An Ethical and Legal Dilemma: Participation in Sports by HIV Infected Athletes

John T. Wolohan
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JOHN T. WOLOHAN*

I. INTRODUCTION

When Ervin “Magic” Johnson announced to a stunned world that he tested positive for Human Immunodeficiency Virus (HIV) and was retiring from the National Basketball Association (NBA), there was almost no discussion about whether he should continue playing.1 After sitting out the 1991-92 basketball season, Johnson and the Los Angeles Lakers announced that Magic Johnson would attempt a comeback during the 1992-93 season.2 However, four days before the start of the 1992-93 season, Magic Johnson retired from the NBA for a second time. Johnson abandoned his comeback and announced that he was retiring for good because of the fear his return was causing some players and owners.3

On January 29, 1996, Magic Johnson announced once again that he was returning to the NBA and the Los Angeles Lakers as an active player. Unlike Johnson’s first attempted comeback in 1992, there was almost universal acceptance by the players and owners of his return.

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1. L. Richard & W. Stevenson, Magic Johnson Ends His Career, Saying He Has AIDS Infection, N.Y. TIMES, Nov. 8, 1991, at A1. One of the reasons Magic Johnson’s announcement was so shocking was due to his athletic ability. Johnson helped the Lakers to five NBA championships and nine appearances in the Finals. He was named the league’s Most Valuable Player in 1987, 1989 and 1990, was the MVP of the NBA Finals in 1980, 1982 and 1987, participated in 11 All-Star Games and set a league record for career assists (9,221), which was later broken by Utah’s John Stockton.


When asked about the difference between his 1992 attempted comeback and his 1996 comeback, Johnson credited the NBA in educating the players about HIV and about how the disease is transmitted.

However, sixteen days after Johnson's announcement, the issue of athletes competing with HIV would be in the headlines again. This time, the reaction was anything but favorable. On February 22, 1996, heavyweight boxer Tommy Morrison announced to the world that he had tested positive for HIV in a pre-fight physical. At the press conference Tommy Morrison announced that due to his contracting HIV he was retiring from boxing. Like Johnson, Tommy Morrison did not stay retired. On September 19, 1996, Morrison announced he would return to the ring for "one last fight" to help raise money for children infected with the AIDS virus.

Because Morrison's press conference and the debate surrounding his return were in such sharp contrast to Johnson's return only eight months earlier, this article examines the legal and ethical considerations in-

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5. The only reason Morrison was even tested for HIV was because he was fighting in Nevada. If he was scheduled to fight in any of the other big boxing states, such as New York or New Jersey, he would never have been tested. After Morrison's announcement a number of states, including New York, Washington, Oregon and Arizona, have made pre-fight HIV testing mandatory. Richard Sandomir, New York to Screen Fighters for HIV, N.Y. TIMES, Feb. 15, 1996, at B17. New Jersey, the most important boxing state after Nevada, California, and Florida have also either made pre-fight HIV testing mandatory, or started to do so. HIV Tests for Boxers in New Jersey, N.Y. TIMES, Mar. 8, 1996, at B18. There is still some debate about the effectiveness of HIV testing of boxers. In particular, when should such testing take place? Who do you test, all fighters or just championship fights and what effect will false-positives have on the fighter, and the promotion of the fight? It must also be noted that individuals infected with HIV will test negative until antibody production begins, which it usually about six weeks after infection. Therefore, it is possible for a fighter to have HIV and still test negative. Michael A. Sutliff & D. Kim Freeland, Limits of Confidentiality Testing and Disclosure with HIV - Infected Sports Participants Engaging in Contact Sports: Legal and Ethical Implications, 19 J. of Sport & Social Issues 415 (1995).
6. Morrison signed to fight on the undercard of the George Foreman-Crawford Grimsley title fight in Tokyo on November 3, 1996. Morrison's opponent was Marcus Rhode. Morrison won by technical knockout 1 minute and 38 seconds into the first round. Foreman, Morrison Win, N.Y. TIMES, Nov. 4, 1996, at B8. A provision in the fight contract called for the fight to end if Morrison suffered any heavy bleeding. At which time the outcome of the fight would have been determined by the judges' scorecards. Morrison said the fight should raise $500,000 for the Knockout AIDS Foundation, which benefits children with HIV and AIDS. Jon Saraceno, Morrison Referee Might Wear Goggles to Keep Blood Out, USA TODAY, Nov. 1, 1996, at C3.
7. Even Magic Johnson criticized Morrison's comeback. Johnson distinguished his comeback from Morrison by stating that "I feel that he shouldn't be doing it because it's (boxing) a blood sport." Johnson went on to say that "if something were to happen, it would set the fight against HIV and AIDS back five to 10 years." Jon Saraceno, Morrison Referee Might Wear Goggles to Keep Blood Out, USA TODAY, Nov. 1, 1996, at C3.
volved in allowing athletes\(^8\) infected with HIV to participate in sporting events.\(^9\) Section II begins by briefly describing the disease and how it is transmitted. Section III then examines Federal discrimination legislation and the protection the laws offer individuals with HIV and AIDS. Next, Section IV examines the ethical dilemma presented by the athletic participation of HIV infected athletes. Finally, Section V concludes by reviewing four factors athletic administrators need to consider when developing participation guidelines for HIV infected athletes.

II. WHAT IS HIV AND HOW IS IT TRANSMITTED?

In 1981, the first report that a rare form of pneumonia was occurring in homosexual men drew little attention.\(^10\) Since the symptoms were consistent with damage to the immune system in previously healthy individuals, the medical community began calling the new set of symptoms, Acquired Immune Deficiency Syndrome (AIDS).\(^11\) Besides pneumonia, AIDS is also associated with a number of secondary infections, cancers and damage to the brain cells.\(^12\) Usually, these infections are fatal to AIDS patients.

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8. Although this article focuses on professional athletes, it should be noted that the legal issues apply to college, high school, and club athletes as well. This is especially true under the Americans with Disability Act (ADA). For example, if a college decided to withdraw a scholarship because the athlete had AIDS and the school feared for the safety of the other athletes, the courts would probably find such an action a violation of the ADA since AIDS cannot be transmitted through casual contact.


11. Id. at 2.

12. Id. at 3.
Since those first reports in 1981, research has revealed that AIDS is caused by the Human Immunodeficiency Virus (HIV), which attacks the body's immune system. In order to illustrate the probability of transmission during athletic activities and the risks athletes are exposed to, the following section examines the effect of HIV on the human immune system and how the virus is transmitted.

A. The Immune System and HIV

The body's health is defended by its immune system. The immune system protects the body from "germs" such as viruses, bacteria, parasites and fungi; it is also important in fighting cancer. When germs are detected, white blood cells called lymphocytes (B cells and T cells) are activated to defend the body. This process is hindered when an individual is infected with HIV, which destroys its host cells, thereby weakening the victim's immune system. Since the breakdown of the immune system is a continuous and gradual process, individuals infected with HIV may remain healthy for many years. It is therefore possible, and very likely, that there are athletes infected with HIV who are participating in sports and do not even know they have HIV.

13. It was not until 1984, that the Human Immunodeficiency Virus (HIV) was isolated by French and American researchers as the cause of AIDS. Id. at 3.

14. Two good resources for information on HIV and AIDS are the U.S. Department of Health & Human Services and the Centers for Disease Control and Prevention (CDC). Both organizations are committed to providing the scientific community and the public with accurate and objective information about HIV infection and AIDS. In addition to research on the virus and its transmission, the CDC National AIDS Clearinghouse provides information on locating Basic Resources on HIV/AIDS and sports. For confidential information, referrals, and educational materials on HIV and AIDS, call: CDC National AIDS Hotline: 1-800-342-AIDS (2437), Spanish: 1-800-344-7432, Deaf: 1-800-243-7889 or write CDC National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003 or check their website on the Internet.

15. See Fan, supra note 10, at 25.

16. For a more detailed explanation of the immune system, see Fan, supra note 10.

17. Generally, athletes are in a potentially higher risk group because as a group they are sexually promiscuous, and some athletes participate in intravenous drug use. David L. Herbert, Legal Aspects of Sports Medicine 211 (1995).

Since a person infected with HIV may remain healthy for years, it is common to distinguish between HIV-positive persons who are "asymptomatic for HIV disease" and HIV-positive persons who are "symptomatic for HIV disease." An asymptomatic person who is infected with HIV will sometimes manifest certain conditions that are evidence of the infection, such as lymphadenopathy (disease of the lymph nodes), diminution of the T-4 cell count, or flu like symptoms. However, when the virus does take hold, a person becomes symptomatic. A symptomatic person who is infected with HIV will manifest other conditions that are actual symptoms of the disease. These symptoms include fever, night sweats, weight loss, fatigue, chronic diarrhea, and opportunistic infections, which are usually held in check by healthy immune systems, and the development of cancers that also result from the failure of the immune system.

People with HIV are said to have AIDS when there is evidence of HIV and two or more serious opportunistic infections or cancers. The illnesses tend to occur late in HIV infection, when few T cells remain to protect the body from such infections or cancers.

B. Transmission

Despite its devastating effects within the body, HIV, which is present only in cells and body fluids, is actually quite fragile and will die quickly outside of the human body. The three leading forms of HIV transmission are sexual contact with an infected person, needle-sharing among intravenous drug users and by HIV infected women who transmit the disease to their newborn babies. Babies may become infected before or during birth, or through breast-feeding after birth. The current scientific view is that body fluids other than blood, semen or breast milk con-
tain so little, if any, HIV that they are not of major importance in HIV transmission. Therefore, casual contact with HIV infected individuals pose no risk of infection.

Other less common ways of spreading HIV include: transfusions of infected blood or blood clotting factors, or after infected blood gets into the bloodstream through an open cut or splashes into a mucous membrane (e.g., eyes or inside of the nose). Therefore, HIV transmission needs to occur directly between HIV tainted fluids from an infected person into the blood stream or into a mucosal lining of another person.

In regards to HIV transmission in athletics, the danger, or major concern is that athletes could become infected with HIV if infected blood gets into their bloodstream through an open cut or splashes into their eyes. Most medical authorities believe that the likelihood of this type of transmission is extremely small. The reason the danger is perceived to be so small is because HIV is so fragile outside the body that it can not survive in the open air or in water.

26. Id. at 132.
27. Casual contact includes hugging, touching, and sharing of eating and drinking utensils. Id. at 120.
28. This is very rare in countries where blood is screened for HIV antibodies. Id. at 120.
29. See FAN, supra note 10, at 134.
30. One study on “Infectious Diseases in Competitive Sports” reviewed the types of infectious diseases that have occurred among athletes or in sports settings. The results identified 38 reports of infectious disease outbreaks or other instances of transmission associated with sports events or activities. The most common method, 24 out of the 38, of disease transmission was person to person. The most common disease transmitted was herpes simplex virus (HSV). The study, which was conducted in 1993, identified only one report of possible HIV infection related to sports. The case involved a recreational soccer player who was injured when he collided with a player who was HIV positive. Goodman et al., supra note 9, at 862.
31. Another concern of some athletes is that HIV can be transmitted through saliva, tears, or sweat. There is no evidence, however, to show that contact with saliva, tears, or sweat has ever been shown to result in transmission of HIV.
32. A recent study of the risk of transmission related to on field injuries during professional football concluded that the risk was much less than one per I million games. See Goodman et al., supra note 9. One report on health care workers, however, put the risk of accidental HIV infection in the health care setting at about 1 in 250. A full 7% of the exposures, the report said, can statistically result from open wound contamination, while another 5% can result from mucous membrane exposure. Herbert, supra note 9, at 12 (citing The American Medical News, Jan. 13, 1989, at 3-19).
33. See FAN, supra note 10, at 134. Consider the uproar caused by Greg Louganis in the 1992 Olympics. When Greg Louganis suffered an open head wound during the 1992 Olympic Games, people thought it was great that he continued to dive. After he told the world that he knew he was HIV positive at the time of his injury, and still elected to dive, the majority of comments were that he was reckless in exposing people to HIV. Since HIV can not survive in water, however, epidemiological evidence predicts that there was no risk to other divers.
While the principal risks for HIV infection are not directly related to sports, and the risk of transmission is considered small, there is one reported case of possible HIV transmission during a soccer match in 1989. During the match, two players were involved in a bloody collision. At the time of the collision, one of the players was HIV positive, while the other was negative. Two months after the collision, the HIV negative athlete tested HIV positive.

The case should not be considered as conclusive evidence of HIV transmission. After reviewing the facts of the case, public health officials in Italy were unable to rule out with any satisfaction certain non-athletic risk factors, nor establish with any certainty that the collision was the source of infection.

III. FEDERAL DISCRIMINATION LEGISLATION

The line between a lawful refusal to extend affirmative action and illegal discrimination against handicapped persons will [not] always be clear. It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program. In athletics, the line between lawful refusal to extend eligibility requirements and illegal discrimination against handicapped persons is getting cloudier all the time. This is especially true since 1990, when President Bush signed into law the Americans with Disabilities Act (ADA). The

34. The principal risks of HIV transmission are by sexual contact with an infected person, by needle-sharing among injecting drug users and new born babies born to HIV infected women. See Goodman et al., supra note 9.
36. The athlete tested seronegative a year before the collision and denied that he had homosexual contact, intravenous drug use, blood transfusions, dental work, or sexual relations with anyone besides his girlfriend. The girlfriend tested seronegative. Id.
37. For example, the player who became HIV infected worked in a drug dependency rehabilitation center.
38. See Goodman et al., supra note 9.
40. See John T. Wolohan, High School Eligibility Requirements and the Disabled Athlete: Are Age Restrictions a Necessary Requirement for Participation in Interscholastic Athletic Programs?, (Accepted for Publication) 6 SETON HALL J. SPORT L. (Fall 1996).
41. The Americans with Disabilities Act, 42 U.S.C. §12101 (1990) [hereinafter ADA]. The stated intent of the act was “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The Act examines and prohibits discrimination in four sections: Employment; Public Services; Public Accommodations and Services Operated by Private Entities; and Telecommunications.
following section examines the evolution of disability legislation, in particular the Rehabilitation Act of 1973,\(^{42}\) and the ADA\(^ {43}\) and the impact the laws have had on individuals with HIV or AIDS.

A. Evolution of Disability Legislation

In the early 1970s, the United States Congress began to enact federal legislation increasing the opportunities available to handicapped individuals. However, before an individual can gain protection from these laws, he or she must first show that they have a disability covered under the laws. The definitions used in the Rehabilitation Act of 1973,\(^ {44}\) and the ADA\(^ {45}\) are very similar in that they define an individual as having a “disability” if he or she has:

1) a physical or mental impairment that substantially limits one or more of the major life activities\(^ {46}\) of such individual;
2) a record of such an impairment; or
3) being regarded as having such an impairment.\(^ {47}\)

B. The Rehabilitation Act of 1973

The Rehabilitation Act of 1973,\(^ {48}\) passed by Congress in response to the attention generated by Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania,\(^ {49}\) and Mills v. Board of

\(^{44}\) The Rehabilitation Act of 1973 defines “handicapped individual” as follows: “any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to subchapter I and III of this chapter. [F]or the purposes of subchapter IV and V of this chapter, such terms mean any person who (i) has a physical or mental impairment which substantially limits one or more of such person’s major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.” Pub. L. 93-112, 87 Stat. 361, as amended, 29 U.S.C. § 706 (6)(1992). See infra notes 49-72 and accompanying text.

\(^{45}\) The ADA defines the term “disability” to mean any individual with “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; (C) or being regarded as having such an impairment.” 42 U.S.C. 12102 (2) (1990).

\(^{46}\) The term “major life activities” means such activities as “caring for one’s self, performing manual tasks, walking, hearing, speaking, seeing, breathing, learning, and working.” 28 C.F.R. § 35.104 (2) (1995).


\(^{49}\) Under Pennsylvania law retarded children were excluded from educational programs within the public school system. The plaintiffs brought a class action lawsuit against the state claiming that Pennsylvania law deprived the retarded children aged 6 - 21 of their due process and equal protection rights. With the court encouragement, the two sides reached an agree-
Education of the District of Columbia,\textsuperscript{50} was the first federal legislation to grant handicapped individuals the same opportunities as nonhandicapped individuals.\textsuperscript{51} Section 794 of the Rehabilitation Act states that:

No otherwise qualified handicapped individual with a disability in the United States, as defined in section 706 (8) of this title shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . \textsuperscript{52}

The purpose of the Rehabilitation Act was to provide handicapped individuals the opportunity to participate in programs or activities without being discriminated against due to their handicap. The Department of Health, Education and Welfare published the original implementing regulations for § 794 in 1978. Pursuant to these regulations, educational programs and institutions, including high schools, providing physical education or interscholastic athletic programs must provide qualified handicapped individuals an equal opportunity to participate in the activities.\textsuperscript{53}

In order for an individual to successfully pursue a claim under §504, he or she must establish four elements: (1) that he or she is a “handicapped individual” under the definition provided in section 706 (8); (2) that he or she is “otherwise qualified” for the athletic activity; (3) that he or she is being excluded from athletic participation “solely by reason of”...
his or her disabilities; and (4) that the institution is receiving federal financial assistance. Since most challenges under § 504 hinge on the determination of the “otherwise qualified” element or the “solely by reason of” element, an examination of the meaning of those two elements is important.

The United States Supreme Court in *Southeastern Community College v. Davis,* interpreted the phrase “otherwise qualified person” to mean someone “who is able to meet all of a program’s requirements in spite of his handicap.” Davis, who suffered from a serious hearing disability, sought entry into Southeastern Community College’s School of Nursing. The school rejected Davis’ application because it believed that her hearing disability made it impossible for her to safely complete the program and care for patients. Davis claimed that she was “otherwise qualified” and that she was denied admission “solely by reason of her handicap.” In rejecting Davis’ claim, the Supreme Court stated that section 504 does not compel educational institutions to disregard the disabilities of handicapped individuals or to make substantial modifications in their programs to allow disabled person to participate. In fact, the Supreme Court found that “neither the language, purpose, nor history of section 504 reveals an intent to impose an affirmative action obligation on recipients of federal funds.” Although finding no affirmative action obligation on recipients of federal funds, the Supreme Court did find that situations could arise where refusal to modify an existing program might become unreasonable and discriminatory. In a case interpreting the term “reasonable accommodation,” the Supreme Court in *Alexander v. Choate* addressed what types of modifications would be required under section 504. Balancing the statutory rights of the dis-

55. 422 U.S. 397 (1979).
56. Id. at 406.
57. Id.
58. Id.
59. Id. at 405.
60. Id. at 406.
61. Id. at 411.
62. 469 U.S. 287, 301 (1985). Faced with rising Medicaid costs, Tennessee proposed to reduce the number of annual inpatient days that state Medicaid would pay hospitals on behalf of a Medicaid recipient from 20 to 14. In a class action suit, the Medicaid recipients argued that the 14-day rule, or any annual limitation, denied meaningful access to Medicaid services in Tennessee. In rejecting the claim, the Supreme Court held that Tennessee was allowed to limit the number of days because handicapped individuals still had meaningful and equal access to that benefit.
abled individual with the legitimate interests of federal funds recipients to preserve the integrity of their programs, the Supreme Court held that "while a grantee need not be required to make fundamental or substantial modifications to accommodate the handicapped, it may be required to make reasonable ones." The Rehabilitation Act of 1973, therefore, requires that reasonable accommodation should be made to make the individual otherwise qualified. Under the Rehabilitation Act, "a recipient shall make reasonable accommodations to the known physical and mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program." In determining whether an accommodation would impose an undue hardship, the court can consider the nature and cost of the accommodations needed.

The most extensive discussion of the "otherwise qualified" language in the athletic context occurs in Poole v. South Plainfield Board of Education. In Poole, the court, interpreting Davis, held that an "otherwise qualified person is one who is able to meet all the program's requirements in spite of his handicap." Poole, a high school wrestler who had been excluded from wrestling because he had only one kidney, was such an "otherwise qualified person" and that the only reason he was prevented from wrestling was due to his disability. The purpose of § 504, the court stated, "is to permit handicapped individuals to live life as fully as they are able, without paternalistic authority deciding that certain activities are too risky for them."

63. Id. at 300.
64. 34 C.F.R. § 104.12.
65. "Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and similar actions." 34 C.F.R. § 104.12 (b).
66. 34 C.F.R. § 104.12.
67. "Factors to be considered include:
(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;
(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
(3) The nature and cost of the accommodations needed."
34 C.F.R. § 104.12 (c).
69. Id. at 953.
70. Id.
71. Id. at 953-54.
The third requirement, that the individual is being excluded from athletic participation "solely by reason of" his or her disabilities, is met if the handicapped individual is being excluded due to his or her handicap or disability. Thus, in Poole, the plaintiff was being excluded from athletics "solely by reason of" the fact that he had one kidney.

**C. The Americans with Disabilities Act (ADA)**

Perhaps the most powerful weapon disabled athletes have in their fight to participate in interscholastic athletics is the ADA. Signed into law July 26, 1990, the purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" by removing social and architectural barriers which have segregated individuals with disabilities from full participation in society. In eradicating barriers, the ADA focuses on whether there are any reasonable accommodations that could be made to remove any barrier created by a person's disability. Reasonable accommodations include any modifications of a program or activity which create an equal opportunity for an individual with a disability.

The relevant portions of the ADA regarding professional athletic associations are Title I and Title III. The Title used depends on whether the discrimination is by the employer or the organization, league or athletic association. Title I, which prohibits discrimination in employment, provides that: "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." Most professional sports leagues and the NCAA, except boxing, have already developed guidelines recommending that individuals with HIV be allowed to participate in competitive events. The guidelines also recommend that the leagues not test athletes for HIV.

73. See Wolohan, supra note 40.
76. "The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent or such person, . . ." 42 U.S.C. § 12111(5)(A) (1990).
78. The NBA, NFL, NHL and the NCAA all provided information on their substance abuse and health programs. See also Mary A. Hums, *AIDS in the Sports Arena: After Magic*
Title III, which is based on § 504 of the Rehabilitation Act of 1973 and prohibits discrimination by private entities who provide public accommodations and services, provides that: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The ADA defines a "qualified individual with a disability" as any handicapped or physically or mentally disabled individual "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication ... barriers, or the provision or auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."

In order for an individual to successfully pursue a claim under Title III of the ADA, he or she must establish that he or she: (1) is a "qualified individual with a disability;" (2) is "otherwise qualified" for the athletic activity; (3) is being excluded from athletic participation "solely by reason of" his or her disabilities; and (4) is being discriminated against by a private entity which performs a public service.

Even if the plaintiff is able to prove all the elements necessary to establish a prima facie case under the ADA, the courts will uphold discriminatory practices if permitting an individual to participate would pose "a direct threat to the health or safety of others." Therefore, if it can be shown that an athlete infected with HIV poses a direct threat to

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81. The term "auxiliary aids and services" is defined as including:
   (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
   (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
   (C) acquisition or modification of equipment or devices; and
   (D) other similar services and actions.
84. 28 C.F.R. § 36.208. Direct threat means "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services." Id. at (b).
85. 28 C.F.R. § 36.208. See also Cathy J. Jones, College Athletes: Illness or Injury and the Decision to Return to Play, 40 BUFF. L. REV. 113 (1992).
the health or safety of other participants, the association would be justi-

fied in excluding them from participation. In determining whether HIV
poses a direct threat to the health or safety of other participants, the
court is required to conduct an individualized assessment.86

D. Application to Individuals With HIV or AIDS

Although the Supreme Court has not ruled on the issue, there is
enough legal precedent to conclude that the Rehabilitation Act and the
ADA protect individuals with contagious diseases, such as HIV and
AIDS from discrimination. The first case to hold that contagious dis-
eases were covered under § 504 of the Rehabilitation Act of 1973 was
School Board of Nassau County, Florida v. Arline.87 In Arline, Gene
Arline was hospitalized for tuberculosis in 1957. The disease went into
remission for the next twenty years. During this time Arline taught ele-

mentary school in Nassau County, Florida from 1966 until 1979.88 Ar-
line suffered a relapse in 1977 and two more in 1978. After her third
relapse, Arline was suspended with pay for the remainder of the 1978-79
school year.89 At the end of the 1978-79 school year, the Nassau County
School Board held a hearing and dismissed Arline, “not because she had
done anything wrong, but because of the continued recurrence of
tuberculosis.”90

Although the District Court found that Arline was a handicapped
person, the court held that she was not a handicapped person under
§ 504.91 On appeal, the Court of Appeals reversed and held that “per-
sons with contagious diseases are within the coverage of section 504 and
that Arline’s condition falls . . . neatly within the statutory and regula-
tory framework.”92 After finding that Arline was covered under § 504,
the court remanded the case for further review as to whether the risk of
infection precluded Arline from being “otherwise qualified” for her job,
and whether reasonable accommodations could be made for her.93

86. 28 C.F.R. § 36.208 (c). See School Board of Nassau County, Florida v. Arline, 480
88. Id. at 276.
89. Id.
90. Id.
91. Id.
92. Id. at 264.
93. Id. at 265.
Upon review of whether Arline was a handicapped person under § 504, the United States Supreme Court examined the regulations promulgated by the Department of Health and Human Services. The regulations define two key terms used in the § 504 definition of a handicapped individual: physical impairment and major life activity. Using this statutory and regulatory framework, the Supreme Court held that Arline was a handicapped person under § 504. The Supreme Court, noting that there was nothing in the legislative history of § 504 to suggest that Congress intended such a result, specifically rejected the argument that individuals with contagious diseases, because of the threat they posed to the health of others, should not be protected under § 504.

After determining that Arline was a handicapped person under the Rehabilitation Act, the Supreme Court then examined whether Arline was “otherwise qualified for the job.” In determining whether a person is “otherwise qualified for the job,” the Supreme Court held that a person who poses a significant risk of transmitting an infectious disease to others in the workplace is not otherwise qualified for the job unless reasonable accommodations can be made to eliminate the risk. In holding that Arline did not pose a significant risk of transmitting an infectious disease to others in the workplace, the Supreme Court found that such inquiry should include:

[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how

94. A physical impairment is “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin and endocrine.” 45 CFR § 84.3(j)(2)(i).
95. “Major Life Activity” is defined as: “functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” 45 CFR § 84.3(j)(2)(ii), as cited in School Bd. of Nassau County, Florida v. Arline, 480 U.S. 273, 280 (1987).
96. See Arline, 480 U.S. at 281.
97. The Supreme Court held that “Arline's contagiousness and her physical impairment each resulted from the same underlying condition.” Id. at 282. It would be unfair therefore "to allow to seize upon the distinction between the effects of a disease on others and the effects of a disease on a patient . . . to justify discriminatory treatment." Id. at 281.
98. An otherwise qualified person is someone who is able to meet all of a program's requirements in spite of his or her handicap. See supra notes 56 - 72 and accompanying text. In an employment context, an otherwise qualified person is someone who can perform the essential functions of the job in question. 45 CFR § 84.3(k).
99. See Arline, 480 U.S. at 287, n.16.
long is the carrier infectious), (c) the severity of the risk (what is
the potential harm to third parties) and (d) the probabilities the
disease will be transmitted and will cause varying degrees of harm.\textsuperscript{100}

The Supreme Court in \textit{Arline}, however, noted that this case dealt
with tuberculosis, which gave rise to both impairment and to contagious-
ness, and not AIDS.\textsuperscript{101} Therefore, the Supreme Court refused to con-
sider whether a person with HIV/AIDS could be considered to have a
physical impairment, or whether such a person could be considered a
handicapped person under the Rehabilitation Act.\textsuperscript{102}

The issue of whether HIV was covered under § 504 was first argued
in \textit{Thomas v. Atascadero Unified School District}.\textsuperscript{103} In \textit{Thomas}, the par-
ents of a child infected with HIV sought a preliminary injunction against
the school district to require the school district to allow their five year
old son to attend a regular kindergarten class.\textsuperscript{104}

In granting a preliminary injunction against the school district,\textsuperscript{105} the
district court held individuals infected with HIV suffered impairments to
their physical systems which significantly impair their major life activi-
ties\textsuperscript{106} and were, therefore, handicapped individuals covered under
§ 504.\textsuperscript{107} The court then held that the plaintiff was otherwise qualified
and that he was being excluded solely because of his handicap.\textsuperscript{108} Fi-
nally, the court looked at the risk of allowing the plaintiff to attend
school and found that “any risk of transmission of the AIDS virus by
Ryan in connection with his attendance in regular kindergarten class is
so remote that it cannot form the basis for any exclusionary action by the
school district.”\textsuperscript{109} After finding the plaintiff handicapped under § 504,
the court reached the "inevitable conclusion" that the Rehabilitation Act conferred statutory protection on individuals infected with HIV.\textsuperscript{110}

The \textit{Thomas} decision was quickly followed in \textit{Ray v. School District of DeSoto County}.\textsuperscript{111} In \textit{Ray},\textsuperscript{112} the parents of three young boys sought a preliminary injunction to allow their children to attend regular public school. The boys, who were hemophiliacs and had contracted HIV, were prohibited by the school district from attending regular classes.

The court following \textit{Thomas} held that the "legal precedents and medical testimony presented in this case leaves no doubt in this court's mind that the motion for preliminary injunction should be granted."\textsuperscript{113} However, the \textit{Ray} court specifically prohibited the boys from participating in contact sports because of the possibility of blood spills or the exchange of other body fluids.\textsuperscript{114}

The first cases to examine discrimination in an employment setting due to AIDS was \textit{Chalk v. U.S. District Court, Central District of California}.\textsuperscript{115} In February 1987, Chalk was hospitalized with pneumonia and diagnosed as having AIDS. After recuperating from the pneumonia, Chalk was cleared to return to work by his personal physician. Chalk, a teacher within the Orange County system, was placed on administrative leave until cleared by the physician for the school district.\textsuperscript{116} After being cleared to return to the classroom, the Orange County Department of Education informed Chalk that it was reassigning him to an administrative position, and that he was barred from teaching.\textsuperscript{117}

Chalk went into court seeking an injunction requiring the Department of Education to reinstate him to his classroom duties. In applying

\begin{itemize}
\item \textsuperscript{110} \textit{Id.} at 383.
\item \textsuperscript{111} 666 F. Supp. 1524 (M.D. Fla. 1987).
\item \textsuperscript{112} \textit{Id.}
\item \textsuperscript{113} \textit{Id.} at 1536. The court stated that the boys attendance would be governed by the published guideline for such attendance from the Center for Disease Control and the American Academy of Pediatrics. Those guidelines state that:
Most school-aged children and adolescents infected with HTIV-III should be allowed to attend school without restrictions and with the approval of the child's physician. Based on present data the benefits of unrestricted school attendance of these children outweigh the possibility that they will transmit the infection in the school environment. \textit{Id.} at 1531 (citing the Center for Disease Control and the American Academy of Pediatrics recommended guidelines).
\item \textsuperscript{114} \textit{Id.} at 1536.
\item \textsuperscript{115} 840 F.2d 701 (9th Cir. 1988).
\item \textsuperscript{116} Dr. Thomas Prendergast, the Director of Epidemiology and Disease Control for the Orange County Health Care Agency, found that: "nothing in Chalk's role as a teacher should place his students or others in the school at risk of acquiring HIV." \textit{Id.}
\item \textsuperscript{117} \textit{Id.} at 703.
\end{itemize}
the four factors outlined by the Supreme Court in School Board of Nassau County, Florida v. Arline,\textsuperscript{118} the court held that since it was unlikely that Chalk could transmit HIV while performing his teaching duties, Chalk was protected under § 504. The Ninth Circuit granted the injunction, held that Chalk had demonstrated a strong probability of success on the merits and that that he would suffer irreparable harm if he was not allowed back into the classroom.\textsuperscript{119}

Another case using § 504 of the Rehabilitation Act to prevent employment discrimination of an individual with HIV was Doe v. District of Columbia.\textsuperscript{120} Doe, an applicant for a firefighter position, received a "Letter of Appointment" from the District of Columbia.\textsuperscript{121} After receiving the letter, Doe informed an official within the fire department that he was HIV positive.\textsuperscript{122} In response to Doe's disclosure, the fire department withdrew its offer.\textsuperscript{123}

The court, while finding that "it was undisputed that plaintiff is an individual with handicaps for purposes of the Act,"\textsuperscript{124} held that in order to establish a prima facie case of discrimination against the fire department, Doe must show: 1) that his HIV status does not pose a direct threat to others; 2) that in spite of his handicap, he was otherwise qualified for the job; and 3) that he was denied employment solely due to his HIV status.\textsuperscript{125}

To determine whether Doe posed a threat to others or was otherwise qualified, the court considered the four part test used by the Supreme Court in Arline:

(a) the nature of the risk (how the disease is transmitted),
(b) the duration of the risk (how long is the carrier infectious),
(c) the severity of the risk (what is the potential harm to third parties) and

\textsuperscript{118} 480 U.S. 273 (1987).
\textsuperscript{119} The district court in Chalk held that even though "the duration of the risk was long and the severity was 'catastrophic'[,] . . . scientifically established methods of transmission were unlikely to occur and that the probability of harm was minimal" and, therefore. Chalk would probably ultimately win. Chalk, 840 F.2d at 707.
\textsuperscript{121} Id. at 565.
\textsuperscript{122} Id.
\textsuperscript{123} The fire department withdrew the offer even though "there was no question about Doe's capability of performing the functions of a firefighter." In fact, the fire department did not even test for HIV when Doe took his physical examination and would not have discovered Doe's HIV status unless he told the department. Id. at 561.
\textsuperscript{124} Id. at 567.
\textsuperscript{125} Id. at 568.
(d) the probabilities the disease will be transmitted and will cause varying degrees of harm.\textsuperscript{126}

The court, in holding that the fire department was in violation of § 504, found that due to the nature of the disease and how it was transmitted, Doe posed no direct threat to others since the risk of blood to blood contact during the performance of firefighting duties was remote and transmission of HIV was extremely small.\textsuperscript{127} In reaching this conclusion the court refused to regard the theoretical or remote possibility of HIV transmission as a basis for employment discrimination.\textsuperscript{128} With respect to the second and third factors, the court found that although the duration and the severity of the risk was long and deadly, the two factors warrant little attention since the risk of transmission was so remote.\textsuperscript{129} As for the final factor, the probability the disease will be transmitted and infect others, the court once again found that since the risk of transmission was so small, it invalidates any concern that Doe's handicap will pose a direct threat to others.\textsuperscript{130}

Next, the court examined whether Doe was otherwise qualified to perform the duties of a firefighter. In holding that Doe's HIV status did not impair his abilities to perform the job, the court reviewed the medical testimony presented at the trial and found that Doe was in good physical condition and health, and was otherwise qualified to serve as a firefighter.\textsuperscript{131}

The final factor the court reviewed was whether Doe was denied a position with the fire department solely due to his handicap. After reviewing the evidence presented, the court found that "the fire department's records unequivocally reflect that the offer of employment to Doe was withdrawn because of a medical determination that his HIV status rendered him unfit to serve as a firefighter."\textsuperscript{132} In support of the conclusion that Doe was denied a position with the fire department solely due to his handicap, the court pointed to the testimony of Captain Francisco of the District of Columbia fire department, who said that if

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{126} Id. at 568 (citing School Board of Nassau County, Florida v. Arline, 480 U.S. 273, at 288 (1987)).
\item \textsuperscript{127} Id. at 568-69.
\item \textsuperscript{128} Id. at 569.
\item \textsuperscript{129} Id.
\item \textsuperscript{130} Id.
\item \textsuperscript{131} Id. In addition to the expert testimony, the court noted that Doe had passed the fire department's own physical examination.
\item \textsuperscript{132} Id. at 570.
\end{enumerate}
\end{footnotesize}
Doe had not voluntarily disclosed that he was HIV positive, he would currently be working for the fire department.\footnote{133} Although Chalk and Doe were decided based on § 504 of the Rehabilitation Act, a number of courts have interpreted the decisions as placing individuals with HIV within the protection of the ADA. In Doe v. Kohn, Nast & Graf,\footnote{134} the United States District Court for the Eastern District of Pennsylvania found that an attorney infected with HIV was covered under the ADA when he was terminated from his job.\footnote{135} The plaintiff Doe, an attorney, was terminated after his employer discovered he was HIV positive.

The court concluded that after reading the ADA and its interpretive regulations,\footnote{136} the plaintiff, due to his HIV infection, had "a physical or mental impairment that substantially limits one or more of his major life activities, and thus has a disability within the meaning of the ADA."\footnote{137}

In Abbott v. Bragdon,\footnote{138} Sidney Abbott who had been infected with HIV for nine years sued her dentist under Title III of the ADA when he refused to fill a cavity in his office. The dentist, Randon Bragdon, did offer to treat the plaintiff in a hospital setting where she would have to pay both the dental fees and the additional hospital charges.\footnote{139}

In order to prove a violation under Title III of the ADA, the court held that the plaintiff must show: 1) the defendant's office constitutes a place of public accommodation; 2) that the plaintiff has a disability covered under the ADA; and 3) that the treatment of plaintiff does not pose a public threat to the health and safety of others.\footnote{140} On the first point, the court concluded, and the defendant agreed, that the dentist office

\footnote{133} Id. An interesting sidenote of Doe was the issue of compensatory damages. The court, citing Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992), held that compensatory damages were available under §504 of the Rehabilitation Act. Congress specifically provided that the same remedies that are available under Title IX are available under §504. Therefore, "Franklin must authorize the award of damages for intentional discrimination under §504." Doe, 796 F. Supp. at 572.


\footnote{135} Id.

\footnote{136} The court looked at the Justice Department's interpretations of the ADA. The Justice Department concluded that HIV is an impairment that "substantially limits a major life activity, either because of its actual effect on the individual with the disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as disabled." Id. at 1321, n.8 (citing 28 C.F.R. § 35.104; 28 C.F.R. § 36.104).

\footnote{137} Id. at 1321.


\footnote{139} Id. at 584.

\footnote{140} Id. at 585.
constitutes a place of public accommodation under the ADA. The court also found that "the vast weight of authority supports the proposition that HIV constitutes a physical impairment for the purposes of the ADA." The court then found that the plaintiff's HIV status interferes with, or substantially limits one of her major life activities, reproduction, and thus constitutes a disability under the ADA.

The last issue addressed by the court was whether the plaintiff's HIV status posed a direct threat to the health and safety of others. The ADA does not require the extension of public accommodations to any individual who poses a direct threat to the health and safety of others. To determine if an individual poses a direct threat to another individual, an individual assessment must be made based on reasonable medical judgment that relies on current medical knowledge.

The defendant argued that the performance of dental procedures creates a significant risk of transmission of HIV due to contact with the plaintiff's blood. In particular, the dentist points out that while filing a cavity, he and his staff must inject the plaintiff with needles and drill the decayed tooth. All of which, the defendant argued, creates a risk of transmission through spattering and misting blood and bloody saliva. The court refused to base its decision on allegations or speculations and held that it must be based on current medical information.

In concluding that the defendant was in violation of Title III of the ADA, the court held that the defendant could not point to a single case where a dentist contracted HIV while working on a HIV infected pa-
The plaintiff was able to show that the risk of transmission was small, and even smaller when the dentist implemented the recommendations of the Centers for Disease Control (CDC).

IV. HIV INFECTED ATHLETES AND SOME ETHICAL CONSIDERATIONS

Although most infectious disease and AIDS authorities will agree that the risk of an athlete transmitting HIV during an athletic event is very small, most will also admit there is at least a small possibility of transmission if certain conditions occur. Since there is at least a statistically small chance that HIV may be transmitted during an athletic event, athletic administrators must make some critical decisions about whether to allow an athlete with HIV to compete in sports. To illustrate some of the issues involved, imagine that you are the state boxing commissioner and Tommy Morrison would like to stage his next fight in your state.

The first question you should ask yourself is, do athletes with HIV pose a direct threat to the health and safety of other athletes while competing in athletic events? All of the current medical information about HIV transmission, indicates that individuals with HIV pose no direct threat to the health and safety of others, unless they are involved in high risk activities. Athletics is not a high risk activity. Yet, while athletics in general may not be a high risk activity, as the state boxing commissioner you need to consider whether boxing poses a greater risk of transmission than other contact sports, such as basketball, football and hockey, and therefore requires special regulations. There are a growing number of state boxing associations that believe the risk of transmitting HIV in the ring is greater than in other sports. Unlike other contact sports, boxing is a blood sport. Due to the increased exposure to blood,

150. Id.
151. Id. at 589.
152. Dana Seltzer, Educating Athletes on HIV Disease and AIDS - The Team Physician's Role, 21 THE PHYSICIAN AND SPORTS MED. 109 (Jan. 1993). The conditions needed to transmit HIV during an athletic event are: 1) a HIV positive athlete; 2) the HIV positive athlete begins to bleed; and 3) enough infected blood somehow enters the bloodstream of another athlete. This could be from another cut, or through the eyes.
153. High risk activities of HIV transmission are sexual contact with an infected person and needle-sharing among injecting drug users. See Goodman et al., supra note 9.
154. After Morrison's announcement a number of states, including New York, Washington, Oregon and Arizona have made pre-fight HIV testing mandatory. Richard Sandomir, New York to Screen Fighters for HIV, N.Y. TIMES, Feb. 15, 1996, at B17. New Jersey, California, and Florida have also either made pre-fight HIV testing mandatory or started to do so. HIV Tests for Boxers in New Jersey, N.Y. TIMES, Mar. 8, 1996, at B18.
some medical experts believe that "if there is any sport we need to be careful about it is boxing." The reason for the increased concern is because it is normal for fighters to bleed during a fight and for blood to splatter. This increased exposure to blood creates a greater likelihood that a fighter will or could come in contact with infected blood. The increased exposure to blood increases the risk of transmission. With an increased risk of transmission, you could probably conclude that HIV infected boxers should not be allowed to fight. Also, as the state boxing commissioner your job is to protect all fighters, not just HIV infected ones. In protecting the boxer's safety, if there is any risk of transmission, it is a smart move to err on the side of safety. After all, there is no cure for HIV and it will ultimately prove fatal to anyone who is infected.

The question is not whether there is a statistically small chance that someone can transmit HIV in the boxing ring, but whether the fear of transmission is reasonable. If the fear is not reasonable, then the fighters are being denied the opportunity to box because of the unreasonable fears of others. State boxing officials claim they are concerned that spattering blood or bloody saliva will get into the bloodstream of a fighter through an open cut or splashes into a mucous membrane (e.g., eyes or inside of the nose). However, when you examine the current medical evidence and the past history of HIV transmission, you discover that "the risk of transmission is so small as to be unmeasureable." Therefore, if you were to make an assessment as to whether an HIV infected fighter poses a direct threat to another fighter, based on reasonable medical judgment that relies on current medical knowledge and not on allegations or speculations, as the Supreme Court in Arline re-


156. One court went as far as to state that: "AIDS is the modern day equivalent of leprosy. AIDS, or a suspicion of AIDS, can lead to discrimination in employment, education, housing, and even medical treatment." South Florida Blood Service, Inc. v. Rasmussen 467 So.2d 798 (Fla. App.2d. 1985). Although we have learned a lot about HIV and AIDS since the court's decision in 1985, people with HIV are still discriminated against. A number of boxing commissions and organizations have discriminated against fighters with HIV, without any evidence that HIV can be transmitted in the rink. Examples of such discrimination include the actions of the Nevada state boxing commission when it canceled the Morrison fight, and the World Boxing Organization when it stripped Reuben "Hurricane" Palacio of his boxing title when both fighters tested positive for HIV.

157. Nightline: AIDS and Boxing (ABC television broadcast, Feb. 13, 1996) (citing Dr. Anthony Fauci of the National Institutes of Health; Dr. Alfred Saah of the John Hopkins Medical School, an AIDS specialist who worked for the NBA educating players of the risk of transmission; and Dr. Michael Johnson, of the NBA Players Association and Head of the NBA AIDS Education program.).

quires, you could probably conclude that HIV infected boxers should be allowed to fight.

Also, if HIV transmission is possible in boxing, why is it not possible in basketball, football or hockey? No other league tests its players for HIV, and yet it is not uncommon for players in those sports to be cut or bleeding. Is the sport of boxing so different that it requires special regulations, such as mandatory pre-fight testing? Yet, how can mandatory pre-fight testing be the answer when there is still some debate about its effectiveness on boxers? Individuals infected with HIV will test negative until antibody production begins, which takes usually about six weeks after infection. Therefore, it is possible for a fighter to have HIV and still test negative. Another problem with mandatory pre-fight testing is the effect a false-positive could have on the fighter and the promotion of the fight. As noted by one court, "the public has reacted to the disease with hysteria" and those people thought to have HIV are being discriminated against in nearly every phase of their lives.

One final question you might ask is, are there are any reasonable accommodations that you can make to eliminate the risk of transmission to non-infected fighters? One such accommodation would be a provision in the contract ending the fight if an HIV infected boxer suffers any heavy bleeding. At which time the outcome of the fight would be determined by the judges' scorecards. Another suggestion would be to allow as much time between the rounds, or suspend the fight during a round, to stop all the bleeding. Are these accommodations reasonable? Stopping the fight, or stopping the blood flow, will only minimize the risk. The only way to eliminate all risks associated with HIV transmission would be to exclude all athletes infected with HIV from sports.

159. Although the vast majority of individuals infected with HIV will begin producing detectable antibodies within 6 weeks, it can take up to one year after being exposed. Seltzer, supra note 152.


161. Id.

162. Is this a reasonable accommodation? What would happen if in a championship fight one of the fighters is cut in the first round? How about if the fight is stopped in the tenth round, after a fighter, who has lost all nine of the previous rounds, has clearly hurt the other fighter and is close to knocking him out? Also, stopping the fight will only minimize the risk. The only way to eliminate all risks associated with HIV transmission would be to exclude all athletes infected with HIV from sports.

163. Seltzer, supra note 152.
V. Conclusion

Athletic administrators can no longer wait for the courts to provide guidance in developing a policy regarding athletic participation by HIV positive athletes. They need to act now, especially since it is likely that there are HIV positive athletes competing in their organization. In developing a policy, athletic administrators should ask themselves the following questions: 1) do athletes who are HIV positive pose a direct threat to the health and safety of other athletes; 2) should any athlete infected with HIV compete in competitive athletics; 3) does boxing pose a greater risk of transmission than other contact sports, such as basketball, football and hockey, and therefore require special regulations; and 4) can or should we do anything to protect the athlete who does not have HIV while competing with athletes who are HIV positive?

Finally, remember that the ADA and §504 of the Rehabilitation Act require that an organization make reasonable accommodation for individuals with HIV. Therefore, you need to consider whether there are any minor changes that can be made that would allow these athletes to participate in sports.