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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

_____)	
In the Matter of)	
)	
Dr. Michael J. Galvin,)	Docket No. 9445
)	
Appellant.)	
_____)	

DECISION OF THE ADMINISTRATIVE LAW JUDGE
ON PETITION FOR REVIEW

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General

ADMC – Anti-Doping and Medication Control

Authority – Horseracing Integrity and Safety Authority

HISA – Horseracing Integrity and Safety Act, 15 U.S.C. §§ 3051-60

HIWU – Horseracing Integrity & Welfare Unit

RSP – Racetrack Safety Program (Rule Series 2000)

Review Proceeding

AB – Appeal Book

AuOBr. – Authority’s Opening Brief

GOBr. – Galvin’s Opening Brief

GPFOF – Galvin’s Proposed Findings of Fact

GRAuPFOF – Galvin’s Reply to the Authority’s Proposed Findings of Fact

In 2020, Congress enacted the Horseracing Integrity and Safety Act (“HISA”).¹ Among other things, HISA created the Horseracing Integrity and Safety Authority (the “Authority”), a private, independent, self-regulatory, nonprofit corporation, to “develop[] and implement[] . . . a racetrack safety program” throughout the United States.² Congress further: (1) directed the Authority to “develop and maintain a nationwide database of racehorse safety, performance, health, and injury information for the purpose of conducting an epidemiological study,” and (2) authorized it to “require [statutorily] covered persons to collect and submit to the database . . . such information as the Authority may require to further the goal of increased racehorse welfare.”³

The Authority issued proposed Racetrack Safety Program (“RSP”) Rules, subsequently approved by the Federal Trade Commission, which the Authority enforces through its enforcement counsel.⁴ The Authority also has contracted with the Horseracing Integrity & Welfare Unit (“HIWU”), another private body, whose responsibilities include investigating possible Rule violations.⁵

The RSP Rules took effect July 1, 2022. Among other things, the Rules regulate Veterinarians whose practice includes thoroughbred racehorses covered by

¹ *See* 15 U.S.C. §§ 3051-60.

² *Id.* § 3052(a).

³ *Id.* § 3056(c)(3)(A) & (B).

⁴ Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity And Safety Authority (Mar. 3, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf; Rule 8320(b).

⁵ *See* Rules 1020 (Definition of Agency), 5700-40, 8400 (permitting the Authority to confer investigatory powers on its “designee”); Appeal Book (“AB”) 1011-13 (Ceriani).

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HISA (“Covered Horses”).⁶ These Rules impose reporting obligations on Veterinarians, which require them to upload to the Authority medical records “in an electronic format designated by the Authority”⁷ In this case, the Authority’s enforcement counsel proved in an adversarial proceeding that Dr. Michael J. Galvin, a Veterinarian, violated an RSP Rule by failing to timely upload to the Authority’s online portal over 3,500 veterinary records.⁸ As sanctions, the Authority ordered Dr. Galvin’s registration under HISA suspended for two years and fined him \$25,000.

In this proceeding, Dr. Galvin seeks to overturn the finding that he violated the RSP Rule and to challenge the sanctions imposed as excessive. As discussed below, I reject Dr. Galvin’s arguments and affirm the liability finding against Dr. Galvin and the sanctions imposed.⁹

I. SUMMARY OF THE CASE.

A. Relevant Rule Provisions and the Violation Charged.

HISA Rules apply to all “Covered Persons,” a term that includes “all . . . Veterinarians”¹⁰ A “Veterinarian means a licensed veterinarian who provides veterinary services to Covered Horses.”¹¹ An “Attending Veterinarian” is “a

⁶ Rules 2220-51.

⁷ *Id.* 2251(b).

⁸ AB 8 (Notice of Violation), 1303 (Amended Final IAP Decision), 1429 (Board Decision on Appeal).

⁹ *See* 15 U.S.C. § 3058; 16 C.F.R. §§ 1.146-147. *See* 87 Fed. Reg. 60077 (Oct. 4, 2022) (Final Rule) (authorizing review by an FTC ALJ and thereafter by the Commission).

¹⁰ Rule 1020 (Definitions).

¹¹ *Id.*

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Veterinarian providing treatment or services to Covered Horses hired or otherwise authorized by the Trainer or Owner or his or her respective designee.”¹² Dr. Galvin is both a Veterinarian and an Attending Veterinarian.

HISA requires all Covered Persons to “register” with the Authority.¹³ The statute further provides that:

Registration under this subsection shall include an agreement by the covered person to be subject to and comply with the rules, standards, and procedures developed and approved under subsection (c).¹⁴

Registered Covered Persons must “at all times—(A) cooperate with . . . the Authority . . . during any civil investigation[.]”¹⁵

Enforcement counsel alleges that Dr. Galvin violated RSP Rule 2251, which provides, in pertinent part, that:

(a) All Veterinarians shall provide treatment records pursuant to *Rule Series 3000*.

(b) For treatments, procedures, and surgeries performed at a location licensed by State Racing Commission or a Training Facility, and in addition to the information required to be submitted by Veterinarians pursuant to *Rule Series 3000*, every Veterinarian who examines or treats a Covered Horse shall, within 24 hours after such examination or treatment, submit to the Authority the following information in an electronic format designated by the Authority:

(1) name and HISA ID of the Covered Horse or, if unnamed, the registered name of the dam and year of foaling;

¹² *Id.*

¹³ 15 U.S.C. § 3054(d)(1).

¹⁴ *Id.* § 3054(d)(2).

¹⁵ *Id.* § 3054(d)(3).

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- (2) name and HISA ID of the Responsible Person of the Covered Horse;
- (3) name and HISA ID of the Veterinarian;
- (4) contact information for the Veterinarian (phone number, email address);
- (5) any information concerning the presence of unsoundness and responses to diagnostic tests;
- (6) diagnosis;
- (7) condition treated;
- (8) the name of any medication, drug, substance, or procedure administered or prescribed, including date and time of administration, dose, route of administration (including structure treated if local administration), frequency, and duration (where applicable) of treatment;
- (9) any non-surgical procedure performed (including but not limited to diagnostic tests, imaging, and shockwave treatment) including the structures examined/treated and the date and time of the procedure;
- (10) any surgical procedure performed including the date and time of the procedure; and
- (11) any other information necessary to maintain and improve the health and welfare of the Covered Horse.¹⁶

Enforcement counsel must prove the violation by a preponderance of the evidence.¹⁷

The references in Rule 2251 to the “Rule Series 3000” are themselves significant. Rule 3040(d), entitled “Additional Responsibilities of Attending Veterinarians,” provides in pertinent part:

In addition to the duties under *Rule 3040(a)*, and the further duties and requirements imposed under the Rule 2000 Series (Racetrack Safety Program), it is the personal responsibility of each Attending Veterinarian to act in strict compliance with the Protocol and keep updated treatment

¹⁶ Emphases added.

¹⁷ Rule 8340(f).

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records (including, without limitation, records of medical, therapeutic, and surgical treatments and procedures, including diagnostics) in an electronic database designated by the Agency or in any other form designated by the Agency and provide access to the Agency upon request and without delay to or copies of such treatment records. The records must include the details required under Rule 2251(b) and must be submitted in an electronic format designated by the Authority within the deadline specified in that same provision.¹⁸

The “Protocol” refers to the “Equine Anti-Doping and Controlled Medication Protocol, a set of Rules in addition to those in the RSP.”¹⁹

B. Investigation of Dr. Galvin and Review of His Portal Upload Practice.

In roughly May 2023, HIWU began an investigation of Dr. Galvin after a tip that he may have received Banned Substances, or injected them into Covered Horses.²⁰ During June, enforcement counsel notified Dr. Galvin that it had “reason to believe” he had failed to submit treatment records for three identified Covered Horses.²¹ Enforcement counsel further quoted Rule 2251(b) and informed Dr. Galvin that “future noncompliance could result in an enforcement action and subject you to a range of sanctions under Rule 8200(b).”²²

In September 2023, HIWU searched Dr. Galvin’s veterinary van to determine “whatever is going on . . . [I]f there was evidence of IAI [intra-articular injections], which he might have been keeping in his billing records, his vet

¹⁸ *Id.* 3040(a) (emphasis added).

¹⁹ *Id.* 3010(b).

²⁰ AB 1016-22 (Ceriani).

²¹ *Id.* 2 (Rule 2251(b) notice letter).

²² *Id.* See also *id.* 5 (Feb. 2024 notice letter).

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treatment records.”²³ Among the records HIWU obtained were Dr. Galvin’s practice notebooks, which include “daily veterinary logs” of his services, HIWU followed up the September search with a request for documents from Dr. Galvin, which he provided in November 2023.²⁴

HIWU investigative analyst Melissa Stormer reviewed and did a “side-by-side comparison” of the entries in Dr. Galvin’s records with those Dr. Galvin made in the Authority’s online data portal.²⁵ Ms. Stormer “found discrepancies.”²⁶ As she testified:

There were missing treatment dates that he had stated in his “*Work Done*” records that were not found in the portal. There were records that were in his notebooks as treatment on particular days that were not in his reported “*Work Done*” records in November, nor were they uploaded to the portal.²⁷

With Ms. Stormer’s analysis, by late 2023, HIWU was aware there was a problem with Dr. Galvin’s reporting records to the Authority’s portal.²⁸ HIWU followed up in early 2024 by requesting records from dozens of trainers and owners.²⁹ These responses similarly informed Ms. Stormer’s “side-by-side comparison” to determine whether Dr. Galvin had “uploaded into the portal”

²³ See *id.* 1019, 1020, 1027 (Ceriani), 145-46, 149-50 (Stormer), 1306 (Amended Final IAP Decision, summarizing testimony of HIWU investigator), 381-481 (Galvin notebooks).

²⁴ *Id.* 146, 151-57, 321-22 (Stormer), 484 (Galvin counsel’s transmittal letter).

²⁵ *Id.* (Stormer).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* 1033-34, 1041 (Ceriani).

²⁹ *Id.* 157-60 (Stormer), 179 (enforcement counsel: “The number of requests were around 160 different requests.”), 483 (Galvin counsel’s transmittal letter producing records), 528-82, 584-89, 591-616, 618-879 (HIWU document requests and trainer responses), 1020, 1022, 1024-26 (Ceriani).

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services he provided to owners and trainers.³⁰ From these records, Ms. Stormer built “a Preliminary Summary Exhibit.”³¹ The Summary Exhibit, a searchable, excel spreadsheet, consists of 3,500+ treatment records that Dr. Galvin failed to upload to the Authority’s portal.³²

By early 2024, investigation and analysis of missing portal treatment records shifted from HIWU to the Authority’s enforcement counsel.³³

C. Enforcement Counsel Charges Dr. Galvin.

In August 2024, the Authority’s enforcement counsel charged Dr. Galvin with violating RSP Rule 2251(b)’s reporting requirements. Specifically, enforcement counsel asserted that records it had obtained “indicate that you failed to report to HISA approximately 3,951 treatments administered to 497 Covered Horses between January 1, 2023 and March 7, 2024.”³⁴

To resolve the charged violation, an Internal Adjudication Panel (“IAP”), consisting of a single IAP member, was formed.³⁵ The IAP member held two conferences, on October 30 and November 19, 2024, which both enforcement counsel

³⁰ *Id.* 212-13 (Stormer). *See generally id.* 172-73, 188, 191, 192, 194, 196, 199-200, 202, 212-13 (Stormer), 1040 (Ceriani).

³¹ *Id.* 213-14 (enforcement counsel), 880 (spreadsheet).

³² *Id.* 223 (Stormer).

³³ *Id.* 1026-31, 1033-35, 1038-40, 1041-42 (Ceriani), 1438 (demand for business records).

³⁴ *Id.* 8 (Notice of Violation).

³⁵ The Rule-based steps by which this Rule 2251(b) case came to be referred to an IAP and heard under Rule 8000 Series procedures is unclear. I previously directed the parties to brief the basis for IAP jurisdiction, but after receiving the parties’ positions ruled that Dr. Galvin had forfeited any objection to jurisdiction by failing to raise it and by participating in the IAP proceeding. *See generally Matter of Galvin*, No. 9445, 2026 FTC LEXIS 3, at *6-15 (ALJ Jan. 7, 2026).

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and Dr. Galvin's counsel attended.³⁶ Enforcement counsel provided the spreadsheet that Ms. Stormer had prepared, along with the underlying source documents, to Dr. Galvin's counsel the evening before the October conference.³⁷

The November conference resulted in a schedule, which included setting February 24, 2025 for both parties to submit "pre-hearing memo disclosures" and March 10 and 11, 2025 for the IAP hearing.³⁸ The November conference further set a date for Dr. Galvin to serve discovery requests on enforcement counsel, which he followed up on and which enforcement counsel responded to.³⁹ A date also was set for the parties to present their positions on Dr. Galvin's request for depositions, which the IAP member later denied after receiving the parties' statements.⁴⁰ Although Dr. Galvin's counsel sought another prehearing conference for other issues he sought to raise, after the IAP member asked him to propose dates, he offered none; no additional conference was held.⁴¹

Enforcement counsel made the required prehearing statement, identifying Dr. Galvin as among its IAP hearing witnesses.⁴² Dr. Galvin, however, did not

³⁶ AB 28 (Oct. 30, 2024 prehearing conference video) & 29 (Nov. 19, 2024 status conference video).

³⁷ *Id.* (video at 0:1:47-0:2:05), 213-14 (enforcement counsel), 1441 (transmittal email).

³⁸ *Id.* 31 (IAP member email).

³⁹ *Id.* 122 (document requests), 126 (enforcement counsel response).

⁴⁰ *Id.* 31 (IAP member email), 55 (IAP member ruling). *See also id.* 33 (Galvin counsel's letter), 39 (enforcement counsel's brief),

⁴¹ *Id.* 33 (Galvin counsel's letter), 53 (IAP member email), 1305, 1311-12 (Amended Final IAP Decision). As the hearing approached, Dr. Galvin's counsel requested at least one more conference, including additional issues, but no proposed dates. *Id.* 57 & 72 (Galvin counsel's letter and IAP member's response).

⁴² *Id.* 59, 63 (listing Dr. Galvin).

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submit any prehearing material, nor identify any witnesses.⁴³ Instead, his counsel maintained that since other issues he had raised had not been dealt with, “this matter is not remotely ripe for adjudication, and we are unable to supply a prehearing memorandum at this time.”⁴⁴ On the Friday before the IAP hearing commenced, Dr. Galvin submitted a motion to dismiss the case, the consideration of which was deferred and resolved as part of the decision on the merits after the IAP hearing.⁴⁵

D. Enforcement Counsel’s Proof at the IAP Hearing.

At the IAP hearing, HIWU’s analyst, Ms. Stormer, and HIWU counsel Zach Ceriani (called by Dr. Galvin) provided an overview of the investigation that resulted in charging Dr. Galvin. However, enforcement counsel’s proof revolved around extensive documentary evidence, much of which was derived from Dr. Galvin’s own records. Ms. Stormer explained her analysis of information from the records received and her spreadsheet comparison of Dr. Galvin’s treatment entries in those documents with his portal entries, described above. She further explained that, upon review, enforcement counsel determined that Dr. Galvin had in fact uploaded a handful of entries that were erroneously included, as well as a few transposition errors and minor duplication.⁴⁶

⁴³ *Id.* 352 (IAP member), 985 (Dr. Galvin’s counsel), 1305 (Amended Final IAP Decision).

⁴⁴ *Id.* 70 (Galvin counsel’s letter).

⁴⁵ *Id.* 79-99, 103-35 (motion to dismiss and exhibits).

⁴⁶ *Id.* 215-28 (enforcement counsel), 277-79 (Stormer).

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During the hearing, Ms. Stormer also spot-checked in real time various treatment records provided by trainers or Dr. Galvin against the online portal records. This testimony, summarized in Table 1, further demonstrated that Dr. Galvin failed to upload services he provided.

Table 1			
Trainer	Horse Treated	Dates Treated	Portal Entry by Dr. Galvin
Rob Atras	Awesome Glo	Feb. 1, 3, 10, 14, 16, 29, 2024	No
Ray Handal	Barrage	Oct. 2 and 3, 2023	No
Greg DiPrima	Awesome Force	Aug. 22 and Sept. 1, 2023	No
David Jacobson	Bowl of Cherries	July 12 and Aug. 7, 2023	No
David Jacobson	La Aguililla	Apr. 25, May 17, June 13 and 20, July 30, Aug 22, 2023	No
David Jacobson	Lawful	June 12 and July 6, 2023	No
Oscar Barrera	Big Package	May 4 and June 15, 2023	No
Source: AB 233-55, 324-29 (Stormer).			

Besides Ms. Stormer, Dr. Mary Scollay also testified for enforcement counsel. Dr. Scollay was HIWU's chief of science and had worked in the industry since

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1987.⁴⁷ Her experience included starting a project to capture racehorse injury data, which evolved into the Jockey Club’s Equine Injury Database, established in 2009, and which now has “millions of entries” of horseracing injuries—but not those relating to medical treatment.⁴⁸ Dr. Scollay “defend[ed] the philosophy of treatment reporting and the safety and welfare initiatives associated with disclosure of medical records of race horses.”⁴⁹

As she explained, injury records, married with veterinary treatment records, offer “the holy grail” of “correlating medication use with the risk of injury.”⁵⁰ This integrated analysis is “needed to really refine our ability to assess risk and identify horses that warrant additional protection. . . . It’s the gold standard to reconcile injury occurrence with the racing surface information with the horse’s medical history.”⁵¹

Complete, timely reporting, such as that that the Authority requires, serves multiple purposes.

- It enables regulatory officials to check laboratory findings against portal treatment records, and better understand laboratory test results.⁵²
- Timely reporting can inform whether to place or release a horse from the “Veterinarians’ (Vets’) List,” which identifies “all Covered Horses that are

⁴⁷ *Id.* 887-89 (Scollay).

⁴⁸ *Id.* 888-90, 905.

⁴⁹ *Id.* 932.

⁵⁰ *Id.* 905-06.

⁵¹ *Id.* 890, 909.

⁵² *Id.* 890-92.

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determined to be ineligible to compete in a Covered Horserace in any jurisdiction until released by a Regulatory Veterinarian [who supervise racetracks].”⁵³ Horses can be on the “vet’s list” because of “injury, illness, [or] use of particular medication,” for example.⁵⁴ Absent timely reporting, a racetrack’s Regulatory Veterinarian could fail to learn of, for example, “multiple intra-articular injections, that’s a red flag for the regulatory veterinarian in terms of just how sound is this horse really if it requires this level of medication.”⁵⁵

- Relatedly, timely treatment uploading assists in assessing risk factors, thereby allowing officials to “prioritize where your emphasis is going to go or which horses warrant additional scrutiny”⁵⁶ Dr. Scollay further explained: “[T]imely reporting is key because the data is constantly under analysis, constantly being used by regulatory veterinarians to, again, better understand the health of the horses that they are being asked to approve for racing.”⁵⁷
- Reporting further helps verify that horses are competing in compliance with the Rules.⁵⁸ Industry participants and the public at large can “verify that

⁵³ Rule 2010 (Definitions).

⁵⁴ AB 896 (Scollay).

⁵⁵ *Id.* 899-900. *See generally id.* 917-19 (discussing how portal data aids a Regulatory Veterinarian’s assessment whether a horse should be on the Vet’s List.).

⁵⁶ *Id.* 892.

⁵⁷ *Id.* 903.

⁵⁸ *Id.* 896-900.

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horses are participating in compliance with the rules which are intended to promote the integrity of competition, as well protect the safety of the athletes.”⁵⁹

- Moreover, by demonstrating that “we are being mindful and responsible and ethical when we care for these horses,” collection and analysis of treatment records promotes the industry’s “social license” to conduct horseracing itself.⁶⁰
- Assembling large amounts of treatment data, able to be queried and analyzed, also facilitates study of conditions that can contribute to risk of injury.⁶¹ HISA itself requires development of “a nationwide database of racehorse safety, performance, health, and injury information for the purpose of conducting epidemiological study.”⁶² Industrywide, mandatory data reporting informs study that is otherwise infeasible.⁶³

Dr. Scollay’s testimony complemented Ms. Stormer’s spot-checking testimony, described above. Two of the spot-checked Covered Horses had died, and a third had to be euthanized. Although all three worked out or raced in the months immediately preceding their deaths, Dr. Galvin failed to upload veterinary care he

⁵⁹ *Id.* 895.

⁶⁰ *Id.* 893.

⁶¹ *Id.* 900-01.

⁶² 15 U.S.C. § 3056(c)(3)(A).

⁶³ AB 906-14 (Scollay).

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provided.⁶⁴ Dr. Galvin’s failure to report treatment to the portal handicaps the ability of the Authority—or of anyone else—to study and perhaps gain insights from these deaths. By contrast, other veterinarians who treated two of the horses reported to the portal.⁶⁵

E. Dr. Galvin’s Failure to Defend on the Merits.

1. Relevant Rule Provisions.

Rule 8400(c), which applies to RSP matters, requires a “Covered Person” to, in relevant part:

- (1) Cooperate with . . . the Authority, or their designees during any investigation; and
- (2) Respond truthfully to the best of the Covered Person’s knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

Rule 8200(d) further provides that “[a] Covered Person . . . shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. Chapter 57A [HISA] or the regulations of the Authority.”

Under Rule 8400(f), “[f]ailure to comply with . . . [any] provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.”

In addition, as noted earlier, RSP Rule 2251(b) imports the Rules comprising the 3000 Series, one of which is Rule 3040(d). Rule 3040(d) itself refers to Rule

⁶⁴ *Id.* 243-46 (no portal entries for Bowl of Cherries during the preceding two months), 252-54 (no portal entries for La Aguililla during the preceding five months), 254-55 (no portal entries for Lawful during the preceding two months) (Stormer).

⁶⁵ *Id.* 285, 321 (Bowl of Cherries, treated by two other Veterinarians), 253 (La Aguililla treated by other Veterinarians) (Stormer).

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3040(a)—entitled “Core Responsibilities of Covered Persons”—details duties that apply to individuals such as Dr. Galvin. Among those duties is “(2) to cooperate promptly and completely with the Authority and the Agency [HIWU] in the exercise of their respective powers under the Act and the Protocol and related rules. . . .” Subsection (2) further prescribes features of cooperation, such as making facilities available for inspection, providing data and documents for HIWU review, and providing transcribed under-oath interviews. Subsection (2) further states that “[f]ailure to cooperate promptly and completely with the Agency may constitute a violation pursuant to Rule 3510(b),” which makes “refus[al] or fail[ure] to cooperate” sanctionable conduct.

Thus, as a registered Veterinarian, Dr. Galvin agreed to cooperate with the Authority. And he failed to meet that obligation.

2. Non-Appearance at the IAP Hearing.

The IAP member set a date for both sides to submit prehearing statements prior to the hearing itself. Enforcement counsel’s prehearing statement identified Dr. Galvin as a witness they intended to call.⁶⁶ Although subject to the Rules’ cooperation obligations, Dr. Galvin did not appear when the video IAP hearing began.

His testifying arose, however, during the afternoon of the first hearing day. To appreciate the depth of Dr. Galvin and his counsel’s disregard of these proceedings, fulsome quotation of the hearing transcript is appropriate:

⁶⁶ *Id.* 63 (enforcement counsel prehearing statement).

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Mr. Beauman [enforcement counsel]: “[I]s Dr. Galvin going to come and testify?”

Mr. Bonstrom [counsel for Dr. Galvin]: That remains to be seen.

Mr. Royse [enforcement counsel]: [I]f we request to call Dr. Galvin to testify, is the respondent going to voluntarily appear and testify in response to that call?

Mr. Bonstrom: Well, I’ll answer it this way. I need a heads-up. And the reason I need a heads-up is I’m in Colorado. Mr. Hallas [Dr. Galvin’s co-counsel] is in Connecticut. Dr. Galvin is in New York. And I need to be in the room with Dr. Galvin if and when he testifies.

Judge: I’ll just say I’m looking at the witness list submitted by HISA, and he’s on it. So he had to anticipate getting called as a witness for HISA.

Mr. Bonstrom: Oh, at some point, certainly. Of course, we cooperate with that, but as a matter of professional courtesy and due process, you know, we need a heads-up.

Mr. Royse: No, sir. I don’t want to get in an argument with it, but this was your head’s-up, is the notice of this hearing and our preliminary statement with the witnesses. And he’s the respondent, so I really didn’t want to argue with you. I was just asking: If we call him, is he available to testify? And if your answer is he’s not, then we just need to know that.

Mr. Bonstrom: Well, I’m not going to declare that right now. I’ve stated my position. If you guys have a good faith basis of calling him today, I’ll make my objections, then.

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Judge: He is the next witness on their list.⁶⁷

The hearing continued with Ms. Stormer's testimony, but the parties revisited Dr. Galvin's testifying at the end of the day:

Mr. Royse: . . . [F]ormally, we would call Dr. Galvin. And, obviously, we'll shut up and let Mr. Bonstrom respond whether he's available or not.

Mr. Bonstrom: Well, he's available, but the issue is, as I indicated, I'm in Colorado. Dr. Galvin is in New York. And Mr. Hallas [additional counsel for Dr. Galvin] is in Connecticut. I have all of the exhibits in Colorado. I haven't had an opportunity to prep Dr. Galvin. I think that he's entitled to have his lawyer present in the room, certainly, if not the same state. So what I would do—what I would offer is I can speak with Mr. Hallas tonight and see if, you know, he can find a place for Dr. Galvin to testify and to be with him. That's the best I can do.

Mr. Royse: . . . [W]e're ready to proceed with him now. If he can't do that, so be it. We are willing to take him out of the order in the morning [that is, the following day].⁶⁸

The IAP member expressed her frustration:

Judge: . . . [T]his hearing was scheduled on November the 19th. So we've had lots of time to make witnesses aware. And on the 24th of February—and I double-checked my e-mail just now to be sure that you were copied—that's when the pre-hearing memo from HISA went out to all of the parties. And it does list Dr. Galvin as a witness.⁶⁹

⁶⁷ *Id.* 318-19, 320 (hearing transcript).

⁶⁸ *Id.* 347, 348.

⁶⁹ *Id.* 349.

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Enforcement counsel's effort to examine Dr. Galvin continued during the morning of the second day of the hearing:

Mr. Royse: At this point, we would call Dr. Galvin. . . .

Mr. Bonstrom: Judge, if I could be heard on that. You know, I made a record yesterday about this. Last night, I spoke with Attorney Hallas. And I spoke with Dr. Galvin. Mr. Hallas is in court in Connecticut today. Dr. Galvin is at the racetrack. His office consists of a van, and he's got an iPhone. And beyond that, I'm in Colorado. And what I'd ask for – you know, I'm flying back to New York on the 13th [the next day]. I'll be in my office on Shelter Island on the 14th. I would like an opportunity to be present when Dr. Galvin, who is prepared to appear via Zoom—but I need to be present when he does so. So I'm asking for, you know, an adjournment until next week for Dr. Galvin's testimony.

Judge: . . . This hearing was scheduled for yesterday and today. It has been scheduled since November 19th. Dr. Galvin could be available today on his iPhone.

Mr. Bonstrom: That wouldn't be practical, Judge. . . . [A]ll of the exhibits are presented on screen It's not practical for him to be—appear on an iPhone —

Mr. Royse: As the hearing officer has noted, this was a duly noticed hearing. Counsel has been well aware of it. Counsel . . . had the ability to make arrangements in the last four months for the respondent in this proceeding to appear in a location that was conducive to participating in the noticed hearing with counsel, in whatever means he needed to.

Furthermore, the documents that have been used have been presented to counsel. They have been available to counsel to provide to his client to review in any fashion, electronic or in printed fashion. He's chosen not to participate today. For whatever practical reasons counsel has described, they are not sufficient to excuse his presence. We would object strenuously to any adjournment.

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Judge: Okay. Mr. Bonstrom, is it possible for you for your client to appear sometime this morning or afternoon on his iPhone? Is that a possibility?

Mr. Bonstrom: Not a possibility for the reasons I stated.

Judge: I, again, would ask that you contact Dr. Galvin today and have him appear before the end of this hearing at 5:00 today.

Mr. Bonstrom: I understand, Judge. I'll call him again, but . . . [i]t's my advice, as his counsel, that he not appear.

Judge: Have your client appear today, please.

Mr. Bonstrom: Well, you know, if that's an order, Judge, you already have my answer. You know, my professional opinion is that I can't produce him and defend his due process rights.

Mr. Royse: . . . I don't want to put everybody through a silly exercise of sitting here until 5:00, knowing Dr. Galvin is not going to show up if Mr. Bonstrom has told us he's instructing his client to not appear. That's fine. If he's put that on the record, it seems to me we can forego that effort.

Mr. Bonstrom: Yeah. I think that's an accurate description of my advice.

[After a recess]

Judge: Mr. Bonstrom, have you spoken with your client?

Mr. Bonstrom: Well, I did last night. I didn't call him again.

Judge: So he will not appear today?

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Mr. Bonstrom: You know my position on the record. Okay? He's not going to testify today on the advice of counsel.⁷⁰

In sum, Dr. Galvin failed to appear on either hearing date. To be sure, throughout the discussion of his testifying, his counsel complained about not only “due process”, but also such matters as:

- “inadequate discovery and . . . [lack of] in limine motions,”
- “requests for a pre-hearing conference” (for which he never offered dates),
- the hearing was “not ready for prime time,”
- “not ready to go forward” without a conference,
- his “motion to dismiss” was outstanding,
- “complexity and seriousness of issues,” and
- “no courtesies have been extended.”⁷¹

This much is undeniable, however. At the November 19, 2024 conference, the hearing dates of March 10 and 11, 2025 were set and later confirmed in the IAP member's December 3, 2024 email.⁷² Enforcement counsel's preconference hearing statement listed him as a witness, and the Rules required his cooperation. Dr. Galvin did not appear. All the excuses Dr. Galvin's counsel offered are distraction—nothing more.

⁷⁰ *Id.* 936-38, 939-41.

⁷¹ *See, e.g., id.* 319, 348, 349, 350, 352, 938-39, 940.

⁷² *Id.* 29 (video at 0:22:20-0:22:55), 31 (IAP member email).

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Nor was the IAP hearing the first time Dr. Galvin's counsel decided to ignore the Rules governing this case. At the November conference, the IAP member set a February date for the parties to submit prehearing material, including witnesses they intended to call, the documents they intended to offer, and a supporting memo.⁷³ Dr. Galvin filed nothing, and instead of moving for appropriate relief, protested with excuses: "Our requests for a status conference have raised the issues of Enforcement Counsels' noncompliance with our discovery demands and the need for in limine and dispositive motions. Because our requests have been ignored this matter is not remotely ripe for adjudication, and we are unable to supply a prehearing memorandum at this time."⁷⁴

F. Enforcement Counsel's Proffer in Dr. Galvin's Absence.

With Dr. Galvin a no-show, enforcement counsel made a "proffer into the record of the cross-examination and evidence we would have made had the respondent chosen to appear."⁷⁵ Counsel's proffer detailed additional, specific examples of Dr. Galvin's omitted treatment uploads. The proffer essentially confirmed Ms. Stormer's extensive analysis of the records. The following are examples:

Covered Horse Fenway: On May 11, 2023, Dr. Galvin treated Fenway, which ran first at Monmouth Park on May 14. He treated Fenway again on June 1 and the

⁷³ See *id.* 31 (IAP member email).

⁷⁴ *Id.* 70 (Galvin counsel's letter).

⁷⁵ *Id.* 941 (Royse).

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horse ran on June 4, placing third, after which he was “claimed” by a new owner.⁷⁶ The track’s regulatory veterinarian voided the new owner’s claim for lameness, found Fenway “unsound,” and put the horse on the vet’s list. Fenway never again raced. Dr. Galvin never uploaded the May 11 and June 1, 2023 treatments to the HISA portal, and did not include them in his own “work done” treatment records produced to HIWU.

Covered Horse Scott Alaia: Dr. Galvin’s notebooks show he treated Scott Alaia on May 11, June 1, and June 15, 2023. There are, however, no records of the treatments in Dr. Galvin’s “work done” records. Similarly, there are no upload records of these treatments, ever.

Trainer David Jacobson: In his notebooks, Dr. Galvin records treating horses trained by Mr. Jacobson on at least six days in June 2023. He never uploaded these treatments to the HISA portal. Overall, for trainer Jacobson horses, enforcement counsel identified 180 treatment records that Dr. Galvin failed to upload.

Independent of the proffer itself, the proof enforcement counsel introduced established Dr. Galvin’s Rule 2251(b) violation by the requisite preponderance of the evidence standard. Thus, this discussion of the proffer simply highlights additional, albeit non-essential, proof presented in the IAP hearing.

G. Another Missing Witness—Dr. Galvin’s Retained Expert Accountant.

⁷⁶ A “claiming race” is one in which a horse, “after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission.” Rule 1020 (Definitions). A “Claim” refers to the purchase of a horse after the Claiming Race for a designated amount. Rule 1020 (Definitions). Rule 2262(c) prescribes circumstances in which the Claim may be voided.

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To reiterate, the evening before that October 2024 conference with the IAP member, enforcement counsel furnished to Dr. Galvin’s counsel a searchable excel spreadsheet listing more than 3,500 failures *and* the spreadsheet’s source documents.⁷⁷ Dr. Galvin was well-positioned to review enforcement counsel’s material. At the next day’s conference, his counsel reported that “[w]e’ve had an accountant *standing by* the past two months to begin auditing Dr. Galvin’s records.”⁷⁸

Dr. Galvin now protests that, when enforcement counsel later introduced the list into evidence at the IAP hearing a handful of errors were detected—after enforcement counsel had fly-specked it to prepare for the hearing.⁷⁹ The list nevertheless was good enough for Dr. Galvin’s counsel to state, at the parties’ November 2024 conference months earlier, that:

[W]e’ve hired an accountant *to start going through these records* that were produced, to go through Dr. Galvin’s portal entries, to go through the uh the excel spreadsheet . . .

[W]e’ve got an accountant that *is going through* all the documents and all the excel spreadsheets and so on and so forth . . .”⁸⁰

And what emerged at the March 2025 IAP hearing from that accountant’s review: zero—nothing—nada. The accountant never appeared.

⁷⁷ AB 62, at ¶ 7 (HIWU prehearing statement).

⁷⁸ *Id.* 28 (video at 0:07:23) (emphasis added).

⁷⁹ *See id.* 215-19 (hearing transcript).

⁸⁰ *Id.* 29 (video at 0:06:56-07:09, 0:25:58-0:26:07) (emphases added). *See also id.* (video at 0:15:28) (“we’ve retained an accountant”), 0:29:17 (“We had to find an accountant to go through the records.”).

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At the hearing, Dr. Galvin's counsel never mentioned any accountant or any work that individual supposedly did. But, if counsel's remarks before the hearing are to be believed, despite having months to pour over the relevant records, their expert accountant had nothing to offer to rebut enforcement counsel's proof.

Evidence that enforcement counsel offered confirms this assessment. In response to a prehearing discovery request from Dr. Galvin, HIWU produced a spreadsheet of the portal entries Dr. Galvin *did* upload.⁸¹ Review of these uploaded records disclosed the following:

Table 2			
Data Extracted from AB 881*			
Month	No. Records Uploaded by Dr. Galvin	No. Timely Records (W/in 24 hrs.)	Earliest Treatment Among Untimely Uploaded Records
Jan. 2023	0	0	NA
Feb. 2023	0	0	NA
Mar. 2023	0	0	NA
Apr. 2023	7	0	Mar. 15. 2023
May 2023	1	0	May 5, 2023
June 2023	1	1	NA
July 2023	0	0	NA

⁸¹ *Id.* 224-25 (enforcement counsel) (emphasis added); 881 (spreadsheet).

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Table 2			
Data Extracted from AB 881*			
Month	No. Records Uploaded by Dr. Galvin	No. Timely Records (W/in 24 hrs.)	Earliest Treatment Among Untimely Uploaded Records
Aug. 2023	4	4	NA
Sept. 2023	17	17	NA
Oct. 2023	12	8	Sept. 25, 2023
Nov. 2023	8	5	Nov. 11, 2023
Dec. 2023	12	9	Dec. 23, 2023
Jan. 2024	5	2	July 1, 2022
Feb. 2024	1	1	NA
Mar. 2024	12	6	Sept. 20, 2023
Document Requests to Owners and Trainers			
Apr. 2024	526	18	Feb. 7, 2022
May 2024	1547	24**	Jan. 2, 2022
June 2024	407	2***	Jan. 11, 2022
July 2024	4	4	NA
Aug. 2024	10	10	NA
Enforcement Counsel Notice of Violation Aug. 23, 2024			
Sept. 2024	121	114	Sept. 4, 2024

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Table 2			
Data Extracted from AB 881*			
Oct. 2024	187	167	Oct. 1, 2024
Nov. 2024	227	203	Nov. 7, 2024
Dec. 2024	6	4	Nov. 15, 2024
Jan. 2025	6	6	NA
<p>* Source: AB 881. This spreadsheet, produced by enforcement counsel in response to a discovery request by Dr. Galvin, compiles records uploaded to the Authorities portal. <i>See</i> AB 132 (Response to Request No. 6). Comparing Column 2—treatment date—with Column 3—upload date—permits upload timeliness to be determined.</p> <p>** Multiple treatment date upload errors disregarded.</p> <p>*** Upload treatment date error disregarded.</p>			

Dr. Galvin's failure to report treatments to the Authority's portal, and the sheer irregularity of his upload practice, is obvious. First, during the period January 2023 through March 2024, Dr. Galvin uploaded a trivial number of records—compared to the 3,500+ not uploaded on a timely basis.⁸² Once requests for records were sent to owners and trainers in March 2024, however, Dr. Galvin's portal uploads skyrocketed in the April-June 2024 period.⁸³ Virtually all, however, were untimely legacy treatment records. Some reflected treatment as far back as January 2022, before the Authority portal had launched, and many covered

⁸² Strictly speaking, the date range enforcement counsel charged ended March 7, 2024.

⁸³ AB 160, 232 (Stormer).

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treatment six or more months earlier.⁸⁴ Dr. Galvin's uploading dropped off until enforcement counsel charged him with a Rule 2251(b) violation in August 2024, after which there was more significant, timely reporting. But that did not last long either; by December 2024, reporting had plummeted again.

Dr. Galvin complains that these records, which the IAP member admitted into evidence, are not "relevant" to the violation charged.⁸⁵ Much the contrary, as Table 2 demonstrates, many of the treatment entries Dr. Galvin did make—particularly those during April-June 2024—cover non-reported treatments that occurred *during* the January 2023-March 7, 2024 period enforcement counsel charged. However, while eventually reported, they were, as Table 2 also demonstrates, untimely. Consequently, they are probative of Dr. Galvin's systemic non-compliance with Rule 2251(b) during the relevant time period.⁸⁶ And, regardless of whether the treatment that was uploaded occurred before or after the charged period, the irregularity of Dr. Galvin's practice, which emerges from these input records, corroborates enforcement counsel's other proof. The uploads also demonstrate both Dr. Galvin's ability to upload to the portal and his disregard of warning letters that Dr. Galvin admits he received.⁸⁷ The absence of 3,500+ uploads during the relevant period wasn't accidental.

H. Dr. Galvin's Hearing Witnesses.

⁸⁴ AB 881 reports the treatment date (column 2) and the upload date (column 3) and can be sorted to compare the two by month.

⁸⁵ See GRAuPFOF ¶¶ 31-37.

⁸⁶ See AB 8-9 (Notice of Violation).

⁸⁷ See GRAuPFOF ¶¶ 11-12.

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Having failed, prior to the IAP hearing, to identify his own witnesses, as the first hearing day concluded, Dr. Galvin's counsel announced that he wanted to call three enforcer witnesses the next day, Zach Ceriani, Tracy Gilman, and Deshawn Richards.⁸⁸ Mr. Richards had a prior engagement that precluded his appearing, but enforcement counsel produced Mr. Ceriani and Ms. Gilman the next day.⁸⁹

Ms. Gilman was employed by the Authority to provide "field support. . . . So people call when they have questions or need direction on how to enter information into the HISA portal."⁹⁰ Dr. Galvin's counsel examined her regarding matters relating to portal use, including the Authority's acceptance of hard copy Veterinarian treatment records during 2023 and possibly continuing into 2024, while the Authority remedied portal start-up bugs.⁹¹ Ms. Gilman's testimony occupies 12 pages of the transcript.⁹² None of it is cited in Dr. Galvin's opening or reply briefing.

Mr. Ceriani is investigations counsel for HIWU and had attorney oversight of the investigation of Dr. Galvin prior to enforcement counsel taking over the investigation and pursuit of the case.⁹³ Much of Mr. Ceriani's examination was, in the words of Dr. Galvin's counsel himself, "going down a rabbit hole."⁹⁴

⁸⁸ AB 351-52 (Galvin's counsel), 986-87 (enforcement counsel).

⁸⁹ *Id.* 987-88 (enforcement counsel).

⁹⁰ *Id.* 994-95 (Gilman).

⁹¹ *Id.* 1001-02.

⁹² *Id.* 994-1006.

⁹³ *Id.* 1011, 1015.

⁹⁴ *Id.* 1022 (Galvin's counsel).

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I. The IAP Member's Decision.

After hearing the testimony and enforcement counsel's proffer in Dr. Galvin's absence, and after receiving extensive documentary material, the IAP Member upheld enforcement counsel's charge.⁹⁵ The IAP member also denied Dr. Galvin's motion to dismiss.

Regarding the motion to dismiss, the IAP member rejected Dr. Galvin's arguments that: (1) by combining all of the alleged failures to report into a single charge, enforcement counsel failed to state a legally cognizable violation and was impermissibly "duplicitous" (a combination of two or more criminal offenses); (2) delay in charging Dr. Galvin constituted a due process violation; (3) enforcement counsel was engaged in selective or vindictive prosecution; (4) there were Fifth Amendment due process violations arising from enforcement counsel's failure to disclose exculpatory evidence and the IAP member's failure to convene additional conferences.⁹⁶

At the IAP hearing itself, Dr. Galvin raised still more legal issues, but with one exception, did not dispute the merits of the Rule 2251(b) charge. As for the legal issues raised, the IAP member rejected the arguments that: (1) failure to furnish the IAP hearing in transcript form deprived Dr. Galvin of a "meaningful opportunity" to prepare his post-hearing brief; (2) evidence probative on non-

⁹⁵ *Id.* 1301 (Amended Final IAP Decision).

⁹⁶ *Id.* 1309-12.

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reporting was admitted without foundation; and (3) enforcement counsel waived or was estopped from enforcing pre-February 21, 2024 violations.⁹⁷

Dr. Galvin's sole merits-based argument was based on evidence that, until a point in 2023, Veterinarians were permitted to submit hard-copy treatment records to the Authority, and not limited to portal uploads. Dr. Galvin maintained that the 1,973 hardcopy records he produced to HIWU during the investigation of his case should be "deemed compliant" with Rule 2251(b)'s requirements. The IAP member rejected this argument, as the records lacked the treatment details that Rule calls for.⁹⁸

The IAP Member awarded the following sanctions:

1. Dr. Galvin's registration with HISA was suspended for two years.
2. A fine of \$25,000 was appropriate.
3. Public disclosure of the adjudicated violation was directed pursuant to Rule 8380.⁹⁹

J. Dr. Galvin's Appeal to the Board.

On appeal to the Board of the Authority, Dr. Galvin argued that: (1) enforcement counsel's Notice of Violation failed to state a cognizable offense; (2) enforcement counsel's single charge was impermissibly duplicitous; (3) enforcement counsel's pre-accusation delay violated Dr. Galvin's Due Process rights; (4) enforcement counsel's alleged first-ever Rule 2251(b) violation was a "dramatic

⁹⁷ *Id.* 1312-13.

⁹⁸ *Id.* 1313.

⁹⁹ *Id.* 1314, § 8.

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departure” from enforcement counsel’s prior practice and thus was arbitrary and capricious; (5) Dr. Galvin’s two-year suspension was so disproportionate as to be an abuse of discretion; and (6) the IAP member’s Decision was not supported by substantial evidence. As relief, Dr. Galvin requested that the IAP decision be vacated and annulled.¹⁰⁰

The Board reviewed the evidence introduced at the IAP hearing and the IAP member’s decision and implicitly rejected Dr. Galvin’s arguments. The Board concluded that “the IAP Ruling is not clearly erroneous and is supported by the evidence and applicable law. The Board concurs with the factual findings and reasoning articulated by IAP Member Borden in the IAP Decision, and . . . affirm[ed] the IAP Decision in full.”¹⁰¹

II. ISSUES PRESENTED FOR REVIEW.

Dr. Galvin argues four grounds for dismissal:

1. The IAP member’s decision is not supported by substantial evidence.
2. As what he contends is the “first ever” Rule 2251(b) violation charged, enforcement counsel’s prosecution of the case was “arbitrary and capricious.”
3. The single charge in enforcement counsel’s Notice of Violation was “impermissibly duplicitous.”
4. The two-year suspension of Dr. Galvin’s registration is “shocking to one’s sense of fairness and constitutes an abuse of discretion as a matter of law.”

¹⁰⁰ *Id.* 1317-46 (Request for Appeal).

¹⁰¹ *Id.* 1432 (Board Decision on Appeal).

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III. SCOPE OF REVIEW.

HISA civil sanctions, imposed for Rule violations, are reviewable by an FTC Administrative Law Judge (“ALJ”) upon application of the person aggrieved and thereafter by the Commission itself on a discretionary basis.¹⁰² The ALJ reviews:

“whether—

- (i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted;
- (ii) such acts, practices, or omissions are in violation of this [chapter] or the anti-doping and medication control or racetrack safety rules approved by the Commission; or
- (iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁰³

The ALJ’s review of the IAP member’s decision is *de novo*— “as if it had not been heard before, and as if no decision previously had been entered.”¹⁰⁴ Thus, the ALJ must determine the merits of the Rule violation charged, and whether the sanctions the Authority imposed were “arbitrary, capricious, an abuse of discretion,

¹⁰² 15 U.S.C. §§ 3058(b)-(c); FTC Rules 1.146-147.

¹⁰³ 15 U.S.C. § 3058(b)(2)(A). *See also* FTC Rule 1.146(b)(1)-(3).

¹⁰⁴ *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006) (review under Federal Rule of Civil Procedure 12(b)(6)). *See also Harris v. Lincoln Nat’l Life Ins. Co.*, 42 F.4th 1292, 1295 (11th Cir. 2022) (“De novo means . . . a fresh, independent determination of the ‘matter’”) (quoting with approval *Doe v. United States*, 821 F.2d 694, 697-98 (D.C. Cir. 1987)); *Reyes-Colón v. United States*, 974 F.3d 56, 60 (1st Cir. 2020) (“review . . . de novo . . . is a legalistic way of saying we critique the judge’s decision without giving any deference to his views”); *Amparan v. Lake Powell Car Rental Cos.*, 882 F.3d 943, 947 (10th Cir. 2018) (“[A] district court’s grant of summary judgment [is reviewed] de novo,” and “[i]n so doing, we need not defer to factual findings rendered by the district court.”) (internal quotation marks omitted); *Aquarius Marine Co. v. Pena*, 64 F.3d 82, 87 (2d Cir. 1995) (on *de novo* review, the appellate court “give[s] no deference to the lower court”).

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or otherwise not in accordance with law.”¹⁰⁵ In exercising their review authority, the ALJ may “affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part” and “make any finding or conclusion that, in [their] judgment . . . is proper and based on the record.”¹⁰⁶

IV. ANALYSIS OF THE ISSUES.

A. Enforcement Counsel Proved Dr. Galvin Violated Rule 2251(b).

I have detailed the evidence introduced at the IAP hearing above. A central piece of enforcement counsel’s proof is an excel spreadsheet—Exhibit 16—offered into evidence through HIWU analyst Ms. Stormer.¹⁰⁷ The spreadsheet showed that Dr. Galvin failed to upload on a timely basis more than 3,500 records of treatment of Covered Horses during the period January 1, 2023 through March 7, 2024. Dr. Galvin did not rebut this evidence. The record as a whole satisfied the IAP member that enforcement counsel had proven its Rule 2251(b) charge against Dr. Galvin by “a preponderance of the evidence.”¹⁰⁸ As discussed below, I agree.

Dr. Galvin’s objections to enforcement counsel’s proof are without merit.

1. New York Substantial Evidence Law Does Not Apply.

Dr. Galvin argues that “substantial evidence” does not support the IAP member’s Decision and the Board’s affirmance. For this argument, he cites Article 78 of the New York Civil Procedure Law and Rules, and a New York Court of

¹⁰⁵ 15 U.S.C. § 3058(b)(2)(A); FTC Rule 1.146(b)(1)-(3).

¹⁰⁶ 15 U.S.C. § 3058(b)(3)(A)(ii-iii); FTC Rule 1.146(d)(3).

¹⁰⁷ AB 880 (spreadsheet).

¹⁰⁸ AB 1305, 1314 (Amended Final IAP Decision).

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Appeals decision, *300 Gramatan Ave. Associates v. State Division of Human Rights*,¹⁰⁹ which applied a substantial evidence standard in reviewing a New York State agency's action.¹¹⁰ But this action arises under HISA, a federal statute, and the Rules implementing that federal law. RSP Rule 8340(f) requires enforcement counsel to prove its Rule 2251(b) charge against Dr. Galvin by “a preponderance of the evidence,” and both HISA and the Rules call for this ALJ review to be *de novo*.¹¹¹

No part of HISA or the Rules adopt a “substantial evidence” standard of review. And Dr. Galvin offers no basis for importing New York State procedural law on review of agency action. Even if *300 Gramatan* applied, however, the New York Court required only that, to sustain agency action, “the reviewing court should review the whole record to determine whether there is a rational basis in it for the findings of fact supporting the agency's decision.”¹¹² This standard—discussed below in response to Dr. Galvin's additional arbitrary and capricious objection—is readily satisfied.¹¹³

Regardless of the applicable standard of review, however, Dr. Galvin's only argument is that enforcement counsel's spreadsheet exhibit (and at least some

¹⁰⁹ 45 N.Y.2d 176, 181, 408 N.Y.S.2d 54 (1978).

¹¹⁰ *Id.*; GOBr. at 13-14.

¹¹¹ 15 U.S.C. § 3058(b)(1); FTC Rule 1.146(b)(1)-(3). *See also Steadman v. SEC*, 450 U.S. 91, 98, 102 (1981) (Even under the APA—where an agency order must be “supported by . . . substantial evidence”—in a disciplinary proceeding “the standard [of proof] adopted is the traditional preponderance-of-the-evidence standard.”) (footnote omitted).

¹¹² 45 N.Y.2d 176, 182 (internal quotation marks omitted; citing authorities).

¹¹³ *See* pp. 44-52, below.

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underlying supporting source material) lacked sufficient foundation proof to admit the material into evidence. This argument, too, fails.

2. Enforcement Counsel's Evidence Was Admissible.

For his argument, Dr. Galvin relies on the Federal Rules of Evidence, and case law applying those rules. However, in this HISA case, Rule 8340(g) provides that the proceeding “shall not be bound by the technical rules of evidence” and “may admit hearsay evidence if . . . of a type that is commonly relied on by reasonably prudent people.”¹¹⁴ Countless agency decisions, as well as § 556(d) of the Administrative Procedures Act, validate the Rule. “[A]dministrative agencies . . . have never been restricted by the rigid rules of evidence.”¹¹⁵ The APA itself expressly provides that “[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.”¹¹⁶

Thus, in *Gallagher v. National Transportation Safety Board*,¹¹⁷ the Tenth Circuit held that “[a]gencies are not bound by the strict rules of evidence governing

¹¹⁴ See also Rule 7260(d) (“Conformity to legal rules of evidence shall not be necessary, but the Federal Rules of Evidence may be used for guidance.”; relevant and material evidence, “including hearsay evidence,” may be admitted.).

¹¹⁵ *FTC v. Cement Institute*, 333 U.S. 683, 705-06 (1948). See also, e.g., *Richardson v. Perales*, 402 U.S. 389 (1971) (upholding a denial of disability benefits based on hearsay evidence consisting of written medical reports even though witness testimony at the administrative hearing contradicted the written reports); *Johnson v. Boston Public Schools*, 906 F.3d 182, 192 (1st Cir. 2018) (“administrative hearings [in student placement cases] are not bound by the Federal Rules of Evidence.”); *Singh v. Ashcroft*, 398 F.3d 396, 406-07 (6th Cir. 2005) (immigration proceedings “are not subject to the Federal Rules of Evidence”).

¹¹⁶ 5 U.S.C. § 556(d).

¹¹⁷ 953 F.2d 1214, 1218 (10th Cir. 1992) (cleaned up). See also *Marina Aviation, LLC v. FAA*, No. 22-70173, 2023 WL 8015267, at *1 (9th Cir. Nov. 20, 2023) (rejecting objections that evidence admitted before the FAA was “riddled with hearsay” and “not authenticated”).

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jury trials . . . Under this [APA] standard, in order to be admissible for consideration in an administrative proceeding, the evidence need not be authenticated with the precision demanded by the Federal Rules of Evidence.”

The evidence forming the basis for enforcement counsel’s spreadsheet—Exhibit 16—came from records provided by Dr. Galvin himself and owners and trainers who responded to HIWU’s document demand. Ms. Stormer testified to the sources of information from which the entries in Exhibit 16 were extracted and to the process she undertook to prepare the Exhibit. Her testimony establishes a foundation sufficient in this HISA case to admit the document as evidence.¹¹⁸ Enforcement counsel provided the spreadsheet and its source documents to Dr. Galvin more than four months before the hearing. The spreadsheet satisfies Rule 8340(g). Indeed, it would likely be admissible even under the Federal Rules of Evidence.¹¹⁹

If all or parts of Exhibit 16 were to be discredited as unworthy of belief, Dr. Galvin needed to offer the required evidence—either through his own testimony and practice records or that of percipient witnesses, or from the elusive accountant

¹¹⁸ See *Woolsey v. National Transp. Safety Bd.*, 993 F.2d 516, 519-20 (5th Cir. 1993) (Although the authenticity standard, in agency proceedings is “somewhat lower” than that the Federal Rules of Evidence, unless there is proof the evidence “is what it purports to be,” it can be excluded as “irrelevant or immaterial.”)

¹¹⁹ Fed. R. Evid. 1006(a) (A court “may admit as evidence a summary . . . offered to prove the content of voluminous admissible writings . . . that cannot be conveniently examined in court, whether or not they have been introduced into evidence.”). See also, e.g., *United States v. Smith*, 150 F.4th 832, 848 (7th Cir. 2025) (admitting investigator’s report regarding market manipulation where “the authoring officer or investigator testifies at trial”); *Gordon v. United States*, 438 F.2d 858, 876 (5th Cir. 1971) (charts were properly admitted where the defendants “cross-examined FBI Agent Brady who prepared [them], and all documents relating to each transaction summarized in the charts were available for verification.”) (footnote omitted).

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retained even before enforcement counsel produced Exhibit 16 and its source documents. According to Dr. Galvin's counsel, that expert began reviewing the spreadsheet no later than November 2024—months before the March 2025 hearing. No such evidence—from any source—was forthcoming.

Dr. Galvin, however, offers a cascade of foundation objections to Ms. Stormer's relying on information provided not only by Dr. Galvin himself, but also by owners and trainers, in response to HIWU demands for information.¹²⁰ For these entries, he contends, the foundation for admission, either as admissions or under the business records exception to the hearsay rule, as provided for in the Federal Rules of Evidence, was not satisfied. But as noted, Rule 8340(g) governs here, and it permits hearsay to be admitted where “commonly relied on by reasonably prudent people.” The data Dr. Galvin challenges is either his own, or came from other persons similarly regulated under HISA and the Rules.¹²¹ All were under duties to maintain records “of medical, therapeutic, and surgical treatments and procedures” for their Covered Horses, as well as to provide truthful information, to cooperate, and to refrain from fraudulent and otherwise wrongful activity relating to the Authority and HIWU's discharge of their regulatory responsibilities.¹²² “Reasonably prudent” individuals—including HIWU, the

¹²⁰ See, e.g., GOBr. at 15-16; GRAuPFOF ¶¶ 7, 16, 28-29, 30.e, f, g, 38.

¹²¹ AB 618, 684, 701, 744, 792, 819, 825, 835, 843, 850, 859, 864, 869, 872 (HIWU Demands for Business Records). It is of no moment that HIWU's demands sought information under the ADMC Program, whereas Dr. Galvin was eventually charged under the RSP. Owners and trainers have duties under both programs, and in all events would have no way to predict what direction the investigation might take, or what Rule violation, if any, might eventually be charged.

¹²² See, e.g., Rules 2251(b), 2252(a), 3040(a)(2), 3510(b) & (d), 5720(f), 5730(d) 8100(a)-(d), (f), (h), 8400(c), (d) & (f).

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Authority, and the IAP member—could appropriately rely on information from Dr. Galvin as well as from the owners and trainers.¹²³

Any shortcoming in this material goes only to the weight of the evidence, not its admissibility as part of enforcement counsel’s case. The handful of entry duplication or typographical errors, identified by enforcement counsel at the IAP hearing, do not render Exhibit 16 inadmissible.¹²⁴ Dr. Galvin himself proved no material shortcoming sufficient to exclude any particular piece of information, much less all of it, from admission. He did not, for example, offer proof that a trainer’s report of Dr. Galvin treating the trainer’s Covered Horse was erroneous or otherwise unworthy of belief. Evidence like this might have been the provenance of Dr. Galvin’s expert accountant, but he was, once again, a no-show.

¹²³ See, e.g., *Affirmed Energy, LLC v. FERC*, No. 25-1091, 2026 WL 363780, at *1085 (D.C. Cir. Feb. 10, 2026) (“Absent evidence to the contrary, FERC was entitled to rely on representations by parties who were uniquely in a position to know the relevant information.”) (internal quotation marks omitted); *Coalition to Stop CPKC v. Surface Transp. Bd.*, No. 23-1165, 2025 WL 1720672, at *3 (D.C. Cir. June 20, 2025) (same); *United States v. Bachsian*, 4 F.3d 796, 798 (9th Cir. 1993) (ocean bills of lading, packing lists, and invoices covering 180 cartons of gloves were properly admitted, despite the absence of testimony from the maker of the records where “the individual who prepared the documents would have had been under some duty to insure that the documents were accurate and would have no incentive to misrepresent the facts recorded on the documents”); *FTC v. AMG Services, Inc.*, No. 2:12-cv-00536-GMN-VCF, 2014 WL 12788195, at *7 (D. Nev. July 16, 2014) (FTC database of consumer complaints was admissible), *rev’d on other grounds sub nom. AMG Capital Management, LLC v. FTC*, 593 U.S. 67 (2021). Cf. *Idaho v. Wright*, 497 U.S. 805, 819 (1990) (trustworthiness of evidence may be established by “the totality of the circumstances”); *Goode v. United States*, 730 F. Supp. 2d 469, 477 (D. Md. 2010) (statement of “an independent witness without a motive to fabricate,” provided to a police officer “shortly after the accident” was admissible) (discussing authorities).

¹²⁴ See *United States v. Masiarczyk*, 1 Fed. Appx. 199, 208 (4th Cir. 2001) (Where a summary “contained inaccurate information,” that “goes to weight rather than admissibility.”) (citing authorities); *United States v. Reyes*, 157 F.3d 949, 953 (2d Cir. 1998) (Where a visitor log allegedly contained “irregularities . . . , [r]esidual doubts on the question would go to the weight of the evidence, not its admissibility.”).

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Troublé v. The Wet Seal, Inc.,¹²⁵ on which Dr. Galvin cites, not only relied on the Federal Rules of Evidence, but also is distinguishable on the facts. Unlike here, where the information came from individuals with obligations to report truthfully, in *Troublé* the plaintiff's *own* employees prepared the challenged records in anticipation of litigation. Dr. Galvin's other business records authorities are similarly distinguishable.¹²⁶

Equally unpersuasive are Dr. Galvin's "chain of custody" authorities, invoked for all the records that HIWU obtained, including those from Dr. Galvin himself.¹²⁷ Chain of custody can matter when the evidence—such as drugs, guns, or a machine in a personal injury case—is fungible, susceptible to tampering, or changing through ordinary operation. Then, the chain of custody foundation helps assure the item is what it purports to be: *the* piece of evidence relevant to the case. Thus, in *People v. Julian*,¹²⁸ which Dr. Galvin cites, the New York Court of Appeals rejected the chain of custody objection asserted, writing: "We believe that a chain in custody should be tested not by the satisfaction of a technical series of steps, but by whether the proof satisfies the rationale for requiring an evidentiary foundation."

¹²⁵ 179 F. Supp.2d 291 (S.D.N.Y. 2001). *See* GOBr. at 15.

¹²⁶ GOBr. at 15, citing *United States v. Freidin*, 849 F.2d 716, 718-19, 720 (2d Cir. 1988) (reversing admission as a business record a memorandum with white-out and which was not the responsibility of the witness-sponsor to prepare); *Tashnizi v. INS*, 585 F.2d 781, 783 n.1 (5th Cir. 1978) (although properly admitted in a deportation proceeding under the relaxed rules covering agency cases, the business records exception could not have been shown by an agency attorney's testimony, since he had temporary custody of the document only to submit it as evidence).

¹²⁷ *See, e.g.*, GRAuPFOF ¶¶ 1, 5, 10, 30.a-d, .f (objecting to Dr. Galvin's own "veterinary treatment notebook" as "lack[ing] a chain of custody" showing).

¹²⁸ 41 N.Y.2d 340, 344, 392 N.Y.S.2d 610 (1977). *See* GOBr. at 17.

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Unlike the drugs in *Julian* or in Dr. Galvin's other authority, *People v. Connelly*,¹²⁹ the records forming the basis for Ms. Stormer's spreadsheet are not fungible, or subject to change insusceptible to detection. If a spreadsheet entry were altered—whether intentionally or inadvertently—the change would be readily detectable: the entry need only be compared to its source document, which enforcement counsel provided to Dr. Galvin. If a source document appeared irregular on its face, Dr. Galvin could have brought that, too, to witness Stormer's attention to rebut her testimony. Dr. Galvin had all that he needed to probe and test, and, where appropriate, refute the information in the summary exhibit enforcement counsel presented. Who, better than Dr. Galvin or his phantom accountant, could have refuted that information—or, had they testified, *established* any foundation now argued was needed for Dr. Galvin's own notebooks and other production? There is no colorable “chain of custody” objection here.

One of Dr. Galvin's other cited authorities is, however, instructive. In *Tamarin v. Adam Caterers, Inc.*,¹³⁰ on summary judgment the plaintiff demonstrated the employer's delinquent ERISA payments based on an affidavit and an accountant's report. Faced with the plaintiff's proof, the burden shifted to the employer if summary judgment were to be avoided; the employer was “the party who has the legal and contractual duty to provide the records, and who is in a better position than his adversary to keep and vouch for the accuracy of such records.”¹³¹

¹²⁹ 35 N.Y.2d 171, 359 N.Y.S.2d 266 (1974).

¹³⁰ 13 F.3d 51 (2d Cir. 1993). *See* GOBr. at 16.

¹³¹ *Id.* at 52.

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However, the employer “failed to provide its own records to dispute specific items of the claim,” relying instead on an opposing affidavit that was “virtually a repetition of the general denial in the answer.”¹³² The Second Circuit upheld the District Court’s grant of summary judgment in favor of the plaintiff.

Like the employer in *Tamarin*, Dr. Galvin introduced no evidence to discredit enforcement counsel’s spreadsheet. Repeatedly chanting the mantra “no foundation” will not do.¹³³ If Dr. Galvin sought to excuse his failure to upload to the Authority’s portal, he had the burden of rebutting the jigsaw puzzle of records HIWU received in 2023 through its investigation—and put together itself.

The proof that enforcement counsel introduced at the IAP hearing shows, by a preponderance of the evidence, that Dr. Galvin violated RSP Rule 2251(b). In addition, enforcement counsel’s evidence is reinforced by the adverse inference that may appropriately be drawn against Dr. Galvin.

¹³² *Id.*

¹³³ *See, e.g., Secs. Inv. Prot. Corp. v. Madoff Inv. Secs. LLC*, 528 F. Supp. 3d 219, 231 (S.D.N.Y. 2021) (An expert report, based on the defendant’s “books and records,” is “particularly useful” when the party opposing admission of the evidence “fails to present evidence sufficient” rebuttal proof, and “when the trier of fact would not be at liberty to disregard arbitrarily the unequivocal, uncontradicted, and unimpeached testimony of an expert.”) (internal quotation marks omitted), *aff’d sub nom. Picard v. JABA Assocs. LP*, 49 F.4th 170 (2d Cir. 2022); *In re Correria*, 589 B.R. 76, 131 (Bankr. N.D. Tex. 2018) (after the Court-appointed expert’s testimony demonstrated that the computer of the debtor’s personal assistant was tampered with, “[t]he burden then shifted to [the assistant] . . . to prove otherwise.”). *Cf. Bartlit Beck LLP v. Okada*, 25 F.4th 519 (7th Cir. 2022) (after the respondent stated he would not attend the merits hearing, the arbitration panel did not deny him fundamental fairness by declining to reschedule the hearing and deciding the case on the claimant’s papers).

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3. An Adverse Inference Is Appropriately Drawn Against Dr. Galvin.

To summarize, the IAP hearing was set months in advance. Enforcement counsel listed Dr. Galvin as a witness in their prehearing statement, which was served on Dr. Galvin's counsel. But when, at the IAP hearing, enforcement counsel called Dr. Galvin to testify, his counsel's explanation for his client's non-appearance was, at best, inconvenience—and, more likely, simply obfuscation.

The Rule provisions, detailed above, establish that, as a registered Covered Person, Dr. Galvin has a duty to comply with the Rules issued under HISA, which include the obligation to cooperate in this matter. Non-appearance at the IAP hearing was not an option. The Rule itself reinforces well-established law. As the Court stated in *United States v. Al-Sibai*,

Under the so-called “missing witness” rule, an adverse inference arises when a party fails to call a witness peculiarly within his power to produce and whose testimony would elucidate the transaction. . . . Defendant is peculiarly within the control of himself and, as one of the two individuals in the marriage between himself and Kankula, his testimony would elucidate that transaction. Therefore, the court draws an adverse inference from Defendant's failure to appear and testify at his trial.¹³⁴

¹³⁴ No. 13–11341, 2014 WL 2533065, at *3 (E.D. Mich. June 5, 2014) (cleaned up), *aff'd*, 599 Fed. Appx. 251 (6th Cir. 2015). *See also, e.g., Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 226 (1939) (“The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.”); *Graves v. United States*, 150 U.S. 118, 121 (1893) (“[I]f a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable.”); *Gumbs v. Int'l Harvester, Inc.*, 718 F.2d 88, 96 (3d Cir. 1983) (“The unexplained failure or refusal of a party to judicial proceedings to produce evidence that would tend to throw light on the issues authorizes, under certain circumstances, an inference or presumption unfavorable to such party.”); *Gass v. United States*, 416 F.2d 767, 775 (D.C. Cir. 1969) (“An adverse inference is permitted from the failure of the accused to call witnesses peculiarly within his power to produce when their testimony would elucidate the transaction.”) (cleaned up); *United States v. Wilson*, 322 F.3d 353, 364 (5th Cir. 2003) (The government's failure to call its employees “as

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Dr. Galvin was the person responsible for reporting his treatment of Covered Horses into the Authority’s portal. If something was amiss in enforcement counsel’s proof—which, absent refutation, shows his systematic non-reporting—Dr. Galvin was uniquely situated to “elucidate” it. We know Dr. Galvin has a voice because he saw fit to submit an affidavit to the Board in seeking to stay the sanctions pending appeal.¹³⁵ For the arbitration hearing itself, however, he simply muzzled himself. It is appropriate, therefore, to infer that he failed to testify because the information he could provide would have been unfavorable to his defense.¹³⁶ This very adverse inference is uncommonly strong; Dr. Galvin also failed to call to testify his retained accountant—a witness within his control—whose work “*going through*” the spreadsheet and source material began no later than November 2024.¹³⁷

The silence of these two defense witnesses is “evidence of the most persuasive

witnesses when they had crucial information about this dispositive issue of fact gives rise to a particularly strong adverse inference against it.” (internal quotation marks omitted).

¹³⁵ AB 1355 (Galvin affidavit).

¹³⁶ See also *Man Wei Shiu v. New Peking Taste Inc.*, No. 11–CV–1175 NGG RLM, 2014 WL 652355, at *8 (E.D.N.Y. Feb. 19, 2014) (defendant’s failure to testify warrants an inference that her testimony “would have supported plaintiffs’ claims”); *Lucini Italia Co. v. Grappolini*, No. 01 C 6405, 2003 WL 1989605, at *2 (N.D. Ill. Apr. 28, 2003) (“draw[ing] an adverse inference by reason of Defendants’ failure to appear at trial to rebut statements attributed to them or to explain, under oath, their position on key events”).

¹³⁷ AB 28 (video at 0:07:23-0:07:32) (emphasis added). See also, e.g., *United States v. Gaskin*, 364 F.3d 438, 469 (2d Cir. 2004) (The defendant appropriately argued an adverse inference “from the prosecution’s failure to call a handwriting expert.”); *Roberge v. Hannah Marine Corp.*, 124 F.3d 199, 1997 WL 468330, at *3 (6th Cir. Aug. 13, 1997) (The defendant appropriately argued that “plaintiff’s counsel would have had an expert testify that other companies used a different practice in reconfiguring wires, if such was the case.”); *McClanahan v. United States*, 230 F.2d 919, 925 (5th Cir. 1956) (The prosecutor appropriately argued that the defendant’s failure to call his former attorney, whose testimony, “it might be expected, . . . if given, would corroborate that of the [defendant] as to the legal advice given.”).

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character.”¹³⁸ It reinforces the un rebutted evidence that proves Dr. Galvin violated Rule 2251(b).

B. The Board’s Decision Was Not Arbitrary or Capricious.

Dr. Galvin challenges the finding that he violated Rule 2251(b) and the sanctions thus imposed as arbitrary and capricious. Review under this standard requires determining whether the decisionmaker “examined the relevant data and articulated a satisfactory explanation for [the] decision, including a rational connection between the facts found and the choice made.”¹³⁹ This review ensures that “the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.”¹⁴⁰

Dr. Galvin bases his argument on a “first ever” objection to enforcement against him. He maintains that enforcement pursuit of this Rule 2251(b) charge represents a “dramatic and unexplained departure from HISA practice and precedent.”¹⁴¹ This claimed “departure,” he contends, is impermissible unless enforcement counsel itself explains it.¹⁴² Absent that explanation, according to

¹³⁸ *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923). *See also Kirby v. Tallmadge*, 160 U.S. 379, 383 (1896) (“‘All evidence,’ said Lord Mansfield in *Blatch v. Archer*, 1 Cowp. 63, 65. ‘is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other side to have contradicted.’”).

¹³⁹ *Dep’t of Commerce v. New York*, 588 U.S. 752, 773 (2019) (cleaned up). *See also Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 56 (1983).

¹⁴⁰ *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). *See also Dep’t of Commerce*, 588 U.S. at 773 (The Court “must confine [itself] to ensuring that [the decision-maker] remained within the bounds of reasoned decisionmaking.”); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) (“[T]he court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.”)

¹⁴¹ GOBr. at 7.

¹⁴² *Id.* at 7-8.

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Dr. Galvin, charging and prosecuting the case against him, and imposing sanctions for his violating Rule 2251(b), is said to be arbitrary and capricious.¹⁴³ This argument fails.

1. Dr. Galvin's "First Ever" Argument Is Meritless.

Whether made by criminal defendants or those subject to agency action, "first ever" arguments are, typically, losers. As the Ninth Circuit has written, "[t]he fact that not all criminals are prosecuted is no valid defense to the one prosecuted"¹⁴⁴ For example, in *Branch Ministries v. Rossotti*,¹⁴⁵ the IRS revoked the Branch Ministries' tax-exempt status after the Church placed an ad urging Christians not to vote for Bill Clinton in the upcoming presidential election. Arguing that the IRS singled it out, the Church provided "several hundred pages of newspaper excerpts reporting political campaign activities in, or by the pastors of, other churches that have retained their tax-exempt status."¹⁴⁶

Unlike these other houses of worship, the Church maintained it was "the only one to have ever had its tax-exempt status revoked for engaging in political activity.

¹⁴³ *Id.* at 9, 11; AB 1330-31 (Galvin Request for an Appeal).

¹⁴⁴ *United States v. Choate*, 619 F.2d 21, 23 (9th Cir. 1980) (cleaned up). *See also United States v. Rickenbacker*, 309 F.2d 462, 464 (2d Cir. 1962) (citing authorities); *Grell v. United States*, 112 F.2d 861, 875-76 (8th Cir. 1940) ("That others are violating the laws is no defense to the prosecution of an accused person," although arguably relevant to determining the appropriate "punishment.").

¹⁴⁵ 211 F.3d 137 (D.C. Cir. 2000).

¹⁴⁶ *Id.* at 144.

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It attribute[d] this alleged discrimination to the Service’s political bias.”¹⁴⁷ The D.C.

Circuit rejected the Church’s argument:

None of the reported activities involved the placement of advertisements in newspapers with nationwide circulations opposing a candidate and soliciting tax deductible contributions to defray their cost If there was no one to whom defendant could be compared in order to resolve the question of [prosecutorial] selection, then it follows that defendant has failed to make out one of the elements of its case. Discrimination cannot exist in a vacuum; it can be found only in the unequal treatment of people in similar circumstances.¹⁴⁸

Branch Ministries is but illustrative. Here are a few other “first ever” arguments—each rejected:

- The newspaper argued it “was improperly singled out for registration under FARA [the Foreign Agents Registration Act], not as a matter of legitimate discretion, but rather because of hostility to the editorial policy of defendant, and the (Irish Republican) cause it espouses, and as a result of pressure from the British and perhaps the Irish governments.”¹⁴⁹
- The defendant argued he was “the first union official in Puerto Rico to be charged with criminal contempt”¹⁵⁰
- The defendant argued that “although there is indication that other persons have also refused to fill out the household [census] form, he is the only one against whom the Government has initiated a criminal prosecution.”¹⁵¹
- The defendant argued “he must have been singled out because of the hundreds of witnesses in the House Permanent Select Committee on

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 144-45 (cleaned up).

¹⁴⁹ *Att’y Gen. v. Irish People, Inc.*, 684 F.2d 928, 931 (D.C. Cir. 1982) (cleaned up).

¹⁵⁰ *United States v. Union Nacional de Trabajadores*, 576 F.2d 388, 395 (1st Cir. 1978).

¹⁵¹ *Rickenbacker*, 309 F.2d at 464.

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Intelligence investigation and the other committees of the House and the Senate, only two have been charged”¹⁵²

- The defendant argued that “no other T.D.I. [taxpayer delinquency investigation], of which there have been many hundreds, has been referred to the Criminal Investigation Division for prosecution, or has ultimately been eventually prosecuted.”¹⁵³

As all these decisions demonstrate, a “first ever” argument has no traction by itself; factually, there must be something more.

2. Dr. Galvin Fails to Show Unlawful Purpose or Effect.

Dr. Galvin quotes from HIWU reports regarding 2023 equine fatalities at: (1) Laurel Park, which refers to “revealed violations by Covered Persons of HISA’s veterinary and horse reporting rules; and (2) Saratoga, which states that “the timeliness and completeness of information reporting required by the rules must be resolved going forward”¹⁵⁴ He similarly quotes a third HIWU report, which notes, among other things, that as of the third quarter of 2024; (1) Veterinarian uploads increased by 59%, compared to the prior year’s third quarter; (2) Veterinarians were uploading “approximately 7,500 veterinary treatment records each day”; (3) “approximately 4 million veterinary treatment records had been uploaded . . . since the inception of the Racetrack Safety Program [on July 1,

¹⁵² *United States v. Stone*, 394 F.Supp.3d 1, 34 (D.D.C. 2019) (cleaned up).

¹⁵³ *United States v. Cooney*, 754 F. Supp. 255, 256 (D. R.I. 1990) (bracketed matter in original).

¹⁵⁴ GOBr. at 10.

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2022].”¹⁵⁵ This material, he contends, provides a factual basis for his first-ever argument.

The information Dr. Galvin cites falls woefully short of demonstrating arbitrary and capricious enforcement. As the Supreme Court has said, regardless of “statistics,” there must be facts that show the decision to proceed “was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.”¹⁵⁶ There must be both “a discriminatory effect *and* . . . a discriminatory purpose.”¹⁵⁷ Commonly, “ordinary equal protection standards” will inform the analysis.¹⁵⁸

Moreover, there is a presumption of regularity for agency action as well as for the exercise of prosecutorial discretion.¹⁵⁹ And the proof required to rebut the presumption “is particularly demanding”¹⁶⁰ It calls for “a strong showing of bad faith or improper behavior”¹⁶¹ The evidence, taken as a whole, must “tell[] a

¹⁵⁵ GOBr. at 9 (bracketed matter added).

¹⁵⁶ *Oyler v. Boles*, 368 U.S. 448, 456 (1962). *See also* *Wayte v. United States*, 470 U.S. 598, 608 (1985) (The prosecutorial decision must be “deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights.”) (cleaned up).

¹⁵⁷ *United State v. Armstrong*, 517 U.S. 456, 465 (1996) (emphasis added) (cleaned up). *See also* *United States v. Green*, 152 F.4th 1025, 1032 (9th Cir. 2025) (“A defendant must establish both (1) a discriminatory effect and (2) a discriminatory intent.”).

¹⁵⁸ *Armstrong*, 517 U.S. at 469 (cleaned up). *See also* *United States v. Foster*, No. 24-1538, 2025 WL 985387, at *2 (3d Cir. Apr. 2, 2025) (there must be “clear evidence that investigations or prosecutions were not pursued against similarly situated offenders based on some impermissible consideration.”) (internal quotation marks omitted).

¹⁵⁹ *Armstrong*, 517 U.S. at 465; *Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 415; *United States v. Yu*, 161 F.4th 25, 39 (1st Cir. 2025).

¹⁶⁰ *Reno v. American-Arab Discrimination Comm.*, 525 U.S. 471, 489 (1999). *See also* *Yu*, 161 F.4th at 43, 44 (there is a “high” burden).

¹⁶¹ *Dep’t of Commerce*, 588 U.S. at 781 (cleaned up).

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story that does not match the explanation the [decision-maker] gave for [its] decision.”¹⁶² In context of this Rule violation, the presumption of regularity also recognizes that “[w]hether to prosecute and what charge to file or bring . . . are decisions that generally rest in the prosecutor’s discretion.”¹⁶³

Dr. Galvin offers no facts suggesting that, in pursuing this case, HIWU, the Authority, or enforcement counsel had an unlawfully discriminatory or otherwise wrongful purpose, much less that there was any discriminatory effect. Just the opposite. Dr. Galvin’s massive non-reporting was systemic—and appropriately chargeable.

In *United States v. Ruiz*,¹⁶⁴ the defendants’ “complex and large-scale fraudulent tax” scheme involved “nineteen defendants and approximated \$250 million in false income tax refund claims.” Compared to others pursued civilly, the case differed “as to the extent of the fraud, the degree of sophistication required, the number of persons involved, the amount of actual or intended loss and the prior histories or related conduct of certain members of the scheme.”¹⁶⁵ The Court of Appeals upheld the indictment. Similarly, in *United States v. Rx Depot, Inc.*,¹⁶⁶ the

¹⁶² *Id.* at 784.

¹⁶³ *United States v. Batchelder*, 442 US 114, 124 (1979). *See also United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965) (en banc) (Attorneys for the United States have discretion “whether or not there shall be a prosecution in a particular case.”).

¹⁶⁴ 665 Fed. Appx. 607, 610 (9th Cir. 2016).

¹⁶⁵ *Id.*

¹⁶⁶ 290 F. Supp. 2d 1238, 1249 (N.D. Okl. 2003). *See also United States v. Meadows*, 867 F.3d 1305, 1313, 1315 (D.C. Cir. 2017) (upholding prosecution where “Meadows’ fraudulent conduct . . . continued for approximately a year, involved two separate false filing schemes, and resulted in approximately 49 false claims.”) (cleaned up); *United States v. Conley*, 859 F. Supp. 909, 937-38 (W.D. Pa. 1994) (the indictment “charge[d] the Defendants with operating a large scale illegal gambling business involving in excess of twenty-three persons,” and there was “no proof” that other

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Court upheld enforcement: “It is reasonable . . . for FDA [on whose behalf the United States sued] to marshal its limited resources against large-scale, commercial operations such as Rx Depot/Rx Canada rather than small-scale, individual violators.”¹⁶⁷

So too here. Dr. Galvin offered no evidence suggesting that enforcement counsel turned a blind eye to “similarly situated” Veterinarians—others who, like Dr. Galvin, systematically disregarded their reporting obligations and who “could have been prosecuted, but were not”¹⁶⁸

3. Enforcement Here Is Not a “Departure.”

Finally, Dr. Galvin’s argument that this enforcement action departs from existing Authority policy and practice is unsound as a matter of fact, and unsupported by any of the authorities cited.¹⁶⁹ On the facts, the Authority never announced non-enforcement of RSP Rule 2251(b). The RSP took effect in mid-2022, and there were start-up glitches with uploading to the portal, a not uncommon experience when new technology is introduced. While undertaking remedial measures, the Authority relaxed uploading requirements so as to allow

“illegal gambling businesses . . . have reached the size and sophistication of the Duffy Conley organization described in the Indictment.”), *aff’d after trial*, 92 F.3d 157 (3d Cir. 1996).

¹⁶⁷ *See also Moog Indus., Inc. v. FTC*, 355 U.S. 411, 413 (1958) (The FTC “alone is empowered to develop that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically,” and therefore has discretion to pursue “individualized” enforcement.).

¹⁶⁸ *Armstrong*, 517 U.S. at 469 (cleaned up).

¹⁶⁹ *See* GOBr. at 7-9.

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Veterinarians to submit paper treatment records.¹⁷⁰ There simply was no non-enforcement announcement to depart from.

Equally important, Dr. Galvin's argument is itself over-stated. Ms. Stormer testified "we have plenty of active [portal entry] investigations . . . Probably half a dozen right now . . . I have ongoing open ones," and they involve both trainers and Veterinarians.¹⁷¹ There has been at least one other charged violation. While not dispositive standing alone, these additional facts highlight the bankruptcy of Dr. Galvin's argument.

As for the law cited, none of Dr. Galvin's authorities arose in comparable circumstances, or otherwise required an agency explanation to justify enforcement activity. For instance, in *Encino Motorcars, LLC v. Navarro*,¹⁷² the Supreme Court declined to uphold agency action where the Department of Labor inadequately explained the basis for its "overrull[ing]" "decades of industry reliance on the Department's prior policy." The Court explained that "in light of the serious reliance interests at stake, the Department's conclusory statements do not suffice to explain its decision."¹⁷³ Neither the Authority nor HIWU issued any analogous statement regarding enforcement of Rule 2251(b), and hence there is here no cognizable industry reliance.

¹⁷⁰ AB 1000-03 (Gilman), 1277 (Authority July 5, 2022 letter), 1278 (Authority Oct. 11, 2022 letter), 1282 (undated 2023 Authority letter).

¹⁷¹ *Id.* 266-67 (Stormer). *See also id.* 263-65, 267-68, 283-84 (Stormer) (publicly-reported violations and ongoing cases), 290-91 (HIWU counsel).

¹⁷² 579 U.S. 211, 218, 222 (2016).

¹⁷³ *Id.* at 224.

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In *Matter of Charles A. Field Delivery Service, Inc.*,¹⁷⁴ also cited, the New York Court of Appeals vacated agency action that departed, without explanation, from two appellate rulings that were factually “indistinguishable.” Again, the decision has no application. Dr. Galvin’s other cited authorities are equally far afield.¹⁷⁵

4. The Sanctions Fit the Facts.

There is no logical gap between the facts and the sanctions here. After assembling and analyzing treatment records from multiple sources, enforcement counsel concluded that Dr. Galvin failed to upload 3,500+ records to the Authority’s portal. On that basis, it began its enforcement action, and it proved Dr. Galvin’s violation. The sanctions imposed are, as discussed below, within the discretion conferred on the Authority.

Dr. Galvin’s arbitrary and capricious objection is without merit.

C. The Notice of Violation Was Not Impermissibly Duplicious.

Rule 2251(b), quoted earlier, provides that “every Veterinarian who examines or treats a Covered Horse shall, within 24 hours after such examination or treatment, submit to the Authority” prescribed information “in an electronic format

¹⁷⁴ 66 N.Y.2d 516, 518, 498 N.Y.S.2d 111 (1985). See GOBr. at 8.

¹⁷⁵ See *Nat’l Cable & Telecomms. Assn. v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (The FCC, by rulemaking, reclassified internet services under the Telecommunications Act); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 517 (2009) (The Court upheld FCC action where the agency “forthrightly acknowledged” that its enforcement actions “broke[] new ground, taking account of inconsistent prior [public] Commission and staff action and explicitly disavowing them as no longer good law.”) (cleaned up); *Lomangino & Sons, Inc. v. City of New York*, 980 F. Supp. 676, 678 (E.D.N.Y. 1997) (For some plaintiffs, the agency properly denied waivers of local law requirements after comparing the plaintiffs to other applicants in an agreed-upon group, while for other plaintiffs, further agency comparison was needed.).

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designated by the Authority” Rule 8200(d)(1) instructs that a Notice of Violation “shall . . . (ii) [s]pecify with reasonable particularity the factual basis of the Authority’s belief that the provision has been violated” Enforcement counsel’s Notice to Dr. Galvin states that:

[The Authority] has reason to believe you may have violated Rule 2251(b) by failing to submit over 3,900 treatment records to HISA.

. . . .

Based upon information and belief, veterinary treatment records obtained by [the Authority and HIWU] indicate that you failed to report to HISA approximately 3,951 treatments administered to 497 Covered Horses between January 1, 2023 and March 7, 2024.¹⁷⁶

Dr. Galvin argues that enforcement counsel’s Notice is duplicitous—that is, it charges not one Rule 2251(b) violation, but thousands of individual violations. This argument borders on the frivolous.¹⁷⁷

1. Administrative Enforcement.

First of all, Dr. Galvin ignores the regulatory nature of the violation charged. The SEC often secures a single penalty for securities law violations arising from multiple failures to file required reports or from an overall scheme involving numerous misrepresentations to many investors. For example, in *SEC v. Alpine Securities Corp.*,¹⁷⁸ the Commission began an enforcement action against Alpine, a broker/dealer, for deficient reporting of Suspicious Activity Reports (“SARs”) over a

¹⁷⁶ AB 8-9 (Notice of Violation).

¹⁷⁷ *See, e.g.*, GOBr. at 2-6.

¹⁷⁸ 413 F. Supp. 3d 235 (S.D.N.Y. 2019), *aff’d*, 982 F.3d 68 (2d Cir. 2020), *cert. denied*, ___ U.S. ___, 142 S.Ct. 461 (2021).

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multi-year period. On summary judgment, the District Court held that the SEC established “2,720 separate violations of Rule 17a-8 premised on thousands of deficient narratives in the SARs [Alpine] filed”¹⁷⁹ The Court explained: “Alpine’s violations were systemic and enduring, occurring over a course of years and involving conduct that was plainly in violation of federal law reporting requirements.”¹⁸⁰ The Court imposed a single civil penalty of \$12 million for the 2,720 reporting failures, an amount that was “a small fraction of the maximum tier-one remedies available”— \$204,000,000—that the Court could have awarded if it had applied the statutorily-authorized per violation amount.¹⁸¹ Although Alpine argued the penalty amount was “unprecedented,” the Court of Appeals upheld the award based on “[t]he breadth and duration of Alpine’s deficient reporting and recordkeeping activity,” which “was driven by the unprecedented number of violations . . . committed.”¹⁸²

*SEC v. Garfield Taylor, Inc.*¹⁸³ is similar. The SEC charged securities fraud arising from a Ponzi scheme in which the defendants swindled “over 130 investors . . . and charitable organizations” out of \$27 million.¹⁸⁴ The Court recognized that it could award a civil penalty for each violation. However, “[b]ecause the violations . . .

¹⁷⁹ 413 F. Supp. 3d at 245.

¹⁸⁰ *Id.* at 246.

¹⁸¹ 982 F.3d at 85; 413 F. Supp. 3d at 250 & n.25.

¹⁸² 982 F.3d at 85-86.

¹⁸³ 134 F. Supp. 3d 107 (D.D.C. 2015).

¹⁸⁴ *Id.* at 108-09.

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arose out of a single scheme or plan, . . . the Court . . . appl[ie]d a single monetary penalty”¹⁸⁵

Similar cases, charging a violation based on multiple acts, are commonly brought and settled administratively by consent decree. In *Matter of Robinhood Financial LLC*,¹⁸⁶ two corporate affiliates entered a consent decree providing for penalties of \$45 million to settle claims that: (1) from October 2018 through April 2024, Robinhood “systematically failed” to make “at least 11,849” accurate and timely filings in response to agency requests regarding trading activity; and (2) from January 20, 2020 through March 2022, failed to make timely SAR filings.¹⁸⁷

Enforcement counsel’s charge here is analogous. As the agency enforcement cases demonstrate, statutory and rule provisions that regulate business activity may—as here—appropriately prove a pattern or scheme that persists over time as a systemic or common violation for which a single sanction is imposed, even though

¹⁸⁵ *Id.* at 110 (cleaned up). See also *SEC v. Crystal World Holdings, Inc.*, No. 1:19-cv-02490 (CJN), 2025 WL 326593, at *4 (D.D.C. Jan. 28, 2025) (The defendants’ many fraudulent transactions represented a “single scheme or plan”; as such, the Court will think of it as a single violation.”); *SEC v. Murray*, No. 12-cv-01288-EMC, 2016 WL 6893880, at *9 (N.D. Calif. Nov. 23, 2016) (“Since Murray’s conduct arguably was connected to a single (though elaborate) scheme . . . , the Court finds it appropriate to impose a total civil penalty of \$150,000.”); *SEC v. Rabinovich & Associates, LP*, No. 07 Civ. 10547(GEL), 2008 WL 4937360, at *6 (S.D.N.Y. Nov. 18, 2008) (“Although [the defendant] engaged in repeated violations of the securities laws, they all arose from a single scheme or plan. A penalty of \$130,000 is therefore appropriate in this case.”)

¹⁸⁶ SEC Release No. 102170, 2025 WL 89731, at *2, 4, 11, 21-22 (Jan. 13, 2025).

¹⁸⁷ See also *Matter of GTS Secs., LLC*, SEC Release No. 102192, 2025 WL 89778, at *4 (Jan. 14, 2025) (Between May 2019 through July 2020, the broker/dealer failed to escalate “173 reviews of potentially suspicious” trading and, “as a result, . . . filed no SARs during this time.”); *Matter of Archipelago Trading Servs., Inc.*, SEC Release No. 98234, 2023 WL 5549092, at *1 (Aug. 29, 2023) (Between October 2017 and September 2020, the broker/dealer “failed to surveil . . . and investigate numerous red flags of potentially unlawful manipulative trading, including possible spoofing, layering, wash trading, and pre-arranged trading, related to approximately 15,000 transactions,” and “failed to file at least 461 SARs.”).

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per violation penalties could otherwise be aggregated. Here, enforcement counsel notified Dr. Galvin of the applicable Rule violated, the period of time over which the violation occurred, and the approximate number of reporting failures he allegedly committed. The Notice adequately informed Dr. Galvin of the Rule violation charged. The details underlying enforcement counsel's charge could be—and here were—provided later. By the end of October 2025—months before the IAP hearing—enforcement counsel had voluntarily produced a spreadsheet detailing each alleged failure to report, together with the underlying source material. Dr. Galvin had ample notice and the opportunity to prepare a defense.

Dr. Galvin's duplicitous argument does not cite any decision in the administrative setting that supports his contention. The omission is not surprising, as duplicitousness and duplicity, as a doctrine, have an entirely different meaning in administrative cases. The doctrine refers to duplication, which arises most commonly in one of two ways. Either: (1) all the facts of a pleaded claim overlap those of another, thus rendering the claim needlessly duplicative¹⁸⁸; or (2) the matters in the administrative proceeding are also being heard in a related

¹⁸⁸ See, e.g., *United States Coast Guard v. License No. 726646A*, No. 2593, 1997 USCG LEXIS 6, at *2 (Aug. 14, 1997) (affirming where, prior to hearing the merits, “[t]he Administrative Law Judge dismissed the first specification of violation of regulation upon finding it to be duplicitous of the single specification under the charge of negligence.”); *United States Coast Guard v. Merchant Mariner's Document*, No. 2468, 1988 USCG LEXIS 3, at *31 (July 12, 1988) (“The Administrative Law Judge correctly noted that the misconduct and negligence charges were duplicitous and a finding of proved in each charge would not support an increased sanction since both charges arose from the same factual occurrences.”); *Delgado v. Dept. of the Air Force*, 36 M.S.P.R. 685, 687, 688, 1988 MSPB LEXIS 438 (May 18, 1988) (Two charges, challenged as “duplicative,” were “based on the same incident and involve essentially the same misconduct” and “should have been brought as one charge.”).

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proceeding, thus making administrative enforcement needlessly wasteful, potentially inconsistent, or subject to *res judicata*.¹⁸⁹

As the Supreme Court has reminded, “[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.”¹⁹⁰ Thus, agency disciplinary proceedings need not satisfy “all of the formal procedural requirements of a common law criminal trial.”¹⁹¹ This is particularly so in HISA cases where RSP Rule violations are resolved as *private* arbitrations, not a governmental enforcement. In *Matter of Serpe*,¹⁹² I held these arbitrations are not subject to constitutional constraints, but only to the due process protection set out in HISA and its implementing rules. But in any event, Dr. Galvin’s duplicitous argument fares no better under criminal law authority.

¹⁸⁹ See, e.g., *Van Boven v. Dep’t of Veterans Affs.*, DA-1221-10-0156-W-1, 2010 MSPB LEXIS 1550, at *2 (Mar. 9, 2010) (dismissing an appeal where “there is a high risk of duplicitous litigation” arising from “another complaint [filed] with the Office of Special Counsel”); *Transport of N.J. v. Greyhound Lines, Inc.*, 132 M.C.C. 245 (I.C.C.), 1980 WL 14181, at *2 (STB Oct. 14, 1980) (affirming dismissal of a complaint before the agency where a federal court decision “was a determination based on the merits, and . . . a further determination by the Commission in another proceeding would result in a ‘duplicity of litigation’ which would not be in the public interest”).

¹⁹⁰ *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 895 (1961).

¹⁹¹ *Doe v. Univ. of Iowa*, 80 F.4th 891, 900 (8th Cir. 2023) (cleaned up). See also, e.g., *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (“[T]he revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.”); *Cohen v. Hurley*, 366 U.S. 117, 131 (1961) (New York could “constitutionally afford a different procedure” in attorney disciplinary proceedings than “in criminal prosecutions.”).

¹⁹² Administrative Law Judge Decision on Application for Review, at 66-70 (discussing authorities), No. 9441 (FTC ALJ Sept. 12, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/614069.2025.09.12_alj_decision_on_application_for_review.pdf, *on appeal*, Order Partially Staying Administrative Law Judge’s Decision, Granting Review, and Ordering Briefing Schedule (FTC Sept. 15, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/d9441_2025.09.15_commission_order_partially_stay__0.pdf. See also 15 U.S.C. §§ 3057(c)(3), 3058(b)(2)(B) (importing Administrative Procedure Act requirements in 5 U.S.C. § 556); FTC Rule 1.146(c)(1)(ii).

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2. Criminal Law Principles.

In criminal cases, duplicitous counts are barred “primarily out of a concern that the jury may find a defendant guilty on a count without having reached a unanimous verdict on the commission of any particular offense.”¹⁹³ This concern, “can be cured, however, by a limiting instruction requiring the jury to unanimously find the defendant guilty of at least one distinct act.”¹⁹⁴ HISA cases, of course, are heard without a jury, thus rendering these concerns attenuated at best.¹⁹⁵ On this basis alone, Dr. Galvin’s duplicity objection fails. But I will assume, for argument’s sake, that his objection needs to be considered on the merits.

If, as Dr. Galvin argues, case law regarding indictments can be applied in this RSP case, then enforcement counsel’s Notice of Violation should be “construed liberally in favor of its sufficiency.”¹⁹⁶ Moreover, the Notice’s sufficiency is “governed

¹⁹³ *United States v. Verrecchia*, 196 F.3d 294, 297 (1st Cir. 1999) (cleaned up). *See also United States v. Xu*, 114 F.4th 829, 838 (6th Cir. 2024) (“The overall vice of duplicity is that the jury cannot in a general verdict render its finding on each offense, making it difficult to determine whether a conviction rests on only one of the offenses or on both.”) (cleaned up).

¹⁹⁴ *United States v. Yielding*, 657 F.3d 688, 702 (8th Cir. 2011). *See also United States v. Sturdivant*, 244 F.3d 71, 80 (2d Cir. 2001) (where the jury unanimously found the defendant guilty on each of two counts, any prejudice could be cured by sentencing the defendant “as if he had been convicted of the charged crime involving . . . the lesser penalty”); *United States v. Margiotta*, 646 F.2d 729, 733 (2d Cir. 1981) (noting a “properly instructed” jury would cure any arguable duplicitousness).

¹⁹⁵ *See United States v. Nunez-Beltran*, No. 10cr522 JM(CAB), 2010 WL 2985490, at *3 (S.D. Cal. July 26, 2010) (“[T]he dangers of a duplicitous indictment were eliminated because the case was tried by a judge, not a jury. It is clear that the magistrate judge was able to delineate the charges . . .”), *aff’d on other grounds*, 434 Fed. Appx. 640 (9th Cir. 2011); *People v. Davis*, 72 N.Y.2d 32, 39, 530 N.Y.S.2d 529 (1988) (rejecting duplicity argument, and noting that “because this was a bench trial there was no possibility that the verdict would not be unanimous and defense counsel could have reminded the court that the scope of the charge had been narrowed by the bill of particulars”).

¹⁹⁶ *United States v. Lee*, 919 F.3d 340, 349 (6th Cir. 2019) (cleaned up).

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by practical, not technical considerations, and the basic purpose behind an indictment is to inform a defendant of the charge against him.”¹⁹⁷

The Notice of Violation adequately advised Dr. Galvin of the period during which he failed to upload treatments required to the Authority’s portal under Rule 2251(b). The details could follow, as Dr. Galvin’s counsel himself recognized. Early in the prehearing period, he told the IAP member that “[w]e’ve had an accountant *standing by* the past two months to begin auditing Dr. Galvin’s records.”¹⁹⁸

Contrary to Dr. Galvin’s argument, enforcement counsel was not required, in its charging document, to list each individual treatment by date and horse. *United States v. Universal C.I.T. Credit Corp.*,¹⁹⁹ which arose from a Fair Labor Standards Act prosecution, is instructive. The FLSA imposes both minimum wage and overtime pay requirements, as well as payment recordkeeping obligations. The Government charged C.I.T. Credit with 32 violations that fell into three groups:

- 6: minimum wage violations
- 20: overtime violations
- 6: recordkeeping violations

The District Court “held that it is a course of conduct rather than the separate items in such course that constitutes the punishable offense”²⁰⁰ That meant there were three chargeable violations—not 32.

¹⁹⁷ *United States v. Rafoi*, 60 F.4th 982, 993 (5th Cir. 2023) (cleaned up). *See also United States v. Garcia-Limon*, 146 F.4th 885, 894 (10th Cir. 2025) (“practical rather than technical considerations” are applied) (internal quotation marks omitted).

¹⁹⁸ AB 28 (video at 0:07:23-0:07:31) (emphasis added).

¹⁹⁹ 344 U.S. 218 (1952).

²⁰⁰ *Id.* at 220.

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The Supreme Court affirmed: “The offense made punishable under the Fair Labor Standards Act is a course of conduct. Such a reading of the statute compendiously treats as one offense all violations that arise from that singleness of thought, purpose or action, which may be deemed a single impulse”²⁰¹

Similarly, in *United States v. Rufolo*,²⁰² the indictment charged that “[f]rom on or about April 1, 1989 up to and including on or about October 23, 1989, . . . the defendant JOSEPH W. RUFOLO, unlawfully . . . did make and present to a person in the civil service of the United States . . . [travel expense reimbursement] claims upon and against the United States . . . knowing such claims to be false”²⁰³ Rufolo sought dismissal, arguing that the “count is duplicitous.”²⁰⁴ The Court rejected his argument: “several acts may be charged together in one count if the acts were part of a single continuing scheme.”²⁰⁵

In *United States v. Root*,²⁰⁶ the Court upheld an indictment charging a single count of tax evasion based on “a continuous course of conduct” over a three-year period. The Court wrote: “If the doctrine of duplicity is to be more than an exercise in mere formalism, it must be invoked only when an indictment affects the policy considerations” that underlie that doctrine. . . . [A] single count of an indictment

²⁰¹ *Id.* at 224 (internal quotation marks omitted).

²⁰² No. 89 CR. 938 (RMW), 1990 WL 29425 (S.D.N.Y. Mar. 13, 1990), *aff’d*, 930 F.2d 911 (2d Cir. 1991).

²⁰³ 1990 WL 29425, at *1.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at *2 (cleaned up) (discussing authorities).

²⁰⁶ 585 F.3d 145, 154 (3d Cir. 2009) (internal quotation marks omitted).

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should not be found impermissibly duplicitous whenever it contains several allegations that could have been stated as separate offenses, but only when the failure to do so risks unfairness to the defendant.”²⁰⁷ Because the taxpayer “was not prejudiced” by the Government charging tax evasion in multiple years as one count, the indictment “was not impermissibly duplicitous.”²⁰⁸

Likewise, in *United States v. Klein*,²⁰⁹ the government’s bank fraud indictment charged that, “from at least January 2000 to April 2001, the defendants and co-conspirators agreed to exchange and did, in fact, exchange a large number of checks with a combined face value of tens of millions of dollars amongst their various businesses.”²¹⁰ The defendants sought dismissal arguing that the indictment’s “lack of specificity creates a danger of duplicity”²¹¹ Specifically, they argued that Count 2 did not “identify the checks alleged to be fraudulent, by whom and to whom the checks were drafted, upon which accounts they were drawn, how precisely the checks were allegedly fraudulent, and which financial institutions were allegedly victimized as a result.”²¹² The Court rejected the argument, as the count “alleges a single *scheme to defraud*. . . . The acts that allegedly constituted this scheme may properly be charged in a single count, even if it was possible to

²⁰⁷ *Id.* at 155 (cleaned up).

²⁰⁸ *Id.*

²⁰⁹ No. 03 CR. 1471(HB), 2004 WL 1191962 (S.D.N.Y. May 27, 2004).

²¹⁰ *Id.* at *1.

²¹¹ *Id.* at *3

²¹² *Id.* at *1.

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charge them separately, so long as they are part of the continuing course of conduct.”²¹³

Moreover, even if aggregating “the individual acts” in the scheme “were impermissible, the defendants would still have to demonstrate prejudice to prevail on their duplicity challenge.”²¹⁴ The prosecution had committed to “provid[ing] the defendants with a schedule of checks in electronic format that outlines, at minimum, the allegedly fraudulent checks, as well as the identity of the alleged co-conspirators, the businesses, the bank accounts, and the financial institutions mentioned in Count Two. This will provide the defendants with more than adequate information to prepare their defense.”²¹⁵

Many authorities have rejected comparable indictment challenges.²¹⁶ Sports law authority is also informative. In *FEI v. Arnould*,²¹⁷ the Tribunal sanctioned, as a single violation, the charge that the horse owner falsified FEI vaccination passports for at least four horses that he handled during varying multi-month periods of time.²¹⁸

²¹³ *Id.* at *4

²¹⁴ *Id.* at *5

²¹⁵ *Id.*

²¹⁶ See, e.g., *United States v. Kamalu*, 298 Fed. Appx. 251, 252 (4th Cir. 2008) (upholding an indictment where an accountant, in a tax fraud case, was charged with “fil[ing] hundreds of false federal income tax returns . . . on behalf of numerous client taxpayers he represented for the tax years 1999 through 2002”) (internal quotation marks omitted); *United States v. Davis*, 471 F.3d 783, 791 (7th Cir. 2006) (upholding, as “alleg[ing] only one crime”—“health care fraud”—an indictment that “sets out an ongoing and continuous course of conduct, accomplished through three different methods, that were repeated on numerous (likely daily) occasions over several years”).

²¹⁷ No. C20-0055 (FEI Mar. 31, 2021), *modifying sanction on other grounds*, CAS 2021/A/7895 (Nov. 24, 2021).

²¹⁸ See No. C20-0055, at ¶¶ 41 (Nov. 27, 2017-Aug. 25, 2018), 42 (Oct. 5, 2017-Aug. 25, 2018), 44 (various dates from Apr. 3 to Sep. 15, 2018), 46 (Jan. 1, 2017-year end 2017). See also *Farnosova v.*

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Dr. Galvin points to no evidence suggesting that any one or more groups of his failures to report were distinct, thus arguably interrupting the “singleness of thought.” Indeed, Dr. Galvin has not introduced *any* evidence refuting enforcement counsel’s proof of his failure to upload timely reports over the 14-month period charged.

3. Lack of Countervailing Considerations.

Dr. Galvin not only has failed to show prejudice from enforcement counsel’s single non-reporting charge, he also has offered no benefit that could result from requiring enforcement counsel to list separately in its Notice of Violation each of his thousands of failures to upload his treatment records to the Authority’s portal during the relevant period. Individually charged Rule violations would clearly expose Dr. Galvin to multiple sanctions—here, amounting to a lifetime ban and an oppressive fine.

In *United States v. Kamalu*, the Fourth Circuit upheld an indictment charging an accountant with “engaging in a continuing scheme” of tax fraud.²¹⁹ The Court noted that doing so not only failed to create “any prejudice to Kamalu,” but rather “benefitted” him “because each discrete count would have been amenable to a

International Association of Athletics Federations, CAS 2017/A/5045, at ¶¶ 5, 7, 134 (July 27, 2018) (doping violation, based on “longitudinal monitoring” of the athlete over a multi-year period, sanctioned as one violation although the athlete “ingested different prohibited substances on multiple occasions,” and “was also engaged in a sophisticated doping scheme”).

²¹⁹ 298 Fed. Appx. at 254.

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separate sentence upon conviction.”²²⁰ So too with Dr. Galvin’s non-reporting scheme. The single Rule violation provided benefit, not prejudice.²²¹

On the other hand, if, in a case of systemic non-compliance, failure-by-failure detail were required, that would plant seeds of mischief for a Covered Person, such as Dr. Galvin, to exploit the notice’s very detail, at the outset of the case, to derail, or at least delay, the proceeding. To enable the HISA enforcement system to be thus manipulated would “serve no useful purpose.”²²² To so construe Rule 8200(d)(1) would not be reasonable. “[W]here the result of one interpretation [of a statute] is unreasonable, while the result of another interpretation is logical, the latter should prevail.”²²³

4. Dr. Galvin’s Case Law.

The dozen decisions that Dr. Galvin cites in his duplicitous charging argument meander from one diversionary destination to the next.

- The few that, charitably speaking, might be said to present roughly similar facts rejected the defendant’s argument.²²⁴

²²⁰ *Id.* at 254-55.

²²¹ *See also Root*, 585 F.3d at 155 (Rejecting a duplicity argument since, “[i]nstead of being convicted for three single-year counts of tax evasion, Root was convicted on one three-year count. In such circumstances, duplicity may actually inure to a defendant’s benefit by limiting the maximum penalties he might face if he were charged and convicted on separate counts for what amounts to a single scheme.”) (cleaned up); *Klein*, 2004 WL 1191962, at *4 (“any requirement that acts be pleaded separately whenever possible could very well result in cumulative punishment.”).

²²² *United States v. Rawlings*, 821 F.2d 1543, 1546 (11th Cir. 1987).

²²³ *Sierra Club v. Train*, 557 F.2d 485, 490 (5th Cir. 1977) (citing authorities). *See also Kelly v. United States*, 924 F.2d 355, 361 (1st Cir. 1991) (“[U]nreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.”) (cleaned up).

²²⁴ *United States v. Prieto*, 812 F.3d 6, 11 (1st Cir. 2011) (where the government charged a scheme to defraud as a single mail fraud offense, the concerns underlying duplicitousness “find no toe-hold in

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- The objection was similarly rejected on facts bearing no similarity to those here.²²⁵
- Decisions that upheld duplicitous objections after conviction at trial did not dismiss the indictment where there either was no prejudice to the defendant or that any prejudice could be remedied by re-sentencing.²²⁶
- Other decisions do not even raise duplicitous arguments.²²⁷
- And in one case—charging conspiracy to defraud the United States and various substantive offenses—the First Circuit held that, although seven of 30 counts were duplicitous, failure to object waived the argument.²²⁸

All told, these cases strike out.

After systematically failing to upload treatment records for more than a year, Dr. Galvin “can hardly protest that [enforcement counsel] was willing to charge and

this case”); *Root*, 585 F.3d at 154 (tax evasion over a three-year period, based on “a continuous course of conduct,” were properly charged as a single offense); *United States v. Mauskar*, 557 F.3d 219, 226 (5th Cir. 2009) (scheme to defraud Medicare and Medicaid was properly charged as a single offense, and even if duplicitous, the jury instruction assured no prejudice); *Margiotta*, 646 F.2d at 733-34 (reversing District Court order upholding duplicitous objection, and permitting the government to charge a mail fraud offense consisting of 50 mailings); *United States v. UCO Oil Co.*, 546 F.2d 833 (9th Cir. 1976) (reversing District Court order dismissing indictment that consisted of 30 counts of making false statements in reports filed with the IRS).

²²⁵ *United States v. Bradford*, 148 F.4th 699, 708 (9th Cir. 2025) (two counts of sex trafficking indictment alleged different violations of the same statute); *United States v. Craigie*, 565 F. Supp.3d 267, 270-72 (D. N.H. 2021) (multiple false statements made “in the same event or on the same document” were properly charged as one offense).

²²⁶ *United States v. Kandic*, 134 F.4th 92, 100-02 (2d Cir. 2025) (no prejudice); *United States v. Sturdivant*, 244 F.3d 71, 79-80 (2d Cir. 2001) (re-sentencing ordered).

²²⁷ *United States v. Hassoun*, 476 F.3d 1181, 1186-88 (11th Cir. 2007) (rejecting argument that the government had charged the same offense in three separate counts); *United States v. Beros*, 833 F.2d 455, 463 (3d Cir. 1987) (failure to charge jury instructions requested by the defendant was error).

²²⁸ *United States v. Newell*, 658 F.3d 1, 28 (1st Cir. 2011).

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bear the burden of proving” his Rule 2251(b) violation.²²⁹ Whether considered under administrative or criminal law, Dr. Galvin’s objection based on duplicitous charging is meritless.

D. Dr. Galvin’s “Offset” Argument for “Work Done” Materials that He Produced Fails.

One final argument that Dr. Galvin belatedly asserts should be dealt with. Before the IAP member, Dr. Galvin argued that “[t]o the extent treatments can be divined from Dr. Galvin’s seized notebook, or from his November 13, 2023 production to HIWU, those records should be deemed compliant with HISA’s transitory ‘pen-and-paper’ reporting option.”²³⁰ He thus sought rely on materials that HIWU obtained from him in its investigation in 2023, to “offset” or “mitigate” his failure to upload treatment records to the Authority’s portal. The IAP member rejected the argument, holding that these materials “do not contain the details of the treatments that are specifically required to be recorded as set forth in Rule 2251(b).”²³¹ On appeal to the Board, Dr. Galvin raised the point only on his “pre-accusation delay” argument, which had no appellate traction.²³²

In seeking this review, Dr. Galvin dropped the delay point entirely, and consequently his “offset” argument never made its way into his opening set of papers. But in his reply papers, Dr. Galvin resurrects at least part of the argument,

²²⁹ *Prieto*, 812 F.3d at 12.

²³⁰ AB 1274 (Galvin post-hearing brief).

²³¹ AB 1313 (Amended Final IAP Decision).

²³² *Id.* 1329-30 (Request for Appeal). *See id.* 1429 (Board Decision on Appeal).

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asserting in a conclusory statement: the “Work Done” entries in his November 2023 production supposedly “satisfied Rule 2251(b)’s requirements because, during the entirety of 2023, HISA [the Authority] permitted veterinarians to submit hard copies of treatment records in lieu of Portal submissions (the ‘paper-and-pen’ treatment reporting option).”²³³

The hypocrisy of Dr. Galvin’s argument is noteworthy. In one breath, Dr. Galvin contends that his November 2023 “Work Done” production to HIWU should be deemed *portal compliant* and, therefore, offset his non-reporting liability. Meanwhile, in the next breath, he protests that there is “no foundation” for Ms. Stormer’s considering the “work done records” *to be* “veterinary treatment records”²³⁴ Dr. Galvin cannot have it both ways. But he can, and indeed does, lose on both. As I have already discussed, his no-foundation chant is meritless.²³⁵ Similarly, his offset argument is too little and too late.

“[E]ven well-developed arguments raised for the first time in a reply brief come too late.”²³⁶ Dr. Galvin’s offset effort is not even colorably “well-developed.” It also fails on the merits. Here are the relevant facts:

²³³ GRAuPFOF ¶ 4. *See also id.* at ¶ 5 (Dr. Galvin’s “counsel’s ‘Work Done’ production met the requirements of HISA’s interim ‘pen-and-paper’ filing option, rendering further Portal entry of the records unnecessary.”).

²³⁴ *Id.* ¶¶ 29.e-f, 30.f-g.

²³⁵ *See pp.* 35-41, above.

²³⁶ *Stewart v. IHT Ins. Agency Group, LLC*, 990 F.3d 455, 457 (6th Cir. 2021). *Cf.* FTC Rule 1.146(a)(1) (“Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority.”). *See also Alex W. v. Poudre School Dist. R-1*, 94 F.4th 1176, 1186 (10th Cir. 2024) (“We do not consider late-blooming arguments raised for the first time in a reply brief.”) (internal quotation marks omitted); *Uncommon, LLC v. Spigen, Inc.*, 926 F.3d 409, 419 n.2 (7th Cir. 2019) (“As briefed, the argument is terse, free of legal citation, and vague. It is therefore waived.”); *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136,

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Soon after the Authority launched its online portal for veterinary records in June 2022, upload glitches were identified.²³⁷ While the Authority undertook corrective activity, it offered to Veterinarians “a template that can be used instead of the portal and either uploaded or emailed to [the Authority] at vetreports@hisaus.org.”²³⁸ Hard-copy records, as well as those uploaded or emailed, apparently also were received and inputted by the Authority’s staff.²³⁹

In October 2022, the Authority advised Veterinarians that the portal was “available for your immediate use. . . . You can now upload the daily treatment reports through the portal (Daily Treatment Files), email them to vetreporting@hisaus.org, or fax them to 1-888-997-1740.”²⁴⁰ The Authority further wrote: “we are expecting all HISA-registered Veterinarians to be in full compliance with HISA rules, including the reporting requirements.”²⁴¹ A December 15, 2023 cut-off for accepting hard copies was announced, although the deadline may have extended into 2024.²⁴²

Dr. Galvin offered no evidence showing that: (1) *any* individual Work Done entry *was* included on enforcement counsel’s hearing spreadsheet of *non-reported*

145 (3rd Cir. 2017) (“[W]e have consistently refused to consider ill-developed arguments or those not properly raised and discussed in the appellate briefing.”).

²³⁷ AB 1277 (Authority July 2022 letter).

²³⁸ *Id.*

²³⁹ *Id.* 1001-02 (Gilman).

²⁴⁰ *Id.* 1278 (Authority Oct. 2022 letter).

²⁴¹ *Id.* 1279.

²⁴² *Id.* 1189 (Authority email), 1283 (Authority undated letter). *See id.* 1002 (Gilman) (hard copy acceptance ended “[s]ometime last year [2024], I think.”).

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treatments (AB 880), and thus available for offset to begin with; *or* (2) the individual entry, when obtained by HIWU in November 2023 as hard copy material, was sufficiently close in time to the date of the treatment he provided that it might, even arguably, be reasonable to deem the entry “compliant” despite its receipt *in this case* by HIWU—not the Authority—after the 24 hours called for in Rule 2251(b) itself. The latter element of the proof also would require Dr. Galvin had to show how much of a “grace period” between pen-and-paper submission and treatment date was considered tolerable during this transition period. Dr. Galvin, or his retained expert accountant, might, perhaps, have offered this sort of missing evidence at the IAP hearing. But as noted earlier, both were no-shows. Dr. Galvin’s argument is not only hypocritical, but—in his own words—“lacks foundation.”

This evidentiary vacuum makes it unnecessary to consider the over-arching legal issue his argument raises: whether information extracted from documents *requested by HIWU* in an investigation can ever substitute for *self-reporting by Dr. Galvin himself to the Authority*, required by Rule 2251(b) even as relaxed while portal reporting was refined.

Accordingly, Dr. Galvin’s “offset” argument is frivolous.

E. Dr. Galvin’s Objection to the “Tab 48 Material” Is Meritless.

In his reply papers, Dr. Galvin objects to materials, contained in Tab 48 of the AB, which he contends were not “offered or accepted in evidence” at the IAP hearing.²⁴³ Tab 48 is a voluminous compilation that enforcement counsel referred to

²⁴³ GRAuPFOF ¶ 30.

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during his proffer. It consists of: (1) extracts from admitted records, including Dr. Galvin's treatment notebooks, Work Done records, trainer productions, Galvin non-reported treatments and upload entries from spreadsheets, and letters from enforcement counsel or Dr. Galvin's counsel²⁴⁴; (2) medical treatment records extracted from the Authority's portal²⁴⁵; (3) information from the Equibase online website²⁴⁶; (4) calendars and calendar dates²⁴⁷; and (5) extracts from the Authority's Vet's List portal²⁴⁸; and (6) a trade publication report.²⁴⁹

Dr. Galvin's objection is similarly frivolous for several reasons:

First, I have already held that enforcement counsel proved Dr. Galvin's Rule 2251(b) violation independent of any proffer statements. Hence, proffer references to, or other reliance on, material in Tab 48 is harmless.²⁵⁰

Second, Dr. Galvin long-ago forfeited his objection. In its post-hearing brief to the IAP member, enforcement counsel discussed and cited to the same Tab 48

²⁴⁴ AB 1086-94, 1096-104, 1106, 1109-12, 1114-15, 1117-19, 1121, 1123-24, 1127-28, 1130-31, 1134, 1136, 1139-40, 1143-45, 1149, 1154, 1161-62, 1166-75, 1178, 1181-82, 1184-87.

²⁴⁵ *Id.* 1107, 1122, 1132, 1135, 1146, 1151, 1157, 1159, 1166, 1183. *See, e.g., id.* 952 (proffer describing records).

²⁴⁶ *Id.* 1091-94, 1096, 1105, 1108-10, 1120, 1126, 1129, 1132-33, 1135, 1141-42, 1146, 1150, 1155-56, 1158, 1161-63, 1165-66, 1177, 1179-80, 1183.

²⁴⁷ *Id.* 1087-88, 1097, 1099, 1102, 1105-06, 1112, 1118, 1121, 1127, 1130, 1134, 1139, 1154, 1155, 1168.

²⁴⁸ *Id.* 1181. *See also id.* 959 (proffer describing vet's list extracts).

²⁴⁹ *Id.* 1164.

²⁵⁰ *See, e.g., United States v. Mousseaux*, 148 F.4th 973, 981 (8th Cir. 2025) ("The admission of hearsay evidence that is cumulative of earlier trial testimony by the declarant or cumulative of other hearsay evidence to which no objection was made is . . . harmless error.") (cleaned up); *United States v. Griffin*, 324 F.3d 330, 348 (5th Cir. 2003) ("Where objected to testimony is cumulative of other testimony that has not been objected to, the error that occurred is harmless.").

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material, and Dr. Galvin never objected.²⁵¹ The IAP member discussed this material in its decision, thereby at least implicitly considering it admitted into evidence.²⁵² Dr. Galvin never protested; far from it, he never mentioned the Tab 48 material on either his appeal or stay motion to the Authority's Board.²⁵³ Although in affirming the IAP member, the Board referred to enforcement counsel's proffer, Dr. Galvin raised no objection to it in seeking review here, or in his first set of papers on the merits, which cited extensively to other parts of the hearing record, including parts of the proffer itself.²⁵⁴

It belabors the obvious to hold that Dr. Galvin forfeited his belated objection. It is not properly before me on this review.²⁵⁵

Third, virtually all the Tab 48 information came from admitted exhibits anyway. Tab 48 is, therefore, a proper summary exhibit.

Fourth, under the Rules, Equibase is recognized as "the official database for Thoroughbred horseracing," and is "the accepted horse [sic, source] for horse racing

²⁵¹ AB 1247-53, 1256-57 (enforcement counsel brief), 1268-75 (Galvin brief).

²⁵² *Id.* 1308 (Amended Final IAP Decision).

²⁵³ *Id.* 1317-46 (Request for Appeal), 1347-54 (memorandum on stay motion), 1382-89 (reply memorandum on stay motion).

²⁵⁴ *Id.* 1430 (Board Decision on Appeal); Application for Review, dated Oct. 9, 2025; GPFOF ¶¶ 13-22; GOBr. at 4-6, 16-17.

²⁵⁵ *See* FTC Rule 1.146(a)(1): "Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority."

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statistics, results . . . [, and] racing information”²⁵⁶ I take official notice of the Equibase data, as well as that in the calendar material.²⁵⁷

Fifth, the Vet’s List extract and trade report. Putting aside Dr. Galvin’s forfeit of his objection, reliance on this information during the proffer and on this review would, again, be harmless.²⁵⁸

* * *

To sum up, enforcement counsel has proven by a preponderance of the evidence that Dr. Galvin violated Rule 2251(b), as charged. Dr. Galvin’s various “defenses” have no merit. I turn now to the sanctions the Authority imposed, which Dr. Galvin challenges as disproportionate.

²⁵⁶ Rule 1020 (Definitions), AB 151 (Stormer). *See also Jamgotchian v. Kentucky Horse Racing Comm’n*, 488 S.W.3d 594, 598 n.1 (Ky. 2016) (“Equibase Company is a partnership between subsidiaries of the Jockey Club and the Thoroughbred Racing Associations of North America and its website serves as the thoroughbred industry’s official database.”).

²⁵⁷ *See, e.g., National Classification Committee v. United States*, 779 F.2d 687, 695 (D.C. Cir. 1985) (An agency may take “official notice of matters of common knowledge”) (internal quotation marks and citations omitted); *Geoffroy v. Secretary of HHS*, 663 F.2d 315, 318 (1st Cir. 1981) (“[T]he taking of official notice has long been part of the administrative adjudicative process,” and properly taken where “Appellant has given us no reason to believe that the sources which form the basis of the notice taken. . . are either inaccurate, unreliable or otherwise inappropriate as applied specifically to him.”) (citation omitted); *Walker v. Indian River Transport Co.*, 741 Fed. Appx. 740, 743 n.3 (11th Cir. 2018) (taking judicial notice of a calendar); *Bernard v. Smart Transp. Div.*, No. 2:23-cv-10235-SB (DTB), 2024 WL 2191020, at *3-4 (C.D. Cal. Apr. 25, 2024) (taking judicial notice of calendar dates).

²⁵⁸ *See, e.g., United States v. Maund*, No. 24-5932, 2026 WL 497464, at *1, 10-11 (6th Cir. Feb. 23, 2026) (Although the trial court “gave the jury several unadmitted exhibits and failed to provide some of the admitted exhibits” during deliberations, the errors were harmless where “the government presented significant other evidence of guilt” as to one defendant and “the government’s evidence also overwhelms any possible prejudice” to another.”); *Brown v. Rednour*, 637 F.3d 761, 762 767 (7th Cir. 2011) (Where the evidence against the defendant was “overwhelming, and the police report that went to the jury room mistakenly was cumulative,” permitting the jury to see the “inadmissible” report was harmless.).

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V. SANCTIONS.

In charging Dr. Galvin with a Rule 2251(b) violation, enforcement counsel wrote that “the violation . . . may result in penalties, including a fine up to \$50,000, suspension or revocation of registration, or any of the other sanctions established in Rule 8200. This matter will also be publicly disclosed in accordance with Rule 8380”²⁵⁹ Enforcement counsel further summarized those parts of Rule 8200 that seemingly were most relevant to their case.²⁶⁰ As thus limited in the Notice, Rule 8200(b) provides that “one or more” of the following sanctions “may be impose[d]”:

(2) Impose a fine upon a Covered Person in the following amounts:

(i) Up to \$50,000.00 for a first violation, or

. . . .

(3) Deny or suspend the registration of a Covered Person for a definite period, probationary period, or a period contingent on the performance of a particular act;

(4) Revoke the registration of a Covered Person subject to reapplication at a specified date;

(5) Impose a lifetime ban from registration with the Authority;

(6) Deny a Covered Person or a Covered Horse access to any location under the jurisdiction of the Authority during the period of a suspension;

(7) Impose a temporary or permanent cease and desist order against a Covered Person;

²⁵⁹ AB 8 (Notice of Violation).

²⁶⁰ *Id.* 9-10.

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(8) Require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

....

(10) Censure a Covered Person;

... ; or

(12) Impose any other sanction as a condition of participation in horseracing as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case, and that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

Rule 8200(b) also provides that the sanctions chosen must be “in proportion to the nature, chronicity, and severity of the violation”

Here, the IAP member awarded, and the Board upheld, a \$25,000 fine under subparagraph (2)(i) and a two-year registration suspension under subparagraph (3). While Dr. Galvin objects to both sanctions, once again his arguments are frivolous.

A. The Suspension Imposed.

On the suspension, the only basis for Dr. Galvin’s challenge is that this is the first time enforcement counsel has pursued a Rule 2251(b) reporting violation to a merits resolution. But as set out earlier, that alone does not afford a basis for objection, and Dr. Galvin does not engage in any serious fact analysis of the underpinning of the suspension period imposed. Here, specifically: (1) enforcement counsel proved that Dr. Galvin engaged in systemic disregard of his reporting obligations under Rule 2251(b); (2) Dr. Galvin offered no rebuttal evidence in response; (3) although he had the assistance of a retained accountant shortly after being charged, whatever analysis this individual may have developed, if any, never

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saw the light of day at the IAP hearing record despite having begun months beforehand; and (4) by failing to appear to testify, Dr. Galvin defaulted in his cooperation obligations without colorable justification.²⁶¹

Rule 8200(b)(3) leaves the period of suspension up to the IAP member and Board's discretion. However, other Rules implementing HISA adopt two-year penalty periods for various first violations, subject only to mitigation in exceptional circumstances, based on fact-specific proof for which the violator bears the burden.²⁶² For example, a two-year period of Ineligibility for a first violation is *mandatory* where:

a. A Covered Horse tests positive for a Banned Substance, regardless of the Substance's concentration level or its effect on performance, or the Covered Person's "intent."²⁶³

²⁶¹ See *Alpine Secs. Corp.*, 413 F. Supp. 3d at 246-48 (The fine amount for systemic non-reporting and recordkeeping violations took account of the defendant's continued lack of remorse and denial of wrongdoing), *aff'd*, 982 F.3d 68 (2d Cir. 2020). See also *SEC v. Mooney*, No. 1:22-cv-02320-SDG, 2025 WL 901802, at *6 (N.D. Ga. Mar. 25, 2025) (The penalty amount may consider the "defendants' failure to admit to their wrongdoing and lack of cooperation and honesty with authorities.") (cleaned up), *SEC v. RMR Asset Mgmt. Co.*, 553 F. Supp. 3d 820, 827 (S.D. Cal. 2021) (The defendants' "failure to recognize the wrongfulness of their conduct and accept responsibility weighs in favor of a full penalty."), *aff'd sub. nom. SEC v. Murphy*, 50 F.4th 832 (9th Cir. 2022). Cf. *CFTC v. 4x Solutions, Inc.*, 13-cv-2287 (RMB) (FM), 2015 WL 9943241, at *4 (S.D.N.Y. Dec. 28, 2015) (directing \$8.24 million penalty against defendants who failed to appear and who engaged in a multi-year scheme to defraud at least 19 investor), *adopted*, 2016 WL 397672 (S.D.N.Y. Jan. 29, 2016).

²⁶² See, e.g., Rules 3224 (elimination of sanction based on No Fault or Negligence) & 3225 (reduction of sanctions based on No Significant Fault or Negligence); Administrative Law Judge Decision on Application for Review, *Matter of Overly*, No. 9443, at 68-69, 72-73, 83-84 (FTC ALJ Jan. 27, 2026), *app. for review*, FTC (Feb. 26, 2026); *Ali Alabbar v. FEI*, CAS 2013/A/3124, at ¶¶ 12.17(1), 12.18 (Sept. 27, 2013).

²⁶³ Rule 3212(a); *Matter of Lewis*, No. 9434, 2024 WL 5078296, at *5 (FTC ALJ Oct. 17, 2024); *Hansen v. Fédération Equestre Internationale (FEI)*, CAS 2009/A/1768, at ¶ 15.6 (Dec. 4, 2009) (discussing strict liability for presence violations).

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b. A Covered Person is in Possession of a Banned Substance, even if not administered to a Covered Horse and regardless of intent.²⁶⁴

c. A Banned Substance is injected into a Covered Horse, even if the substance's classification as Banned is disputed.²⁶⁵

Enforcement counsel having proven Dr. Galvin's systemic failure to comply with his reporting obligations under Rule 2251(b) over more than a year, and bearing in mind analogous penalty periods in other Rules, the choice of a two-year suspension is not an abuse of discretion or otherwise not in accordance with law.

B. The Monetary Sums Awarded.

Regarding the \$25,000 fine, Dr. Galvin argues that the fine is excessive. His objection is equally frivolous. The \$25,000 amount is less than the maximum allowable for a first violation and well-within the Board's discretion on the facts of this case.

C. Dr. Galvin's Case Law Authority.

In objecting to the sanctions imposed, Dr. Galvin cites authorities illustrating that agency action may be reviewed under an arbitrary and capricious standard—a matter not in dispute.²⁶⁶ He also cites several New York State decisions, only one of

²⁶⁴ *Matter of Shell*, No. 9439, 2025 WL 1784696, at *11 (FTC ALJ Mar. 6, 2025); *HIWU v. Poole*, JAMS Case 1501000576, at ¶¶ 7.7-.8 (Aug. 8, 2023), *aff'd*, No. 9417, 2023 WL 8435860, at *4, 7 (FTC ALJ Nov. 13, 2023); *Matter of Perez*, JAMS Case No. 1501000589, at ¶¶ 7.23-.29 (Oct. 9, 2023), *aff'd*, No. 9420, 2024 WL 1209246, *6, 9 (FTC ALJ Feb. 7, 2024) (Ex. A), *review denied*, 2024 WL 3824065 (FTC Aug. 8, 2024).

²⁶⁵ *Matter of Shell*, No. 9435, 2024 FTC LEXIS 153, at *3, 11-32 (ALJ Oct. 31, 2024), *aff'g*, JAMS Case No. 1501000708 (June 11, 2024).

²⁶⁶ GOBr. at 11-12.

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which, *Matter of Rice v. New York State Gaming Comm'n*,²⁶⁷ arguably warrants discussion. *Rice* is distinguishable nonetheless.

The State's racing authority held that the trainer was liable for receiving confidential pre-race information from a racing official over a multi-year period. The State authority imposed a license suspension of "no less than three-years" and a \$50,000 fine.²⁶⁸ Racing official testimony on the materiality of the information provided was disputed.²⁶⁹ There also was an aura of discrimination, as the trainer was "the only [one] ever disciplined . . . for this rule violation—a troublesome point given that [the trainer] is the only female trainer ever to win a training title at a New York track."²⁷⁰ The Appellate Division set aside the suspension, and, while "tak[ing] no issue with the [\$50,000] monetary penalty," "remit[ted] the matter . . . to reassess the penalty."²⁷¹

There is no comparable fact dispute in Dr. Galvin's case. Treatment reports, containing the details prescribed in Rule 2251(b), were required and not uploaded. His violation was systemic and properly a subject of discipline. And notably, the sanctions here still are less than those in *Rice*. Thus, the decision provides no support for Dr. Galvin's objection to the sanctions as "disproportionate" or "shocking."

²⁶⁷ 217 A.D.3d 1098, 190 N.Y.S.3d 517 (3d Dept. 2023).

²⁶⁸ *Id.* at 1099.

²⁶⁹ *Id.* at 1102 (One said the information "would not affect anything," and both expressed the view that "the public would not be in any way misled.") (cleaned up).

²⁷⁰ *Id.*

²⁷¹ *Id.*

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Dr. Galvin’s remaining New York authorities serve merely as sources from which to word-pluck language from cases where penalties were reduced.²⁷² But Dr. Galvin makes no attempt to compare the facts in the decisions to those in this case. Nor could he, as each decision looks nothing like Dr. Galvin’s systemic non-reporting.

- *Matter of Pell v. Board of Education of Union Free School District No. 1*²⁷³ involved a series of employee discipline cases. The Court of Appeals detailed principles applicable to judicial review of agency action, and in each case the Court upheld the agency’s determination.
- In *Matter of Brito v. Walcott*,²⁷⁴ involved a schoolteacher who had consensual sex with an adult colleague in a darkened classroom one night. No student saw the activity, and the Appellant Division held that *firing* an otherwise able teacher was an excessive penalty.
- *Matter of Kinlock v. Doherty*,²⁷⁵ involved, again, a termination of employment—not, as here, a suspension—this time for violation of the employer’s sick leave policy. Apart from reciting that there were other “numerous instances” where the employer “imposed penalties less severe,” the Court provided no other facts.²⁷⁶

²⁷² GOBr. at 12-13.

²⁷³ 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974).

²⁷⁴ 115 A.D.3d 544, 982 N.Y.S.2d 105 (1st Dept. 2014).

²⁷⁵ 256 A.D.2d 93, 681 N.Y.S.2d 264 (1st Dept. 1998).

²⁷⁶ *Id.* at 94.

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- *Matter of Pelham v. White*,²⁷⁷ arose after the employee was demoted by five grades due to his failure to curb “widespread” drug use, of which he was aware, in the workplace that he supervised. In view of the employee’s “24-year unblemished record,” the Court directed further review of the pay reduction penalty.²⁷⁸
- In *Government Employees Insurance Co. v. Commissioner of Motor Vehicles*,²⁷⁹ an insurance company set unduly low labor rates for a particular auto repair shop, which the repair shop apparently accepted, but which “impeded” settlement of the driver’s insurance claim.²⁸⁰ The Appellate Court reduced suspension of the repair shop’s statutorily-required registration from 30 to no more than five days, based on comparison of the penalties imposed on other shops.

Dr. Galvin’s reliance on these cases simply highlights the bankruptcy of his objection. No one disputes that a sanctioning body can, depending on the circumstances, over-reach in imposing a penalty on a worker or regulated person. But here, the Authority has not.

Through systematic non-reporting, “Galvin impeded HISA’s congressional mandate, and deprived subsequent owners, trainers, and veterinarians of critical

²⁷⁷ 166 A.D.2d 824, 563 N.Y.S.2d 171 (3d Dept. 1990).

²⁷⁸ *Id.* at 826.

²⁷⁹ 94 A.D.2d 695, 461 N.Y.S.2d 896 (2d Dept. 1983).

²⁸⁰ 461 A.D.2d at 696.

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horse health information.”²⁸¹ The Board’s chosen sanctions can be viewed as, if anything, lenient. However, this apparently is the first time that enforcement counsel has pursued a widespread Rule 2251(b) violation through to a merits resolution. I am, therefore, satisfied there is no basis on this *de novo* review to change the sanctions imposed on Dr. Galvin.

Last, I reiterate two points I recently made in affirming the sanctions in another RSP case, *Matter of Kriple*.²⁸² First, since Rule 8200(b) itself provides no guideposts for the various sanctions detailed, decision-making at all levels will be better served if both grounds for exercising the Authority’s discretion and supporting authority are provided.

Second, in its post-hearing brief, enforcement counsel sought “a two-year suspension of Dr. Galvin’s registration with HISA,” and the IAP member, correspondingly, held simply that “Dr. Michael J. Galvin’s registration with HISA shall be suspended for two years.”²⁸³ Affirming, the Board elaborated by describing the effects that arise from registration suspension:

During the period of suspension, Dr. Galvin shall be prohibited from participating in any capacity in any activity involving Covered Horses, including but not limited to the providing of veterinary services to Covered Horses, or in any other activity taking place at a Racetrack or Training Facility, and from permitting anyone to participate in any capacity on his behalf in any such activities during the suspension period.²⁸⁴

²⁸¹ AuOBr. at 13.

²⁸² No. 9446, 2026 FTC LEXIS 25, at *25-26 (ALJ Mar. 4, 2026).

²⁸³ AB 1234 (enforcement counsel post-hearing brief), 1314 (Amended Final IAP Decision). *See also id.* 1266 (“HISA seeks a two-year suspension”) (enforcement counsel post-hearing brief).

²⁸⁴ *Id.* 1432-33 (Board Decision on Appeal).

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In *Kriple*, I confirmed the appropriateness of this sort of practical guidance, while also recognizing that “[d]epending on case-specific facts,” variation of this particular language might be warranted.²⁸⁵

My remarks in *Kriple* apply equally to this case, and I extend them to both enforcement counsel and the IAP member hearing an RSP case.

VI. CONCLUSION.

I have considered all the matters raised by Dr. Galvin on this review and, regardless of whether detailed specifically above, find them unpersuasive. The Decision of the Board of the Authority and the sanctions imposed are **AFFIRMED**.

ORDERED:

Jay L. Himes

Jay L. Himes
Administrative Law Judge

Date: March 19, 2026

²⁸⁵ *Kriple*, 2026 FTC LEXIS at 26.