

PUBLIC

**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

IN THE MATTER OF:

DR. LARRY OVERLY, DVM

APPELLANT

THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW

PUBLIC

CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this Authority's Response to Appellant's Application for Review is being served on October 6, 2025, via Administrative E-File System and by emailing a copy to:

Hon. Jay L. Himes
Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to Oalj@ftc.gov
and 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

Howard L. Jacobs
Law Offices of Howard L. Jacobs
31111 Agoura Rd., Suite 225
Westlake Village, CA 91361
Telephone (805) 418-9892
Fax (805) 418-9899
Via email to howard.jacobs@athleteslawyer.com

George M. Wallace
215 North Marengo Avenue, Third Floor
Pasadena, CA 91101-1504
Telephone (626) 844-677
Fax (626) 795-0353
Via email to gwallace@wbslaw.com

Counsel for the Appellant

/s/ Bryan Beauman

Enforcement Counsel

PUBLIC

The Horseracing Integrity and Safety Authority (“**Authority**”) files this Response to Appellant’s Application for Review of the Final Decision of Arbitrator Laura C. Abrahamson (“**Arbitrator**”) under the Authority’s Anti-Doping and Medication Control (“**ADMC**”) Program (the “**Final Decision**”). The Administrative Law Judge (“**ALJ**”) should uphold the Final Decision and deny Appellant’s request for an evidentiary hearing.

First, the Arbitrator correctly determined that Appellant failed to establish a “compelling justification” for Possession of Banned Substances and thus violated ADMC Program Rule 3214(a). In accordance with prior case law, the Arbitrator acknowledged that compelling justification is a “fact specific, case by case inquiry that must be determined by the evidence.” Appellant failed to show, by a preponderance of the evidence, that he was justified in having Testosterone or Isoxsuprine at Los Alamitos for a legitimate and legal veterinary purpose that was not connected to Covered Horses.¹

With respect to the Testosterone, among other things: (i) the Arbitrator accepted a HIWU Investigator’s credible testimony that Appellant never told him that Testosterone was needed in his non-Covered practice; (ii) Appellant failed to produce records showing that he had ever administered Testosterone to a non-Covered Horse at Los Alamitos; and (iii) the only evidence of Appellant’s use of Testosterone in his off-track practice was for a horse owned by Appellant’s veterinary technician, Ms. Ingram, with whom he had an undisclosed romantic relationship, and whose horse Appellant was purportedly scheduled to treat a week after the search by HIWU.²

¹ Final Decision, ¶7.5.1. See also *In the Matter of Dr. Scott Shell DVM*, FTC Docket No. 9439 (“*Shell FTC*”), at p. 16 (Mar. 6, 2025); *HIWU v. Shell*, JAMS Case No. 1501000653, at para. 7.17 (Sept. 9, 2024).

² Final Decision, ¶7.5.6.

PUBLIC

With respect to the Isoxsuprine, among other things: (i) Appellant admitted that Isoxsuprine could not be used on non-Covered Horses at Los Alamitos; (ii) Appellant produced no records showing any instance in which he had treated a Non-Covered Horse with Isoxsuprine; and (iii) Appellant's testimony that a client requested that he bring Isoxsuprine to an appointment for a non-Covered Horse was unsupported by any veterinary medical records from this appointment – despite Appellant and Ms. Ingram testifying that such records exist.³

Appellant's claim that a "compelling justification" is otherwise established based on the composition of his practice is a red herring that would render Rule 3214(a) meaningless and fails to consider the full context of public guidance from HIWU's former Chief of Science, Dr. Mary Scollay. Appellant's assertion that this evidence should be assessed and weighed differently would permit improper evasion of the ADMC Program and is inconsistent with this tribunal's prior ruling that "compelling justification is the exception" and should "be interpreted restrictively."⁴

Second, the Authority disputes that the sanctions imposed by the Arbitrator were arbitrary, capricious, an abuse of discretion, prejudicial, or not in accordance with the law. Appellant is only entitled to the elimination of sanctions if he establishes No Fault under Rule 3224. A finding of No Fault, which is limited to "exceptional circumstances," is unavailable where the undisputed evidence showed that: (i) Appellant was aware of the ADMC Program Rules and claimed to have studied them; (ii) Appellant knew Testosterone and Isoxsuprine are Banned Substances; (iii) Ms. Ingram knew she had loaded Isoxsuprine onto Appellant's veterinary truck; (iv) Appellant admitted that he made no effort to reach out to Dr. Scollay or anyone else at HIWU to discuss the composition of his practice and whether he was at risk of violating Rule 3241(a); and (v) Appellant

³ Final Decision, ¶7.5.7.

⁴ *Shell FTC*, at p. 16.

PUBLIC

admitted that he made no effort to review Dr. Scollay's presentation, which was available on the HIWU website.⁵ The Arbitrator otherwise assessed Appellant's sanctions in accordance with prior case law and properly determined both his objective and subjective degrees of Fault.⁶

The Arbitrator's analysis was rationally connected to the facts and based on the consideration of relevant factors.⁷ Appellant has not identified *any* failure on the part of the Authority to act within "a zone of reasonableness" – nor can he point to *any* plain error or unjustified exercise of discretion by the Arbitrator such that the Final Decision is "clearly against the logic and effect of the facts as [were] found."⁸

As a final matter, Appellant has not shown sufficient grounds for an evidentiary hearing. Pursuant to 16 CFR §1.146(c)(2), the ALJ is to assess whether any party to this appeal seeks to "supplement" or "contest" the facts found at first instance.⁹ Neither applies here. Appellant does not identify any new evidence that should be introduced to "supplement" the record. Moreover, while Appellant states that he "requests a hearing to contest facts that the Arbitrator claimed she found," he does not identify any specific facts to be "contested." In fact, referencing the "facts that the Arbitrator claimed she found" acknowledges that this matter should be decided on the record below and no evidentiary hearing is necessary.

Appellant's application is premised on legal arguments about the interpretation and application of the "compelling justification" defense and Fault analysis. The evidence that informs

⁵ Final Decision, ¶7.8.4 – 7.8.5.

⁶ Final Decision, ¶7.8.7 – 7.8.17.

⁷ *Shell FTC*, at p. 13 (citations omitted).

⁸ *Shell FTC*, at p. 13-14 (citations omitted).

⁹ 16 CFR §1.146(c)(2) also provides that the ALJ will assess whether the Commission seeks supplementation of the record (if it filed the application for review), or, if in the ALJ's view, the factual record is insufficient to adjudicate the merits of the case.

PUBLIC

this analysis is in the record and can be reassessed or reweighed, as applicable. Appellant's application does not point to *any* erroneous findings of fact that must be corrected.

Pursuant to 16 CFR §1.146(c)(3), the appeal should be limited to briefing, unless the ALJ elects to hear oral argument. If, however, the ALJ determines that an evidentiary hearing should be held, the Authority requests that the witnesses presented on behalf of HIWU at the Arbitration be permitted to testify.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6th day of October, 2025.

/s/Bryan H. Beauman

BRYAN BEAUMAN
REBECCA PRICE
333 W. Vine Street, Suite 1500
Lexington, Kentucky 40507
Telephone: (859) 255-8581
bbeauman@sturgillturner.com
rprice@sturgillturner.com
HISA ENFORCEMENT COUNSEL

MICHELLE C. PUJALS
ALLISON J. FARRELL
4801 Main Street, Suite 350
Kansas City, MO 64112
Telephone: (816) 291-1864
mpujals@hiwu.org
afarrell@hiwu.org
**HORSERACING INTEGRITY &
WELFARE UNIT, A DIVISION OF
DRUG FREE SPORT LLC**