

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9448**

ADMINISTRATIVE LAW JUDGE:

JAY L. HIMES

IN THE MATTER OF:

DR. DONALD MCCROSKY

APPELLANT

**THE AUTHORITY’S REPLY TO APPELLANT’S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND REPLY LEGAL BRIEF**

Comes now the Horseracing Integrity and Safety Authority, Inc. (“**HISA**” or the “**Authority**”) pursuant to the Administrative Law Judge’s Order on Application for Review and Stay of Sanctions, dated March 31, 2026, and submits the following Reply Findings of Fact, Conclusions of Law, and Reply Legal Brief.

CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of this Authority's Reply Findings of Fact, Conclusions of Law and Reply Legal Brief is being served on May 1, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that no portion of the filing was drafted by generative artificial intelligence ("AI") and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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REPLY TO APPELLANT’S PROPOSED FINDINGS OF FACT

I. THE PARTIES AND REGULATORY FRAMEWORK

1. Dr. Donald McCrosky is a licensed veterinarian who graduated from Purdue University College of Veterinary Medicine in 1968 and has practiced equine veterinary medicine for fifty-eight years. (AB 2737) (McCrosky).

- No response.

2. Dr. McCrosky is eighty-one years old. (AB 2916) (Cueto, closing argument).

- A closing argument is not evidence; this fact is not disputed.

3. At all relevant times, Dr. McCrosky was a Covered Person under HISA and the ADMC Program. Amended Final Decision (“AFD”) at ¶ 2.3.

- A cite to the Amended Final Decision (“AFD”) is contrary to the directions included at Paragraph 11 of Attachment I to the Administrative Law Judge’s (“ALJ”) Order on Application for Review and Stay of Sanctions, dated March 31, 2026; this fact is not disputed.

4. Dr. McCrosky is one of two trackside veterinarians serving Fairmount Park Racetrack in Collinsville, Illinois, one of only two thoroughbred racing facilities in the State of Illinois. (AB 2899-2900) (Cueto, closing argument).

- A closing argument is not evidence; this fact is not disputed.

5. Approximately fifty percent of Dr. McCrosky’s veterinary practice involves Covered Horses subject to HISA regulation; the remaining fifty percent involves non-Covered Horses treated off-track. (AB 2897) (Sayao, closing argument); AFD ¶ 6.3.2 (AB 2489).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

6. Dr. McCrosky operates a mobile veterinary unit — a minivan — stocked with medications he uses daily to treat both Covered and non-Covered Horses across a service area spanning approximately seventy-five miles. (AB 2903) (Cueto, closing argument).

- A closing argument is not evidence. Appellant never testified that the medications in his minivan were used “daily to treat both Covered and non-Covered Horses.” He stated: “I carry a lot of medications, because you never know for sure what you're going to need.”¹

7. The American Association of Equine Practitioners (“AAEP”), a professional organization of which HIWU's Chief of Science Dr. Mary Scollay has been a member for forty years, has formally declared that ADMC Program Rule 3214(a) is “unworkable and impracticable” for veterinarians providing care to both Covered and non-Covered Horses, and that compliance with Rule 3214(a) is “effectively impossible” for practitioners at mixed-breed facilities. (AB 2900-2901) (Cueto, closing argument).

- A closing argument is not evidence. The AAEP statements referred to are not “formal declarations;” rather, the AAEP was “providing comment to provoke proposed edits to the [HISA] regulations that will then be considered by [the] Anti-Doping Medication Control Committee.”²

II. THE APRIL 2025 SEARCH AND POSSESSION CHARGES

8. In April 2025, HIWU investigators searched Dr. McCrosky's minivan while it was parked at Fairmount Park Racetrack. Dr. McCrosky voluntarily consented to the search. (AB 2905) (Cueto, closing argument); AFD ¶ 2.3 (AB 2467).

- A cite to the AFD is contrary to ALJ instructions, and a closing argument is not evidence; this fact is not disputed.

9. Investigators discovered five substances in the vehicle: testosterone cypionate, Thyro-L, ammonium sulfate, P-Bloc (ammonium chloride), and Osphos. AFD ¶¶ 2.3-2.4. (AB 2467).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

10. Each of the five substances is classified as a Banned Substance under the ADMC Program's Prohibited List. AFD ¶¶ 6.3.1-6.3.2. (AB 2489).

¹ HISA Appeal Book 2 (“AB2”), 2743:11-13 (McCrosky).

² AB2, 2711:6-9 (Scollay).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

11. During the search, Dr. McCrosky identified the intended off-track use of each substance in real time, named specific clients for whom the substances were intended, and provided corroborating text messages. (AB 2904-2905) (Cueto, closing argument).

- A closing argument is not evidence. For Testosterone, Appellant identified an *on-track* use, namely he stated that he used Testosterone on Covered Horses as an appetite stimulant.³ Appellant identified a specific client “in real time” and provided “corroborating text messages” for just one of the five substances, namely Katie Nelson for the Thyro-L.⁴

12. Dr. McCrosky identified Katie Nelson as a client whose horse had a thyroid condition and required the Thyro-L that same day. (AB 2904) (Cueto, closing argument); AFD ¶ 6.3.2.a (AB 2489).

- A cite to the AFD is contrary to ALJ instructions, and a closing argument is not evidence. Although Appellant claimed that he intended to deliver the Thyro-L to Ms. Nelson the same day of the Search,⁵ Investigator Meyer testified that Appellant told him during the Search that he planned to deliver it the following day.⁶

13. Dr. McCrosky identified another client, Michelle Crowder, whose horse had an urgent orthopedic need requiring the Osphos the following day. AFD ¶ 6.3.2.b (AB 2489).

- A cite to the AFD is contrary to ALJ instructions. Appellant expressly admitted that the need for Osphos was not urgent for Ms. Crowder’s horse (although he considered time to be of the essence for Ms. Crowder as a client).⁷

14. HIWU investigators did not send any of the five seized substances to a laboratory for testing. (AB 2905) (Cueto, closing argument).

³ HISA Appeal Book (“AB”), p. 181, para. 7-8(a), 11(a) (Witness Statement of Matthew Meyer, dated December 5, 2025 (“Meyer Statement”)); AB2, 2750:10-2751:17 (McCrosky), 2827:14-2828:4 (McCrosky).

⁴ AB, p. 1925, para. 11(b), p. 1975 (Meyer Statement); AB2, 2610:13-22 (Meyer).

⁵ AB2, 2752:2-16 (McCrosky).

⁶ AB2, 2610:13-22 (Meyer).

⁷ AB2, 2760:18-23 (McCrosky)

- A closing argument is not evidence; this fact is not disputed.

15. HIWU did not follow up with Katie Nelson or any other client identified by Dr. McCrosky to verify his stated off-track justifications. (AB 2904-2905) (Cueto, closing argument).

- A closing argument is not evidence. As noted above, during the Search, Appellant did not identify any intended client other than Ms. Nelson.

16. The Arbitrator found that Dr. McCrosky's showing of compelling justification “has not come close to discharging his high burden.” AFD ¶ 8.20 (AB 2508).

- No response.

III. THE USE ADRV — TIGGER ATTACK

17. Dr. McCrosky administered one cubic centimeter of testosterone to Tigger Attack, a Covered Horse owned by his wife, as an appetite stimulant, a use he had employed in his practice for approximately thirty years. (AB 2748) (McCrosky); AFD ¶ 2.6 (AB 2467).

- No response.

18. Dr. McCrosky admitted the administration voluntarily when interviewed by HIWU investigators on the day of the search. AFD ¶¶ 2.6-2.7. (AB 2467).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

19. Dr. McCrosky testified the administration occurred at least five to seven days before any scheduled race date and was not intended as a performance-enhancing measure. (AB 2748) (McCrosky).

- Appellant testified that he administered Testosterone to Covered Horses five or six days before a race.⁸ However, during the Search, Appellant stated that he gave Testosterone to Tigger Attack seven to ten days before the race.⁹

20. The Arbitrator found the Use ADRV established under the strict liability standard applicable to Rule 3213. AFD ¶ 8.22 (AB 2509).

⁸AB2, 2747:2-2748:3 (McCrosky), 2819:12-2820:17 (McCrosky).

⁹AB, p. 2399, para. 9 (USF).

- No response.

IV. THE TAMPERING ADRV — THYRO-L AND OSPHOS REPOSSESSION

21. Following the search, HIWU investigators seized the Thyro-L and Osphos as evidence. Dr. McCrosky subsequently repossessed both substances. AFD ¶¶ 1.2, 6.3.5 (AB 2466, 509).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

22. Dr. McCrosky was warned multiple times by HIWU investigators not to repossess the seized substances before he did so. AFD ¶ 8.23 (AB 2509).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

23. Dr. McCrosky testified he repossessed the substances because he had scheduled patient appointments requiring each medication and was concerned about the cost and disruption to his clients. AFD at ¶¶ 6.3.2.a-b, 8.24.

- A cite to the AFD is contrary to ALJ instructions. Appellant did not specifically testify to the disruption that his clients would face if he did not use the OsPhos or Thyro-L during the alleged appointments.

24. HIWU's investigation was not impeded by the repossession — the substances were not sent for laboratory testing and were not relied upon as physical evidence at the hearing. (AB 2905-2906) (Cueto, closing argument).

- A closing argument is not evidence. Appellant did impede the investigation by preventing the OsPhos and Thyro-L from being retained and stored by HIWU as evidence, which is HIWU's standard investigative practice.¹⁰ Appellant did not know (and could not have known) at the time he repossessed the OsPhos and Thyro-L whether or not those substances would need to be sent to a laboratory for analysis, relied upon as physical evidence, or otherwise required as part of the Doping Control process.

¹⁰ AB2, 2606:9-2607:1 (Meyer), 2612:13-2613:1 (Meyer), 2640:14-23 (Meyer).

25. The Arbitrator found the repossession reflected “a disdain or disregard for the rules of the ADMC Program” and constituted Tampering. AFD ¶ 8.25 (AB 2509).

- No response.

V. THE TAMPERING ADRV — CHILDERSATTACK

26. Childersattack is a Covered Horse owned by Dr. McCrosky's wife and trained by Vance Childers. AFD ¶ 2.8 (AB 2468).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

27. In October 2024, a blood sample drawn from Childersattack tested positive for testosterone. A sample drawn three weeks earlier in September 2024 had tested negative. AFD ¶¶ 2.9-2.10 (AB 2468); Order at 20-21.

- A cite to the AFD is contrary to ALJ instructions, and the Order cited is not evidence; this fact is not disputed.

28. Dr. McCrosky sent HIWU a handwritten note stating he had performed a partial castration on Childersattack in March 2022, leaving one undescended testicle that he believed was producing testosterone endogenously. AFD ¶¶ 2.11-2.12. (AB 2468).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

29. Dr. McCrosky testified he does not maintain computerized medical records for his wife's horses, consistent with a longstanding general practice of non-digital record-keeping that predates HISA. (AB 2908) (Cueto, closing argument); AFD ¶ 8.11 (AB 2507).

- A cite to the AFD is contrary to ALJ instructions. Appellant testified that he did not keep any medical records *at all* on his own horses (whether electronic or paper). He made this statement in reference to Childersattack, which is a Covered Horse owned by his wife.¹¹ Accordingly, Appellant meant that he does not keep any medical records (whether electronic or paper) for any of his or his wife's horses.

¹¹ AB2, 2797:6-2798:2 (McCrosky).

30. Dr. McCrosky removed the retained testicle on December 2, 2024, approximately three weeks after HIWU notified trainer Childers of the atypical finding. (AB 2909-2910) (Cueto, closing argument); AFD ¶ 2.16 (AB 2469).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

31. HIWU’s Chief of Science, Dr. Mary Scollay, testified that the September negative/October positive testosterone results would be “highly unlikely” for a ridgling with an undescended testicle unless testosterone had been administered exogenously between the two samples. AFD ¶ 2.13 (AB 2468); Order at 21.

- A cite to the AFD is contrary to ALJ instructions, and the Order cited is not evidence. Dr. Scollay testified that she believed there was *no likelihood* that Childersattack was a ridgling as of the date of the October positive test.¹²

32. No witness with personal knowledge of the castration procedure testified to contradict Dr. McCrosky's account. (AB 2910) (Cueto, closing argument).

- A closing argument is not evidence. Appellant was the only witness who testified at the hearing with personal knowledge of the claimed castration procedure.

33. The Arbitrator found that Dr. McCrosky “deliberately attempted to mislead the authorities regarding the status of Childersattack.” AFD ¶ 8.31 (AB 2510).

- No response.

VI. THE TRAFFICKING ADRV — CASTRO

34. HIWU investigators discovered two filled syringes in the tack room of Fairmount Park trainer Isidoro Castro, which forensic analysis revealed contained glaucine and testosterone, both Banned Substances. AFD ¶¶ 2.19-2.20. (AB 2469).

- A cite to the AFD is contrary to ALJ instructions. The Trainer’s name is Isidro (not Isidoro) Castro. There was no specific evidence as to whether the syringes were filled, partially filled, or empty at the time they were located by HIWU Investigators; however, Investigator

¹² AB2, 2776:16-2677:12 (Scollay).

Meyer’s report of the interview with Trainer Castro states: “CASTRO admitted to injecting the horse in the neck with the syringe,”¹³ which suggests that the syringes were not filled when they were found.

35. Isidoro Castro told HIWU investigators that Dr. McCrosky sold him the syringes in a parking lot for \$20.00. AFD ¶ 2.20 (AB 2469).

- A cite to the AFD is contrary to ALJ instructions. The Trainer’s name is Isidro (not Isidoro) Castro.

36. Castro did not appear at the January 14, 2026 evidentiary hearing. Both parties had sought his testimony. (AB 2912) (Cueto, closing argument).

- A closing argument is not evidence; this fact is not disputed.

37. Castro’s statement to HIWU investigators was not recorded, was not subject to cross-examination, and constitutes hearsay. (AB 2912) (Cueto, closing argument).

- A closing argument is not evidence. Even though Trainer Castro’s statement is hearsay, Appellant himself testified to selling the syringes to Trainer Castro in a Rural King parking lot.¹⁴

38. At the time Castro made his statement, he faced his own regulatory exposure for possessing syringes and two electric buzzers at Fairmount Park. (AB 2913) (Cueto, closing argument).

- A closing argument is not evidence; this fact is not disputed.

39. Dr. McCrosky testified he delivered aspirin and Banamine to Castro for a horse experiencing a tying-up episode — a recognized equine muscle disorder — and denied delivering testosterone or glaucine. (AB 2912-2913) (Cueto, closing argument); AFD ¶ 6.3.7 (AB 2491).

- A cite to the AFD is contrary to ALJ instructions; the Authority does not dispute that this was Appellant’s testimony.

¹³ AB, p. 2004 (Investigative Report re: Castro Interview).

¹⁴ AB2, 2847:18-2848:2 (McCrosky).

40. Dr. McCrosky testified he was unaware of what glaucine was. (AB 2912-2913) (Cueto, closing argument); AFD ¶ 6.3.8 (AB 2491).

- A cite to the AFD is contrary to ALJ instructions; the Authority does not dispute that this was Appellant’s testimony.

41. The Arbitrator found the Trafficking ADRV proven, concluding that no credible veterinarian would be unaware of the contents of an injectable intended for a Covered Horse. AFD ¶ 8.33 (AB 2511).

- No response.

VII. SANCTIONS IMPOSED

42. The Arbitrator imposed fully consecutive ineligibility periods for all nine ADRVs, resulting in a total of twenty-four years of ineligibility. AFD ¶¶ 8.48-8.51. (AB 2513)

- No response.

43. The Arbitrator imposed monetary fines totaling \$300,000, representing the maximum available fine for each ADRV charged. AFD ¶ 9.1 (AB 2514).

- No response.

44. The Arbitrator found Dr. McCrosky “acted with intent, and with a flagrant disregard of the ADMC Program Rules.” AFD ¶ 8.43 (AB 2512).

- No response.

45. The Arbitrator found that “proportionality must be taken into consideration” but concluded that Dr. McCrosky's conduct “warrants the imposition of the maximum allowable fines and a consecutive period of Ineligibility.” AFD ¶¶ 8.48, 8.50. (AB 2513)

- No response.

46. The Arbitrator did not analyze whether running the five Possession ADRVs — arising from a single search of a single vehicle on a single day — concurrently would produce a more proportionate global sanction. AFD ¶¶ 8.48-8.51. (AB 2513)

- While the AFD does not expressly address this point, it does not mean the Arbitrator did not consider it in arriving at the global sanction imposed on Appellant. Indeed, in assessing the global sanction and proportionality, the Arbitrator stated, “A period of Ineligibility of two years consecutive is imposed for each of the Possession ADRVs...”,¹⁵ suggesting that the Arbitrator did turn his mind to the proportionality of running of the five periods of Ineligibility for the Possession ADRVs consecutively rather than concurrently.

47. HIWU’s closing argument identified Dr. McCrosky's ability to continue practicing with non-Covered Horses as a factor minimizing proportionality concerns regarding the ineligibility sanction. (AB 2897) (Sayao, closing argument).

- The Arbitrator noted in the context of his proportionality assessment that half of Appellant’s practice was on non-Covered Horses and identified that Appellant would be able to continue that part of his practice even if significant sanctions are imposed on him.¹⁶

48. Dr. McCrosky's two prior violations relied upon as aggravating factors were not Anti-Doping Rule Violations — one was for refusal to allow testing and one was for breach of a prior ineligibility period. (AB 2896-2897) (Sayao, closing argument); AFD ¶ 8.45 (AB 2513).

- A cite to the AFD is contrary to ALJ instructions; this fact is not disputed.

49. A twenty-four year ineligibility period imposed on an eighty-one-year-old practitioner is the functional equivalent of a permanent lifetime ban from covered horse practice. (AB 2916) (Cueto, closing argument).

- A closing argument is not evidence. Moreover, this is Appellant’s speculation as opposed to a fact. There was no evidence adduced on Appellant’s life expectancy or how long he intended to continue his veterinary practice.

¹⁵ AB, p. 2514, para. 8.50 (AFD).

¹⁶ AB, p. 2513, para. 8.48 (AFD).

REPLY TO APPELLANT’S PROPOSED CONCLUSIONS OF LAW

I. STANDARD REVIEW

1. This Court’s review of the Arbitrator’s Amended Final Decision is de novo — conducted as if the matter had not been previously heard and without deference to the Arbitrator’s factual findings, credibility determinations, or legal conclusions. 16 C.F.R. § 1.146(c); Matter of Serpe, No. 9441 (FTC ALJ Sept. 12, 2025); Freeman v. DirecTV, Inc., 457 F.3d 1001, 1004 (9th Cir. 2006).

- The correct cite is 16 C.F.R. § 1.146(b).

2. HIWU bears the burden of proving each charged ADRV to the comfortable satisfaction of this Court — a standard greater than a preponderance of the evidence but less than clear and convincing proof. Matter of Serpe, No. 9441; ADMC Program Rule 3261.

- No response.

3. Once HIWU establishes an ADRV to the comfortable satisfaction standard, the burden shifts to Dr. McCrosky to establish any applicable defense or mitigation by a preponderance of the evidence. Matter of Serpe, No. 9441.

- No response.

4. On de novo review, this Court is not bound by the Arbitrator’s interpretation of the compelling justification standard under Rule 3214(a), his credibility assessments, or his proportionality analysis. This Court may reverse, modify, or remand any aspect of the Amended Final Decision. 16 C.F.R. § 1.146(c)(2).

- The correct cite is 16 C.F.R. § 1.146(d)(3), and this provision does not refer to the AFD; it refers to the “final civil sanction of the Authority.”

II. THE TRAFFICKING ADRV SHOULD BE REVERSED

5. The Trafficking ADRV was not established to the comfortable satisfaction standard. The sole direct evidence connecting Dr. McCrosky to the transfer of glaucine and testosterone was the uncorroborated, out-of-court statement of Isidoro Castro — a self-interested witness who faced independent regulatory exposure, did not appear at the hearing, and was not subject to cross-examination by either party. PFF ¶¶ 35-38.

- The Arbitrator was comfortably satisfied that Appellant committed a Trafficking ADRV based on the totality of the evidence, including Appellant’s own admission that he sold Trainer Castro the loaded syringes and the Arbitrator’s finding that it was “highly unlikely” that Appellant did not know that those syringes contained the Banned Substances Testosterone and Glaucine.¹⁷

6. Dr. McCrosky's uncontroverted sworn testimony that he delivered aspirin and Banamine for a legitimate therapeutic purpose — and that he was unaware of the substance identified as glaucine — raises a credible innocent explanation that the comfortable satisfaction standard requires be excluded before liability attaches. PFF ¶¶ 39-40.

- Appellant’s testimony did not raise a legitimate therapeutic purpose or credible innocent explanation. To the contrary, Appellant admitted that he sold the syringes to Trainer Castro in conscious violation of HISA and Illinois Racing Board (“**IRB**”) Rules that prohibit Trainers from possessing syringes at Fairmount Park.¹⁸

7. The inference that no credible veterinarian would be unaware of the contents of an injectable does not constitute affirmative proof that Dr. McCrosky trafficked in the specific Banned Substances charged. The Trafficking charge required proof of transfer of glaucine and testosterone — not merely proof of a syringe transaction. PFF ¶¶ 34-41.

- There is no requirement in the ADMC Program Rules or otherwise in law that requires direct evidence to sustain a Trafficking violation. Rather, the comfortable satisfaction standard can be met using any reliable means, including circumstantial evidence and reasonable inferences.¹⁹

¹⁷ AB, p. 2510, para. 8.27-8.31(Decision).

¹⁸ AB2, 2850:22-2854:12 (McCrosky), 2858:17-23 (McCrosky); AB, p. 2334, para. 5 (Witness Statement of Daniel Mathis, dated January 2, 2026 (“Mathis Statement”)) and AB, pp. 2337-2343 (HISA and IRB Rule Excerpts).

¹⁹ See e.g., [CAS 2021/A/7838](#) *WADA v. ICF and Dyachenko*, at paras. 107-112 & 118.

8. In the alternative, if this Court sustains the Trafficking ADRV, the veterinarian exception under Rule 1020 applies: Dr. McCrosky's testified purpose — treatment of a horse experiencing a tying-up episode — constitutes a “genuine and legal therapeutic purpose” within the meaning of that definition. PFF ¶ 39.

- As stated in response to Conclusion of Law 6, the evidence demonstrates that Appellant’s syringe sale to Trainer Castro was *not* for a genuine and legal therapeutic purpose that would give rise to the veterinary exception under the Rule 1020 definition of Trafficking.

III. THE CHILDERSATTACK TAMPERING ADRV SHOULD BE REVERSED OR ITS SANCTION RESTRUCTURED

9. The Childersattack Tampering ADRV required proof of intentional false statements — a heightened showing under Rule 3216(a) that comfortable satisfaction demands be established by compelling circumstantial evidence excluding credible innocent explanations. PFF ¶¶ 26-33.

- Appellant submitted false information to HIWU in response to an ATF Notice for Testosterone detected in Childersattack’s Sample with the intention of explaining away a potential Presence ADRV. Falsifying documents in this manner constitutes a Tampering ADRV.²⁰ Moreover, there is no requirement in the ADMC Program or otherwise at law that innocent explanations must be excluded before a Tampering ADRV is established.²¹

10. The record evidence is equally consistent with negligent record-keeping by a practitioner who consistently maintained no digital records for his wife's horses as with deliberate fabrication of a castration narrative. Where the evidence does not compel a finding of intentional fraud over negligent omission, comfortable satisfaction is not achieved. PFF ¶¶ 29, 32.

- A Tampering ADRV is made out based on the comfortable satisfaction standard, which is higher than the preponderance of the evidence but lower than beyond a reasonable doubt,

²⁰ Rule 1020, definition of *Tampering*; Rule 3212; Rule 3216(a).

²¹ See e.g., [CAS 2021/A/7838](#) *WADA v. ICF and Dyachenko*, at para. 118 (“It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt.”)

as set out in Conclusion of Law 2. The comfortable satisfaction standard can be established for an intentional explanation, even if a negligent explanation is also possible on the evidence.

11. In the alternative, if this Court sustains the Childersattack Tampering ADRV, its ineligibility period should run concurrently with — not consecutively to — the sanctions imposed for the Possession and Use ADRVs, as the conduct arose within the same regulatory relationship and period. PFF ¶ 26.

- The Childersattack Tampering ADRV is a stand-alone violation that does not share a common set of facts with any of the other eight ADRVs established in the AFD. There is no basis for the period of Ineligibility for the Childersattack Tampering ADRV to run concurrently with any other periods of Ineligibility imposed here.

IV. THE \$300,000 MONETARY FINE MUST BE ELIMINATED OR SUBSTANTIALLY REDUCED

12. The proportionality principle applicable to HISA proceedings governs monetary sanctions with equal force as ineligibility periods. *Matter of Overly*, No. 9443, at 85-95; *Shell II*, No. 9439, 2025 WL 1784696, at *33-34.

- The amount of a fine imposed as a Consequence of an ADRV is discretionary up to the stated maximum quantum set out in Rule 3223(b). Prior appellate case law has held that imposing cumulative fines can be disproportionate if the result “inflict[s] undue financial burden”²² and that the principle that the fine should “be commensurate with” the fault “‘is a useful convention’—a well-recognized default principle, but subject to individual case adjustment.”²³

13. Monetary fines under Rule 3223(b) are discretionary — set at “up to” the maximum amounts specified — and do not mandate imposition of the maximum fine in every case. The

²² *In the Matter of Dr. Scott Shell DVM* (“*Shell*”), FTC Docket No. 9439, at p. 50 (Mar. 6, 2025).

²³ *In the Matter of Larry Rickman Overly* (“*Overly*”), FTC Docket No. 9443, at pp. 92-93 (Jan. 27, 2026).

Arbitrator's imposition of maximum fines without meaningful analysis of whether the fine serves a purpose not already accomplished by the ineligibility constitutes an abuse of the proportionality principle.

- The evidence supports the Arbitrator's conclusion that Appellant's "intentional and egregious conduct reflected in the nine ADRVs warrants the imposition of the maximum allowable fines."²⁴ There is no requirement under the ADMC Program or otherwise at law that the fine must "serve a purpose not already accomplished by the ineligibility." Instead, the ADMC Program is designed as a dual Consequence regime whereby an ADRV results in both a period of Ineligibility and a fine, subject to the application of the principle of proportionality in exceptional cases.²⁵

14. Where a period of ineligibility already permanently excludes a Covered Person from all covered horse practice for the remainder of his working life, a \$300,000 monetary fine layered on top serves no additional deterrence, rehabilitation, or protective function that the ineligibility does not already fully accomplish. PFF ¶¶ 42-43, 49.

- As noted in reply to Conclusion of Law 13, there is no requirement under the ADMC Program or otherwise at law that the fine must serve a purpose not already accomplished by a period of Ineligibility.

15. HIWU's own closing argument identified Dr. McCrosky's ability to continue non-Covered Horse practice as a factor minimizing proportionality concerns regarding the ineligibility sanction. HIWU cannot simultaneously argue that the survival of his non-covered practice minimizes the burden of ineligibility while also defending a \$300,000 fine that directly threatens his ability to sustain that surviving practice. PFF ¶ 47.

- There was no evidence submitted on whether or not a fine imposed against Appellant in this case would threaten his ability to maintain his practice, and Appellant's counsel

²⁴ AB, p. 2514, para. 8.50 (AFD).

²⁵ [Overly](#), p. 64.

objected to HIWU's questions about Appellant's financial circumstances which could have elicited answers relevant to this issue.²⁶

16. The conduct underlying the five Possession ADRVs was commercially neutral and therapeutically motivated — Dr. McCrosky carried medications for identified off-track patients with specific pending appointments. Imposing maximum fines for commercially neutral possession is disproportionate to the nature of the conduct. PFF ¶¶ 11-15.

- The Possession ADRVs were neither “commercially neutral” nor “therapeutically motivated.” Rather, Appellant chose to carry Banned Substances with him at Fairmont Park for reasons of pure convenience.²⁷ In any event, the evidence supported that the total fine imposed in this case was proportionate to the nature of Appellant's misconduct, as correctly held by the Arbitrator.²⁸

17. The two prior violations relied upon as aggravating factors to justify maximum consecutive sentences and maximum fines were not Anti-Doping Rule Violations. Weighting non-ADRV regulatory compliance failures as equivalent to prior ADRVs in the proportionality analysis inflates the global sanction beyond what the ADMC Program's graduated structure contemplates. PFF ¶ 48.

- The Arbitrator characterized the two prior violations as “ADMC Program violations” and not ADRVs.²⁹ There is no basis in the AFD or otherwise for Appellant's assumption that the Arbitrator weighed these two prior violations equivalent to ADRVs in the proportionality analysis.

V. THE CONSECUTIVE INELIGIBILITY STRUCTURE MUST BE RESTRUCTURED

18. The five Possession ADRVs arose from a single search, a single vehicle, and a single date. Imposing five fully consecutive two-year ineligibility periods for a single possession episode treats

²⁶ AB2, 2807:10-2810:13 (McCrosky).

²⁷ AB2, 2831:9-18 (McCrosky), 2845:4-18 (McCrosky).

²⁸ AB, p. 2514, para. 8.50 (AFD).

²⁹ AB, p. 2513-2514, para 8.49.

the number of substances found in one search as an independent aggravating factor rather than as a reflection of the breadth of a mixed-practice veterinarian's therapeutic formulary. PFF ¶¶ 8-10.

- The five Possession ADRVs arose out of a common set of facts. Rule 3228(d) authorizes the imposition of consecutive periods of Ineligibility for multiple ADRVs arising out of common facts (such as a single investigative search).³⁰ Under Rule 3214(a), Veterinarians cannot possess *any* Banned Substances on a Covered Racetrack absent a compelling justification. Where a Veterinarian is found to be Possession of multiple Banned Substances based on a single search, such conduct may be considered more serious and warrant stricter Consequences, as compared to a Veterinarian found in Possession of just one Banned Substance.

19. The proportionality principle in HISA proceedings requires that the global sanction be commensurate with the totality of the conduct — not the mechanical sum of individual maximum sentences. *Shell II*, No. 9439, 2025 WL 1784696, at *33-34; *Overly*, No. 9443, at 64. The Arbitrator's failure to meaningfully engage with whether concurrent or partially concurrent sentences would better reflect the global severity of the conduct renders his proportionality analysis insufficient. PFF ¶ 46.

- The evidence supports the Arbitrator's conclusion that Appellant's "intentional and egregious conduct reflected in the nine ADRVs warrants the imposition of ... a consecutive period of Ineligibility commensurate with the sanctioned conduct."³¹ The Arbitrator properly and adequately considered as part of his proportionality analysis whether to impose consecutive or concurrent sanctioning based on the severity of Appellant's misconduct.³²

20. Dr. McCrosky's due process challenge to the denial of his continuance request is preserved for Commission review. The Arbitrator's denial of a continuance that required Dr. McCrosky to

³⁰ *Overly*, pp. 86-92; *Shell*, pp. 44-50.

³¹ AB, p. 2514, para. 8.50 (AFD).

³² AB, p. 2514, para. 8.47, 8.48, 8.50 (AFD).

appear virtually by iPhone from a remote location in a complex nine-count proceeding, while not dispositive at the ALJ level, is preserved as a ground for further review.

- Appellant’s due process challenge is not preserved; Appellant raised no due process, fairness, or other concerns at any point before or during the arbitration hearing stemming from his virtual appearance, including regarding his ability to present evidence. The Arbitrator did not require Appellant to appear by iPhone, that was Appellant’s choice of device for his virtual appearance. In any event, Appellant’s virtual participation did not violate due process.³³

REPLY LEGAL BRIEF

The Authority declines to file a Reply Legal Brief and relies on the content of its initial Supporting Legal Brief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st day of May, 2026.

/s/Bryan H. Beauman

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³³ See e.g., *Mathews v. Eldridge*, 424 U.S. 319, 333-335 (1976) (due process is “flexible,” and procedural safeguards can be tailored to meet the demands of the particular situation, having regard to both parties’ interests).

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