

WADA - INTERNATIONAL STANDARD FOR THERAPEUTIC USE EXEMPTIONS 2021.

[Author – Jatin Lalwani, *Fourth Year Student at National Law School of India University, Bengaluru; Researcher at SLPRR*]

1. What is the purpose and scope of ISTUE 2021?

ISTUE is developed by the WADA and are mandatory provisions for providing certain exemptions for use of banned substances by athletes. It seeks to establish conditions and guidelines in which the use, possession or administration of banned substances is permitted for therapeutic (medical) reasons. It also establishes a proper framework for guiding the athletes to apply for these exemptions, granting them, the review process and to maintain confidentiality of the process.

2. What are the conditions for obtaining Therapeutic Use Exemptions?

To obtain the exemptions, an athlete has to show all of the following –

- a) That the substance which is prohibited is needed for the treatment or diagnosis of medical issues which should be supported by evidence.
- b) That the substance in question would not lead to any unanticipated performance enhancement after the treatment on regaining the health in the normal course of action.
- c) That there is no alternative to the substance in question for the treatment. In case of alternative, the physician has to explain why the substance was chosen over other forms.
- d) That the use of such substance or method is not in response to any prohibited substance used prior.

3. Can the Therapeutic Use Exemption be applied retroactively?

There could be a retroactive application for such exemption if the athlete can show any one of the following -

- a) That there was emergency or the treatment had to be done urgently.
- b) That the athlete had issues such as insufficient time, opportunity or other exceptional circumstance before the sample was collected.
- c) That the national level anti-doping agency was focussing on certain sport and it did not require or permit the athlete to apply for the exception at the time.
- d) If the athlete is not an international or national level athlete and has been using such substance for therapeutic reasons.
- e) That the athlete is using such substance for therapeutic reasons and such substance is only prohibited in the competition he/she is taking part in.

In exceptional circumstance where it would be unfair to the player to not be granted retroactive exception, the exception may be granted. However, for international and national level athletes, the anti-doping agency may grant such exception only with the prior approval by WADA. For other athletes, the anti-doping agency may grant without approval but such grant can be reversed by WADA. The WADA decisions for such approval/disapproval cannot be challenged. All the decisions of the anti-doping bodies should be reported through The Anti-Doping Administration and Management System (ADAMS).

4. What is the process of applying for a Therapeutic Use Exemption?

The athlete may apply for an exemption at the national anti-doping body as soon as possible. If such exemption is granted by the national body, it need not again be applied for to any other national body and such exemption would be recognised globally. In case a particular competition bans a substance, the exemption should be applied 30 days prior to the competition unless there are certain exceptional situations.

The exemption can be applied to the national body, international body or other event organising body (as applicable) by filling up the form provided on the websites. If the athlete is not sure of the body that the exemption should be applied to, the national body of that athlete has to be consulted. If the national body refuses to grant exemption because of issues of its power to grant,

the rules of the body of the residing country has to be looked. If the athlete still does not come within the body's authority, the rules of the country of which he/she is a citizen has to be consulted.

5. What are the conditions for granting of exemptions?

The application for such exemption should only be applied at one organisation. It should be accompanied by relevant medical documents as may be mentioned and signed by the physician. There would be a time limit for the exemption granted and it will expire after that time. The exemption would be granted only for the particular banned substance and in case there is need for a new dosage which is also prohibited, the relevant anti-doping body has to be consulted.

6. What are the responsibilities of the anti-doping organisations with respect to the exemptions?

Every organisation has to establish a TUEC (Therapeutic Use Exemption Committee) to consider the applications which would include three physicians and other experts where required. All organisations should provide for a clear process of application to the TUEC. All decisions of the TUECs have to be published by the relevant organisations in English or French through ADAMS within 21 days giving reasons for the same while maintaining confidentiality. The applicability of the exemption (national/international level) shall be communicated to the athlete.

7. How is the exemption recognised?

An exemption granted by one anti-doping organisation will be recognised by other organisations as well if all the conditions were satisfied. The international federation or other event organisers has to maintain and publish a list of bodies of whose decisions it will automatically recognise. If they do not recognise automatically, a request has to be filed by the athlete to that relevant organisation for such recognition.

8. What are the review powers of WADA?

Apart from the already discussed review powers of the WADA, it can also review any other exemption that has been granted to check the compliance of the conditions for granting such exemptions. The athlete should apply for the review in writing and if WADA denies to review, such decision could not be appealed further. In case where WADA is obliged to review, it can still be sent back to the relevant organisation by WADA. The reversal of decisions by WADA on review shall be prospective or retroactive depending on the type of application.

9. What are the confidentiality conditions of the process?

All personal information of the athlete during the process is governed by confidentiality according to the International Standard for the Protection of Privacy and Personal Information. However, all such information will be shared with the relevant members of the organisation and the athlete should authorise the physician to share the relevant information to the body when asked. The decision of the exemption shall also be shared with the other relevant organisations. All medical information is to be governed by medical confidentiality.

