

PUBLIC

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

ADMINISTRATIVE LAW JUDGE:

IN THE MATTER OF:

DR. DONALD MCCROSKY

APPELLANT

**AUTHORITY'S RESPONSE TO APPLICATION FOR STAY OF FINAL CIVIL
SANCTIONS**

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.148(b)(1) and 16 CFR §4.4(b), a copy of this Authority's Response to Appellant's Application for a Stay is being served on March 17, 2026, via Administrative E-File System and by emailing a copy to:

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The Horseracing Integrity and Safety Authority, Inc. (“**Authority**”) files this Response to Appellant’s Application to stay sanctions issued pursuant to the Final Decision of the Arbitrator under the Authority’s Anti-Doping and Medication Control (“**ADMC**”) Program (the “**Decision**”). Appellant’s request should be denied, as he has failed to satisfy any of the requirements of 16 CFR §1.148(d).

First, the likelihood of Appellant’s overall success on review is low.

With respect to the Rule 3213 Use violation, Appellant expressly admitted that he gave the Banned Substance Testosterone to a Covered Horse.¹ The Arbitrator properly held that, since “Use is a strict liability offence,” Appellant’s justifications for such Use provide him no assistance. Elimination of a period of Ineligibility for the Use violation required establishing No Fault. However, Appellant conceded No Fault was unavailable,² and the Arbitrator held that Appellant’s “degree of Fault is Significant” (see Rule 3225), including because “he did not see any benefit to altering the manner in which he had carried out his practice for decades” after the ADMC Program went into effect.³ Even if Appellant is otherwise successful in this appeal (which the Authority disputes), he will face two-years of Ineligibility for the violation of Rule 3213 alone.

Appellant incorrectly states that the Trafficking violation (Rule 3214(b)) was based on the evidence of “a single interested hearsay declarant.” Rather, Appellant admitted to selling syringes to the individual in question, which syringes were confirmed by laboratory testing to contain two Banned Substances.⁴ The Arbitrator concluded that it was “highly unlikely” that Appellant did not

¹ Decision at para 8.21-8.22; ADMC Program Rule 4112.

² Decision at para 8.40.

³ Decision at para 8.45.

⁴ Decision at pages 2, 27, 31.

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know the content of the syringes,”⁵ and properly assessed Appellant’s credibility and the totality of the evidence in finding a Trafficking violation.

Regarding Possession (Rule 3214(a)), Appellant baldly and incorrectly asserts that the imposition of five consecutive two-year periods of Ineligibility “is inconsistent with ADMC Program jurisprudence favoring concurrent or partially concurrent sentences for violations arising from a single investigation.” Rather, ADMC Program jurisprudence affirms that Rule 3228(d), properly interpreted, authorizes consecutive periods of Ineligibility for violations arising out of “common facts.”⁶ The Arbitrator duly analyzed the proportionality of the global sanction and considered relevant factors identified in ADMC Program jurisprudence, including prior sanctions and the impact on Appellant’s veterinary career.⁷

In interpreting Rule 3214(a), the Arbitrator held that Appellant had the onus to establish compelling justification, which he described as “a high bar which must be applied with caution.”⁸ Prior decisions of the Administrative Law Judge have already rejected arguments similar to Appellant’s suggestion that compliance with the compelling justification standard is “effectively impossible.”⁹ In accordance with relevant case law, the Arbitrator properly found that Appellant failed to produce medical records or any other evidence to establish that the Banned Substances at issue were required for emergency purposes,¹⁰ and that Appellant’s claim of inconvenience “does not equal compelling justification.”¹¹

⁵ Decision at paras 8.32-8.34.

⁶ *In the Matter of Larry Rickman Overly* (“*Overly*”), FTC Docket No. 9443 at pages 86-92 (Jan. 27, 2026); *In the Matter of Dr. Scott Shell DVM* (“*Shell*”), FTC Docket No. 9439, at p. 44-50 (Mar. 6, 2025).

⁷ Decision at paras 8.48-8.50; *Shell*, at p. 50.

⁸ Decision para 8.6. See also *Shell*, at p. 16.

⁹ *Shell*, at p. 34; *Overly*, at p. 52-53.

¹⁰ Decision at para 8.18.

¹¹ Decision at para 8.18, citing *Shell*, at p. 34.

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Second, Appellant has not and will not suffer irreparable harm absent a stay. It is well settled that “economic loss does not, in and of itself, constitute irreparable harm.”¹² Rather, “monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business.”¹³ That is not the case here. The period of Ineligibility imposed by the Arbitrator will not threaten the existence of Appellant’s business as the sanction is limited to treatment of Covered Horses, which constitutes only half of Appellant’s veterinary practice. Moreover, Appellant filed no evidence to support his claims of loss of “professional time, client relationships, or practice capacity.” Such bare assertions of lost business prospects are “not enough: ‘speculative injury is not sufficient’.”¹⁴ Finally, Appellant’s sanctions have been publicly disclosed, as required by Rule 3620, such that “[a]ny arguable harm has already occurred and thus would be unaffected by issuing a stay.”¹⁵

Third, contrary to Appellant’s submission, other parties and the public interest will be harmed if the stay is granted. The Authority strongly contests Appellant’s argument that the Decision imposes sanctions that are the result of any error. The ADMC Program protects the integrity of horseracing and the confidence of its stakeholders, as well as the welfare of Covered Horses.¹⁶ Granting the stay will undermine the Authority’s efforts to protect the integrity of horseracing and will harm other Responsible Persons by permitting Appellant’s participation therein. It would also be antithetical to the ADMC Program’s mission to protect horse welfare.

¹² *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (“*Wisc Gas*”). See also *Los Angeles Memorial Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980) (“It is well established, however, that [alleged] monetary injury is not normally considered irreparable”).

¹³ *Wisc. Gas*, at 674.

¹⁴ *Overly*, Order on Application for Stay (“*Overly Stay*”) at page 15 (Nov. 20, 2024), citing *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). See also *Wisc. Gas*, at 674.

¹⁵ *Overly Stay*, at page 14.

¹⁶ ADMC Program Rules 3010(a), 3010(d)(7). See also *Overly Stay*, at p. 18-19.

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Fourth, the stay is *not* in the public interest. The public interest is served by individual compliance with the rules and regulations validly promulgated by federal agencies. Appellant has neither satisfied the express requirements for a stay nor provided any facts to support his request.

The Authority requests that Appellant's request for a stay be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th day of March, 2026.

/s/Bryan H. Beauman

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