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

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

IN THE MATTER OF:

DR. LARRY OVERLY, DVM **APPELLANT**

APPELLANT'S REPLY BRIEF

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Dr. Larry Overly ("Appellant") replies to the Horseracing Integrity and Safety Authority's ("**HISA**") December 15, 2025 Brief ("**HISA Br**.").

I. INTRODUCTION

HISA focuses on irrelevant record keeping attacks and prejudicial character assassination to distract from the facts of this case, which are relatively straightforward. HISA ignores its minister of justice role, and seeks 23-months eligibility for each count charged, to run consecutively, and a $25,000 fine for each count, despite well-reasoned findings in *HIWU v. Shell*, *HIWU v. Puype*, ADMC Rules, and recent clarification from Federal Trade Commission Administrative Law Judge Jay L. Himes stating that *lex sportiva* and proportionality principles dictate two different Banned Substances recovered in the same transaction and occurrence should be treated as one possession charge for penalty purposes.

II. COMPELLING JUSTIFICATION

HISA implies Appellant adopted the blanket ***Perez I*** Non-Covered practice defense, arguing it is insufficient to "keep the Banned Substances at [a] Covered racetrack." HISA Br. p. 20. Unlike ***Perez I***, Appellant argued that Dr. Scollay's guidance should be taken to mean that veterinarians have "compelling justification" to carry Banned Substances on Covered racetracks "[i]f the veterinarians are practicing… on a population of non-Covered Horses, they're taking care of quarter horses or they've got a country practice..."[1] Dr. Scollay/HISA/HIWU never said, nor does Rule 3214(a) require, "emergencies" for "compelling justification."[2] Dr. Scollay admitted what is in your truck and justification depends on practice composition.[3] Appellant demonstrated that in 2024 almost 66% of his Los Alamitos equine patients were Non-Covered QHs, almost 80%

[1] **Proposed Finding of Fact ("PFF") 9-14; *HIWU v. Perez*, JAMS Case No. 1501000589; AB 523-547 ("Perez I)**.
[2] **PFF 10-12; 15**.
[3] **PFF 12**.

of the treatments were for Non-Covered equine, almost 70% of his practice was Non-Covered, and that Los Alamitos houses a majority of Non-Covered QHs.[4]

Appellant did not *merely* argue travel "inconvenience." Not carrying these medications could create ethical dilemmas or malpractice concerns, and separate trucks and/or reloading is patently unrealistic. **PFF 25-27.** Appellant removed banned substance Biphosphonates from his practice truck, but that does not void need to carry, and corrective measures are inadmissible to prove prior liability. *Columbia & P. S. R. Co. v. Hawthorne,* 144 U.S. 202, 208 (1892).

The Arbitrator holding post-seizure use cannot establish compelling justification conflicts with ***Perez I,*** holding "a vet might show compelling justification based on records showing he "***intended***" to administer to Non-Covered horses.[5] There are no time limits. Appellant prescribed Testosterone for Non-Covered horse Cosmo pre-seizure, demonstrating compelling justification. **PFF 23.**

Appellant justified the need to carry Isoxsuprine for Non-Covered horse "Brownie" on July 17, 2024, after owner Chantal asked for Isoxsuprine, thinking it would be beneficial for Brownie. Appellant eventually learned, and Ingram testified, that she placed Isoxsuprine on the truck for that appointment, which Appellant attended along with practice vet Dr. Chaparro and owner Chantal. **PFF 18.**

Appellant also justified the need to carry Testosterone, as Appellant showed by a preponderance of evidence that he ethically kept and used Testosterone for Cosmo's appetite, a legitimate Non-Covered use, in his majority Non-Covered practice, and this medication is legal and permissible to carry at Los Alamitos (which stables a majority of Non-Covered QHs) under

[4] **PFF 4-5**.
[5] ***Perez I*, ¶ 7.15.**

Cal. Code Regs., Tit. 4 § 1869, establishing a compelling justification to possess this Banned Substance at Los Alamitos for use in Non-Covered practice, despite the fact that Cosmo was stabled in Orange. **PFF 22-25**.

III. FAULT ANALYSIS

Contrary to HISA's argument (HISA Br. 23-24), here, Appellant exercised utmost caution: he reviewed Dr. Scollay's guidance, regularly reviewed guidance put forth by HISA/HIWU, regularly reviewed industry blog posts, and spoke directly to Los Alamitos Chief Veterinary Officer Dr. Jeff Blea with respect to the Rules. Accordingly, Appellant could not "suspect" a violation. **PFF 10-14.** HISA/HIWU and Dr. Scollay never clarified their statements on "compelling justification." **PFF 15.** Thus, the Arbitrator finding that Appellant's lack of "effort to reach out to Dr. Scollay or anyone else at HIWU" is not relevant under the facts of this case to the issue of "utmost caution" (**Decision**, **¶ 7.8.5),** and is not rationally connected to the facts of Dr. Scollay's guidance.

The Arbitrator misconstrued the objective and subjective elements for "no significant fault." Given Dr. Scollay's guidance, a reasonable veterinarian would have done nothing more. **Appellant's Opening Brief, p. 11-12.** The Decision is unreasonably disconnected from a proper factual reading of Dr. Scollay's statements. Fault if any, is minimal, and penalties (which are denied) if any should have been the minimum.

IV. HISA CANNOT SEEK TWO YEARS INELIGIBILITY FOR EACH BANNED SUBSTANCE TO RUN CONSECUTIVELY

The well-reasoned decisions in *Shell*[6] and *Puype*,[7] the *lex sportiva*, ADMC Rules, FTC ALJ Himes' Decision in the *Shell I Appeal*,[8] and the proportionality principle all demonstrate that

[6] *HIWU v. Dr. Scott Shell*, JAMS Case No. 1501000653 (Decision, 9/9/24) **AB p. 3146**.
[7] *HIWU v. Mike Puype*, JAMS Case No. 1501000653 (Decision, 12/3/24) **AB p. 3182**.
[8] *In the Matter of Scott Shell*, FTC Dkt. No. 9439 (Decision 3/6/25) **AB p. 3215**.

if liability is found, the Arbitrator must not consider four years ineligibility or double fines for Appellant, because the two Banned Substances were seized in one transaction and occurrence, in an alleged first time offense, requiring the two Banned Substances to be treated together as one charge. Accordingly, HISA should be prohibited from even charging two counts.

HIWU'S EAD Notice and Charge Letter do not cite a Rule with language allowing HIWU to charge Appellant with two counts of Rule 3214(a). HIWU presumes it can, based on two Banned Substances. But the EAD Notice only states that "Consequences may be imposed pursuant to ADMC Program Rules 3221, 3222, and 3223 for each violation." AB p. 3874. No Rule specifically permits two charges.

In *Puype*, HIWU charged a trainer with two Rule 3214(a) violations for Isoxsuprine and Thyro-L, both recovered on April 24, 2024, in one transaction and occurrence.[9] In *Puype*, HIWU relied on Rule 3223(c)(2), seeking "a period of Ineligibility for each of the two violations…to be served consecutively." In that case, Arbitrator Barbara Reeves ("Reeves") properly and persuasively found the "plain language of Rule 3223(c)(2) does not support consecutive sanctions for first-time offenders, as it explicitly refers to Covered Persons "*already serving* a period of Ineligibility for another violation of the Protocol" [emphasis added][10], and Mr. Puype was not already serving a period of ineligibility for another violation at the time that the sanction in his case was being assessed. Arbitrator Reeves also correctly found that reliance on Rule 3223(c)(2) is at odds with Article 10.9.3.1 of the World Anti-Doping Code ("WADC"), which the ADMC Program is based on and upon which HISA regularly relies.[11] Based thereon, Reeves interpreted

[9] **¶ 2.19-2.20.**
[10] **¶8.30-8.31.**
[11] **¶8.33**. WADC Art. 10.9.3.1 provides that an anti-doping rule violation will only be considered a second violation of the additional violation occurred after the person had been given notice of the first violation. This rule is very reasonably based on the premise that a person should be provided notice and

the Rules used "WAD[C] and the lex sportive that interprets it [to find] possession of more than one banned substance in a scenario such as this one should be treated as a single violation."[12]

The reasoning in *Puype* is supported by rulings in *Shell I* and *Shell FTC Appeal,* where HIWU originally argued that it could charge multiple counts under Rule 3228(d). In *Shell I,* Reeves found Rule 3228(d) ***only applies*** where "both Banned Substance…and a Controlled Medication Substance…" are charged, **AB p. 3170 ¶¶ 7.7**, and similar to *Puype*, found Rule 3223(c)(2)'s language "would not support consecutive punishments based on its language." *Shell I,* OCBA, Tab 1, ¶ 7.73. ALJ Himes concluded Reeves was incorrect and the word "and" in Rule 3228(d) could be read as an "or" because Banned Substance violations carry heavier penalties than controlled medications and under Reeves' reading, HIWU could charge the latter with two violations, but the former with only one. *Shell FTC Appeal*, OCBA, Tab 3 pp. 47-48.

However, **Rule 3228(d)** ***is not a charging rule, it is a procedural rule***. **Rule 3228(d)** clearly states when a distinct Banned Substance and distinct Controlled Medication charge are filed together, they do not become one ("shall be treated as separate violations") but are "adjudicated together in consolidated proceedings." **AB p. 3849**. (noting "a violation" might involve "one or more Banned Substances" not several violations). Thus, HIWU's argument that in the ADMC Program's possession definition, the word "substance" is singular, making each possession a violation is at odds with the plain language if Rules 3223, 3228, and WADC/CAS interpretation, which do not permit separate or consecutive penalties for each different Banned Substance, in a first-time possession offense arising from the same course of conduct, absent prior charges, prior

an opportunity to correct their behavior before being charged with a second violation; and the rationale for this rule applies even more to serving sanctions concurrently vs. consecutively.

[12] **¶7.19.2.**

notice, and/or prior ineligibility. If you replace the word "and" with "or" in Rule 3228(d) it would render the **Rule3228(d)** completely meaningless.

Regardless, ALJ Himes agreed that "despite Rule 3228(d)'s charging authority…an over-arching consideration is inescapable…*Puype*...accords with many decisions in the sports world globally." *Shell FTC Appeal*, **AB p. 3266**. "[I]t is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement." ***W. v. FEI,* CAS 99/A/246, at ¶ 31, AB p. 3942.** Accordingly, multiple ADRVs, based on a common set of facts, are often treated as a single[13] violation for sanction purposes.[14] The principal of "proportionality" is related to fault, as CAS has stated that "the seriousness of the penalty […] depends on the degree of the fault committed by the person responsible" ***W. v. FEI,* at ¶ 31, AB p. 3942**.

Put simply, even if HIWU could charge two counts, ALJ Himes rejected "HIWU's effort to impose sanctions for each ADRV[15]. Dr. Overly is charged as a first-time HISA offender, and the two Banned Substances were recovered in one transaction and occurrence. **AB p. 4354**. Dr. Overly admitted had the charged Banned Substances on his truck, and his compelling justification is the same for both medications, that he possessed these legal Banned Substance for use and/or intended use in his nearly 70% non-covered practice, and statements made by Dr. Scollay, provided him with a reasonable belief that Banned Substances could be possessed at Los Alamitos where **65.71%** of his patients were Non-Covered QHs. **AB p. 6489(239):9-18 (Corbett).** This, accompanied by unclear Rules, no evidence of use on Covered horses or cheating, and no

[13] *Shell FTC Appeal*, **AB p. 3215**, (Citing *Sport Lisboa e Benfica SAD v. FIFA*, CAS 2021/A/8076, at ¶ 131 (Oct. 10, 2022); *Puerta v. ITF,* CAS 2006/A/1025, at ¶ 88 (July 12, 2006) **AB p. 3676; 3702**.
[14] *Shell FTC Appeal*, **AB p. 3266-3267** (citing *World Athletics v. Oduduru,* SR/171/2023, ¶ 117 (Sept. 18, 2023); *Decision of The Athletics Integrity Unit in the Case of Khamidova* ¶ 24 (Mar. 6, 2024)"). **AB p. 3753, 3762**.
[15] *Shell FTC Appeal,* **AB p. 3267**.

HISA/HIWU guidance further explaining compelling justification, dictates that separate, consecutive ineligibility and cumulative fines ($50,000) in this case for two Banned Substances received in one transaction is legally unsound and grossly disproportionate to claimed misconduct.

V. CONCLUSION

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

DATED: December 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing Appellant's Reply Brief is being served this 26th day of December 2025 via first class mail and by emailing a copy to:

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Executed on December 26, 2025, at Brea, California.

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