

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

**ADMINISTRATIVE LAW JUDGE:**

**JAY L. HIMES**

**IN THE MATTER OF:**

**DR. DONALD MCCROSKY**

**APPELLANT**

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

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## CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this Authority’s Response to Appellant’s Application for Review is being served on March 20, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that no portion of the filing was drafted by generative artificial intelligence (“AI”) and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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*/s/ Bryan Beauman*

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The Horseracing Integrity and Safety Authority, Inc. (“**Authority**”) files this Response to Appellant’s Application for Review of the Final Decision of Arbitrator Hugh Fraser (“**Arbitrator**”) under the Authority’s Anti-Doping and Medication Control (“**ADMC**”) Program (the “**Decision**”). The Administrative Law Judge (“**ALJ**”) should uphold the Decision and the sanctions imposed thereunder. Pursuant to 16 C.F.R. §1.146(c)(2)-(3), the appeal should be limited to briefing and/or oral argument; however, if the ALJ determines that an evidentiary hearing should be held, the Authority requests that it be permitted to submit evidence and witnesses on its behalf be permitted to testify.

First, the Arbitrator correctly determined that Appellant did “not come close” to establishing a “compelling justification” for Possession of five different Banned Substances and thus violated ADMC Program Rule 3214(a).<sup>1</sup> The Arbitrator properly recognized that compelling justification is “a high bar which must be applied with caution.”<sup>2</sup> Prior ALJ decisions have rejected arguments similar to Appellant’s suggestion that compliance with the compelling justification standard is “effectively impossible” for mixed-practice veterinarians.<sup>3</sup>

Appellant did not submit a single prescription or other medical record as evidence of compelling justification for Possessing five different Prohibited Substances in his minivan at Fairmount Park.<sup>4</sup> Instead, the totality of his evidence was his own oral testimony regarding the substances’ intended uses and the convenience of having them in his minivan, along with a single client text message pertaining to only one of the five substances (i.e., Thyro-L) and that did not

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<sup>1</sup> Decision, para. 8.20.

<sup>2</sup> Decision, para. 8.6. See also Decision, paras 8.15-8.17; *In the Matter of Dr. Scott Shell DVM* (“*Shell*”), FTC Docket No. 9439, at p. 16 (Mar. 6, 2025) (“compelling justification is the exception” and should “be interpreted restrictively”).

<sup>3</sup> *In the Matter of Larry Rickman Overly* (“*Overly*”), FTC Docket No. 9443, at pp. 86-92 (Jan. 27, 2026); *Shell* at p. 44-50. See also Decision, paras 8.15-8.17.

<sup>4</sup> Decision, paras. 8.11, 8.18.

indicate the timing of treatment or any urgency.<sup>5</sup> Prior ALJ decisions have found that no compelling justification existed in cases where the mixed-practice veterinarians in question submitted no medical records or other documentary evidence and no corroborating witness testimony regarding how the Banned Substances in question were intended to be or were, in fact, used on non-Covered Horses.<sup>6</sup>

Second, with respect to the Rule 3213 Use violation, Appellant expressly admitted that he gave the Banned Substance Testosterone to a Covered Horse.<sup>7</sup> The Arbitrator properly held that, since “Use is a strict liability offence,” Appellant’s justifications for such Use provide him no assistance.

Third, the Arbitrator had a rational basis to find that Appellant intentionally subverted the doping control process by submitting false information to HIWU, thereby committing a Tampering violation (Rule 3216). Appellant claimed that Covered Horse Childersattack’s positive test was caused by endogenous Testosterone from a retained undescended testicle following a partial castration performed by Appellant.<sup>8</sup> In rejecting Appellant’s suggestion that “inconsistencies” in this explanation, including scientific evidence demonstrating its falsity, reflected mere “misrepresentations” rather than fraud, the Arbitrator relied on Appellant’s admitted prior intentional misrepresentation of the horse’s status.<sup>9</sup> The Arbitrator properly assessed Appellant’s credibility and the totality of the evidence in affirming this Tampering violation.

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<sup>5</sup> Decision, para. 8.14.

<sup>6</sup> See, e.g., *Shell*, at pp. 24-35; *Overly*, at pp. 28-48.

<sup>7</sup> Decision, para. 8.21-8.22; ADMC Program Rule 4112.

<sup>8</sup> Decision, paras. 2.8-2.11 and p. 38.

<sup>9</sup> Decision, paras. 8.26-8.29, 8.31 and p. 39.

Fourth, Appellant incorrectly states that the Trafficking violation (Rule 3214(b)) was based on “a single self-serving hearsay statement from an interested witness.” Rather, Appellant admitted to selling syringes to the individual in question, which syringes were later confirmed by laboratory testing to contain two Banned Substances.<sup>10</sup> The Arbitrator concluded that it was “highly unlikely” that Appellant did not know the content of the syringes,”<sup>11</sup> and properly assessed Appellant’s credibility and the totality of the evidence in finding a Trafficking violation.

Fifth, the Authority disputes that the sanctions imposed by the Arbitrator were arbitrary, capricious, an abuse of discretion, prejudicial, or not in accordance with the law. Prior ALJ decisions affirm that Rule 3228(d), properly interpreted, authorizes consecutive periods of Ineligibility for multiple Possession violations arising out of “common facts.”<sup>12</sup> Consistent with ALJ authority that “the proportionality principle is a case law-derived exception [and] should not become the norm,”<sup>13</sup> the Arbitrator declined to reduce the overall sanction on grounds of proportionality. In so doing, he properly considered the seriousness of Appellant’s “intentional and egregious conduct” across nine separate violations, Appellant’s prior history of violations, and the sanction’s impact on Appellant’s veterinary career.<sup>14</sup>

The Arbitrator’s analysis was rationally connected to the facts and based on a consideration of relevant factors.<sup>15</sup> Appellant has not identified any failure on the part of the Authority to act within “a zone of reasonableness” – nor can he point to any plain error or unjustified exercise of

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<sup>10</sup> Decision, pp. 2, 27, 31.

<sup>11</sup> Decision, paras. 8.32-8.34.

<sup>12</sup> *Overly.*, at pp. 86-92; *Shell*, at pp. 44-50.

<sup>13</sup> *Overly.*, at p. 64.

<sup>14</sup> Decision, paras 8.48-8.50; *Shell*, at p. 50; *Overly* at p. 62.

<sup>15</sup> *Shell*, at p. 13.

discretion by the Arbitrator such that the Decision is “clearly against the logic and effect of the facts as [were] found”.<sup>16</sup>

Lastly, Arbitrators are expressly empowered under Rule 7110(a) to order a Covered Person’s, like Appellant’s, virtual participation for part of the hearing. Appellant’s continuance request due to “family obligations” was untimely and fell short of demonstrating “exceptional circumstances” under Rule 7170(h).<sup>17</sup> Appellant’s virtual appearance satisfied due process, which requires only procedures reasonably calculated to afford a fair hearing in the specific circumstances — not the party’s preferred format.<sup>18</sup> Moreover, Appellant raised no due process or other concerns during the hearing stemming from his virtual appearance, including regarding his ability to present evidence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20<sup>th</sup> day of March, 2026.

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<sup>16</sup> *Shell*, at pp. 13-14.

<sup>17</sup> See also Rule 7170(f).

<sup>18</sup> See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 333-335 (1976) (due process is “flexible,” and procedural safeguards can be tailored to meet the demands of the particular situation, having regard to both parties’ interests).

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