



2025 FLEMING BUILDING  
503 THOMPSON STREET  
ANN ARBOR, MICHIGAN 48109-1340  
734 763-5082 FAX: 734 763-1399

February 6, 2007

Scott Fontaine  
6146 S. Cushman Ave.  
Tacoma, WA 98408

Re: FON 0036-07

Dear Mr. Fontaine:

I am writing in regard to your Freedom of Information Act request directed to Mary Sue Coleman dated January 24, 2007, which was received on January 29.

It will not be possible to respond to this request within the five-day period accorded by the Michigan Freedom of Information Act. However, under Section 5 (2) (d) of the Act, the University is permitted to extend the deadline for not more than 10 business days.

The University will respond to your request on or before February 19, 2007.

Sincerely,

A handwritten signature in blue ink that reads 'Patricia J. Sellinger'.

Patricia J. Sellinger  
Freedom of Information Act Coordinator



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February 19, 2007

Scott Fontaine  
6146 S. Cushman Ave.  
Tacoma, WA 98408

Re: FON 0036-07

Dear Mr. Fontaine:

I am writing in regard to your Freedom of Information Act request directed to Mary Sue Coleman dated January 24, 2007, which was received on January 29.

You requested the following records related to the drug testing of University of Michigan athletes conducted since January 1, 2004 (unless otherwise stated):

- “Documentation or an accounting of all positive tests.”

Your request is granted. Enclosed find responsive records for the 2004-05 and 2005-06 seasons. A breakdown for the 2003-04 season does not exist. Additionally enclosed find a clarification regarding positive test results.

- “A calendar or other documentation indicating the frequency of drug tests administered to athletes.”
- “Records related to punishments levied for positive tests.”

Enclosed find a copy of the Student-Athlete Policy on Drugs and Drug Testing, which contains responsive information.

- “The budget for or amount of money dedicated to drug testing for fiscal or calendar years, 2004, 2005, 2006 and 2007.”

I have been advised by the Athletic Department that the following amounts were paid for drug testing for the calendar years 2004-2007:

2004	\$10,348.80
2005	\$10,865.20
2006	\$11,468.20
2007	No payments made to date

- “Audits or reports discussing the drug testing of athletes, excluding standardized information provided by other government agencies or the NCAA.”
- “Contracts or agreements with vendors who have a role in drug testing athletes.”
- “All information provided by vendors the last time your institution put the drug testing of athletes up for bid or requested proposals.”

Your requests are denied. No responsive records exist.

Please note that within 180 days from the date of this letter, you have the right to appeal the denial of information to the President of the University or seek judicial review in the circuit court to try to compel disclosure. If you elect to appeal and the President upholds the denial, you may still seek judicial review within the 180-day period.

An appeal to the President must be submitted in writing to: President’s Office, c/o Gary Krenz, The University of Michigan, 2080 Fleming Administration Building, 503 Thompson Street, Ann Arbor, MI 48109-1340. The statement must (1) identify the request and the final determination by the FOIA officer that is being appealed, (2) specifically state the word “appeal,” and (3) identify the reason or reasons why the final determination should be reversed.

If you seek judicial review in the Michigan circuit court and prevail, you will be awarded reasonable attorney's fees, costs and disbursements incurred in maintaining the action. If you prevail in part, you may still be awarded complete or partial reimbursement for those expenses. In addition to actual and compensatory damages, you will be awarded punitive damages in the amount of \$500 if the court finds that the University was arbitrary and capricious in its denial.

A copy of Section 10 of the Michigan FOIA is attached for your information.

Sincerely,



Patricia J. Sellinger  
Freedom of Information Act Coordinator

Enclosures

## Freedom of Information Act Right to Appeal

15.240. Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1) (a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of the public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1) (a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1) (b).

(4) In an action commenced under subsection (1) (b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;--Am 1978, Act 329, Imd. Eff. July 11, 1978;--Am 1996, Act 553, Eff. Mar. 31, 1997.

**THE UNIVERSITY OF MICHIGAN**  
**Athletic Department**

**Student-Athlete Policy on Drugs and Drug Testing**

**DRUG TESTING**

**A. Purpose**

Student-athletes are affected by drug abuse in a variety of ways. Individuals who abuse substances may suffer from a number of short and long-range medical, behavioral and social problems. In addition to affecting the health and safety of student-athletes, substance abuse exacts a tremendous cost in its interference with performance. Therefore the purpose of drug testing is as follows: 1) To protect the health and safety of student-athletes and others with whom they interact; 2) To promote drug education; 3) To identify student-athletes who are harmfully involved with substances and arrange counseling and treatment for them; 4) To serve as a deterrent to drug use by the student-athlete; 5) To promote fair competition; 6) To help insure compliance with NCAA drug use policies; and 7) To provide a common mechanism for the detection and sanction of specific cases of drug use.

Drug testing will be viewed as a tool used to augment all other efforts to create a drug-free environment for student-athletes and to help prepare said student-athletes for testing by the NCAA.

**B. Notice and Consent**

A statement of this policy shall be included in information that is sent to all recruited student-athletes and to all admitted student-athletes with their orientation information.

A consent form for the testing of urine samples, which fully describes this policy, shall be given to each student-athlete to sign at their initial team meeting during the first year of eligibility.

**C. Testing Policy**

The Athletic Department drug testing policy consists of four components:

**1) Random Testing 2) Reasonable Suspicion Testing 3) Physician Directed Testing and 4) Team testing**

**1) Random Testing**

All varsity student-athletes will be subject to random, year-round drug testing. These tests will be conducted in the form of urine collection throughout their entire career at the University of Michigan. A representative from the athletic department will explain to the members of each team the procedures of the drug-testing program and answer any questions.

**2) Reasonable Suspicion Testing**

Athletic Department coaches and staff should report to an Athletic Department Team Physician any incident or behavior that amounts to "apparent abuse" or "suspected abuse" of alcohol and/or other drugs. The Athletic Department Team Physician shall then review the matter, consult with appropriate internal/external specialists as needed and ascertain whether the incident and/or behavior presents sufficient evidence to constitute reasonable suspicion that the student-athlete may be involved in the inappropriate use or abuse of illegal or NCAA banned substances. If it is determined that a student-athlete's behavior suggests this

possibility, they will be referred for reasonable suspicion testing as outlined in **section E.2** below.

### **3) Physician Directed Testing**

The Athletic Department Team Physician may also require a student-athlete to provide a specimen based on an effort to diagnose a problem presented by the student -athlete or in an effort to identify or eliminate drug abuse when diagnosing a medical problem.

### **4) Team Testing**

Following a confirmed positive test and/or the verification of personal admission that controlled substances or substances listed by the NCAA as "banned drugs" have been introduced into the team environment, a coach may request that their team be moved to "PHASE II" testing. The sports program administrator will review the request, consult with the Athletic Department Team Physician and appropriate staff and make a recommendation to the Athletic Director. The Athletic Director will review the recommendation and determine the appropriate actions, which may include but are not be limited to increased drug testing.

## **D. Confidentiality**

The records of student-athlete drug testing shall be treated confidentially. Unless otherwise required or permitted by law, only the student-athlete, involved medical personnel, and members of the University staff with 'a need to know' consistent with their University responsibilities shall be notified that a student-athlete has been tested for drugs.

## **E. Testing Procedure**

Tests will be primarily conducted for drugs of abuse such as amphetamines, cocaine, marijuana, barbiturates, opiates, etc. They may also include procedures to detect performance-enhancing drugs and others banned by the National Collegiate Athletic Association. A complete list of drugs banned by the NCAA is available in the NCAA Manual and may be obtained from the Athletic Department Team Physician or any Certified Athletic Trainer. Student-athletes participating in bowl games or NCAA Championship events may be required to submit to a drug test by the NCAA. The University of Michigan drug-testing program is not related to the NCAA year round drug testing program.

### **1) Random Testing**

Student-athletes will be selected using the department's database to create a completely random selection process. The student-athlete's team athletic trainer will be responsible for filling out a form with the student-athlete's name, time and location of testing. The athletic trainer will inform the selected student-athlete and answer any questions related to the actual testing activity.

A form will be signed by the student-athlete and the team athletic trainer acknowledging that the student-athlete has been provided with the relevant information. One copy will be provided for the student-athlete. One copy will remain with the athletic trainer verifying the student-athlete was contacted, and then returned to the medical staff representative for placement in the student-athlete's medical file.

In the event that a student-athlete is unable to comply with the designated time, the athletic trainer will use the form to document the explanation and provide this information to the designated staff person for an alternative plan for collecting a

sample from the student-athlete. The explanation will also be shared with the head coach for their support in creating a solution.

All urine samples for testing will be collected under the direct observation of a Certified Athletic Trainer or by a designated "professional institution" outside of the department to guarantee validity. The samples will then remain under the constant supervision of the Athletic Department Team Physician or Certified Athletic Trainer or by a designated "professional institution" outside of the department until they are sent to a licensed facility for testing. Appropriate precautions will be observed to correctly identify the urine specimens, assure accuracy and maintain confidentiality of test results. All positive specimens will be confirmed using gas chromatography mass spectrometry.

Failure to appear or refusing to give a urine specimen will be cause for an immediate suspension of the student-athlete from competition or practice until a Team Physician completes an assessment.

### **2) Reasonable Suspicion/Physician Directed Testing**

All urine samples for testing will be collected under the direct observation of a Certified Athletic Trainer to guarantee validity. The samples will then remain under the constant supervision of the Athletic Department Team Physician or Certified Athletic Trainer until they are sent to a licensed facility for testing. Appropriate precautions will be observed to correctly identify the urine specimens, assure accuracy and maintain confidentiality of test results. All positive specimens will be confirmed using gas chromatography mass spectrometry. Failure to appear or refusing to give a urine specimen will be cause for an immediate suspension of the student-athlete from competition or practice until a trained professional designated by the Athletic Department completes an assessment.

### **3) Team Testing (Phase II status)**

If a team is given PHASE II status, drug testing will be mandatory for the full team twice annually following the procedure outlined in **section E.2** above. One test will occur prior to the first game of the competitive season. The second test will occur at an undisclosed time during the school year. The team may also remain active in the random selection program designed for all teams.

## **F. Outcomes**

Any student-athlete who has a positive test result from one of the above testing procedures will meet with an Athletic Department Team Physician and be referred for appropriate counseling and education programs. Such student-athlete may also be required to submit to subsequent drug testing.

The Athletic Department Team Physician will notify the student-athlete's head coach and Athletic Administration (Director of Athletics or Administrator in charge of Athletic Medicine) of a positive test, even if the test results are below the NCAA test limits, unless in the judgment of the physician, the positive test resulted from an appropriately prescribed therapeutic medicine or an interfering substance (i.e. poppy seed ingestion causing a positive test for opiates).

The student-athlete who tests positive above the NCAA test limits also will be subject to, but not limited to, the following disciplinary actions. The Director of Athletics and the student-athlete's head coach may impose more stringent disciplinary actions, which may include suspension or dismissal.

The time period over which "positive test results" are recorded will begin on the student-athlete's first day of classes upon initial enrollment or the first day of practice, whichever occurs first and shall end at the completion of the student-athlete's final date of eligibility.

**1) First Positive Test:**

Upon confirmation of a first positive test result, the Athletic Department Team Physician will notify the student-athlete, Athletic Administration and the student-athletes Head Coach. If the student-athlete is under eighteen years of age, his/her parents or legal guardians will be informed of the positive test result. The student-athlete will be required to attend an assessment interview with the Athletic Department Physician. The student-athlete may be referred for an assessment by a designated substance abuse professional and may require substance abuse education, counseling and treatment. If referred for education, counseling and treatment and the student-athlete fails to participate, additional disciplinary action will be taken by the Athletic Director and/or Head Coach and may include, but not be limited to suspension from practice/games. The Athletic Department Physician determines if it would be medically safe for the student-athlete to participate. The student-athlete will also be subject to subsequent drug testing.

**2) Second Positive Test**

A second positive is a test occurring at least ninety [90] days following a first positive test. Upon confirmation of a second positive test result, the Athletic Department Team Physician will notify the student-athlete, Athletic Administration and the student-athlete's Head Coach. The student-athlete will be required to attend a reassessment interview with the Athletic Department Team Physician. The student-athlete may be referred for an assessment by a designated substance abuse professional and may require substance abuse education, counseling and treatment. The student-athlete will be suspended from competition for 10% of the maximum allowable contests during the traditional season of their respective sport. This suspension must be served immediately following the positive drug test. If this positive occurs in the off-season, the suspension will be served at the beginning of the next season. A Head Coach may impose more stringent disciplinary action which may include additional suspension. The student-athlete may be dismissed from the team at the determination of the Athletic Director and/or Head Coach. Additional suspension as well as dismissal may occur if the student-athlete fails to participate in the required education, counseling and treatment. Upon completion of the suspension and successful progression in an education, counseling and treatment program, the Athletic Department Physician determines if it is medically safe for the student-athlete to participate.

**3) Third Positive Test**

A third positive is a test occurring at least ninety [90] days following a second positive test. Upon confirmation of a third positive test result, the Athletic Department Team Physician will notify the student-athlete, Athletic Administration and the student-athlete's Head Coach. The student-athlete will be required to attend a reassessment by the Athletic Department Team Physician. The student-athlete will be referred for an assessment by a designated substance abuse professional and required to



participate in a mandatory education, counseling and treatment program. The student-athlete will be suspended from all team related activities for one calendar year. The student-athlete may be dismissed from the team at the determination of the Director of Athletics and the student-athlete's Head Coach. The student-athlete has the right to appeal the one year suspension based on their ability to demonstrate successful completion of a substance abuse treatment program and documentation of drug free status. Further involvement with the Athletic Department is contingent upon continued drug free status. At the completion of the suspension, the Athletic Department Team Physician will then determine if it would be medically safe for the student-athlete to participate.

#### **G. Advisory Board**

The Athletic Director may appoint an advisory board to hear appeals and make recommendations on reinstatement. The final decision on reinstatement rests with the Athletic Director. Individuals to be considered for the board might include but is not limited to a team physician, a university physician trained in substance abuse, a university drug and alcohol counselor, the Faculty Representative, Assistant/Associate Athletic Director and an appropriate staff person from the Student Affairs Office.

**Reviewed/Revised: 10/04/06**

## **CLARIFICATION FOR POSITIVE TEST SAMPLES ON THE “DRUG-FREE SPORTS SUBSTANCE ABUSE PROGRAM REPORT CARDS”**

### **2005-2006**

2 confirmed positive samples for amphetamines: Both positive samples were the result of legally prescribed medications taken appropriately by athletes for attention deficit disorder

7 confirmed positive samples for narcotics: All positive samples were the result of legally prescribed medications while under a physician’s care and taken appropriately

11 confirmed positive samples for marijuana\*

### **2004-2005**

2 confirmed positive samples for narcotics: Both positive samples were the result of legally prescribed medications while under a physician’s care and taken appropriately

9 confirmed positive samples for marijuana\*

*\*Additional explanation on marijuana results—*

*Athletes with a positive marijuana test involve numerous follow up testing. This total count cannot be used to determine how many different athletes tested positive. One individual could be tested three consecutive weeks and produce three positive tests that count in the aggregate data but still only count as a single positive in accordance with University policy.*

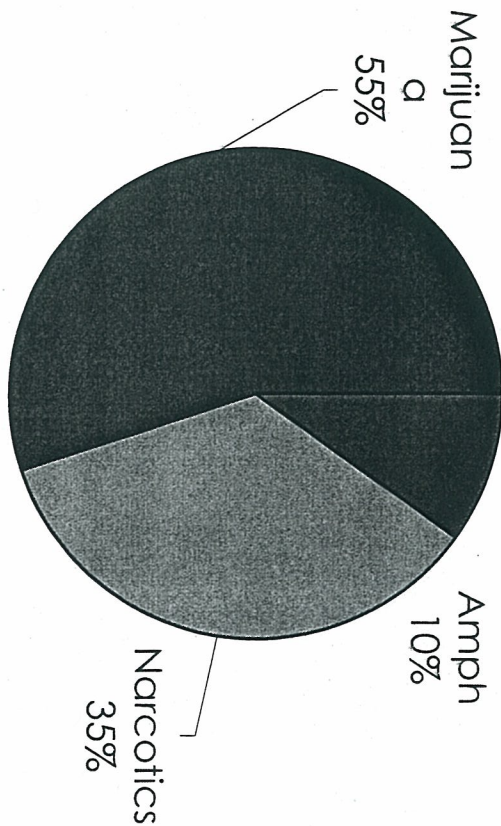


**Drug-Free Sports Substance Abuse Program Report Card**  
 Prepared for: University of Michigan  
 2005-2006 Season

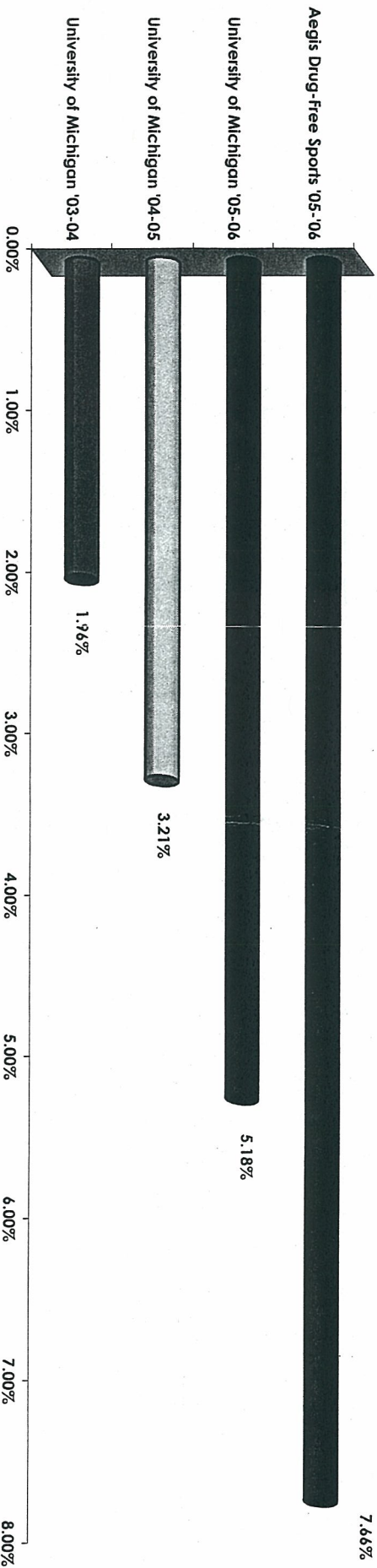
**Positivity Report 2005-2006 Season**

**Percentage of Positives by Drug Class 2005-2006 Season**

Drug Class	Samples Tested	Confirmed Positive	Positivity %
Anabolic Steroids	16	0	0.00%
Amphetamines	386	2	0.52%
Cocaine	386	0	0.00%
Nitrites	386	0	0.00%
Chromate	386	0	0.00%
Narcotics	386	7	1.81%
Marijuana	386	11	2.85%
<b>2005-2006 Total</b>	<b>386</b>	<b>20</b>	<b>5.18%</b>
<b>2004-2005 Total</b>	<b>343</b>	<b>11</b>	<b>3.21%</b>
<b>2003-2004 Total</b>	<b>306</b>	<b>6</b>	<b>1.96%</b>
<b>2002-2003 Total</b>	<b>343</b>	<b>12</b>	<b>3.50%</b>



**Three-Year Positivity Rate Comparison Chart**



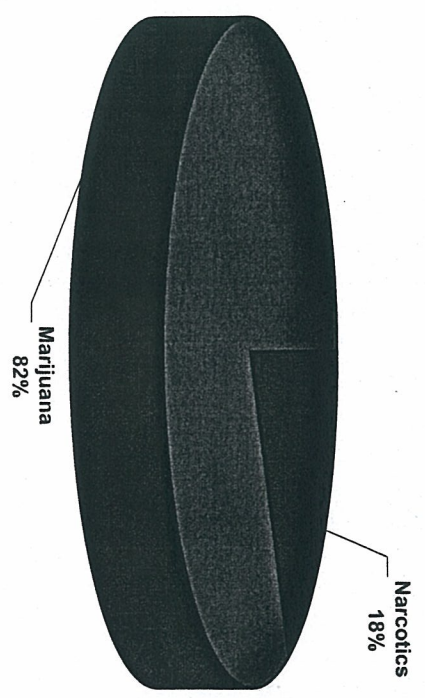
\* Aegis Drug-Free Sports clients include colleges and universities.

### Drug-Free Sports

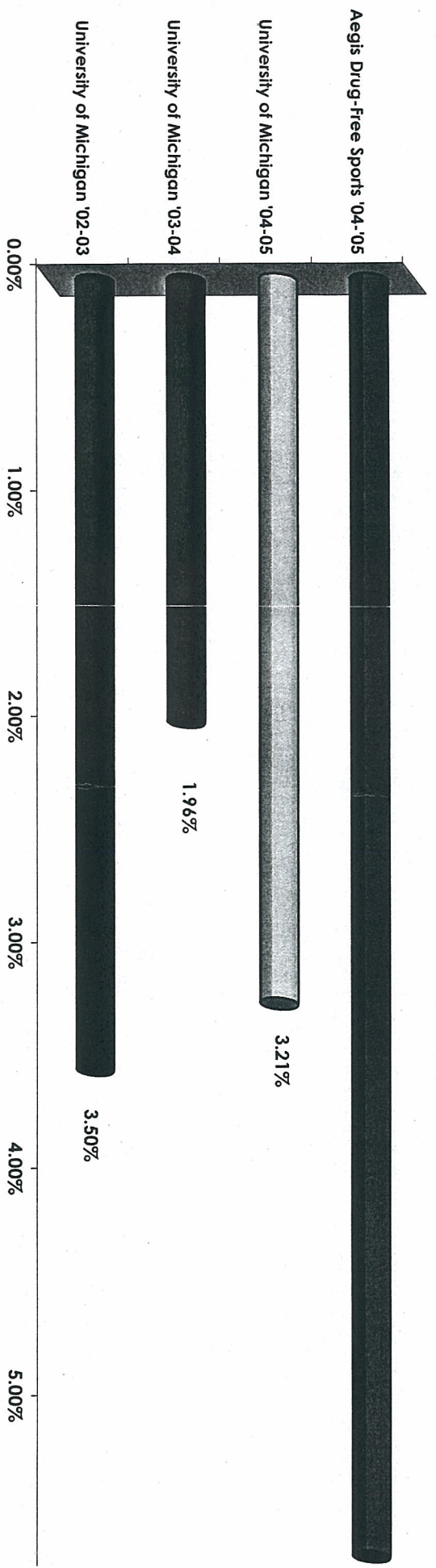
#### Positivity Report 2004-2005 Season

#### Percentage of Positives by Drug Class 2004-2005 Season

Drug Class	Samples Tested	Confirmed Positive	Positivity %
Anabolic Steroids	30	0	0.00%
Amphetamines	341	0	0.00%
Cocaine	341	0	0.00%
Nitrites	341	0	0.00%
Chromate	341	0	0.00%
Narcotics	341	2	0.59%
Marijuana	341	9	2.64%
<b>2004-2005 Total</b>	<b>343</b>	<b>11</b>	<b>3.21%</b>
<b>2003-2004 Total</b>	<b>306</b>	<b>6</b>	<b>1.96%</b>
<b>2002-2003 Total</b>	<b>343</b>	<b>12</b>	<b>3.50%</b>



Three-Year Positivity Rate Comparison Chart



\* Aegis Drug-Free Sports clients include colleges and universities.