



USA Fencing
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February 16, 2018

Honorable Jerry Moran
Chairman
Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security
United States Senate
Washington, DC 20510

Honorable Richard Blumenthal
Ranking Member
Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security
United States Senate
Washington, DC 20510

Dear Senator Moran and Senator Blumenthal:

USA Fencing is committed to creating a safe and positive environment for the physical, emotional and social development of all athletes and participants, and to promoting an environment free of misconduct.

Please see below USA Fencing's responses to the questions from your letter dated February 2, 2018.

- 1. What reporting protocols for child and sexual abuse allegations are currently in place to ensure that all reports receive fair, timely, and thorough review by all appropriate parties, including law enforcement?**

USA Fencing's Safe Sport Policy (the "Policy") has been in place since 2013, and USA Fencing amended its Bylaws in July 2017 to implement the Center for Safe Sport Code (the "Code"). The Policy and Code prohibit misconduct including, among other things, child and sexual abuse, and provide means for anyone to report observed or suspected violations to USA Fencing and/or the U.S. Center for SafeSport (the "Center"). The Code requires that all Covered Individuals report observed or alleged instances of child physical or sexual abuse. USA Fencing maintains a Safe Sport page on our website that links to the Policy and Code and provides information for reporting offenses. The Policy further provides that USA Fencing will report to the appropriate law enforcement authorities all reported allegations of child physical or sexual abuse. If USA Fencing receives a report of child or sexual abuse, the report is immediately forwarded to the Center and reporting protocols are followed. USA Fencing complies



with state mandatory reporting laws.

USA Fencing Covered Individuals (“Covered Individuals”) include: Any individual who currently is, or was at the time of the possible SafeSport Code violation, within the governance or disciplinary jurisdiction of USA Fencing, and/or who is seeking to be within the governance or disciplinary jurisdiction of USA Fencing, for example through application for membership; all individuals, both athletes and non-athletes, USA Fencing formally authorizes, approves or appoints (i) to a position of authority over athletes, or (ii) to have frequent contact with athletes, National Office staff; members; athletes the NGB designates for the USADA required testing pool; volunteers; contractors; and medical staff/trainers.

Reports of misconduct and SafeSport policy violations can be made to USA Fencing and/or the Center online, by mail, phone or submitted electronically and can be made anonymously.

- 2. Are there special accommodations to account for volunteers that are separately employed by non-NGB institutions, like the case of Dr. Nassar who was employed by MSU, in these reporting practices?**

USA Fencing does not have special accommodations for volunteers who are separately employed by non-NGB institutions, because volunteers are Covered Individuals under the USA Fencing Safe Sport Policy. They must comply with the “Code”, and its reporting requirements apply to their conduct.

- 3. Has your organization ever utilized an NDA to enforce confidentiality against any athlete, volunteer, or employee in the past? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual NDA used by your organization.**

USA Fencing has not required any athlete, volunteer or employee to sign an NDA to keep confidential and/or restrict disclosure of information about any wrongdoing, bad act, offense or omission, or any violations of the Code, Policy, other USA Fencing rules, or of applicable law.

- 4. Has your organization ever utilized additional binding agreements other than NDAs with athletes under your purview? To the extent possible, please provide all details regarding the justification and circumstances surrounding every individual agreement used by your organization.**

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All USA Fencing members, including athletes, agree to certain terms and conditions of membership in the form annexed as Appendix A. Among other things, that agreement requires members to adhere to USA Fencing's Rules of Competition, Athlete Handbook, and Safe Sport Policy, and to the Code, and to submit disputes to arbitration after applicable administrative procedures have been exhausted. USA Fencing requires National Team member athletes to sign a Code of Conduct in the form annexed as Appendix B. USA Fencing also enters into agreements for direct athlete support and elite athlete health insurance. USA Fencing has also entered into consent agreements resolving certain disciplinary and/or legal proceedings. Those agreements did not preclude reporting to law enforcement or other disclosure of any underlying alleged misconduct.

- 5. Since the recent lawsuits filed against USOC, USAG, and MSU for organizational failures to investigate, discipline, or remove Dr. Nassar after complaints of sexual abuse, has your organization taken any additional steps to improve the transparency, efficiency, and effectiveness of its criminal misconduct reporting mechanisms?**

USA Fencing believes its mechanisms for reporting criminal misconduct to law enforcement agencies have been and remain sufficiently transparent, efficient and effective. We are constantly reviewing and striving to improve our procedures for reporting non-criminal Safe Sport offenses to the Center and/or USA Fencing, including by, among other things, updating our Safe Sport web page and educating our members about Safe Sport and its reporting mechanisms.

- 6. Please identify any circumstance in which USOC did not take any action following a report of criminal behavior from your organization. To the extent possible, please provide all details regarding the justification and circumstances involved in USOC's decision to not act.**

USA Fencing is not aware of any such circumstance.

- 7. In 2017, USOC engaged with a third-party consultant to assess compliance with SafeSport policies and procedures within USOC and all of its NGBs and High Performance Management Organizations (HPMO). Please describe the report issued for your organization, including any recommendations necessary for full compliance. If additional recommendations were issued, what actions were taken by your organization? Are there any remaining recommendations that your organization has yet to fully implement?**

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USA Fencing's SafeSport audit report included two recommendations. The first recommendation was to update language on our background screening policy, as follows:

United States Fencing Association's policy states, "All USA Fencing officials for sanctioned events that will have direct access to minor participants shall be screened through the Professional Member program," and "All USA Fencing sanctioned event volunteers that will have direct access to minor participants shall be screened through the Professional Member program." United States Fencing Association's application of this policy is inconsistent with the requirements listed in the Athlete Safety Standards and may be focused too narrowly on minors. The Athlete Safety Standards do not limit these activities to include only minors.

USA Fencing immediately updated the language and provided the following response: We have amended the language of the USA Fencing Safe Sport policy to be in compliance with the Athlete Safety Standards by removing the word "minor" before participants and/or athletes. As a practical matter, USA Fencing has been enforcing the policy for individuals who interact with athletes and participants of all ages.

The second recommendation was also a language update, as follows:

United States Fencing Association's SafeSport-related documentation and administrative materials does not specifically indicate that the overall policy applies to athletes designated for the USADA registered testing pool.

Again, the correction was made immediately. As a practical matter, USA Fencing has been enforcing the policy including athletes that we designate for the USADA required testing pool (RTP).

In December 2017, the USOC issued a report that USA Fencing had implemented the recommendations and are considered closed.

USA Fencing is pleased to see that the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017 became a law earlier this week. We look forward to working together to provide a safe environment for all athletes and participants in sport.

Sincerely,



Kris Ekeren
USA Fencing Executive Director

Appendix A: USA Fencing Membership Agreement

In consideration and as a condition of my and/or my minor child's being granted membership in the United States Fencing Association ("USA Fencing") and/or being allowed to participate in any way in USA Fencing and its related events and activities, I acknowledge and agree, on my own behalf and on behalf of any child or other person for whom I am signing this document ("I" or "myself" or "my" being construed hereinafter to include all such persons), as follows:

SUBMISSION TO RULES: I agree to abide by the current rules of USA Fencing as set forth in, among other things, the Bylaws, Rules of Competition, Athlete Handbook, Operations Manual, USA Fencing Safe Sport Policy, USOC Safe Sport Code (including the Practices and Procedures and Supplementary Rules appended thereto) and USADA Rules, all as now constituted and as may be amended from time to time.

ASSUMPTION OF RISK, WAIVER AND RELEASE OF LIABILITY: I acknowledge and agree as follows:

1. The risks of injury from the activities involved in the sport of fencing and related activities are significant, including the potential for serious injury, disability or death, and while particular skills, equipment, and personal discipline may reduce those risks, the risks may continue to exist; and,
2. I KNOWINGLY AND FREELY ASSUME ALL SUCH RISKS, whether known or unknown, apparent or latent, EVEN IF ARISING FROM THE NEGLIGENCE OF THE RELEASEES (defined below) or others, and assume full responsibility for my participation; and,
3. I, for myself and on behalf of my heirs, assigns, personal representatives and next of kin, HEREBY RELEASE, INDEMNIFY AND HOLD HARMLESS USA FENCING, and all affiliated sections, divisions, clubs, host organizations, officers, directors, athletes, referees, coaches, volunteers, officials, club members, individual members, agents, employees, contractors, participants, sponsoring agencies, sponsors, advertisers, and, if applicable, owners or lessors of premises used for the activity ("Releasees"), WITH RESPECT TO ANY AND ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ALLEGING OR ARISING FROM ANY PERSONAL INJURY, DISABILITY, DEATH, or loss or damage to person or property, that may occur or has occurred, in connection with the sport of fencing or related activities, WHETHER OR NOT ARISING FROM THE NEGLIGENCE OF ANY OF THE RELEASEES, to the fullest extent permitted by law.

I HAVE READ THIS ASSUMPTION OF RISK, WAIVER AND RELEASE OF LIABILITY AGREEMENT FULLY, UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND SIGN IT FREELY AND VOLUNTARILY.

DRUG TESTING: I understand that, pursuant to the rules and regulations of USA Fencing, the US Anti-Doping Agency ("USADA") and/or the World Anti-Doping Agency, drug testing may be conducted for athletes who compete in tournaments conducted, sponsored and/or sanctioned by USA Fencing, and that detection of the use of banned drugs would be cause for penalties including but not limited to suspension for a period of time, based upon factors including the substance(s) detected.

In consideration of being granted membership in USA Fencing and/or being allowed to participate in any way in the USA Fencing and its related events and activities, I agree to familiarize myself with and to comply with USADA's and other applicable anti-doping rules. Without limiting the generality of the foregoing, I consent to be subject to drug testing and to penalties if declared positive for a banned substance. I am aware that failure to comply with any selection for a drug test will be cause for the same penalties as for those who are positive for a banned substance. I realize that there are OVER-THE COUNTER medications that may contain banned substances and that it is my responsibility to insure that I do not inadvertently take any medication that contains a banned substance. I know that I may call the USADA hotline, 800-233-0393 for questions about medications and banned substances or practices.

CONSENT FOR MEDICAL TREATMENT: This is to certify that I give my written consent to the USA Fencing and its representatives for myself and/or any person for whom I am signing this document to obtain medical care from any licensed physician, athletic trainer, hospital or clinic for any injury or illness that may arise during fencing and related activities.

QUALIFICATION (Championships and NACs): I understand that some individual events require qualification and that my entry or entries will remain pending until qualification is confirmed. I further understand that, should I not meet the stated qualification, I will be withdrawn from the event and a refund will be processed on my behalf.

CHOICE OF LAW: The foregoing agreement, consent, waiver and release shall be governed, interpreted and construed according to the law of the State of Colorado, without reference to choice of law principles.

ARBITRATION: Except as set forth in the USA Fencing Safe Sport Policy and USOC Safe Sport Code (including the Practices and Procedures and Supplementary Rules appended thereto), any controversy or claim arising from or relating to my membership or participation, or my minor child's membership or participation, in USA Fencing, including but not limited to any matter arising from or relating to (i) qualification or selection for, or competition in, any fencing event, whether staged under the auspices of USA Fencing, the FIE, the USOC, the IOC or some other fencing administrative body, (ii) qualification or selection for, or activities as, a coach, referee or other official at any such fencing event; or (iii) compliance with or violation of any rule, regulation, policy, practice, bylaw, statute or common law, of USA Fencing, FIE, USOC or IOC, or of any national, state, provincial or local governing or administrative body, including any issue concerning compliance by USA Fencing or by any officer, director, employee, agent, attorney, referee, official, club member, individual member, committee member or volunteer of USA Fencing, including but not limited to any matter arising from or relating to allegations of damage to property or injury to person, shall to the fullest extent permitted by law be settled by arbitration, provided, however, that prior to the commencement of any such arbitration, any and all available administrative procedures and remedies of USA Fencing, FIE, USOC, IOC or applicable sports, governmental or administrative body shall have been exhausted.

Any arbitration shall administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be governed by the laws of the State of Colorado and the United States, and it shall be conducted in Colorado Springs, Colorado. The arbitrator(s) will have no authority or jurisdiction to award consequential, punitive or exemplary damages, and any demand for such damages shall be a nullity. Except as may be required by law or as reasonably required to enforce or appeal from an arbitration award or as noted above, arbitration proceedings shall be kept confidential, and neither a party, an attorney for a party, a witness, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder to a non-party without the prior written consent of all parties.

Appendix B: Athlete Code of Conduct

I pledge to uphold the spirit of the USA Fencing Code of Conduct (the "Code"), which offers a guide to my conduct as a member of the USA National Team (the "Team"). I acknowledge that I have a right to a hearing if my opportunity to compete is denied or if I am charged with a violation of this Code.

I have familiarized myself with the Code and understand that acceptance of its provisions is a condition of my selection to the Team.

As a Member of the Team, I hereby promise and agree that I:

- will abide by all published rules related to the Team selection procedures as approved by USA Fencing;
- have acted and will act in a sportsmanlike manner consistent with the spirit of fair play and responsible conduct;
- will maintain a level of fitness and competitive readiness that will permit my performance to be at the maximum of my abilities;
- will submit to a physical examination by USA Fencing medical personnel if my ability to compete is compromised due to physical injury and I understand that such injury may be cause for my not being selected to the Team, being removed from the Team, or not being allowed to participate if I remain on the Team.
- will not commit an anti-doping violation as defined by the International Olympic Committee (IOC), the [International Federation] ([IF]), the World Anti-Doping Agency (WADA), the United States Anti-Doping Agency (USADA) or the United States Olympic Committee (USOC) rules;
- am not currently serving a doping violation and/or do not have a pending or unresolved doping charge;
- will not engage in any conduct that is criminal under any laws applicable to me, including, but not limited to laws governing the possession and use of drugs and alcohol and providing of drugs to any person and of alcohol to minors;
- will not participate or assist in any gambling or betting activities associated with any event related to my sport or my participation;
- am eligible to compete under the rules of the FIE;
- am in possession of a valid USA passport, that will not expire prior to six months following the conclusion of the international competition, should I be chosen for an international team that requires a passport;
- will refrain from conduct detracting from my ability or that of my teammates to attain peak performance;
- will respect the property of others whether personal or public;
- will respect members of my Team, other teams, spectators and officials, and engage in no form of discriminatory behavior or verbal, physical or sexual harassment or abuse;

- will follow my Team's written rules, including by way of example, rules regarding curfew, attire, on-time attendance at required team meetings, consumption of alcoholic beverages and prohibitions on the release of confidential team information;
- will abide by the rules of the FIE concerning allowable trademark identification on clothing and equipment worn or used in competition or on visible body tattoos.
- understand that if I require legal representation because I am accused of criminal misconduct or an anti-doping violation, or if for any other reasons I require the services of an attorney, I will be personally responsible for payment of such legal fees and expenses;
- will act in a way that will bring respect and honor to myself, my teammates, USA Fencing and the United States; and
- will remember that at all times I am an ambassador for my sport, my country and the Olympic Movement