

**California State Athletic Commission
Transgender Initial Statement of Reasons (ISR)**

Hearing Date: August 11, 2014

Subject Matter of the Proposed Regulations: Transgender Regulations

Purpose

Federal, state and local laws prohibit discrimination on the basis of gender identity/expression. Transgender athletes have the right to participate in licensed sports, and major sports licensing authorities (NCAA, ABC, Olympics, etc) have policies in place to govern safe and fair participation of transgender athletes. The purpose of this regulation is to promote fair participation in combat sports and prevent discrimination on the basis of gender or gender identity in a manner that will also protect public health and safety for all participants.

Factual Basis/Rationale

“Transgender” describes an individual whose gender identity does not match the person’s sex at birth. Transgender people are not born with physical characteristics that distinguish them from others. They, like non-transgender individuals, choose to participate in athletic activities for fitness, recreation or employment. Participation in combat sports confers a unique set of health risks as compared to other sports. Treatment for gender transition may involve hormone therapy and/or surgical interventions that may create specific safety concerns in combat sports, both for the transgender athlete and for their opponents. The current regulation is based upon existing sports policies, published research and medical expert consensus. Transgender policies for the National Collegiate Athletic Association (NCAA), Association of Boxing Commissions (ABC) and the Olympics all require medical documentation by an expert with knowledge and training in the area, appropriate notification of the regulatory body in advance of competition, proper documentation of any treatment and in particular hormonal therapy and monitoring of hormone levels to ensure no overt health risks to the athlete as well as no competitive advantage. Many of these issues are also outlined in the NCLR’s handbook “On the Team: Equal Opportunity for Transgender Student Athletes”. In addition, the Endocrine Society has published clinical guidelines titled “Endocrine Treatment of Transsexual Persons” in the Journal of Clinical Endocrinology and Metabolism (September 2009, 94(9): 3132-3154). This guideline provides time ranges needed to allow for increases in muscle mass/strength (for female to male transitions; 2-5 years) or decreases in muscle mass/strength (for male to female transitions: 1-2 years).

Currently CSAC has no specific regulation or policy regarding participation of transgender athletes in combat sports licensed by the Commission. This at best creates an environment that where transgender athlete participation is uncertain and

may not be uniformly managed, and at worst creates a possibility for discrimination. Legal protections exist to prevent discrimination based upon gender or gender identity. At the federal level, the Equal Employment Opportunity Commission (EEOC) has held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and, therefore, is covered under Title VII of the Civil Rights Act of 1964. California has enacted non-discrimination laws prohibiting discrimination on the basis of sexual orientation and gender identity [Cal. Penal Code §§ 422.55 and 422.56, Cal. Gov't Code § 12926 et seq. (non-discrimination in employment and housing), Cal. Civ. Code § 51 (public accommodations), H&SC§ 1365.5 (insurance contracts), Cal. Ed. Code § 200 (education and school safety)]. This regulatory effort is initiated in the interest of creating a level playing field for transgender licensees, with equal opportunity but also taking into consideration fairness to all competitors (transgender and not) as well as unique elements and concern for safety.

Underlying Data

1. "Inclusion of Transgender Student-Athletes", Adopted by the NCAA Executive Committee, April 2010, http://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf
2. AthletesCAN, the Canadian Centre for Ethics in Sport, and the Canadian Association for the Advancement of Women and Sport and Physical Activity, Promising Practices: "Working With Transitioned/Transitioning Athletes in Sport (2009)".
3. "Including Transitioning and Transitioned Athletes in Sport — Issues, Facts and Perspectives – Summary". Brenda Wagman (February 12, 2009), [http://www.caaws.ca/e/resources/pdfs/Summary_Transition_DiscussionPaper_FINAL1%20\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Summary_Transition_DiscussionPaper_FINAL1%20(2).pdf).
4. "Working with Transitioning or Transitioned Athletes in Sport - Emerging Themes". Rachel Corbett (May 26, 2009), [http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review(2).pdf).
5. Goorin, Louis, and Mathijs Bunck, "Transsexuals and Competitive Sports," European Journal of Endocrinology 151(2004): 425-429, <http://www.eje.org/cgi/reprint/151/4/425.pdf>.
6. "Social Science Literature on Sport and Transitioning/Transitioned Athletes"— Literature Review. Kevin B. Wamsley (February 2008), [http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review\(2\).pdf](http://www.caaws.ca/e/resources/pdfs/Wamsley_lit_review(2).pdf).
7. "Do Transitioned Athletes Compete at an Advantage or Disadvantage"— Literature Review. Michaela C. Devries (May 18, 2008), [http://http://www.caaws.ca/e/resources/pdfs/Devries_lit_review\(2\).pdf](http://http://www.caaws.ca/e/resources/pdfs/Devries_lit_review(2).pdf).

8. Steinbach, Paul, "Change Candidates," "Athletic Business"(August 2008), <http://www.athleticbusiness.com/articles/article.aspx?articleid=1817&zoneid=3>.
9. "Transgender Student-Athlete" - A 30-minute video presentation sponsored by the NCAA and conducted by Dr. Betsy Crane, Widener University, http://s3.amazonaws.com/ncaa/web_video/diversity_inclusion/transgenderSA.html. Dr. Crane presents a sexeducator's expertise on gender awareness and diversity, and provides definition to assist the viewer in understanding best practices for including transgender students in athletics participation.
10. "On the Team"
<http://www.wiaa.com/ConDocs/Con550/TransgenderStudentAthleteReport.pdf>
11. Comprehensive discussion of state court and administrative decisions applying sex and disability discrimination to transgender plaintiffs, see www.nclrights.org/site/DocServer/state_cases091004.pdf?docID=1203.
12. *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012), <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>.

Fiscal Impact Analysis in General

The Commission anticipates no fiscal impact pursuant to this regulation.

Economic Impact Analysis/Assessment

The Commission does not expect a significant economic impact to the transgender athlete applicant as many of the tests and procedures are required as part of the transgender medical process as well as some are required for the professional athlete licensing process. Additionally, the Commission expects very few transgender athlete applications.

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal will not be of sufficient amount to have the effect of creating or eliminating jobs. This proposal would only impact individuals who desire to compete as a transgender athlete.
- It will not create new business or eliminate existing businesses within the State of California because this proposal will not be of a sufficient amount to have the effect of creating or eliminating business.
- It will not affect the expansion of businesses currently doing business within the State of California because this proposal will not be of a sufficient amount to have the effect of limiting or furthering the expansion of businesses.

- This regulatory proposal does not affect worker safety because this proposal is not relative to worker safety.
- This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

Benefits of this regulatory proposal:

This regulatory proposal will promote fair participation in combat sports and prevent discrimination on the basis of gender or gender identity in a manner that will also protect public health and safety for all participants.

This proposed regulation will not affect any federally funded State agency or program.

Business Impact

The Commission has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Requirements for Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory requirement or other provision of law.

Only Available Alternative: The alternative is to do nothing and to not allow an otherwise eligible portion of the population equal opportunities to compete in combat sports.

Rejected: This proposed regulatory change is necessary to protect the rights of persons who desire to compete as a transgender athlete. The Commission recognizes that no individual may be discriminated against on the basis of gender or gender identity, and to ignore such rights, could possibly subject the Commission to litigation.