

dosage level of Altrenogest would need to be significantly higher than the levels at issue in this case to materially affect behavior in horses.

Ms. Lynch will also offer expert testimony from Dr. Kristine H. Wammer. Dr. Wammer is a Professor of Chemistry and Associate Dean of the College of Arts and Sciences at the University of St. Thomas. Dr. Wammer's research focuses on the chemical and microbiological processes that affect the persistence of organic contaminants in the environment. She has studied Altrenogest and its survival under different environmental conditions and published work on this topic. Dr. Wammer will testify that Altrenogest can survive for an extended period of time in environments with limited exposure to sunlight like the barn at issue here.²²

(c) Ms. Lynch Will Further Establish That She Does Not Bear Fault for Any Presence of Altrenogest

Finally, Ms. Lynch will establish at the forthcoming evidentiary hearing that she does not bear any Fault or Negligence, or Significant Fault or Negligence, for the alleged Presence of Altrenogest in Motion to Strike. The record as supplemented will establish that the alleged amount of Altrenogest in Motion to Strike's system was minuscule, that the substance was not used to enhance Motion to Strike's performance, and that Motion to Strike's performance was not enhanced.

Ms. Lynch will further establish through testimony from Dr. Good and Ms. McKinney that Ms. Lynch took excellent care of her horses.

²² As set forth in Exhibit A, to the extent HISA intends to rely on any analysis by Dr. Cole or any conclusions derived therefrom in seeking to sustain the sanctions against Ms. Lynch, Ms. Lynch plans to insist that HISA call Dr. Cole to testify at the hearing, so she can be cross-examined. Should HISA be permitted to rely on any testimony from Dr. Cole without offering her live testimony at the hearing, Ms. Lynch plans to call Dr. Cole as an adverse witness for purposes of impeachment.

Ms. Lynch will establish through witness testimony that she exercised due care with her horses, and that she did not know that there was a risk for Motion to Strike being contaminated with Altrenogest.

The record as supplemented will make clear that the sanctions imposed on Ms. Lynch impose an unprecedented and excessive period of ineligibility and financial penalty for the alleged violation, which far outstrips the sanctions HISA has imposed in other environmental contamination cases. *See, e.g., HIWU v. Lauer*, HIWU Case Resolution without a Hearing/Final Decision (Dec. 15, 2023) (trainer sanctioned for two and a half months and a \$2,600 fine because his groom had a prescription for the banned substance Metformin and contaminated a Covered Horse); *HIWU v. Reid*, HIWU Case Resolution without a Hearing/Final Decision (Nov. 10, 2023) (sanction of four months of ineligibility and a \$4,125 fine deemed “appropriate” when hay eaten by a Covered Horse was contaminated with human urine containing a Banned Substance).

VI. The Sanctions for Possession of Thyro-L Cannot Be Upheld

While the procedural deficiencies outlined in Section IV suffice to vitiate the sanction for the Possession Charge, Ms. Lynch will also establish that the record as supplemented through the forthcoming evidentiary hearing cannot sustain the underlying sanction for Possession of Thyro-L in any event.

(a) *HISA Will Not Be Able To Sustain the Finding That the Tub Located in the Trunk of the Car Ms. Lynch Drove to Belmont Contained a Banned Substance*

First, Ms. Lynch will establish the evidence adduced in support of the Possession Charge is inadmissible because it was seized beyond the scope of HIWU’s authority and was an abuse of its powers under the ADMC Rules. We will introduce the testimony of Ms. Lynch’s mother, Kimberly Rae Genner, to establish that the car which was searched and in which the

alleged Banned Substance Thyro-L was located in the trunk, as well as the clothes and shoes in the trunk of the car, belonged to Ms. Genner and not Ms. Lynch. In light of this testimony, we will establish that HIWU lacked authority to search Ms. Genner's car under its own rules because it was not a "racetrack facilit[y]" or an "other place[] of business" of Ms. Lynch. ADMC Rule 8400(a)(1)(i). Indeed, even if the car had been Ms. Lynch's car, the search would not have been authorized by that same rule. Moreover, we will rebut any assertion by HISA that Ms. Lynch consented to the search because any "consent" could not be freely given in circumstances where Ms. Lynch was operating under the investigators' misrepresentation that they had the right to search her mother's car. *See, e.g., United States v. Frye*, 826 F. App'x 19, 21 (2d Cir. 2020) ("[W]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given); *see also Bumper v. North Carolina*, 391 U.S. 543, 548-50 (1968) (holding that, [w]here there is coercion there cannot be consent," and thereby suppressing evidence from an unlawful search and overturning the underlying conviction).

HISA's outlandish decision to dispatch a trio of investigators, including two former FBI agents, to interrogate a trainer with a clean record about a Presence violation for a legal substance was made even more troubling when that band of investigators decided to initiate a search of Ms. Lynch's barn and then her mother's car. As we will establish at the forthcoming hearing, those searches had no legitimate predicate and the fruits of those searches therefore should not be considered. After all, Ms. Lynch was being questioned regarding a Presence violation for a substance which Ms. Lynch was *legally entitled to possess*, because it was being administered to a filly in her barn that had received a prescription to that end from Dr. Good.

Second, as set forth above with respect to the Presence Charge, Ms. Lynch will contend that the documentation provided in relation to the Possession Charge is insufficient to sustain the Possession sanction. Because HISA failed to furnish the A Sample Laboratory Documentation Package for the Possession Charge with the Charge Letter as required by the ADMC Rules, the documentation it has provided should not be considered by the ALJ. *See* 16 C.F.R. § 1.146(c)(5)(iv,) (stating that the “final factual record,” in addition to including “[a]ny new facts adduced at the hearing and found by the Administrative Law Judge,” may only include “facts found by the Authority that, in the determination of the Administrative Law Judge, were found in a process that was consistent with 15 U.S.C. 3057(c), the Authority’s Rule Series 8300, and adequate due process.”).

As with the Presence Charge, Ms. Lynch will also object to any effort by HISA to seek to rely on the inadequate documentation for the Possession Charge as deficient under its own rules and as inadmissible hearsay. Ms. Lynch will contend that HISA must offer testimony from the technicians who performed each procedure and introduce the full Laboratory Documentation Package through their testimony as the law and HISA’s own regulations require.

To the extent the ALJ is willing to consider the documentation furnished below over Ms. Lynch’s objections, Dr. Barker will offer testimony regarding why that documentation is not sufficiently reliable to support a conclusion that there was a Banned Substances present in the trunk of Ms. Lynch’s mother’s car.

(b) HISA Will Not Be Able To Sustain the Finding That Ms. Lynch Was in Possession within the Meaning of the ADMC Rules

Additionally, HISA will not be able to establish that Ms. Lynch was in Possession of a Banned Substance because the record upon supplementation will not be able to support a finding of Possession as defined by the ADMC Rules.

Rule 1010 of the ADMC defines possession as follows:

“Possession means actual, physical possession, or constructive possession (which shall be found only if the Covered Person has exclusive control or intends to exercise exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists). If the Covered Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Covered Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it.”

The supplemented record will establish that Ms. Lynch was not in actual Possession within the meaning of the ADMC Rules, because Ms. Lynch did not have exclusive control over the alleged Thyro-L. Instead, the alleged Thyro-L was located in the trunk of Ms. Genner’s car, and Ms. Genner’s testimony will show that Ms. Lynch was not in exclusive control of that car. Ms. Genner’s testimony will also establish that Ms. Lynch did not have any intention to exercise exclusive control over the tub containing the alleged trace amount of Thyro-L because she had already given the tub to Ms. Genner to discard, had relinquished all control over the tub, and had no knowledge that the tub was located in the trunk of Ms. Genner’s car.

The supplemented record will also establish that Ms. Lynch was also not in constructive possession of the alleged Thyro-L. Ms. Genner’s testimony will again show that Ms. Lynch did not have knowledge that the alleged Thyro-L was in the trunk of Ms. Genner’s car and, even if Ms. Lynch did know of its presence, she had no intention to exercise control over it because her intention had been to dispose of it. Ms. Genner will also testify that the photographic evidence taken by HISA’s investigators of the trunk of the car depicts items belonging to Ms. Genner, not Ms. Lynch, and therefore does not support a finding of knowledge on the part of Ms. Lynch that the tub was in the trunk of the car, contrary to HISA’s assertions.

Ms. Lynch will further contest any conclusion that she failed to properly dispose of the alleged Thyro-L. App. Bk. at 43. To that end, Ms. Lynch intends to introduce testimony and documentary evidence concerning the timing and clean out of the barn during which the Thyro-L was discarded.

In supplementing the record, Ms. Lynch will also demonstrate that any finding of fact made by the Arbitrator in reliance on statements made by HISA Investigator Gregory Pennock, who conducted the search of Ms. Lynch's mother's car, cannot withstand scrutiny. Ms. Lynch will identify various contradictions with respect to Mr. Pennock's testimony that will establish that his testimony was not credible and cannot form the basis for any conclusions drawn by the ALJ. Ms. Lynch also reserves the right to call HISA Investigator Richards, who was present for the search of Ms. Lynch's car and whom Ms. Lynch was improperly prevented from calling in the Arbitration. App. Bk. at 60-61.

(c) Should Possession Be Found, Ms. Lynch Will Further Establish That She Bears No Fault or Negligence, or No Significant Fault or Negligence

Finally, Ms. Lynch will establish at the forthcoming evidentiary hearing that she bears No Fault or Negligence (ADMC Rule 3224), or No Significant Fault or Negligence (ADMC Rule 3225) for the Possession of Thyro-L, if the ALJ should uphold the finding of Possession upon review of the full record as supplemented. The record, as supplemented, will establish that Ms. Lynch did not administer Thyro-L to a Covered Horse once Thyro-L became a Banned Substance, and that she took appropriate steps to dispose of the alleged Thyro-L from her barn.

(d) *The Sanctions Were Arbitrary, Capricious, an Abuse of Discretion, and Otherwise Not in Accordance with Law*

We will also argue that the sanctions HISA seeks to impose on Ms. Lynch are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law. 15 U.S.C. 3058(b)(2)(A)(iii). We will establish through the testimony of Dr. Barker that the amount of alleged Thyro-L identified in a tub in the trunk of Ms. Genner's car was barely enough for three therapeutic doses for a single horse, which also supports Ms. Lynch's contention that she had no intent to possess the substance. Thus, HISA's decision nonetheless to sanction Ms. Lynch with the maximum fine and period of ineligibility for an ADMC Rule 3214(a) violation was grossly disproportionate to any level of fault that could possibly be attributed to Ms. Lynch.

Ms. Lynch will also show through the record as supplemented that, even if a violation of ADMC Rule 3214(a) were found, the maximum sanctions HISA seeks to impose cannot be sustained, because mitigating factors warrant a significantly reduced sentence. The record as supplemented will show that Ms. Lynch had not used it on a Covered Horse after it became a Banned Substance. Moreover, the sanctions HISA has imposed on Ms. Lynch also far outstrip the sanctions HISA has imposed in other Thyro-L Possession cases. *See HIWU v. Perez*, Decision at 8.1, JAMS Case No. 1501000589 (Oct. 9, 2023) (imposing a 14-month suspension and \$5,000 fine for possession of Thyro-L on a veterinarian, despite a finding that he, unlike Ms. Lynch, had made no attempt to discard the Thyro-L); *HIWU v. Poole*, Decision at 8.1, JAMS Case No. 1501000576 (Aug. 8, 2023) (imposing a 22-month suspension and \$10,000 fine for possession of Thyro-L despite a finding that the accused had made no attempt to discard the Thyro-L).

Ms. Lynch, like all who participate in and love the sport that HISA and HIWU were meant to protect, shares in the desire for a uniform playing field and uniform testing standards. But, as we have outlined above and will establish further at the forthcoming evidentiary hearing, HISA and HIWU have pursued Ms. Lynch with a win-at-all-costs vengeance that cannot withstand scrutiny: they have disregarded their own rules, at least recklessly introduced false fact and expert testimony, and otherwise conducted themselves in a manner that is entirely at odds with the duties of any responsible regulator and their statutory mandate to afford athletes due process. To be sure, Ms. Lynch has chosen to be a trainer in a regulated industry, but she did not forfeit her fundamental rights when HISA and HIWU appeared on the scene. All desire a safe, clean sport. But that goal and basic respect for human dignity and rights should not—and must not—be in conflict.

VII. Conclusion

For all of the foregoing reasons, the sanctions levied against Ms. Lynch should be set aside and the underlying charges should be dismissed with prejudice.

Dated: March 1, 2024

Respectfully submitted,

/s/ Grant S. May

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EXHIBIT A
LIST OF WITNESSES APPELLANT INTENDS TO CALL

At the evidentiary hearing, Ms. Lynch intends to supplement the record with testimony from the following witnesses. While this reflects Ms. Lynch's intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA's refusal to provide Ms. Lynch with documents to which she is entitled under HISA's own Rules. Ms. Lynch therefore reserves the right to amend this list.

1. Fact Witness Testimony of Natalia Lynch
See supra at 5, 19-21, 23-24 for a summary of what Ms. Lynch's testimony will establish.
2. Fact Witness Testimony of Dr. Mari J. Good
See supra at 15-16, 19, 21 for a summary of what Dr. Good's testimony will establish.
3. Fact Witness Testimony of Stacey McKinney
See supra at 16, 19 for a summary of what Ms. McKinney's testimony will establish.
4. Fact Witness Testimony of Kimberly Rae Genner
See supra at 20, 23-24 for a summary of what Ms. Genner's testimony will establish.
5. Expert Testimony of Dr. Steven A. Barker
See supra at 11-12, 14, 18, 22, 25 for a summary of what Dr. Barker's testimony will establish.
6. Expert Testimony of Dr. Kristine H. Wammer
See supra at 19 for a summary of what Dr. Wammer's testimony will establish.

To the extent that HISA plans to rely on live testimony from any of the below individuals at the forthcoming hearing, Ms. Lynch intends to cross-examine each of these individuals. To the extent HISA does not plan to call any of these individuals, Ms. Lynch intends to call them and, following a meet and confer with opposing counsel, intends to move for issuance of subpoenas *ad testificandum* for each of the below:

1. Gregory Pennock
2. Naushaun “Shaun” Richards
3. Dr. Cynthia Cole
4. John and Janes Does (laboratory technicians who performed the testing on the samples HISA used in support of charges against Ms. Lynch)²³

²³ For the reasons set forth in this brief (*see supra* at 9-15), Ms. Lynch will object to any effort by HISA to rely on laboratory analysis without live testimony from the individuals who performed the underlying analysis. Should HISA be permitted to rely on that analysis in any way, Ms. Lynch intends to call those individuals as adverse witnesses. The identities of those individuals has not yet been ascertained because HISA has stonewalled discovery into the testing undertaken in Ms. Lynch’s case (*see supra* at 9-11).

EXHIBIT B
LIST OF DOCUMENTARY EVIDENCE APPELLANT INTENDS TO OFFER

At the evidentiary hearing, Ms. Lynch intends to supplement the record with the following documentary evidence all of which is properly admissible because it is “relevant, material and reliable” and also properly considered, where applicable, for impeaching HISA’s witnesses. 16 C.F.R. 1.1146(c)(6)(ii). While this reflects Ms. Lynch’s intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA’s refusal to provide Ms. Lynch with documents to which she is entitled under HISA’s own rules. Ms. Lynch therefore reserves the right to amend this list.

1. Laboratory Documentation Package of Split B Sample for the Presence Charge²⁴
See supra at 11-12, 14-15 for a summary of what this Laboratory Documentation Package could establish and how Ms. Lynch has been prejudiced by HISA’s repeated refusals to furnish it.
2. Laboratory Documentation Package of Split A Sample for the Possession Charge²⁵
See supra at 11-12, 22 for a summary of what this Laboratory Documentation Package could establish and how Ms. Lynch has been prejudiced by HISA’s repeated refusals to furnish it.
3. Claiming Records of the Horse “Provision” dated June 15, 2023
See supra at 16 for a summary of what the Claiming Records will establish.
4. Video of Ms. Lynch’s Barn at Belmont Park from July 8, 2023
See supra at 16 for a summary of what this video will establish.
5. January 16, 2024 Email from J. Bunting to C. Boehning
See supra at 9 for a summary of what this correspondence with establish.
6. January 24, 2024 Letter from A. Farrell to C. Boehning
See supra at 9 for a summary of what this correspondence with establish.

²⁴ As discussed *supra* at 4-5, 9, HISA failed to furnish this document either in the Charge Letter or in response to subsequent requests. Ms. Lynch plans to seek to compel production of this document in advance of the evidentiary hearing.

²⁵ As discussed *supra* at 4-5, 9, HISA failed to furnish this document either in the Charge Letter or in response to subsequent requests. Ms. Lynch plans to seek to compel production of this document in advance of the evidentiary hearing.

7. HISA, HISA Q&A: The ADMC Program, Press Release, Mar. 8, 2023,
<https://hisaus.org/news/hisa-qa-the-admc-program>
See supra at 12 for a summary of what this press release will establish.

EXHIBIT C
LIST OF FACTS AND FINDINGS BY THE ARBITRATOR THAT MS. LYNCH
INTENDS TO CONTEST

Upon supplementation of the record through the evidentiary hearing, Ms. Lynch intends to contest the following findings of fact, which are set forth in the Arbitrator's decision, and thereby also disputes any conclusions of law derived therefrom. While this reflects Ms. Lynch's intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA's refusal to provide Ms. Lynch with documents to which she is entitled under HISA's own Rules. Ms. Lynch therefore reserves the right to amend this list.

1. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was provided with a full and fair opportunity to present her case. App. Bk. at 24, n.5.

With respect to the Presence Allegations:

2. Ms. Lynch will contest the Arbitrator's finding that Dr. Cole's testimony was relevant, persuasive, or credible and will contest any findings made by the Arbitrator in reliance on Dr. Cole's testimony. App. Bk. at 37-39, 44.
3. Ms. Lynch will also contest the Arbitrator's erroneous rejection of Dr. Fenger's expert opinion and Dr. Fenger's finding that the alleged Presence of Altrenogest in the Covered Horse was the result of environmental contamination. App. Bk. at 36-37.
4. Ms. Lynch will contest the Arbitrator's finding that Motion to Strike was not stalled next to the filly Mary Katherine, and that the horses were stalled many stalls away from one another. App. Bk. at 38-39.

5. Ms. Lynch will contest the Arbitrator's finding that Altrenogest had not been administered to Mary Katherine for five days before the day the sample was collected from Motion to Strike. App. Bk. at 38-39.
6. Ms. Lynch will contest the Arbitrator's finding that the amount of Altrenogest detected in Motion to Strike's blood sample is consistent with ingestion within 24 hours. App. Bk. at 38.
7. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch's verification that Mary Katherine had 13 administrations of Altrenogest between June 12 and 24, 2023 was incorrect. App. Bk. at 39.

With respect to the Possession Allegations:

8. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was "in possession of the banned Thyro-L." App. Bk. at 40, 42.
9. Ms. Lynch will contest the Arbitrator's finding that the vehicle was Ms. Lynch's vehicle. App. Bk. at 42.
10. Ms. Lynch will contest any factual predicates supportive of a conclusion that the tub allegedly containing Thyro-L was lawfully seized and that any evidence stemming therefrom can be properly considered. App. Bk. at 41.
11. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch cleaned out her barn in March 2023. App. Bk. at 41.
12. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch handed her mother the cardboard box which is depicted in the pictures captured by Mr. Pennock. App. Bk. at 41-42.

13. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was not able to offer credible evidence to support her claim that she disposed of the alleged Thyro-L by giving it to her mother to dispose of. App. Bk. at 41-42.
14. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch failed to properly dispose of the alleged Thyro-L. App. Bk. at 40, 42-43.
15. Ms. Lynch will contest any findings of fact made by the Arbitrator in reliance, in whole or in part, on the testimony of Mr. Pennock. App. Bk. at 41-43.

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, pursuant to Federal Trade Commission

Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing to be filed and served as follows:

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