach met with assistant coach on April 27, 2018, regarding allegations made by student-athletes. The assistant coach was immediately put on restricted duty. He was not allowed to have any contact with current or prospective student-athletes during the investigation. The assistant coach was told that the institution would be investigating to see if disciplinary action was warranted. A second meeting was requested by the athletics director but the assistant coach failed to comply with the request for a second meeting. On May 4, 2018, the assistant coach submitted his resignation.
2. In 2018-19, the athletics department increased education on NCAA banned substances. Additional education now includes:
 - a. Preseason meetings with student-athletes have an increased focus on banned substances.
 - b. ODU added a larger section to the student-athlete handbook regarding banned substances, which is reviewed with every student-athlete. Handbooks are readily available to student-athletes in hard copy and on the athletics website.
 - c. ODU shows the NCAA video on banned substances to all student-athletes at the start of the academic year.
 - d. ODU specifically names the appropriate personnel for any questions regarding nutritional/dietary substances as the compliance director, athletics director or the associate athletic director. All student-athletes are made aware of this designation.
 - e. Orientation for the parents of student-athletes has a section dedicated to explaining the policy on NCAA banned substances. In the 2019 parent orientations, handouts are also given to the parents regarding NCAA banned substances. This information is reviewed with the parents by the associate athletics director and the compliance director.
 - f. ODU continues to emphasize its policy with all staff members as stated in the student-athlete handbook: "ODU does not support or promote the use of any nutritional/dietary supplements."
3. Beginning in the fall of 2018, ODU's football program hired an outside strength coach who has no coaching responsibilities. This outside coach is certified and meets all national requirements to run the strength program. ODU has a designated strength and conditioning coach who has oversight over all the strength and conditioning programs operated in the athletics department.

APPENDIX TWO
Bylaw Citations

Division II 2017-18 Manual

10.01.1 Honesty and Sportsmanship. Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

10.1 Unethical Conduct. Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

- (a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution;
- (b) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
- (c) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
- (d) Receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and an agent, financial advisor or a representative of an agent or advisor (e.g., "runner");
- (e) Knowing involvement in providing a banned substance or impermissible supplement to student-athletes, or knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state or federal law. This provision shall not apply to banned substances for which the student-athlete has received a medical exception per Bylaw 31.2.3.2; however, the substance must be provided in accordance with medical licensure, commonly accepted standards of care and state or federal law;
- (f) Engaging in any athletics competition under an assumed name or with intent otherwise to deceive; or
- (g) Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or the institution's athletics department regarding an individual's amateur status.

10.2 Knowledge of Use of Banned Drugs. A member institution's athletics department staff members or others employed by the intercollegiate athletics program who have knowledge of a student-athlete's use at any time of a substance on the list of banned drugs, as set forth in Bylaw 31.2.3.1, shall follow institutional procedures dealing with drug abuse or shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.2.2.

Division II 2018-19 Manual

10.1 Unethical Conduct. Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following:

- (a) Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution;
- (b) Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
- (c) Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
- (d) Receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and an agent, financial advisor or a representative of an agent or advisor (e.g., "runner");
- (e) Knowing involvement in providing a banned substance or impermissible supplement to student-athletes, or knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state or federal law. This provision shall not apply to banned substances for which the student-athlete has received a medical exception per Bylaw 31.2.3.2; however, the substance must be provided in accordance with medical licensure, commonly accepted standards of care and state or federal law;
- (f) Engaging in any athletics competition under an assumed name or with intent otherwise to deceive; or
- (g) Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or the institution's athletics department regarding an individual's amateur status.

19.01.3 Responsibility to Cooperate. All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Management Council to further the objectives of the Association and its infractions program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA enforcement staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry.