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Chapter 673: Addressing the Use of Steroids and Performance Enhancing Dietary Supplements by High School Athletes

Justin J. Simpson

Code Sections Affected

Education Code §§ 49030, 49031, 49032, 49033, 49034 (new), 35179.1 (amended).
SB 37 (Speier); 2005 STAT. Ch. 673.

I. INTRODUCTION

Steroids and performance enhancing dietary supplements (PEDS) have never been more at the forefront in American society: President George W. Bush addressed them in his 2004 State of the Union Address;¹ Governor Arnold Schwarzenegger has openly admitted² to his past use of anabolic steroids;³ high profile athletes such as Barry Bonds,⁴ Mark McGwire,⁵ and Marion Jones⁶ are

1. Joseph T. Rannazzisi, *DEA Congressional Testimony*, HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY, Mar. 16, 2004, at <http://www.usdoj.gov/dea/pubs/cngrtest/ct031604.html> (on file with the *McGeorge Law Review*) (quoting President Bush's 2004 State of the Union Address "[t]o help children make the right choices, they need good examples. Athletics play such an important role in our society, but, unfortunately, some in professional sports are not setting much of an example. The use of performance-enhancing drugs like steroids in baseball, football, and other sports is dangerous, and it sends the wrong message—that there are shortcuts to accomplishment, and that performance is more important than character. So tonight I call on team owners, union representatives, coaches, and players to take the lead, to send the right signal, to get tough, and to get rid of steroids now").

2. Andy Furillo, *Governor Pumps Up Lobby Group: With a Bill Pending, He Backs the Dietary Supplement Industry*, SACRAMENTO BEE, July 13, 2005, at A1; see also Duff Wilson, *Beyond Balco: After a Young Athlete's Suicide, Steroids are Called the Culprit*, N.Y. TIMES, Mar. 10, 2005, at A1 (stating that Arnold Schwarzenegger admits past use of steroids and says young people should never take steroids).

3. See NATIONAL INSTITUTE ON DRUG ABUSE, STEROIDS (ANABOLIC-ANDROGENIC) I (Mar. 2005), at 1 (stating "anabolic" refers to muscle-building); see also ALAN I. LESHNER, NATIONAL INSTITUTE ON DRUG ABUSE NIDA, COMMUNITY DRUG ALERT BULLETIN—ANABOLIC STEROIDS (Apr. 17, 2000), <http://www.drugabuse.gov/SteroidAlert/Steroidalert.html> (last visited Aug. 4, 2005) (on file with the *McGeorge Law Review*) ("Anabolic steroids are synthetic substances related to the male sex hormones (androgens) [that] promote growth of skeletal muscle (anabolic effect) and the development of male sexual characteristics (androgenic effects), . . . anabolic steroids [is the common term] although the proper term for these compounds is 'anabolic/androgenic' steroids.").

4. See Christine Brennan, *When 715 Clears the Fence, Disgrace Will Take Top Billing*, U.S.A. TODAY, Dec. 9, 2004, at 12C (identifying events that circumstantially point to baseball superstar Barry Bonds having used of steroids, including the fact that the year Bonds significantly increased his homerun statistics he also began working with two of the most notorious names from the BALCO case, founder Victor Conte and personal trainer Greg Anderson); see also Bill Dow, *Big Muscles, Big Trouble: Steroids and Dietary Supplements Popular with Teens Can Carry Long-Term Risk*, DETROIT FREE PRESS, Mar. 2, 2004, at 6H (imparting that at age thirty-nine Bonds became a BALCO client just before his record setting seventy-three homerun season, and noting that he weighed 185 pounds as a rookie in 1986 and now is a muscular 230 pounds).

suspected of achieving phenomenal athletic accomplishments by using steroids; and the Bay Area Laboratory Co-operative (BALCO),⁷ founded and based in California, is at the center of arguably the largest steroid scandal in the history of sports.⁸ The potentially more dangerous use of legal and heavily marketed⁹ PEDS adds to the danger and prominence of illegal substance use in sports.¹⁰ One might imagine that the negative media surrounding the use of steroids and the dangers of PEDS would stifle their use among student athletes, but that does not appear to be the case.¹¹

According to the federal Centers for Disease Control and Prevention (CDC), illegal steroid use among ninth through twelfth grade students has more than doubled in the last decade from 2.7% in 1991 to 6.1% in 2003.¹² Based on the

5. See Liza Porteus & Sharon Kehnemui Liss, *McGwire Evades Questions on Steroids Use*, FOX NEWS, Mar. 18, 2005, <http://www.foxnews.com/story/0,2933,150800,00.html> (on file with the *McGeorge Law Review*) (reporting on former baseball superstar Mark McGwire's suspicious testimony before Congress regarding steroid use). When asked if he had ever used steroids, McGwire said, "I'm not here to talk about the past. I'm here to be positive on this subject." *Id.* See also David Leon Moore, *As Steroid Use Doubles, A School Fights Back: How One High School is Educating Coaches and Students is at the Heart of a Policy California Might Adopt this Week*, U.S.A. TODAY, May 5, 2005, at 1A (discussing how sales of the now illegal, but then legal supplement androstenedione quadrupled when reports came out stating that Mark McGwire used the supplement during his record setting seventy homerun season).

6. See Associated Press, *BALCO Founder Alleges Jones Used Steroids*, ESPN.COM, Dec. 2004, <http://sports.espn.go.com/espn/wire?section=trackandfield&id=1937565> (on file with the *McGeorge Law Review*) (discussing track star Marion Jones' connection with BALCO and troubles she is facing, such as being under investigation for steroid use by the United States Anti-Doping Agency).

7. See Beau Dure, *BALCO Glance and Glossary*, U.S.A. TODAY.COM, Dec. 13, 2005, <http://www.usatoday.com/sports/balco-glance.htm>, (on file with the *McGeorge Law Review*) (reporting that BALCO is an acronym for Bay Area Laboratory Co-operative, explaining what BALCO is, and discussing that BALCO is at the center of a federal investigation for supplying substances containing the new steroid known as TCG).

8. *Id.*

9. See Guy Gugliotta, *Diet Supplement Marketers Target Kids; Largely Untested Products Alarm Health Experts*, WASHINGTON POST, June 18, 2000, at A01 (discussing the aggressive marketing tactics taken by GNC, Met-Rx, and other supplement companies, which target children and parents as consumers of their products).

10. See SENATE COMMERCE COMMITTEE, TESTIMONY OF MR. CHARLES BELL, PROGRAMS DIRECTOR CONSUMERS UNION OF U.S. INC. ON DIETARY SUPPLEMENTS, http://commerce.senate.gov/hearings/testimony.cfm?id=976&wit_id=2750 (Oct. 28, 2003) (testifying to the dangers of the dietary supplements containing the ephedrine alkaloid (ephedra). In the preceding two years, at least thirty-nine deaths were linked to ephedra usage, however dietary supplements that are "ephedra-free" may also be hazardous).

11. See ASSEMBLY EDUCATION COMMITTEE, BILL ANALYSIS WORKSHEET OF SB 37, at 2 (June 23, 2005) (providing statistical information from the federal Centers for Disease Control and Prevention which show that illegal steroid use among teenagers "increased from 2.7% in 1991 to 6.1% in 2003"); see also Bill Dow, *What Survey of Teens and Parents Found*, DETROIT FREE PRESS, Mar. 2, 2004, at 8H (summarizing the results of a 2003 Blue Cross & Blue Shield Associations Healthy Competition national survey on performance enhancing substances in sports and stating that approximately one in five (eighteen percent) of those surveyed who were between ages twelve and seventeen knew someone who was taking performance enhancing substances).

12. DEP'T OF HEALTH AND HUMAN SERVS., CENTERS FOR DISEASE CONTROL & PREVENTION, NATIONAL YOUTH RISK BEHAVIOR SURVEY: 1991-2003, MORBIDITY AND MORTALITY WEEKLY REPORT, May 21, 2004, available at <http://www.cdc.gov/mmwr/PDF/SS/SS5302.pdf> (on file with the *McGeorge Law Review*).

CDC's statistics, the California Interscholastic Federation (CIF) estimates that over twenty-thousand current California high school students have used steroids.¹³ Furthermore, a 2001 Blue Cross and Blue Shield Association national survey found that about one-million minors between the ages of twelve and seventeen had taken "potentially dangerous performance-enhancing dietary supplements and drugs."¹⁴

The aforementioned statistics on the increasing use of steroid and dangerous PEDS prompted Senator Speier to author Chapter 673.¹⁵ Supporters of Chapter 673 hope it will prevent pupil¹⁶ athlete substance abuse by setting forth a new state-wide policy prohibiting the use of PEDS and steroids by pupil athletes, as well as a policy preventing schools from promoting the sale or use of these substances.¹⁷

II. LEGAL BACKGROUND

A. Existing Federal Law

In 1994, Congress established the Dietary Supplement Health and Education Act of 1994 (DSHEA).¹⁸ The DSHEA primarily defines "dietary supplement"¹⁹ and separates the regulation of such dietary supplements from food or drug regulations.²⁰ The DSHEA also provides for increased research on the benefits and risks of dietary supplements²¹ and for consumer protection through product labeling regulations.²²

The Food and Drug Administration (FDA) is the agency primarily responsible for the enforcement of DSHEA.²³ However, the FDA does not regulate dietary

13. ASSEMBLY COMMITTEE ON EDUCATION, BILL ANALYSIS OF SB 37, at 4 (June 29, 2005).

14. See Dow, *supra* note 4 (referring to the Blue Cross and Blue Shield Association national survey which found that approximately five percent (or 1.1 million) of the United States population between the ages of twelve and seventeen has "taken potentially dangerous performance-enhancing drugs or dietary supplements").

15. ASSEMBLY COMMITTEE ON EDUCATION, BILL ANALYSIS OF SB 37, at 5 (June 29, 2005).

16. AMERICAN HERITAGE DICTIONARY 670 (3d ed. 1994) (defining "pupil" as "[a] student under the supervision of a teacher or professor").

17. EDUCATION COMMITTEE, ASSEMBLY REPUBLICAN BILL ANALYSIS OF SB 37, at 6 (June 23, 2005); CAL. EDUC. CODE § 49031 (enacted by Chapter 673).

18. Dietary Supplement Health and Education Act of 1994, Pub. L. No. 103-417, 108 Stat. 4325 (1994).

19. 21 U.S.C.A. § 321(ff) (West 2005).

20. *Id.*

21. See 42 U.S.C.A. § 287c-11 (West 1999) (stating that the Secretary shall establish an Office of Dietary Supplements which will conduct scientific research relating to dietary supplements).

22. See 21 U.S.C.A. § 343(q)(5)(F) (West 1999) (presenting standards for labeling, including a truthful ingredient statement); *id.* § 343(r) (stating the types of label claims permitted by the FDA, such as claims for a benefit related to a classical deficiency of disease as long (as the prevalence of the disease is disclosed), claims implying a structure or function in which the dietary supplement either affects or maintains, and claims related to general well-being); *id.* § 343(s) (requiring that dietary supplements be labeled as such).

23. See Carol Rados, *Ephedra Ban: No Shortage of Reasons*, FDA CONSUMER MAGAZINE, Mar./Apr. 2004, http://www.fda.gov/fdac/features/2004/204_ephedra.html ("Under DSHEA, manufac-urers are responsible for ensuring that a dietary supplement is safe before it is marketed, [but] . . . the FDA can take formal action against any dietary supplement shown to be unsafe.").

supplements prior to their release to consumers the way that it does with substances classified as drugs.²⁴ Once a dietary supplement is released to consumers, the FDA has the burden of proving that the supplement is harmful to take it off the market.²⁵ Practically speaking, an injury must occur from the use of a dietary supplement before the supplement will be restricted from the marketplace.²⁶ In an effort to determine the effects of dietary supplements, the DSHEA created the Office of Dietary Supplements within the National Institutes of Health.²⁷ The Office of Dietary Supplements is responsible for researching and providing consumers with information about the health effects of dietary supplements.²⁸

B. Existing California Law

Current state law establishes the intent of the Legislature to encourage county offices of education and school districts to offer in-service training for credentialed staff who provide health, physical education, or science education to students on anabolic steroids, as well as techniques to prevent the use of anabolic steroids.²⁹ Furthermore, the Legislature has also stated its intent to encourage schools to include instruction on the effects of using anabolic steroids for students in grades seven through twelve.³⁰ However, before the enactment of Chapter 673, state regulations did not require coaches, trainers, or any school athletic officials to demonstrate any knowledge on the use or effects of steroids or PEDS.³¹

24. BLUE CROSS & BLUE SHIELD ASSOCIATION'S HEALTHY COMPETITION FOUNDATION, SPORTS SUPPLEMENT HEALTH WARNING http://www.healthycompetition.com/hc/resources/supplement_health_warning.pdf (on file with the *McGeorge Law Review*).

25. See 21 U.S.C.A. § 342(f) (West 1999) (stating the procedure the United States must follow to regulate dietary supplements and noting that the burden of proof for establishing the harmful effects of dietary supplement lies with the United States).

26. See *HHS Acts to Reduce Potential Risks of Dietary Supplements Containing Ephedra*, U.S. FOOD AND DRUG ADMIN., Feb. 28, 2003, <http://www.fda.gov/bbs/topics/NEWS/2003/NEW00875.html> (describing the evidence that the FDA put forth in order to prohibit ephedra). Among other scientific findings, the evidence included some "16,000 adverse event reports reveal[ing] two deaths, four heart attacks, nine strokes, one seizure, and five psychiatric cases involving ephedra in which the records appeared thorough and no other contributing factors were identified." *Id.* See also *Dietary Supplements Containing Ephedrine Alkaloids: Final Rule Summary*, U.S. FOOD & DRUG ADMIN., Feb. 2004, <http://www.fda.gov/oc/initiatives/ephedra/february2004/finalsummary.html> (describing the DSHEA standard for restriction and the evidence that the FDA provided to meet that standard to regulate and prohibit the dissemination of dietary supplements containing ephedrine alkaloids).

27. 42 U.S.C.A. § 287c-11(a) (West 2003) (creating the Office of Dietary Supplements within the National Institutes of Health).

28. See *id.* § 287 c-11(b) (stating that the Office of Dietary Supplements was established to explore the roles of, and to promote the scientific study of, dietary supplements).

29. See CAL. EDUC. CODE § 44645 (West Supp. 2005) (stating legislative findings, declarations, and intent, and describing guidelines for training).

30. *Id.* § 51262.

31. See CAL. CODE REGS. tit. 5, §§ 5530-96 (West 2005) (stating the duties of certified personnel, principals, teachers, district superintendents, and temporary athletic team coaches).

III. CHAPTER 673

Chapter 673 makes a statement against pupil athlete use of dangerous PEDS by holding high school sports coaches,³² pupil athletes,³³ and the parents of pupil athletes accountable.³⁴ Chapter 673 also restricts the marketing of “prohibited”³⁵ PEDS.³⁶

A. *The High School Sports Coach*

First, Chapter 673 requires, by December 31, 2008,³⁷ any “high school sports coach”³⁸ to complete a coaching education program that includes, among other things,³⁹ training on the harmful effects of steroid and PEDS use by adolescents.⁴⁰ The coaching education program must be developed by either the local school district or by the CIF.⁴¹ An athletic director or a high school sports coach may teach the program so long as they are qualified by the CIF⁴² and the program meets the guidelines set forth in California Education Code section 35179.1.⁴³ Once a high school sports coach completes the program, he or she will not need to take it again for the remainder of his or her high school coaching career within California.⁴⁴

Chapter 673 also states that the high school sports coach is responsible for the costs of taking the program.⁴⁵ However, Chapter 673 creates the California Coaching Education Fund whereby the State Treasurer shall deposit any voluntary contributions made for the purpose of offsetting the cost of training coaches.⁴⁶ In addition, completion of the program will count towards the coach’s continuing education requirement for renewal of his or her teaching credential if

32. CAL. EDUC. CODE § 35179.1 (amended by Chapter 673); *id.* § 49032 (enacted by Chapter 673).

33. *Id.* §§ 49030, 49033.

34. *Id.* § 49033.

35. *See id.* § 49031 (stating that the PEDS prohibited from marketing are those which contain substances as defined by CAL. EDUC. CODE § 49030); *see also* U.S. ANTI-DOPING AGENCY, 2005 GUIDE TO PROHIBITED SUBSTANCES AND PROHIBITED METHODS OF DOPING, 5 (Dec. 2004) (providing the 2005 list of prohibited substances and methods for Olympic athletes within the United States).

36. CAL. EDUC. CODE § 49031.

37. *Id.* § 49032.

38. *See id.* § 49032(f) (defining “high school sports coach” as “an employee or a volunteer who is authorized by a high school to be responsible for leading a school sports team of pupil athletes”).

39. *Id.* § 35179.1 (stating the guidelines for coaching education programs).

40. *Id.* § 35179.1(c)(4).

41. *Id.* § 49032(a)(1).

42. *Id.* § 49032(a)(2).

43. *Id.* § 35179.1 (amended by Chapter 673).

44. *Id.* § 49032(b) (enacted by Chapter 673).

45. *Id.* § 49032(c).

46. *Id.* § 49034.

the coach is also a certified employee.⁴⁷ Finally, if the high school sports coach does not complete the program by December 31, 2008, he or she cannot coach for more than one season of interscholastic competition.⁴⁸

B. *The High School Athletes and Their Parents or Guardians*

Next, Chapter 673 prohibits pupil athletes participating in interscholastic high school sports⁴⁹ from using dietary supplements⁵⁰ containing Synephrine⁵¹ or dietary supplements containing prohibited substances as enumerated by the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping (“Guide”).⁵² To make the list of prohibited substances readily available, Chapter 673 requires the State Department of Health Services (DHS) to provide the State Department of Education (SDE) with the Guide by March 30, 2006.⁵³

Then the SDE must “notify each school district that serves . . . grades [nine through twelve]” of the Guide and the SDE must post the Guide on its website.⁵⁴ After the SDE has acquired the Guide and the school districts are notified, the CIF will be required⁵⁵ to amend its constitution and bylaws⁵⁶ to mandate that, as a prerequisite to participating in interscholastic high school sports, pupil athletes must sign a pledge promising to abstain from using illegal anabolic steroids without a prescription⁵⁷ and using specified prohibited PEDS.⁵⁸ The required amendment to the CIF constitution and bylaws also must call for pupil athletes’

47. *Id.* § 49032(d).

48. *Id.* § 49032(e).

49. *Id.* § 49030(a).

50. *See id.* § 49030(a) (defining “dietary supplements” as defined by subsection (ff) of section 321 of Title 21 of the United States Code); *see also* 21 U.S.C.A. § 321(ff) (defining “dietary supplements”).

51. *See Ephedra Heart Dangers in Disguise*, CONSUMER REPORTS, Jan. 2004, at 22-23 (describing synephrine as mimicking ephedra in “chemical composition and function, constricting the blood vessels and revving up the cardiovascular system.”). There is little evidence that the substance is effective or safe and experts suspect that it could cause problems similar to ephedra, such as arrhythmias, anxiety, high blood pressure, heart attack, and stroke. *Id.*

52. CAL. EDUC. CODE § 49030(a)(2) (enacted by Chapter 673); 2005 Guide to Prohibited Substances, *supra* note 35.

53. *Id.* § 49030(b).

54. *Id.*

55. *See id.* § 49033 (stating that the effective date is July 1, 2006).

56. CAL. INTERSCHOLASTIC FED’N, 2005-2006 CIF CONSTITUTION AND BYLAWS, <http://www.cifstate.org/Constitution/main.htm> (on file with the *McGeorge Law Review*).

57. *See* CAL. EDUC. CODE § 49033 (stating that anabolic steroids are defined by section 802 of Title 21 of the United States Code); *see also* 21 U.S.C.A. § 802(41)(A) (defining “anabolic steroid” as “any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone)”).

58. *See* CAL. EDUC. CODE § 49033 (stating that the specified prohibited substances are those prohibited by section 49030).

parents or guardians to sign a notification form acknowledging the restrictions to which their pupil athletes have agreed.⁵⁹

C. Additional Safeguard Measure

Finally, Chapter 673 adds an additional safeguard by limiting the exposure of pupil athletes to prohibited PEDS. Chapter 673 bans the marketing⁶⁰ of any prohibited PEDS, as defined by section 49030, “on a school site or at a school-related event.”⁶¹ Furthermore, Chapter 673 bars a school from accepting sponsorship from manufacturers or distributors of prohibited PEDS as enumerated by the Chapter.⁶² However, the Chapter also lists exceptions to this sponsorship bar. Specifically, a school may accept a sponsorship if the manufacturer or distributor is merely an affiliate of a manufacturer or distributor of prohibited PEDS.⁶³ Also, a school may accept sponsorship if the manufacturer or distributor of prohibited PEDS receives no more than fifty percent of its business from dietary supplements as defined by section 321 of Title 21 of the United States Code, but without regard to whether those dietary supplements contain prohibited substances as enumerated by this Chapter.⁶⁴

IV. ANALYSIS

In 2004, Senator Speier authored Senate Bill 1630 (“SB 1630”), which was a bill with striking similarity to that of Chapter 673.⁶⁵ SB 1630 passed through the Legislature only to fall to the veto power of Governor Schwarzenegger.⁶⁶ The Governor stated in his veto letter that he would not pass SB 1630 because it focused on the use of PEDS among high school athletes rather than the clearly illegal and dangerous use of steroids.⁶⁷ More specifically, the Governor stated

59. *Id.*

60. *See id.* § 49031(d)(1) (defining “market” as: “(A) Direct product advertising, (B) Provision of educational materials, (C) Product promotion by a school district employee or school district volunteer, (D) Product placement, (E) Clothing or equipment giveaways, (F) Scholarships). *But see id.* § 49031(d)(2) (stating that “[market] does not include the inadvertent display of a product name or product advertising by a person who is not a manufacturer or distributor of” prohibited PEDS).

61. *Id.* § 49031(b).

62. *Id.* § 49031(a).

63. *Id.* § 49031(e)(1).

64. *Id.* § 49031(e)(2) (stating that the sponsorship bar does not apply to “[a] manufacturer or distributor of a dietary supplement described in subdivision (a) if no more than 50 percent of its annual gross sales are derived from the manufacture or distribution of dietary supplements as defined in subsection (ff) of Section 321 of Title 21 of the United States Code”).

65. SB 1630, 2004-2005 Leg., Reg. Sess. (Cal. 2004) (enrolled by vetoed).

66. *See Veto Letter from Governor Arnold Schwarzenegger, State of Cal., to Cal. State Senate* (Sept. 29, 2004) [hereinafter *Veto Letter*] (on file with the *McGeorge Law Review*) (returning Senate Bill 1630 without his signature and stating the reasons for vetoing the bill).

67. *Id.*

that the definition of PEDS in SB 1630⁶⁸ was unclear and thus would make the bill's implementation problematic.⁶⁹

While Chapter 673 substantially focuses on ensuring that high school athletes do not use PEDS,⁷⁰ it does include steroids within its amendment to section 35179.1 of the Education Code regarding the California's high school coaching education and training program.⁷¹

The education and training program may be the key to deterring steroid and PEDS use by pupil athletes.⁷² Currently, many high school coaches, in general, are not doing enough to dissuade their athletes from using dangerous PEDS or steroids.⁷³ High school coaches often have a significant influence over the behavior of their athletes,⁷⁴ thus it is important that they learn how to detect telltale signs of an athlete using dangerous PEDS or steroids as well as the potentially severe health consequences of an adolescent using these substances.⁷⁵ With the knowledge of those signs and consequences, high school coaches can better assert their influence to help dissuade their athletes from using PEDS and steroids.⁷⁶ However, skeptics of Chapter 673 argue that the Chapter falls short of achieving proper education of coaches because it sets forth no substantive standards for the content of the education and training program.⁷⁷ Furthermore, because Chapter 673 requires high school coaches to pay their own way for the training and education required by Chapter 673, skeptics argue that this may

68. See SB 1630, 2004-2005 Leg., Reg. Sess. (Cal. 2004) (vetoed) (defining "performance-enhancing dietary supplement" as "a dietary supplement designed or marketed to improve athletic performance or physical development by promoting body or muscle growth, stimulating or altering the cardiovascular system or the central nervous system, altering the perception of pain, or otherwise enhancing athletic performance or physical development above levels that would be anticipated under normal conditions with appropriate nourishment"). The bill would have also required the Department of Health Services to develop a list of performance-enhancing dietary supplements. *Id.*

69. Veto Letter from Governor Arnold Schwarzenegger to Cal. State Senate, *supra* note 66.

70. CAL. EDUC. CODE §§ 49030-34 (enacted by Chapter 673).

71. *Id.* § 35179.1 (amended by Chapter 673).

72. See Moore, *supra* note 5 (reporting on World Anti-Doping Agency member Gary Wadler's opinion that mandating all coaches be educated on the warning signs and dangers of substance use is an important step in stifling use by student athletes).

73. See Dow, *supra* note 11 (summarizing the results of the 2003 Blue Cross & Blue Shield Associations Healthy Competition national survey on performance enhancing substances in sports and stating that more than two-thirds of teens (sixty-nine percent) and pre-teens who participate in sports said they had received no information about dangerous substances from their sports teams).

74. See Moore, *supra* note 5 (quoting State Senator Speier: "The coaches are the biggest influence on young athletes. Bigger than their peers. Bigger than their parents. They do whatever their coaches tell them.>").

75. See *id.* (quoting Bob Ladouceur, football coach and religious studies teacher at Concord (California) De La Salle High School, a five-time *USA Today* national football champion: "There are a lot of coaches out there that I think are clueless about steroids or supplements.>").

76. See EDUCATION COMMITTEE, ASSEMBLY REPUBLICAN BILL ANALYSIS OF SB 37, at 6 (June 23, 2005) (arguing that since coaches are in the best position to discourage undesirable behavior among their athletes, they need training to help them understand, recognize, and deal with the problem of substance abuse).

77. *Id.*

deter potential high school coaches (many of whom are volunteers) from becoming a coach due to the additional cost.⁷⁸

In addition to addressing the Governor's first concern with SB 1630,⁷⁹ Chapter 673 directly eliminates the Governor's second concern regarding the ambiguous definition of PEDS set forth by SB 1630.⁸⁰ By deferring to the definition of dietary supplements as prescribed by subsection (ff) of section 321 of Title 21 of the United States Code, Chapter 673 adopts a clear, comprehensive, and established definition of dietary supplements.⁸¹ Furthermore, Chapter 673 clearly defines "prohibited" dietary supplements. The Chapter straightforwardly prohibits dietary supplements that contain certain substances from use by high school athletes. Specifically, it prohibits the use of Synephrine and any substance listed by the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping,⁸² which is also a comprehensive and established list.

Chapter 673 sets forth another policy in its addition of section 49033 to the Education Code.⁸³ This policy requires high school athletes to sign a pledge not to use PEDS prohibited by section 49030 and also makes signing this pledge a condition precedent to the athletes' participation in interscholastic sports.⁸⁴ Furthermore, it requires that the parents or guardians sign a form acknowledging the pledge to which the athletes have agreed.⁸⁵ This section is important because it brings the issue of student athletes' PEDS and steroid use to the attention of athletes and parents.⁸⁶ Other than coaches, parents and guardians may be the frontline of defense against the use of dangerous PEDS and steroids.⁸⁷ Just as it is important for parents to discuss the issues of safe sex, smoking, and drinking and driving, it is important that they discuss the dangers of PEDS and steroids with their children.⁸⁸

78. *Id.*; SENATE THIRD READING, BILL ANALYSIS OF SB 37, at 6 (Sep. 2, 2005).

79. See Letter from Governor Arnold Schwarzenegger to Members of the Cal. State Senate, *supra* note 66 (stating the Governor's concern that SB 1630 focused too much on the use of PEDS among high school athletes and not enough on the illegal and dangerous use of steroids).

80. CAL. EDUC. CODE § 49030 (enacted by Chapter 673); SB 1630, 2004-2005 Leg., Reg. Sess. (Cal. 2004) (enrolled by vetoed).

81. CAL. EDUC. CODE § 49030.

82. *Id.* § 49030(a)(2); 2005 Guide to Prohibited Substances, *supra* note 35.

83. CAL. EDUC. CODE § 49033.

84. *Id.*

85. *Id.*

86. See Dow, *supra* note 4 (quoting Dr. Edward Wojtys, Director of Sports Medicine for the University of Michigan Health System, who said that coaches and parents have the best opportunity to detect when their kids are exhibiting signs of substance use).

87. *Id.*

88. The National Youth Anti-Drug Media Campaign's Behavior Change Expert Panel, *Start An Ongoing Conversation*, http://www.the-anti-drug.com/advice/advice_communicate.asp (on file with the *McGeorge Law Review*) (giving advice to parents on the importance of communicating and explaining how to communicate with their children regarding sensitive issues). "Parents who send a clear message of 'no drug use' are setting expectations for the kids, and this will help their kids stay away from drugs." *Id.*

On the other hand, Chapter 673 states no consequence for failure to honor this pledge.⁸⁹ An athlete's participation is conditioned on the athlete signing the pledge, but the question remains: what happens if the pledge is broken? If an athlete is found to have used prohibited substances, does the athlete become ineligible for the remainder of the season, does the athlete forfeit prior victories, does the entire team become disqualified, or is there any consequence at all for breach of the pledge?⁹⁰

While this section of Chapter 673 leaves those questions unanswered, it nevertheless serves a valiant purpose. Due to the recent surge of dangerous PEDS on the marketplace, it is important that this issue is brought to the attention of persons with direct influence over young athletes. Section 49033 sets forth a qualification that should create an awareness of this issue among parents and guardians of high school athletes as well as among the athletes themselves.⁹¹

Chapter 673 also creates a prohibition on marketing tactics for high schools and school related events, which have been happening in California. For example, in the city of Irvine, Met-Rx Engineered Nutrition had a program where it would supply creatine and other supplements to high school athletes at a forty percent discount and then donate ten percent of the purchase price to the school's athletic program.⁹² Before Chapter 673's enactment, there was no law prohibiting this type of dual sponsorship between supplement manufacturers and high schools.⁹³ Prior to Chapter 673, the only major restriction on the marketing of supplements under federal and state laws was that manufacturers were required to label their products within the restrictions and permissions allotted by the DSHEA.⁹⁴ While Chapter 673 does not shelter adolescents from supplement manufacturer's direct marketing campaigns that use professional athletes, television or magazine ads, and professional sporting events, it does send the message that California does not tolerate such marketing on its high school campuses, during high school events, or by a high school employee or volunteer.⁹⁵

Conspicuously absent from Chapter 673 is any provision that mandates testing of high school athletes for steroids and/or PEDS. The early versions of SB

89. EDUCATION COMMITTEE, ASSEMBLY REPUBLICAN BILL ANALYSIS OF SB 37, at 6 (June 23, 2005).

90. *Id.*

91. *See Dow, supra* note 4 (“[A study found] that parents rated the use of performance-enhancing supplements and drugs as their No. 1 concern in youth sports. Yet [eighty-one percent] of the young people surveyed said they had never had a conversation with their parents about the substances.”).

92. Gugliotta, *supra* note 9.

93. *See* CAL. HEALTH & SAFETY CODE § 110423.2(a) (West Supp. 2005) (prohibiting the sale of specified dietary supplements to minors, but not prohibiting any type of marketing).

94. *See supra* note 22 and accompanying text; *see also* Chris Mooney, *Teen Herbicide: Dietary Supplements Can Be Deadly. So Why Are They Being Marketed to Kids?*, MOTHER JONES MAGAZINE (2003), http://www.motherjones.com/news/outfront/2003/05/ma_378_01.html (“[As of 2003 t]he only major restriction on supplements [was] that manufacturers [could not] claim their products treat specific diseases”).

95. CAL. EDUC. CODE § 49031 (enacted by Chapter 673).

1630⁹⁶ included a requirement for random testing of high school athletes, but Senator Speier retracted that requirement after it spurred opposition from civil libertarians.⁹⁷ In addition, Governor Schwarzenegger's emphasis on cost effectiveness in his veto of SB 1630 may have also played a role in the nonexistence of testing requirements from Chapter 673.⁹⁸ The *USA Today* reported that estimated costs for steroid testing range from fifty dollars to one-hundred-and-fifty dollars per test.⁹⁹ With approximately seven hundred thousand high school athletes in California, that is just too expensive.¹⁰⁰

Furthermore, while the United States Supreme Court has held it constitutional for school districts to require random drug tests of students in extracurricular activities,¹⁰¹ less than four percent of the nation's eighteen thousand schools test for steroid use.¹⁰² Thus, although testing may be an effective measure for preventing steroid and PEDS use by high school athletes, it is currently not the norm and, for California, it is too expensive.¹⁰³

V. CONCLUSION

In the end, Chapter 673 recognizes that there is a problem with abuse of PEDS and steroids at the high school level.¹⁰⁴ The Chapter also targets the people who often have primary influence over high school athletes—their parents and coaches. However, the lack of an enforcement policy leaves in question the effectiveness that Chapter 673 will have in ensuring that high school athletes are not engaging in the use of dangerous performance enhancing substances. While it remains uncertain how successful Chapter 673 will be in curbing the use of dangerous performance enhancing substances, one thing is certain, steroids and PEDS carry enormous health risks when used by adolescents.¹⁰⁵ Chapter 673

96. SB 1630, 2004-2005 Leg., Reg. Sess. (Cal. 2004) (vetoed).

97. See Dan Morain, *Veto of Supplements Bill Is Now Drawing Scrutiny*, L.A. TIMES, July 15, 2005 (discussing the life and death of SB 1630 and the hope for SB 37).

98. Letter from Governor Arnold Schwarzenegger to Members of the Cal. State Senate, *supra* note 66.

99. See Moore, *supra* note 5 (discussing Chapter 673, its policies, and what is missing from the Chapter).

100. *Id.*

101. See *Bd. of Ed. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822 (2002) (holding constitutional drug testing that required all middle and high school students participating in any extracurricular activity to consent to drug testing).

102. See Moore, *supra* note 5 (referencing a 2003 survey of the National Federation of State High Schools).

103. *Id.*

104. See *supra* notes 83-89 and accompanying text.

105. See Wilson, *supra* note 2 (describing the connection between the suicides of two California teenagers and steroid use); see also Dow, *supra* note 4 (listing the health problems linked to steroid use, such as: "stunted growth, hair loss, infertility, shrinking testicles, heart attacks, liver cancer, acne, rage and psychiatric disorders"); Letter from Christine Haller, Univ. of Cal., S.F., Div. of Clinical Pharmacology & Experimental Therapeutics, to the Senate Health Comm., Cal. State Legis. (Mar. 14, 2005) (on file with the *McGeorge Law Review*) (stating that short and long-term effects of PEDS in children are completely unknown,

represents California's determination to protect its adolescents from dangerous substances and, while it may not be a comprehensive solution to the problem, establishing a state-wide policy against adolescent use of dangerous PEDS and steroids is certainly an appropriate measure.

and noting that although a supplement may be safe for an adult when used properly, children have different body compositions).