

ANADO Legal Note 9: What To Do When No One Answers The Buzzer

Mission order, identification and latest whereabouts information in hand, the DCO arrives at the athlete's home address. It is a multi-unit building. At the main entrance there is a row buttons and an intercom. The athlete's name is beside the fourth button. At precisely the start of the one hour period designated by the athlete to be available for out-of-competition testing, the DCO steps up to the intercom and presses the button. No one answers.

What does the DCO do next? Write-up an unavailable athlete report¹ and leave? Try again in five minutes? (The athlete may have been asleep or in the shower or listening to loud music with headphones or grinding coffee beans and did not hear the intercom buzzer or ring.) Try every fifteen minutes for the designated hour? Then prepare the unavailable athlete report and leave? Try to enter the building when another resident leaves or enters? (Do you even know the apartment number? Is that appropriate or even legal without the athlete's specific invitation to enter and come to his or her apartment door?) Phone the athlete at the residential or mobile number?

Those of us conducting for Anti-Doping Organizations the administrative reviews of possible missed tests or whereabouts failures, including DCO reports and athlete explanations, find these sorts of decisions are critical.

The *International Standard for Testing*² gives some practical guidance in the Comment to Articles 11.4.3(b) and (c):

11.4.3(b) Comment: If the Athlete is not available for Testing at the beginning of the 60-minute time slot, but becomes available for Testing later on in the 60-minute time slot, the DCO should collect the Sample and should not process the attempt as an unsuccessful attempt to test, but should include the full details of the delay in availability of the Athlete in the DCO's Sample collection report. Any pattern of behaviour of this type should be investigated by the Responsible ADO as a possible anti-doping rule violation of evading Sample collection under Code Article 2.3 or Code Article 2.5. It may also prompt Target Testing of the Athlete.

11.4.3(c) Comment: Once the DCO has arrived at the location specified for the 60-minute time slot, if the Athlete cannot be located immediately then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during the remaining time he/she should do what is reasonable in the circumstances to try to locate the Athlete.

So the first rule seems to be: keep trying to contact the athlete for the entire one hour period so that a sample can be collected. And do not leave the location to get a coffee

¹ This document has various names. WADA uses "Unsuccessful Attempt Report."

² http://www.wada-ama.org/rtecontent/document/IST_En_2009.pdf

during the one hour if the first few attempts at connecting with the athlete are unsuccessful.

The WADA *Guidelines for Managing an Effective Whereabouts Program*³ gives even more detailed guidance on home visits:

- Article 4.14 discusses how to deal with security personnel who control access to the athlete's location.
- Article 4.16 addresses knocking at the door or ringing the bell, making the point that the DCO should continue to do so periodically through the one hour before writing up an unavailable athlete report.
- Article 4.17 deals with the DCO learning that the athlete is at another location (contrary to the whereabouts form) during the one hour period.
- Article 4.21 states that it may be appropriate for the DCO to speak to someone he/she encounters while attempting to let the athlete know they have arrived to collect a sample. However, the DCO should not identify the purpose of the visit. If anything needs to be said, I suggest that it is best for the DCO to merely say that they are a sport official (which they are).
- Article 4.22 advises the DCO to note their observations of the home if no one answers the buzzer (lights going on and off, apparent movement at the windows or doors, etc.). The Article also suggests checking whether the hood of any car in the driveway is warm "indicating the car has been used recently." I would be very cautious about that – it is not clear that an athlete's membership in a registered testing pool is an invitation to doping control personnel to physically touch an athlete's property other than as strictly necessary to make contact with the athlete.

Some further practices for consideration:

- The unavailable athlete report must give some detail on the efforts the DCO made to contact the athlete. This point is made in Article 4.24 of the WADA *Guidelines for Managing an Effective Whereabouts Program*. Otherwise, the person conducting the administrative review to determine if there has been a missed test or whereabouts failure may have insufficient information to hold the athlete to account. For example, the DCO should record the number and approximate times the buzzer was rung. The DCO should also record how she or he kept the main entrance to the complex under constant observation in case the athlete entered or left the building during the one hour period.
- Contrary to the advice of the *Guidelines for Managing an Effective Whereabouts Program*, if after several attempts there is no response, I would telephone the athlete (although not leave a message). If they are at home, but the intercom system is broken, this will notify the athlete that the DCO has come to collect a sample and permit the athlete to let the DCO into the building. It is exactly the same as speaking to the athlete through the intercom and therefore acceptable as

³ http://www.wada-ama.org/rtecontent/document/Athlete_Whereabouts_Guideline_v2_0_en.pdf

no advance notice testing. If the athlete is not at home, but answers the phone, then the DCO has clear evidence that may constitute a missed test or whereabouts failure. If the athlete does not answer the phone, the DCO is no different position than if the athlete fails to respond on the intercom.

Note that Article 4.16 of the *Guidelines for Managing an Effective Whereabouts Program* advises that the DCO should not telephone the athlete, but gives no reasons for this advice. This is unfortunate. The key principle set out in Article 4.12 of the *Guidelines* is that the DCO should use his/her common sense. This Article also suggests the critical question is what does the DCO need to do to ensure that, if the athlete is present, he/she will know the DCO is there to collect a sample. That being the case, using the telephone when the intercom is not producing results does not prejudice no advance notice testing. It can provide clear evidence that the athlete was not present at the designated place at the designated time. It can also minimize possibly false excuses presented by athletes for failing to respond to the DCO's attempts.

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