

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9452**

ADMINISTRATIVE LAW JUDGE:

HON. JAY L. HIMES

IN THE MATTER OF:

VANCE CHILDERS

APPELLANT

**THE AUTHORITY’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
ORDER, AND SUPPORTING LEGAL BRIEF**

Comes now the Horseracing Integrity and Safety Authority, Inc. (“**HISA**” or the “**Authority**”) pursuant to the Administrative Law Judge’s (“**ALJ**”) Order Setting Revised Briefing Schedule dated July 7, 2026, and submits the following Proposed Findings of Fact, Conclusions of Law, Order, and Supporting Legal Brief.

CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of the Authority's Proposed Findings of Fact, Conclusions of Law, Order and Supporting Legal Brief is being served on July 29, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that any language in the filing that was drafted by generative artificial intelligence was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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PROPOSED FINDINGS OF FACT

1. Appellant is a Trainer and Covered Person under the Anti-Doping and Medication Control Program (“**ADMC Program**”) pursuant to ADMC Program Rule 3020.¹

I. Facts Relevant to Possession Charges

2. On November 12, 2024, HIWU Investigator Matthew Meyer (“**Investigator Meyer**”) and HIWU Director of Investigative Operations Shawn Loehr (collectively, the “**Investigators**”) conducted a search of Appellant’s tack room, feed room, office, and barn area (the “**Search**”) at the Fairmount Park Racetrack in Collinsville, Illinois (“**Fairmount Park**”).²

3. The Search was conducted further to and immediately following the Investigators’ attempt to personally serve Appellant with a Notice of Atypical Finding (“**Atypical Notice**”) concerning a Testosterone positive result recorded for Appellant’s Covered Horse, Childersattack.³

4. During the Search, the Investigators found and seized a tub labeled “Easywillow” on a shelf in Appellant’s tack room. The label of the Easywillow tub listed the Banned Substance Kava Kava (also known as “Kava” or Piper Methysticum), a Category S0 Banned Substance under the ADMC Program.⁴

5. Appellant had used that tack room since 2020, when it was transferred to him from his grandfather, and no one other than those working under Appellant’s direction, such as his brother Hunter Childers, had access to it.⁵

¹ HISA Updated Appeal Book (“**AB**”), p. 2148, para 1 (Uncontested Stipulation of Fact (“**USF**”)). For clarity, HISA’s submissions refer to the ADMC Program as encompassing the entirety of the HISA Regulations numbered Rule Series 1000 and 3000-7000 contained in 88 Fed. Reg. 17. Any reference to a Rule refers to an ADMC Program Rule. All capitalized terms not defined herein have the meanings given to them in the ADMC Program.

² AB, p. 2148, para 2 (USF).

³ AB, 2461:5-2464:15 (Meyer).

⁴ AB, p. 2149, paras 3-6 (USF).

⁵ AB, 2635:9-2641:14 (Childers).

6. Following the Search, a sample of the Easywillow product was sent for forensic analysis to Industrial Laboratories (an ADMC Program Laboratory), which confirmed the presence of Methysticin, the primary active compound in Kava Kava.⁶

7. Appellant never checked the ingredient list of the Easywillow container to see if it contained any Banned Substances.⁷

8. Although Appellant threw out his Thyro-L supplements because he knew those were no longer allowed under the ADMC Program, he did not do a thorough search of his barn to ensure all Banned Substances were purged.⁸

9. On April 21, 2025, HIWU charged Appellant with a Possession ARDV.⁹

II. Facts Relevant to Tigger Attack Presence Charge

10. Tigger Attack is a Covered Horse and gelding trained by Appellant and medically cared for Dr. Donald McCrosky.¹⁰

11. Tigger Attack tested positive for Testosterone in a Post-Race Sample collected on October 29, 2024, after Race 2 at Fairmount Park. The presence of Testosterone in the Tigger Attack Sample at a concentration above the ADMC Program Threshold for geldings (100 pg/mL) was confirmed in both the A Sample and B Sample by separate analyses conducted by two ADMC Program Laboratories.¹¹

12. On March 5, 2025, HIWU charged Appellant with a Presence ADRV.¹²

13. Dr. McCrosky testified under oath in a separate ADMC Program arbitration hearing concerning multiple ADRVs charged against him (the “**McCrosky Arbitration**”) that: (i) he

⁶ AB, p. 2149, para 6 (USF).

⁷ AB, 2630:16-22 (Childers).

⁸ AB, 2651:14-2652:5 (Childers).

⁹ AB, p. 2149, para 8 (USF).

¹⁰ AB, p. 2150, para 10 (USF).

¹¹ AB, p. 2151-2152. paras 21-25 (USF).

¹² AB, p. 2152, para 25 (USF)

generally administers 1 cc of Testosterone to Covered Horses at least 5-6 days before a race if the horse is not eating or “off-feed”, in order to stimulate their appetites; (ii) he administered Testosterone to Tigger Attack 5 days before his October 29, 2024 race because he was off-feed; (iii) and that Appellant was not involved in and did not know anything about the administration of Testosterone to Tigger Attack.¹³

14. Based on that evidence, the Arbitrator affirmed a Use ADRV in the McCrosky Arbitration.¹⁴ Although Dr. McCrosky appealed that decision, he acknowledged that the Use ADRV was proven.¹⁵

15. On June 30, the Authority and Appellant filed a Joint Stipulation on Source of Testosterone in Covered Horses (the “**Joint Stipulation**”) by which they stipulated and agreed that the source of the Testosterone in Tigger Attack’s October 29, 2024 Sample was a Testosterone injection given to Tigger Attack by Dr. McCrosky.¹⁶

16. Appellant made certain enquiries as to medications Dr. McCrosky was administering to his Covered Horses, and based on Dr. McCrosky’s responses, Appellant assumed that Dr. McCrosky was only using permitted substances. Appellant “deferred” to and “trusted” Dr. McCrosky.¹⁷

17. Appellant is a “young, inexperienced trainer” and although his enquiries could have been more thorough, “Dr. McCrosky intentionally misled Trainer Childers regarding the substances he provided to his Covered Horses.”¹⁸

III. Facts Relevant to Childersattack Presence Charge

¹³ AB, p. 2152, para 27 (USF).

¹⁴ AB, p. 2202, paras 8.21-8.22 (*HIWU v. Dr. Donald McCrosky*, JAMS Case 1501001138, (the “**McCrosky Amended Final Decision**”)).

¹⁵ [*In the Matter of Dr. Donald McCrosky*](#) (“**McCrosky**”), Federal Trade Commission (“FTC”) Docket No. 9448, p. 18 (June 2, 2026).

¹⁶ [Joint Stipulation on Source of Testosterone in Covered Horses](#), filed June 30, 2026 (the “**Joint Stipulation**”).

¹⁷ AB, p. 2430, para 7.38 (Final Decision, dated April 28, 2026 (the “**Decision**”)).

¹⁸ AB, p. 2431, paras 7.41-7.43 (Decision).

18. Like Tigger Attack, Childersattack is a Covered Horse and gelding trained by Appellant and medically cared for by Dr. McCrosky.¹⁹

19. Childersattack had a negative result (i.e., no presence of Testosterone) from a Vet's List Sample collected on September 24, 2024.²⁰

20. Childersattack tested positive for Testosterone in an Out-of-Competition ("OOC") Sample collected on October 16, 2024, at Fairmount Park. The presence of Testosterone in the Childers attack Sample at a concentration above the ADMC Program Threshold for geldings (100 pg/mL) was confirmed in both the A Sample and B Sample by separate analyses conducted by two ADMC Program Laboratories.²¹

21. Dr. McCrosky testified under oath in the McCrosky Arbitration that Childersattack's Testosterone positive was due to the Covered Horse having one Testosterone-producing undescended testicle left intact after a partial castration, such that the horse's gender status was ridgling rather than gelding. However, the arbitrator rejected that evidence and affirmed a Tampering ADRV against Dr. McCrosky.²²

22. On appeal, the ALJ also rejected Dr. McCrosky's ridgling explanation and affirmed the Tampering ADRV against him. The ALJ held that Childersattack was a gelding and had been injected with Testosterone by Dr. McCrosky:²³

HIWU former Chief of Science, Dr. Scollay, testified: "I don't believe there's any likelihood that [Childersattack] was a . . . ridgling" when the October 16, 2024 sample was collected. "[T]here's nothing to support that... [T]he most logical explanation [for the test results] is an exogenous administration of testosterone." I agree: the weight of the evidence leads to the conclusion that ... as a gelding, Childersattack's sample analysis in September 2024 was negative for

¹⁹ AB, p. 2150, para 10 (USF).

²⁰ AB, p. 2150, para 11 (USF).

²¹ AB, p. 2150, paras 12-14; p. 2151, para 19 (USF).

²² AB, p. 2202-2203, paras 8.26-8.31 (McCrosky Amended Final Decision).

²³ [McCrosky](#), p. 38-39.

testosterone; and ... after that September analysis Childersattack received a testosterone injection before racing at Fairmount Park in October 2024, which resulted in the positive testosterone result.

The probable inference: Dr. McCrosky is trying to cover this up.

23. In the June 30 Joint Stipulation, the Authority and Appellant stipulated and agreed that the source of the Testosterone in Childersattack's October 16, 2024, Sample was a Testosterone injection given to Childersattack by Dr. McCrosky.²⁴

24. As with Tigger Attack, Childersattack was medically cared for by Dr. McCrosky, and Appellant made the same general inquiries of Dr. McCrosky regarding the medications being administered to both of his Covered Horses, receiving the same vague and misleading assurances that only permissible substances, such as vitamins or "buildup," were being given.²⁵

25. That said, although Appellant's enquiries could have been more thorough, Dr. McCrosky fabricated the ridgling explanation for Childersattack's positive test in an effort to cover up his own misconduct.²⁶

IV. Facts Relevant to Consecutive Sanctioning and Proportionality

26. Appellant never argued in the arbitration below that the three periods of Ineligibility imposed on him should not be served consecutively and/or that the overall sanction should be reduced on grounds of proportionality.

27. Appellant was represented by the same counsel as Dr. McCrosky in the prior McCrosky Arbitration, in which consecutive sanctioning and proportionality were squarely at issue.²⁷

²⁴ [Joint Stipulation](#).

²⁵ AB, p. 2150, para 10 (USF); p. 2430, para 7.38 (Decision).

²⁶ AB, p. 2431, para 7.41 (Decision); p. 2202-2203, paras 8.26-8.31 (McCrosky Amended Final Decision).

²⁷ AB, pp. 2181-2182, para 6.2(mm)-(qq); p. 2185, paras 6.3.11, 6.3.12.iv; pp. 2206-2207, paras 8.48-8.51 (McCrosky Amended Final Decision).

28. The Arbitrator gave the parties the opportunity to provide post-hearing submissions following the issuance of the McCrosky Arbitration decision, on the impact, if any of that decision on the issues in the Arbitration below.²⁸

PROPOSED CONCLUSIONS OF LAW

1. Appellant was in Possession of the Kava Kava found by HIWU Investigators in Appellant's tack room, a premises over which Appellant had exclusive control, during the Search.²⁹

2. Appellant failed to discharge his burden to establish a "compelling justification" for possessing the Kava Kava, a defense to a Possession charge which should be interpreted restrictively. Appellant therefore committed a Possession ADRV.³⁰

3. Appellant committed two Presence ADRVs as the B-Samples collected from his Covered Horses, Tigger Attack and Childersattack, respectively, confirmed the presence of Testosterone in their respective A-Samples, at reported concentrations above the applicable Thresholds for geldings of 100 pg/mL Testosterone in blood.³¹

4. The source of Testosterone in the Samples collected from Childersattack and Tigger Attack giving rise to their respective AAFs was a Testosterone injection given to each Covered Horse by Dr. McCrosky, who was the Covered Horses' Veterinarian at the relevant time.³²

5. Appellant established No Significant Fault or Negligence for all three of the charged ADRVs.³³

²⁸ AB, p. 2212 (Post Hearing Briefing Order).

²⁹ Rule 1020, definition of *Possession*; Proposed Finding of Fact ("PFF") #5.

³⁰ Rule 3214(a). [*Jason Scott v. Horseracing Integrity & Safety Authority \(2025\)*](#), No. 2:25-cv-632-SMD-GJF at 16 (D.N.M. Oct. 22, 2025) ("**Scott**"); AB, p. 0821 (In the Matter of Dr. Scott Shell DVM, FTC Docket No. 9439, (Mar. 6, 2025) ("**Shell**")) ("compelling justification is the exception" and should "be interpreted restrictively"); [*In the Matter of Larry Rickman Overly*](#), FTC Docket No. 9443, pp. 23-24 (Jan. 27, 2026) ("**Overly**").

³¹ Rule 3212(b); Appendix to Rule Series 4000: Technical Document-Prohibited Substances. PFF #11, #20.

³² PFF #15, #23.

³³ Rules 1020, definitions *Fault*, *No Fault or Negligence*, and *No Significant Fault or Negligence*, 3224, 3225; PFF #7-8, #16-17, #24-25.

6. Appellant should be subject to a ten-month period of Ineligibility (“**POI**”) for the Childersattack Presence ADRV based on his objective and subjective degree of Fault (the same length of Ineligibility as that imposed for the Tigger Attack Presence ADRV pursuant to the Arbitrator’s Final Decision dated April 28, 2026 (the “**Decision**”)).³⁴

7. Appellant has not shown good cause for failing to raise the issue of whether the POIs imposed for the three ADRVs affirmed against him should run concurrently or consecutively and he is barred from arguing for the first time in this review that the POIs should be consecutive.³⁵

8. Rule 3228(c)(1) authorizes the imposition of consecutive POIs for multiple Presence ADRVs for the same Banned Substance in relation to different Covered Horses.³⁶

9. The proportionality principle should only be applied exceptionally and restrictively to reduce the global Consequences that would otherwise apply pursuant to the ADMC Program; it should not become the norm.³⁷

10. The Arbitrator did not err in declining to apply the proportionality principle to reduce the overall Consequences imposed against Appellant in the circumstances of this case, including that Appellant is at a relatively early stage of his career.³⁸

11. Other than in respect of the POI for the Childersattack Presence ADRV, the Consequences imposed by the Arbitrator are not arbitrary, capricious, an abuse of discretion, or

³⁴ AB, p. 426, paras 71-73 (*Cilic v. International Tennis Federation*, CAS 2013/A/3327); p. 2430-2431, paras 7.37-7.43 (Decision); PFF #16-17.

³⁵ [FTC Rule 1.146\(a\)\(1\)](#); AB, p. 1676 (*In the Matter of Jonathan Wong*, FTC Docket No. 9426 (Apr. 22, 2024) (“**Wong**”); *In the Matter of Jim Iree Lewis*, FTC Docket No. 9434, p. 14 (October 17, 2024) (“**Lewis**”).

³⁶ [Overly](#), pp. 87-89. See also [HIWU v. Taylor](#), JAMS Case No. 1501000596, paras 7.17-7.20 (July 2, 2024) (“**Taylor**”).

³⁷ [Overly](#), p. 64; [McCrosky](#), p. 70.

³⁸ [Overly](#) at p. 64.

otherwise not in accordance with law. They are supported by, and rationally connected to, the evidence.³⁹

PROPOSED ORDER

Based on the foregoing findings of fact and conclusion of law, incorporated herein, the undersigned ALJ **ORDERS AND ADJUDGES** that the Decision is **AFFIRMED**, and the civil sanctions imposed in the Decision are **UPHELD, SAVE AND EXCEPT** that the POI imposed on Appellant is modified to 32 months (two years and eight months).

SUPPORTING LEGAL BRIEF

I. Introduction

This appeal concerns a review of the Decision, in which the Arbitrator concluded that Appellant committed three separate ADRVs and imposed Consequences including a 46-month (three year and ten month) POI and a \$30,000 fine.

Appellant requests that the Decision be “reversed, modified, or remanded” on three specific grounds pertaining to sanctioning only. Appellant argues that (i) he established the source of the Childersattack Presence ADRV to be a Testosterone injection given by the Covered Horse’s Veterinarian, Dr. McCrosky, such that his POI for that ADRV should be reduced on grounds of No Significant Fault; (ii) the twelve-month POI for the Possession ADRV is too severe having regard to prior ADMC Program jurisprudence; and (iii) the Arbitrator’s imposition of consecutive POIs and failure to conduct a “meaningful proportionality analysis” is inconsistent with “the spirit and purpose of the ADMC Program.”

³⁹ [15 U.S.C. § 3058\(b\)\(2\)\(A\)](#). See also [FTC Rule 1.146\(b\)\(1\)-\(3\)](#); [Overly](#), pp. 21-22; PFF #7-8, #16-17, #24-25.

The Authority agrees with Appellant's argument concerning the POI imposed for the Childersattack ADRV in light of the ALJ's conclusions in *McCrosky*. The parties have filed a joint stipulation that the source of the Childersattack Testosterone positive was an injection by Dr. McCrosky. The Authority contends that, source having been established, Appellant can benefit from a reduction in his POI on the basis of No Significant Fault and that the POI for this ADRV should be ten months, which is the same length of Ineligibility imposed by the Arbitrator for the Tigger Attack Presence ADRV.

Appellant's other two arguments have no merit. Contrary to Appellant's assertions, and by way of summary:

1. The twelve-month period of Ineligibility imposed for the Possession ADRV is fully consistent with ALJ jurisprudence, and Appellant's reliance on *HIWU v. Greiner* is misplaced because that decision was wrongly decided; and
2. Appellant is barred from arguing for the first time on this appeal that his POIs should run concurrently and/or that his overall sanction should be reduced on proportionality grounds, having failed to raise either argument in the Arbitration below and having shown no good cause for that failure.

For the reasons that follow, the Authority respectfully requests that the ALJ dismiss Appellant's appeal and affirm the Consequences imposed in the Decision, save and except that the overall POI imposed on Appellant should be reduced to 36 months.

II. Findings Not Disputed by Appellant

Notably, Appellant does not dispute his liability for the three ADRVs, nor does he dispute the ten-month POI imposed by the Arbitrator for the Tigger Attack Presence ADRV. Given the *de novo* nature of the ALJ's review,⁴⁰ the Authority nonetheless addresses (briefly) these issues before responding to each of Appellant's three grounds of appeal.

a. Possession ADRV Should be Affirmed

Possession under the ADMC Program is a strict liability offense that does not require proof that the Covered Person knew of or intended to possess the Banned Substance.⁴¹ Constructive possession is established where the Covered Person has exclusive control over the premises in which the Banned Substance is found.⁴² Whether the Covered Person was subjectively aware of the substance's presence "is of no legal moment under the definition of Possession."⁴³

Appellant maintained exclusive control over the tack room in which the Easywillow product containing Kava Kava was found: he had used that space since 2020, when it was transferred to him from his grandfather, and no one other than those working under his direction had access to it.⁴⁴ Possession is therefore made out under the ADMC Program's definition.⁴⁵

Appellant did not assert, and there is no evidentiary basis for, any "compelling justification" for his Possession of the Kava Kava. Compelling justification is an exception that must in any event be interpreted restrictively.⁴⁶

⁴⁰ See e.g., [*In the Matter of Philip Serpe*](#), FTC Docket No. 9441, p. 22 (September 12, 2025).

⁴¹ ADMC Program Rule 3214(a).

⁴² Rule 1020, definition of *Possession*.

⁴³ AB, p. 591, para 7.8 (*Poole*).

⁴⁴ PFF #5.

⁴⁵ AB, p. 592, paras 7.09-7.10 (*Poole*).

⁴⁶ Conclusion of Law #2.

b. Two Presence ADRVs Should be Affirmed

Sufficient proof of a Rule 3212 Presence ADRV is established where the Covered Horse's B Sample is analyzed and confirms the presence of the Banned Substance found in the A Sample.⁴⁷ Here, the B Samples collected from Tigger Attack and Childersattack, respectively, reported Testosterone concentrations above the applicable 100 pg/mL Threshold for geldings, thereby confirming the A Sample analyses performed in each instance.⁴⁸

Appellant did not challenge the Sample Collection process or the Laboratories' analyses, meaning the presumption under Rule 3122(c) that the Laboratories conducted Sample analysis and custodial procedures in accordance with the Laboratory Standards is not engaged or rebutted, nor the presumption under Rule 3122(d) against any other departure from the Standards (including Sample Collection procedures. Both Presence ADRVs are therefore established.

c. Ten-month POI for Tigger Attack Presence ADRV Should be Affirmed

The Arbitrator correctly determined that Appellant's degree of Fault was at the lower end of the moderate range in respect of the Tigger Attack Presence ADRV and imposed a ten-month POI accordingly.⁴⁹ Indeed, Appellant appears to accept this holding in that his appeal requests that the Childersattack POI should be "consistent with Trainer Childers' established No Significant Fault on the Tigger Attack charge."

As held by the Arbitrator with respect to objective Fault, Appellant made certain enquiries as to medications Dr. McCrosky was administering to his Covered Horses, and based on Dr. McCrosky's responses, Appellant assumed that Dr. McCrosky was only using permitted

⁴⁷ ADMC Program Rule 3212(b)(2); AB, pp. 2431-2432, paras 7.46-7.47 (Decision).

⁴⁸ PFF #11, #20.

⁴⁹ AB, p. 2431, paras 7.42-7.43 (Decision).

substances. That said, Appellant did not exercise his duty to adequately supervise his Veterinarian and instead merely “deferred” to and “trusted” Dr. McCrosky. Appellant’s objective fault falls in the moderate range, which corresponds to between ten and seventeen months.⁵⁰

With respect to subjective Fault, the Arbitrator held that Appellant is a “young, inexperienced trainer” and that although his enquiries could have been more thorough, “Dr. McCrosky intentionally misled Trainer Childers regarding the substances he provided to his Covered Horses. Such subjective factors support a POI at the lowest end of the moderate range, being ten months.”⁵¹

III. Response to Appellant’s Grounds of Appeal

a. Childersattack Presence ADRV: Ten-Month POI Should be Imposed

The Authority concedes that Appellant’s POI for the Childersattack Presence ADRV should be varied from the two-years imposed by the Arbitrator.

On June 2, 2026, about a month after the Decision was issued, the ALJ decided the *McCrosky* appeal, which decision included factual findings applicable to the present appeal. Specifically, the ALJ held as follows based on substantially similar evidence as that adduced before the Arbitrator here:⁵²

[T]he weight of the evidence leads to the conclusion that ... as a gelding, Childersattack’s sample analysis in September 2024 was negative for testosterone; and ... after that September analysis Childersattack received a testosterone injection before racing at Fairmount Park in October 2024, which resulted in the positive testosterone result.

⁵⁰ AB p. 2426, para 7.12; p. 2430-2431, para 7.40 (Decision).

⁵¹ AB, p. 2431, paras 7.41-7.43 (Decision).

⁵² [McCrosky](#), p. 38-39.

The Authority and Appellant subsequently entered into the Joint Stipulation filed in this appeal by which they stipulate and agree that the source of Childersattack's Testosterone positive was a Testosterone injection given to Childersattack by Dr. McCrosky.⁵³ Accordingly, Appellant has discharged his burden to prove source meaning he may benefit from a reduction of Consequences on grounds of No Significant Fault under ADMC Program Rule 3225(b).⁵⁴

The facts relevant to Appellant's degree of Fault in connection with the Childersattack Presence ADRV are largely the same as those applicable to the Tigger Attack Presence ADRV, summarized above. Accordingly, and applying the well-established *Cilic* framework, a ten-month POI should also be imposed on Appellant for the Childersattack Presence ADRV.

b. Possession ADRV: Twelve-Month POI Should be Maintained

The twelve-month POI imposed by the Arbitrator for the Possession ADRV is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This holding is supported by, and rationally connected to, the evidence.⁵⁵

Appellant's reliance on *HIWU v. Greiner*⁵⁶ to argue that the POI for the Possession ADRV should be reduced is misplaced. The Authority submits that *Greiner* was wrongly decided and reflects both an abuse of discretion and a departure from the law.

In *Greiner*, the arbitrator placed undue weight on the purported "fact" that the product at issue was sold at a tack shop at the racetrack,⁵⁷ notwithstanding evidence that the product at issue in that case had in fact been purchased online.⁵⁸ Moreover, the arbitrator relied heavily on an

⁵³ [Joint Stipulation](#).

⁵⁴ Testosterone is listed in the Prohibited List as a Specified Substance, meaning Rule 3225(b) applies.

⁵⁵ Conclusion of Law #11.

⁵⁶ [HIWU v. Greiner](#), JAMS Case No. 1501001175 (May 7, 2026) ("*Greiner*").

⁵⁷ [Greiner](#), para 7.18.

⁵⁸ [Greiner](#), para 2.6.16.

irrelevant factor in the Fault analysis, namely that HIWU did not notify Trainer Greiner that HIWU was aware that Easywillow contained a Banned Substance.⁵⁹ HIWU has no such obligation under the Rules; rather, the contrary is true: Rule 3040(a)(1) places the onus expressly on a Covered Person to be knowledgeable of and comply with the Protocol, which includes the Prohibited List, at all times. And more to the point, Trainer Greiner could have easily complied with his obligations as Kava Kava was listed on the label of the Easywillow product found in his barn. The *Greiner* decision thus conflicts with important ADMC Program Rules.

The *Greiner* decision is also inconsistent with prior ALJ authority explaining that the objective element of Fault “describes what standard of care could have been expected from a reasonable person in the athlete’s situation.”⁶⁰ The arbitrator in *Greiner* found a low degree of Fault despite that any reasonable Trainer would have taken at least the following three objective measures which Trainer Greiner failed to take: (i) reading the label on the Easywillow container; (iii) confirming that none of the ingredients listed on the label (or similar names for them) were Banned Substances; and (iii) confirming that his son’s fiancée (Ms. Atkinson), a Pony rider at the same Race Track, was not storing Banned Substances in his premises.⁶¹

By contrast, the Arbitrator’s twelve-month POI here reflects a proper application of the *Cilic* framework. The Arbitrator correctly identified objectively reasonable steps that Appellant failed to take, such as reading the ingredient list of the Easywillow container and checking them against the Prohibited List, and conducting a thorough barn search-and-purge.⁶² The twelve month POI is consistent with, if not more lenient than, other ADMC Program decisions, such as *Poole*

⁵⁹ *Greiner*, paras 7.17-7.19.

⁶⁰ See e.g., AB, p. 0866 (*Shell*).

⁶¹ *Greiner*, paras 7.16, 7.20-7.24.

⁶² AB, pp. 2426-2427, paras 7.11-7.18 (Decision).

which affirmed a twenty-two-month Possession POI on a Trainer who took no steps to ensure that the Banned Substance was disposed of just months after the ADMC Program began and who had no “wrongful intent”.⁶³

The twelve-month POI for the Possession ADRV should be maintained.

c. Appellant Waived Arguments on Concurrent Ineligibility and Proportionality

Appellant is barred from arguing, for the first time on this appeal, that his three POIs should run concurrently rather than consecutively and/or that his overall sanction should be reduced on grounds of proportionality. Pursuant to 16 C.F.R. § 1.146(a)(1), an appellant may not raise new issues on review that were not presented to the Arbitrator below, absent a showing of good cause.⁶⁴

Appellant never argued in the Arbitration (whether in writing or orally at the hearing) that his POIs should not be served consecutively or that his global sanction should be reduced for proportionality. He has offered no good cause—let alone any cause—for that failure.

Notably, Appellant was represented by the same counsel as Dr. McCrosky in the prior McCrosky Arbitration, in which HIWU raised both consecutive sanctioning and proportionality and Dr. McCrosky himself raised proportionality. The McCrosky Arbitration decision expressly held that the POIs would run consecutively and provided a detailed analysis of why the principle of proportionality was not engaged.⁶⁵ In these circumstances there can be no good cause for Appellant’s failure to raise concurrent sanctioning or proportionality in the Arbitration, particularly

⁶³ AB, pp. 0800-0801 (*In the Matter of Jeffrey Poole*, FTC Docket No. 9417 (Nov. 13, 2023) (“*Poole*”).

⁶⁴ See also AB, p. 1676 (*Wong*); [Lewis](#), p. 14.

⁶⁵ PFF #27.

given that the Arbitrator gave the parties the opportunity to provide post-hearing submissions following the issuance of the McCrosky Arbitration decision.⁶⁶

In the alternative, if Appellant shows good cause for failing to argue for concurrent sanctioning and/or proportionality below, there is no basis to reduce his overall POI. With respect to consecutive sanctioning, the ALJ held in *McCrosky* that the overall POI “must be based on each individual proven ADRV and the Rules, if any, that address whether consecutive Ineligibility may be imposed.”⁶⁷ Here, Rule 3228(c)(1) authorizes the imposition of consecutive POIs for the two Presence ADRVs because they are “for the same Banned Substance/Method [i.e., Testosterone], incurred by a Covered Person [i.e., Appellant] in relation to different Covered Horses [i.e., Tigger Attack and Childersattack] prior to delivery of an EAD Notice.”⁶⁸ HIWU exercised the discretion it is granted under that Rule to charge each of the two Presence ADRVs separately as a first ADRV, meaning the resultant POIs run consecutively.

The Possession ADRV is should also be imposed consecutively pursuant to Rule 3228(d)(1) because that ADRV is “based on a common set of facts” as the Childersattack Presence ADRV. While the “common facts” tying multiple ADRVs together for purposes of consecutive sanctioning should “ordinarily” provide the “foundation or starting point”, they “do not have to be ‘the exclusive factors to be considered’.”⁶⁹ Here, the November 12, 2024 Search that led to the Possession ADRV started from the Investigators’ service of the Atypical Notice for Childersattack’s October 16, 2024 positive Testosterone result (which ultimately led to the Presence ADRV). The HIWU Investigators conducted that Search because they were present at

⁶⁶ PFF #28.

⁶⁷ [McCrosky](#), p. 61.

⁶⁸ [Overly](#), pp. 87-89; [Taylor](#), paras. 7.17-7.20.

⁶⁹ [McCrosky](#), p. 65.

Appellant's premises to serve him with the Notice.⁷⁰ The personal service of the Atypical Notice and subsequent Search on November 12, 2024 provide the common set of facts authorizing consecutive sanctioning for the Possession ADRV under Rule 3228(d)1.⁷¹

With respect to proportionality, the principle is a case-law-derived exception that applies only exceptionally and restrictively to reduce otherwise-applicable global Consequences, and its application should not become the norm.⁷² There is no basis in the facts of this case to reduce Appellant's overall POI. Notably, this case is distinguishable from the *Shell* matter in which the ALJ applied the proportionality exception. Unlike Dr. Shell, who was a "longtime veterinarian nearing retirement [and] cumulative Ineligibility of eight years would be tantamount to permanent expulsion from practicing in the HISA-covered racing industry,"⁷³ Appellant is in a relatively early stage of his career⁷⁴ and a 32-month (two year and eight month) POI would not amount to permanent expulsion from being a Trainer in HISA-covered jurisdictions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th day of July, 2026.

/s/Bryan H. Beauman

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⁷⁰ PFF #3.

⁷¹ See, by analogy, [McCrosky](#), p. 64-65 where a Use ADRV was found to arise from a "common set of facts" as a Possession ADRV because Dr. McCrosky's admission of Use was given during the HIWU search that led to the Possession ADRV.

⁷² [Overly](#), p. 64; [McCrosky](#), p. 70.

⁷³ AB, p. 0855 (*Shell*).

⁷⁴ PFF #17.

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