UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9443

ADMINISTRATIVE LAW JUDGE: **HON. JAY L. HIMES**
ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:

DR. LARRY OVERLY, DVM **APPELLANT**

APPELLANT'S SUPPORTING BRIEF

Howard L. Jacobs
Katlin N. Freeman
Law Offices of Howard L. Jacobs
31111 Agoura Rd., Suite 225
Westlake Village, CA 91361
Telephone (805) 418-9892
Fax (805) 418-9899
howard.jacobs@athleteslawyer.com
katy.freeman@athleteslawyer.com

George M. Wallace
Attorney at Law
215 North Marengo Avenue, Third Floor
Pasadena, California 91101-1504
Telephone (626) 844-677
Fax (626) 795-0353
gwallace@wbslaw.com

Counsel for Appellant

Dr. Larry Overly ("Appellant") submits the following Proposed Findings of Fact ("PFF"), Proposed Conclusions of Law, and Proposed Order.

I. INTRODUCTION

The Horseracing Integrity & Welfare Unit ("HIWU"), acting for the Horseracing Integrity & Safety Authority ("HISA"), charged Appellant with Anti-Doping Medication Control ("ADMC") Program Rule ("Rule") 3214(a), "Possession of a Banned Substance."

Contrary to Arbitrator Laura Abrahamson's ("Arbitrator") Decision,[1] Appellant established "compelling justification" to possess the Banned Substances at issue,[2] by a "preponderance of evidence." **Rule 3121(b)**. HIWU's former Chief of Science, Dr. Mary Scollay ("Dr. Scollay") gave educational guidance during seminars that must be understood to mean that veterinarians have "compelling justification" to carry Banned Substances on Covered racetracks "[i]f the veterinarians are practicing… on a population of non-Covered Horses, they're taking care of quarter horses or they've got a country practice..."[3] Appellant's supporting testimony and records established his defense.

Alternatively, Rule 3214(a) violates Appellant's Due Process rights, as "compelling justification" is not defined within the Act or Rules, and it is not possible to determine what facts must be established in order to prove a defense. The Civil Sanction imposed is arbitrary, capricious and contrary to law because Appellant conducted due diligence, reasonably relied on Dr. Scollay's published guidance, and the Arbitrator acted unreasonably in finding Fault (**Rule 3224**), and/or

[1] **Appellate Book ("AB") 6680-6724**, August 21, 2025 ("Decision"), **¶¶ 7.5.1-7.5.8; PFF 17-27.**
[2] On July 23, 2024, in one transaction and occurrence at Los Alamitos, HIWU investigators recovered (a) one tub of compounded Isoxsuprine and (b) 4 injectable 10 mL vials of Testosterone Cypionate 200 mg/mL from Appellant's practice truck. **PFF 6**.
[3] **Proposed Finding of Fact ("PFF") 9-14**; *HIWU v. Perez*, JAMS Case No. 1501000589; **AB 523-547 ("Perez I)**.

Significant Fault (**Rule 3225**), by ignoring certain relevant facts and considering facts contrary to the Rules. **Decision, ¶¶ 7.8.3-7.8.5; 7.8.13-7.8.14.**

II. STANDARD OF REVIEW

Appellant seeks a *de novo* review. *See* 15 U.S.C. § 3058(b)(2)(A) and 16 C.F.R. § 1.146(b). In a review conducted under 15 U.S.C. § 3058(b)(2)(A):

"the administrative law judge shall determine whether—

(i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted;
(ii) such acts, practices, or omissions are in violation of this chapter or the antidoping and medication control or racetrack safety rules approved by the Commission; or
(iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Pursuant to 16 C.F.R. § 1.146(b)(2)-(3), the ALJ's determination under 15 U.S.C. § 3058(b)(2)(A)(ii)-(iii) must be made *de novo*.

III. APPELLANT ESTABLISHED COMPELLING JUSTIFICATION

Appellant established "compelling justification" by a preponderance of the evidence, and therefore no **Rule 3214(a)** violation can be found.

A. "Compelling Justification" is Undefined in the Act or Rules

Possession of Banned Substances is a violation absent facts establishing "compelling justification for such Possession." **Rule 3214(a).** Appellant admits "possession," but argues that "compelling justification," as that term should be understood, has been established.

"Compelling Justification" is not defined in the Act or Rules. **PFF 15, PCL 4**. In plain language,[4] "justification" means "good" or "acceptable reason for doing something."[4] CAS A4/2016, *Klein v. ASADA*, **¶¶ 127-131** ("***Klein***"). "Compelling" means "forceful," or "convincing."[5] While "compelling justification" is a fact-specific inquiry, the plain language

[4] https://www.merriam-webster.com/dictionary/justification
[5] https://www.merriam-webster.com/dictionary/compelling

meaning of "compelling justification" must be read[6] in conjunction with Dr. Scollay's guidance and "what could have been expected from a reasonable … veterinarian [with] a practice that includes Non-Covered Horses" and the demonstrated realities of Covered/Non-Covered practice. ***Perez*** **I, ¶¶ 2.29(2) and 7.14.** Appellant's records and testimony demonstrated "compelling justification" by showing need, and "good," "convincing," reasons to carry the Banned Substances at issue based on use and/or intended use in Non-Covered Practice.

B. HISA/HIWU's Guidance

HIWU's former Chief of Science, Dr. Mary Scollay, ("Dr. Scollay") gave educational presentations, including March 24, 2023 at Will Roger's Downs ("WRD"), providing guidance on the Act and "compelling justification." **PFF 9**.

At WRD, in response to a question asked by an attendee about farm work, Dr. Scollay stated, the "caveat I will tell you is:

> …[i]f the veterinarians are practicing also on a population of non-Covered Horses, they're taking care of quarter horses or they've got a country practice part-time they are able to possess Banned Substance because we don't have control over those horses, and so to the extent that they want to use bisphosphonates on a non-Covered Horse, we can't ban them from possessing them… we can't penalize people for something that we don't have control over so, you know, let's just say because we have the ability to investigate, if the story starts to get a little weird or a little extreme, you're going to get more than a raised eyebrow. But at the end of the day if someone is practicing out in the country, we don't have the authority to control the medications they administer or carry for non-Covered Horses… the regulation addresses if there is justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates non-Covered Horses…" **PFF 10.**

Dr. Scollay testified if vets are "practicing also on a population of Non-Covered horses, they're taking care of quarter horses…they are able to possess a Banned Substance because …we

[6] Any ambiguity must be interpreted *contra preferentum* in Appellant's favor. See, e.g., *U.S. v. President and Fellows of Harvard College*, 323 F.Supp.2d 151, 163 (D. Mass. 2004); CAS 2013/A/3435 *Tomasz Stepien v. Polish Rugby Union*, award of 4 July 2018, ¶ 88.

don't have the authority to control the medications they administer or carry for Non-Covered horses. Dr. Scollay used the word "justification" in her presentation but testified that she was "referring to the compelling justification exception in the possession rule." **PFF 11.**

While not identifying a specific percentage, Dr. Scollay testified that "what is carried" depends on the composition of the vet's practice (percentage of Non-Covered practice) and composition is a factor to consider in the "[compelling justification" analysis. In other words, what vets "need/should carry in their vehicles is largely based on the population of horses that they're caring for." Dr. Scollay stated that "could be" justification for Possession of a Banned Substance. **PFF 12.**

C. Appellant Established Compelling Justification

Appellant established facts that Dr. Scollay identified as factors in the compelling justification analysis. Dr. Scollay testified that Non-Covered practice composition is a factor in the compelling justification analysis. **PFF 12**. Appellant's Office Manager, Cassandra Corbett, authenticated records demonstrating that In 2024 at Los Alamitos, Dr. Overly treated 573 Non-Covered Quarter Horses ("QHs") and 299 Thoroughbred ("TBs"), meaning that 65.71% of his patients were Non-Covered; that 79.58% of the treatments rendered were on Non-Covered QHs; and incorporating 73 Non-Covered patients outside Los Alamitos, Dr. Overly had a total 68.35% Non-Covered practice. **PFF 4.** Critically, compared to most racetracks, Los Alamitos stalls a majority QHs compared to TBs. **PFF 5.** As Appellant demonstrated that in 2024 almost 66% of his Los Alamitos equine patients were Non-Covered Qhs, almost 80% of the treatments were for Non-Covered equine, almost 70% of his practice was Non-Covered, and given that Los Alamitos houses a majority of Non-Covered QHs, this weighs heavily in favor of finding that Appellant had compelling justification to carry and possess legal medications at Los Alamitos for use or intended use in his Non-Covered practice. **PFF 4-5**.

i. The Majority of Appellant's Practice is Non-Covered

HISA/HIWU has no jurisdiction over Non-Covered Horses, Non-Covered records, Appellant's Non-Covered Practice, and/or medical discretion in Non-Covered Practice. **PFF 3.** In addition to almost 66% Non-Covered horses at Los Alamitos, Appellant had a Non-Covered practice outside of Los Alamitos, including Cosmo, who is in Orange County, roughly an hour away from Los Alamitos and Appellant's office. Most of Appellant's off-track Non-Covered horses were in Rolling Hills, which is about 45 minutes to more than an hour away**.** Dr. Scollay admitted that vets at Los Alamitos could be scheduled to treat two Covered Horses, then two Non-Covered Horses, and two Covered Horses thereafter. **PFF 25.**

As shown on March 1, 2024, Appellant treated horses at Los Alamitos and Cosmo in the same day, requiring a trip from the office to the track to Orange, California; and it would be illogical and unethical to completely unload all Non-Covered items and load for every trip. Appellant would have to travel an hour in each direction if he forgot the medication that he needed as a result of having to load and unload. **PFF 26.** Appellant acknowledged that staff loaded his truck in the morning and mid-day, but he did not state that they unpack the entire truck but rather, "usually [they] go back through the truck and try to load whatever has been used through the course of treatments that day." Dr. Scollay admitted that it is "possible" that a veterinarian who has a majority Non-Covered practice may have to carry substances on their truck to cater to or treat those Non-Covered horses. Dr. Scollay also agreed that you cannot always determine what you need in advance. **PFF 27.**

Dr. Scollay testified that use in Non-Covered practice could provide "[compelling] justification to possess banned substances. **PFF 12**. Despite arguments raised by HIWU, Appellant

established by a preponderance of evidence that both Banned Substances were used and/or intended for use in Non-Covered practice.

ii. Isoxsuprine

For about 26 years of Appellant's practice, Isoxsuprine could be carried at Los Alamitos. While no longer FDA approved, a veterinarian has discretion to use it in Non-Covered practice and can legally order it from equine pharmacies in California. In 2023, the California Horseracing Board ("CHRB") proposed rules to clarify Cal. Code Regs., Tit. 4, § 1867(b).[7] CHRB Executive Director Scott Chaney noted that CHRB never cited a vet for violation of 1867(b) and was not aware of the Veterinary Medical Board filing accusations prior to 2020. The proposed rules clarified that lawfully compounded medications do not violate 1867(b). **PFF 17.**

Appellant testified that he had no knowledge that Isoxsuprine was on his truck on the date of the search. Appellant and Ingram testified that there was an appointment for Non-Covered horse "Brownie" on July 17, 2024, and owner Chantal asked for Isoxsuprine, thinking it would be beneficial for Brownie. Appellant eventually learned, and Ingram testified, that she placed Isoxsuprine on the truck for that appointment, which Appellant attended along with practice vet Dr. Chaparro and owner Chantal. **PFF 18.**

HIWU attempted to delegitimize the reason Isoxsuprine was on the truck by asserting that there was no medical record for Brownie. There was no medical record for Brownie's July 17, 2025 appointment because, as Appellant testified, Dr. Chaparro did the July 17 exam and Appellant provided information; thus, Appellant did not prepare his own record and only produced his own records. Cassandra Corbett testified that when Appellant only educated or there was no treatment

[7] Cal. Code Regs., Tit. 4, § 1867(b) states "[t]he possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) is prohibited. **AB 3770**.

rendered, Appellant's appointment may not make it into the record. **PFF 19.** Additionally, there is no invoice for Cosmo's treatment because Appellant did not bill Ingram as part of his practice. **PFF 20.**

Compelling justification exists because Isoxsuprine was placed on Appellant's vet truck by Ingram in good faith for purposes of supporting Non-Covered practice. **PFF 21.**

iii. Testosterone

Testosterone is a legal medication which Appellant is permitted to carry at Los Alamitos under Cal. Code Regs., Tit. 4 § 1869. Appellant voluntarily showed HIWU investigators the four confiscated Testosterone vials, which were in a lockable medicine cabinet in the rear of Appellant's truck, and Appellant testified it was unlocked to begin work that day at Los Alamitos. **PFF 22.**

The Controlled Medication Logs ("Logs") and testimony of Dr. Overly and his Vet technician Jessica Ingram ("Ingram") demonstrate Testosterone was kept for used on, and intended for further use on "Cosmo," a Non-Covered QH owned by Ingram. Despite Dr. Dionne Benson's ("**Benson**") claim that Appellant did not provide "full veterinary records," the Logs identify the horse's name, owner, medicine name, size of containers, lot numbers, expiration dates, amounts and dates of use, Appellant's DEA license, and Appellant testified that Testosterone was administered intravenously. Appellant and Ingram testified that Testosterone was administered to Cosmo on the dates identified in the Log. The Logs are authentic, no forged, and made in the normal course of business. **PFF 23.** Appellant's records are authentic and entitled to substantial weight. *See, Gardner v. Heckler*, 777 F.2d 987, 991 (5th Cir. 1985) ("[a]bsent a finding [the] records were not authentic or did not substantiate the amended return…ALJ had a duty to grant insured status…"). **PCL 7**.

Dr. Benson attempted to challenge Appellant's medical discretion in testifying that Testosterone has limited uses and Appellant's protocol does not comport with appetite protocols.

Appellant used his medical discretion and ethically started Cosmo on a low dose, looking for response. Dr. Benson was forced to admit Testosterone is proper and efficacious to treat equines for lack of appetite. **PFF 24.**

In sum, Appellant showed by a preponderance of evidence that he ethically kept and used Testosterone for Cosmo's appetite, a legitimate Non-Covered use, in his majority Non-Covered practice, and this medication is legal and permissible to carry at Los Alamitos (which stables a majority of Non-Covered QHs) under Cal. Code Regs., Tit. 4 § 1869, establishing a compelling justification to possess this Banned Substance at Los Alamitos for use in Non-Covered practice, despite the fact that Cosmo was stabled in Orange. **PFF 22-25**.

The ALJ should not follow the Arbitrator, who (i) arbitrarily required "emergency" or imminent use; (ii) ignored the composition of Appellant's practice (66% Non-Covered Los Alamitos QH practice and 70% Non-Covered practice generally) in requiring that all medications on the truck be intended for use at Los Alamitos on the same day; (iii) failed to credit Appellant's "intended use" of Banned Substance post-seizure, in addition to prior use; (iv) failed to credit witness testimony with respect to records; and/or (v) failed to adequately consider the impracticality of forcing a vet to unload and reload an ambulatory practice truck between every appointment in the compelling justification analysis, when none of these elements are required and/or reasonably knowable to Covered vets. **Decision, ¶¶ 7.5.3-7.5.5, 7.5.6-7.5.7.**

IV. DUE PROCESS/ ARBITRARY AND CAPRICIOUS

Rule 3214(a) and the Decision violate Appellant's Fifth and Fourteenth Amendment Due Process rights, which demand clear regulations. 15 U.S.C. §§ 3057(c)(3); *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012); *Connally v. Gen. Constr. Co*., 269 U.S. 385, 391 (1926) (persons of common intelligence must not have to guess). A given rule or regulation can be deemed unconstitutionally vague based "indeterminacy of precisely what [must

be proved]." *United States v. Williams,* 553 U.S. 285, 306 (2008). A regulation is vague on its face, and therefore void, where "no set of circumstances exists under which [it] would be valid." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (Quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). A regulation is void "as applied to particular parties in particular circumstances… determined 'in light of the facts of the case at hand.'" *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1234 (10th Cir. 2023) (Quoting *United States v. Ochoa-Colchado*, 521 F.3d 1292, 1299 (10th Cir. 2008)).

Rule 3214(a) is vague on its face, because no Covered Person of reasonable intelligence could know what facts must be proven to demonstrate "compelling justification," or how to conduct a Non-Covered practice while also abiding by the Rule. In the absence of such guidance, what constitutes "compelling justification" is subject to the adjudicator's whim. *Beckles v. United States*, 580 U.S. 256, 266 (2017) (vague law invites arbitrary enforcement); *Watkins v. I.N.S.,* 63 F.3d 844, 851 (9th Cir. 1995) ("the standard leaves the [Arbitrator] free to decide cases based on whim…").

Rule 3214(a) is also unconstitutionally vague as applied to Appellant, as he has been subjected to this prosecution under Rule 3214(a) for possession at Los Alamitos, which is a mixed-use facility, with almost 70% Non-Covered practice. **PFF 3-5**. A reasonable veterinarian with a Non-Covered practice, practicing at Los Alamitos, would never suspect, given Dr. Scollay's guidance, that he was not permitted to carry Banned Substances at a mixed-use track where Testosterone was legal, and in preparation for use of Isoxsuprine off the track. Based on the foregoing, Rule 3214(a) is constitutionally vague, void (both facially and as applied), and the Decision and Sanctions should be vacated and charges dismissed as a result.

V. THE SANCTION

The Sanction imposed is arbitrary, capricious and contrary to law. Arbitrary and capricious review requires a "rational connection between facts and judgment," *Burlington Truck Lines v. United States,* 371 U.S., at 167, 168 (1962); and "does not require accepting unreasoned conclusions," which are not "the result of a deliberate, principled reasoning process ... supported by substantial evidence." *Gillespie v. Liberty Life Assur. Co. of Bos.,* 567 F. App'x 350, 353 (6th Cir. 2014) (Quoting *Bennett v. Kemper Nat'l Servs., Inc.,* 514 F.3d 547, 552 (6th Cir.2008)).

While Appellant should not be liable under Rule 3224, the Arbitrator also unreasonably and illogically concluded that Appellant did not demonstrate "No Fault or Negligence," as required to void all penalties. **Decision, ¶¶ 7.5.3-7.5.5, 7.5.6-7.5.7.** Under the Rules, "No Fault or Negligence" is defined as a circumstance in which "[Appellant] did not know …and could not reasonably have known or suspected, even with the exercise of utmost caution, that he…committed a [violation]" **Rule 1020.** "Fault" is defined under the Rules as a "breach of duty or lack of care" considering "degree of risk that should have been perceived by [Appellant][and] level of care and investigation exercised by [Appellant] in relation to what should have been the perceived level of risk." **Rule 1020.**

Here, Appellant exercised utmost caution: he reviewed Dr. Scollay's guidance, regularly reviewed guidance put forth by HISA/HIWU, regularly reviewed industry blog posts, and spoke directly to Los Alamitos Chief Veterinary Officer, Dr. Jeff Blea with respect to the Rules. Accordingly, Appellant could not "suspect" a violation. **PFF 10-14.** HISA/HIWU and Dr. Scollay never clarified their statements on "compelling justification." **PFF 15.** Thus, the Arbitrator finding that Appellant's lack of "effort to reach out to Dr. Scollay or anyone else at HIWU" is not indicative of "utmost caution" (**Decision**, **¶ 7.8.5),** and is not rationally connected to the facts of Dr. Scollay's guidance.

The Arbitrator's **Rule 3225** "No Significant Fault or Negligence," ruling/Sanction is also arbitrary, capricious, and contrary to the law/Rules. The Arbitrator considered irrelevant facts, including (i) Appellant's removal of other Banned Substances from the truck and (ii) delegation of packing/unpacking the truck to employees; and discounted Dr. Scollay's guidance, to irrationally conclude in "totality of the circumstances" that Appellant's fault was significant. **Decision ¶ 7.8.14**.

The objective and subjective elements demonstrate that, given Dr. Scollay's guidance and Appellant's reliance thereon, a reasonable veterinarian would not have done anything more than Appellant did here. *Cilic v. International Tennis Federation*, CAS 2013/A/3327. Appellant read everything published by HISA/HIWU, spoke to Dr. Blea, and relied on Dr. Scollay's published guidance. **PFF 13-14**. Fault, if any, is minimal, and the reasoning given to support a finding of significant fault is illogical, unreasoned, and contrary to the Rule requiring the Arbitrator to look at the factual circumstances underlying the possession. The Decision also unreasonably ignores the plain meaning of Dr. Scollay's statements. In a case considering similar facts, where Mr. Perez testified that he "forgot" that he had Banned Substances in his possession, the Arbitrator found only "moderate fault," and reduced the penalty to 14 months. ***Perez I* ¶ 8.** Here, Appellant not only disclosed the Testosterone to investigators, but told them it was for Non-Covered practice - establishing credibility, minimal fault, and penalties should have been the minimum available. (e.g.., three months). **PFF 22**

VI. CONCLUSION

The Decision should be reversed, Sanction vacated and charges dismissed, with prejudice.

DATED: December 15, 2025

Respectfully submitted,

/s/ Howard Jacobs

Howard L. Jacobs
Cal. Bar No. 149709
Law Offices of Howard L. Jacobs
31111 Agoura Rd., Suite 225
Westlake Village, CA 91361
Telephone (805) 418-9892
Fax (805) 418-9899
Email: howard.jacobs@athleteslawyer.com

Counsel for Appellant Larry Overly

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing Appellant's Supporting Legal Brief is being served this 15th day of December 2025 via first class mail and by emailing a copy to:

Allison J. Farrell Michelle C. Pujals Horseracing Integrity & Welfare Unit 4801 Main Street, Suite 350 Kansas, MO 64112-2749 afarrell@hiwu.org mpujals@hiwu.org **COUNSEL FOR HIWU** A Division of Drug Free Sport, LLC	Bryan H. Beauman Rebecca C. Price Sturgill, Tuner, Barker & Moloney, PLLC 333 W. Vine St., Suite 1500 Lexington, KY 40507 bbeauman@sturgillturner.com rprice@sturgillturner.com COUNSEL FOR RESPONDENT
Hon. Jay L. Himes Administrative Law Judge **Office of Administrative Law Judges** Federal Trade Commission 600 Pennsylvania Avenue NW Washington DC 20580 Copies Via Email to oalj@ftc.gov and	April Tabor **Office of the Secretary** Federal Trade Commission 600 Pennsylvania Avenue NW Washington DC 20580 electronicfilings@ftc.gov
With a hard copy to: Hon. Jay L. Himes Administrative Law Judge Office of Administrative Law Judges Federal Trade Commission 1 Bowling Green, Room 318 New York, NY 10004	

Executed on December 15, 2025, at Brea, California.

/s/ Katlin N. Freeman
Katlin N. Freeman