

## DECISION MAKING MODEL

NAMES: Max Hume, Dan Shea and Raga Vadhi

Pick ONE ethical/legal QUESTION relating to Maria's case. Place a check next to the one you chose to answer.

\_\_\_\_\_ What should Maria Do?  
\_\_\_\_\_X\_\_\_\_\_ What should the committee do?

### II. PART II: LIST 5 SOLUTIONS TO THIS QUESTION. THEN **RANK THEM 1-5** WITH ONE BEING YOUR CHOICE.

1. Enact new guidelines and regulations regarding androgen insensitivity, relying on the expert advice of both medical and legal professionals familiar with the medical condition and the current rules that govern Olympic sporting events.
2. Re-host the hurdles event allowing Maria to compete. (Assuming we are discussing this case from the reference point of 1985 and not 2013)
3. Do nothing due to the relative statistical rarity of the condition and the likelihood of encountering competitors that have this condition. Continue to enforce and follow the existing guidelines regarding the sex control testing process.
4. Create a third sex designation for individuals that fail sex control testing procedures and allow them to compete against each other.
5. Bar individuals with androgen insensitivity from competition on the grounds that all competitors must be "biologically female" and require the presence of an XX chromosomal pair in order to provide a biologically level playing field.

### RESTATE YOUR #1 SOLUTION

In order to account for individuals that have chromosomal inconsistencies regarding sex control testing, consult with medical and legal experts on the issues surrounding potential athletes that have androgen insensitivity. Based on the findings of this committee of medical experts and legal scholars, enact new guidelines and regulations surrounding the participation of athletes who have this condition.

### III. LIST FOUR OR MORE REASONS THAT CHOSE YOUR #1 SOLUTION

1. Given the medical condition listed in Maria Patino's circumstances, more information is required regarding the effects of androgen insensitivity to determine if allowing her to participate would constitute an unfair playing ground for the other participants. Qualified medical personnel familiar with the physiological effects of such a condition should be relied upon to assist in making this determination.
2. We must also consider the current guidelines and rules surrounding international competition and ensure that we take into account the existing legal framework around participation and testing procedures and controls prior to making any ruling. Therefore, it behooves us to also consult with legal experts familiar with the existing rules and guidelines, in order to ensure that any new rules and regulations fit within this framework and do not cause conflicts.
3. It is the duty of the members of the Olympic committee to ensure a level playing field for all competitors. As such, the onus of performing a thorough and adequate examination of the existing guidelines and issuing a ruling surrounding androgen insensitivity should be conducted to ensure that all competitors have clear and concise rules governing their participation in Olympic events.
4. Once a determination and ruling has been made and guidelines have been established, future athletes will have clarified rules surrounding sex control testing, their rights and responsibilities as well as the rights and responsibilities of the Olympic committee in making the determination regarding an athlete's participation in the games. While this ruling may or may not help Maria in her particular case, it will codify regulations for future cases and serve as a framework for other issues that may arise as the result of sex control testing at the Olympic games.

### IV. IF MARIA OR THE COMMITTEE CHOOSE YOUR #1 SOLUTION WHAT WILL HAPPEN? LIST THREE THINGS THAT MIGHT HAPPEN. THINK ABOUT LEGAL PROBLEMS, PSYCHOLOGICAL PROBLEMS, MEDICAL, FAMILY, SOCIETY, FUTURE RAMIFICATIONS AND GOVERNMENT.

1. Should the committee choose to move forward with my recommendation, they will assist to indemnify themselves against legal actions that may arise in future cases as a clear legal guideline will be established regarding irregularities that occur during the sex control testing process.

2. The medical facts surrounding this condition and its effects on performance with respect to sporting events will need to be examined and debated. This will largely depend on any existing body of research, and no doubt will give rise to further research into the phenomena. I would expect experts to come down on both sides of the issue unless there is clear and compelling evidence one way or the other with respect to the physiological effects of androgen insensitivity.

3. The committee will have to deal with any potential legal action that Maria Patino may decide to take as a result of being barred from competition. This will largely depend on the existing legal framework surrounding her participation and the rules that currently govern sex control testing at the Olympic games. Should a case move forward and a ruling be made, the ramifications of the case will play a vital role in the shaping of new guidelines and regulations regarding athlete participation and how sex control testing is carried out and enforced.

#### V. LIST THREE REASONS SOMEONE MIGHT NOT AGREE WITH YOUR DECISION.

1. One could argue that the existing framework provides sufficient information to make a ruling. Maria was tested and shown to have an XY chromosome pair. She failed the sex control testing and was barred from competition as a result.

2. The time and cost involved with convening a committee of experts surrounding the issue of androgen sensitivity to come up with a new set of guidelines may be prohibitive. Or there may not be clear and concise evidence available to make a determination as to the effects the condition has on performance enhancement.

3. There is an alternative argument that sex control testing should be removed, rather than embellished. Removing the prospect of future athletes ever being tested under existing sex control procedures.

#### VI. POSSIBLE LEGAL RAMIFICATIONS (list three): possible law suits, criminal actions, who might need an attorney etc.

1. Maria has a good case to sue the Olympic Committee on the grounds of discrimination due to a verifiable and recognized medical condition. The effect this case's outcome would have would help shape future guidelines and regulations surrounding athlete participation in Olympic events.

2. While highly unlikely in my opinion, the Olympic Committee could take further action against Maria if they can prove that she knowingly misrepresented herself as female and attempted to participate in the Olympic Games as a female. One past example of this that comes to mind would be the administration of estrogen to males and sexual reassignment surgery performed on members of the East German Swim Team in the 1970's and 1980's. However, based on the evidence presented in the case study, it is unlikely that this was a concerted effort on the part of the Spanish government and Maria Patino to misrepresent her sex. Should such evidence come to light, it would provide the committee to take further legal action against Maria.

3. No evidence has been presented of criminal negligence or wrongdoing by either party. As such, it is my opinion that any legal actions that arise from this case would most likely be civil. I'd expect Maria Patino to, at a minimum, file a formal complaint and request arbitration regarding being barred from participation in the Olympic Games and the resulting ruling to play a key role in shaping new regulations regarding sex control testing and athlete participation.

It also seems the Olympic Committee would be best served to issue a formal apology to Maria for the way she was treated in the aftermath of these events. She spent several years fighting to be re-licensed and was given medical clearance to compete again in 1988. It is difficult to imagine the emotional impact an event like this would have on an individual.