PUBLIC
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

FTC DOCKET NO. D-9448
ALJ: JAY L. HIMES

IN THE MATTER OF:
DR. DONALD McCROSKY, Appellant.

APPELLANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, PROPOSED ORDER, AND SUPPORTING BRIEF

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SUPPORTING BRIEF

I. INTRODUCTION

Dr. Donald McCrosky graduated from Purdue University's College of Veterinary Medicine in 1968. For fifty-eight years, he has practiced equine veterinary medicine in rural Illinois, serving as one of only two trackside veterinarians at Fairmount Park Racetrack — one of only two thoroughbred racing facilities in the State of Illinois. He is eighty-one years old.
The Arbitrator imposed a twenty-four-year period of ineligibility and $300,000 in fines. If sustained, Dr. McCrosky will not be eligible to practice among covered horses until he is one hundred and five years old. This is not a sanction. It is an extinction.

The underlying conduct does not justify this result. In April 2025, HIWU investigators searched Dr. McCrosky's minivan — his mobile veterinary unit — at Fairmount Park and found five substances in the vehicle he uses daily to treat both covered and non-covered horses across a seventy-five-mile radius. Dr. McCrosky cooperated fully, allowed the search voluntarily, and identified specific off-track clients and pending appointments for each substance in real time. He named Katie Nelson as the patient needing thyro-L that same day. He provided corroborating text messages. HIWU never followed up on a single one of those leads.

The nine ADRVs charged arise from three distinct episodes: (1) a single search of a single vehicle on a single day producing five possession charges; (2) two tampering charges — one for repossessing two substances he needed for scheduled off-track patient appointments after explicit warnings, and one for providing an explanation of Childersattack's castration history that the Arbitrator found insufficiently credible; and (3) a trafficking charge supported entirely by the uncorroborated, out-of-court statement of Isidoro Castro — a trainer who faced his own regulatory exposure, never appeared to testify, and was subject to cross-examination by neither party.

The Arbitrator found all nine ADRVs proven and imposed fully consecutive maximum sentences on each, without meaningful proportionality analysis. The American Association of Equine Practitioners — an organization that HIWU's own Chief of Science, Dr. Mary Scollay, has been a member of for forty years — has formally declared that Rule 3214(a) as applied to mixed-practice veterinarians like Dr. McCrosky is "unworkable and impracticable." The Arbitrator did not engage with that position.

The Arbitrator characterized Dr. McCrosky’s conduct as reflecting “flagrant disregard” for the ADMC Program Rules. That language demands context. The Arbitrator was reacting to

three specific facts: that Dr. McCrosky resisted digital record-keeping, that he repossessed two seized substances after being warned not to, and that he lacked contemporaneous documentation for his castration account. None of those facts reflect the conduct of a sophisticated doper. They reflect a practitioner who has resisted computerized systems throughout his career — consistently, uniformly, and for every patient including his wife's horses well before HISA existed — and who made a poor decision under pressure when he believed his patients' care was at stake. "Flagrant disregard" describes a state of mind. On de novo review, this Court is not bound by the Arbitrator's characterization of that state of mind. The record evidence is far more consistent with a practitioner who misunderstood his obligations and acted impulsively than with one who deliberately structured his conduct to evade detection.

This brief does not ask this Court to ignore Dr. McCrosky's conduct. It asks this Court to measure that conduct honestly — against the record, against the applicable burden of proof, and against the proportionality principle that HISA's own framework demands. On de novo review, the record does not support the Trafficking ADRV. The compelling justification standard was applied at an impracticably high threshold. And even if every ADRV is sustained, a twenty-four-year consecutive sentence for conduct arising from a single vehicle search, a single testosterone administration, and a single disputed castration narrative — by an eighty-one-year-old veterinarian with fifty-eight years of practice — cannot survive proportionality scrutiny.

Dr. McCrosky respectfully requests that this Court reverse the Trafficking ADRV, reconsider the compelling justification standard applied to the five Possession ADRVs, and restructure the global sanction to reflect concurrent or partially concurrent ineligibility periods proportionate to the totality of the conduct — with the $300,000 fine eliminated or substantially reduced in light of the ineligibility already imposed.

II. ARGUMENT

A. The Twenty-Four-Year Consecutive Sentence and $300,000 Fine Are Disproportionate to the Totality of the Conduct and Must Be Restructured on De Novo Review.

1. The Proportionality Principle Is Not Optional — It Is a Mandatory Component of Global Sanction Analysis Under the ADMC Program.

The ADMC Program expressly incorporates the proportionality principle drawn from the lex sportiva: "it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement." *Shell II*, No. 9439, 2025 WL 1784696, at *33-34. This Court has confirmed that proportionality applies to global sanctions in multi-ADRV cases and is a mandatory analytical step — not a discretionary afterthought. Overly, No. 9443, at 64. The Arbitrator acknowledged proportionality "must be taken into consideration" but concluded, without substantive analysis, that Dr. McCrosky's conduct "warrants the imposition of the maximum allowable fines and a consecutive period of Ineligibility." AFD ¶¶ 8.48, 8.50 (AB 2513–2514); PFF ¶¶ 45-46. That conclusory determination is precisely the kind of analytical failure that de novo review exists to correct. The decisions of this Court and HISA arbitrators in comparable proceedings illuminate the magnitude of that failure:

Case / Forum	Violation	Ineligibility	Fine
Poole, JAMS/FTC No. 9417 (2023)	1 possession (Thyro-L)	22 months	$10,000
Perez, JAMS No. 1501000589 (2023)	1 possession (forgot banned substance)	14 months	Reduced
Lewis, FTC No. 9433 (2024)	1 presence (clenbuterol)	2 years	$15,000
Overly, FTC No. 9443 (2026)	2 possession + use; vet, mixed practice	23 months	Fine imposed

Case / Forum	Violation	Ineligibility	Fine
Galvin, FTC No. 9445 (2026)	3,951 record-keeping failures; vet	2 years	$25,000
McCrosky, JAMS No. 1501001138 (2026)	9 ADRVs: 5 possession (1 search), 1 use, 2 tampering, 1 trafficking	24 YEARS consecutive	$300,000

No prior HISA decision imposed anything approaching this sanction. The closest comparators for a veterinarian's possession violations are *Overly* (23 months for two substances) and *Poole* (22 months for one substance). In the only prior case where a covered person faced a multi-count possession finding arising from similar record-keeping failures and personal-use patterns, the arbitrator found "moderate fault" and reduced the ineligibility to fourteen months. In re *Luis Jorge Perez*, JAMS Case No. 1501000589 (Oct. 9, 2023), aff'd, FTC No. 9420 (ALJ Feb. 7, 2024). The aggregate of all prior HISA sanctions in comparable proceedings does not approach 24 years. The Arbitrator's sanctions stand apart not in degree, but in kind. In re *Jim Iree Lewis*, No. 9433, 2024 WL 5078296 (FTC ALJ Oct. 17, 2024) ("[t]he degree of fault may be considered in exercising discretion to determine an appropriate fine").

***2.* Five of the Nine ADRVs Arise From a Single Search of a Single Vehicle on a Single Day and Should Not Produce Five Consecutive Ineligibility Periods.**

The five Possession ADRVs share a common origin: one inspection, one vehicle, one date. Dr. McCrosky did not make five independent decisions on five separate occasions to carry five prohibited substances to a racetrack. He maintained a mobile veterinary unit — his sole means of practicing medicine across a seventy-five-mile service area — stocked with medications he used daily for both covered and non-covered horses. The five substances were discovered simultaneously, in the same location, during the same encounter.

Imposing five consecutive two-year ineligibility periods — ten years — for what is, in functional terms, a single possession event, treats the happenstance of how many substances were in the

vehicle as an independent aggravating factor. It is not. The number of substances found in a single search reflects the breadth of a mixed-practice veterinarian's formulary, not the frequency or deliberateness of his rule-breaking. Running those five periods concurrently — or at most partially consecutively — would produce a sanction that accurately reflects the gravity of a single episode of possession.

3. The $300,000 Monetary Fine Must Be Eliminated or Substantially Reduced.

This is the issue that demands the Court's closest attention. The monetary fine and the ineligibility period are not independent instruments serving independent purposes — they are alternative expressions of the same regulatory goal: deterring future violations and protecting the integrity of covered horse racing. Where, as here, the ineligibility period already accomplishes total exclusion of the respondent from covered horse practice for the remainder of his working life, a $300,000 fine layered on top serves no deterrence function whatsoever. You cannot deter a man from conduct he is already permanently prohibited from engaging in.

Dr. McCrosky is eighty-one years old. He testified that approximately fifty percent of his practice involves covered horses. The twenty-four-year ineligibility period — even if reduced to a concurrent structure — eliminates that fifty percent of his practice entirely and permanently. The economic consequence of the ineligibility alone is thus career-ending as to covered horses. A $300,000 fine imposed on top of that total professional exclusion does not deter. It does not rehabilitate. It does not protect horse welfare. It punishes — and it does so in a manner grossly disproportionate to the economic reality of a solo rural veterinary practice that has already been permanently curtailed.

The fine structure under Rule 3223(b) is explicitly discretionary: fines are set at "up to" $25,000 per Possession or Use ADRV and "up to" $50,000 per Tampering or Trafficking

ADRV. "Up to" is not "must equal." The Arbitrator treated the maximum fine as the presumptive fine without analysis of whether imposition of the maximum fine, on top of maximum consecutive ineligibility, produces a proportionate global sanction. It does not. The proportionality principle applies to monetary sanctions with equal force as to ineligibility periods. *Overly*, No. 9443, at 85-95.

Three independent grounds support elimination or substantial reduction of the fine:

First, the conduct underlying the five Possession ADRVs was neither commercially motivated nor performance-enhancing. Dr. McCrosky carried medications he used daily to treat sick horses. The ammonium sulfate and ammonium chloride were nerve-blocking agents used in surgical procedures for non-covered horses. The thyro-L was destined for a client's horse with a thyroid condition — Dr. McCrosky named the client, Katie Nelson, in real time to investigators. The osphos was needed the following day for another client's horse. (AB 2903-2905) (Cueto, closing argument); PFF ¶ 11. None of these substances were in the vehicle for any purpose connected to competitive advantage in covered racing. Maximum fines for commercially neutral, therapeutically motivated possession are disproportionate on their face.

Second, HIWU's own closing argument identified Dr. McCrosky's ability to continue non-covered practice as a reason the ineligibility sanction was proportionate. (AB 2897) (Sayao, closing argument); PFF ¶ 47. HIWU cannot have it both ways. If the survival of his non-covered practice minimizes the hardship of the ineligibility, then a $300,000 fine that directly threatens his ability to sustain that surviving practice undermines HIWU's own proportionality rationale.

Third, the two prior violations relied upon as aggravating factors — one for refusal to allow testing, one for breach of a prior ineligibility period — were not Anti-Doping Rule Violations. They were regulatory compliance failures. Weighting non-ADRV prior violations to

justify maximum consecutive sentences and maximum fines conflates distinct categories of misconduct and inflates the global sanction beyond what the ADMC Program's own graduated structure contemplates.

4. The Arbitrator Failed to Engage With the AAEP's Formal Position That Rule 3214(a) Is Unworkable as Applied to Mixed-Practice Veterinarians.

The American Association of Equine Practitioners — whose membership includes HIWU's own Chief of Science — has formally declared that Rule 3214(a) is "unworkable and impracticable" for veterinarians who provide care to both covered and non-covered horses over the course of a single workday, and that "compliance with Rule 3214 is effectively impossible" while delivering appropriate veterinary care consistent with state veterinary practice acts. (AB 2900-2901) (Cueto, closing argument); PFF ¶ 7. The Arbitrator did not address this position. On de novo review, this Court should consider whether the compelling justification standard as applied to a mixed-practice veterinarian carrying a mobile formulary reflects the actual requirements of Rule 3214(a) — or whether it imposes a compliance burden the Rule's own regulatory community has declared unachievable.

III. ON DE NOVO REVIEW, THE TRAFFICKING ADRV WAS NOT ESTABLISHED TO THE COMFORTABLE SATISFACTION STANDARD AND MUST BE REVERSED.

1. The Sole Direct Evidence of Trafficking Was an Uncorroborated Hearsay Statement From a Witness Who Never Appeared to Testify.

The Trafficking ADRV rests on a single foundation: Isidoro Castro told HIWU investigators that Dr. McCrosky sold him two syringes containing glaucine and testosterone in a parking lot. That statement was never subjected to cross-examination. Castro did not appear at the January 14, 2026 hearing. Both parties wanted him there. Neither produced him. (AB 2912) (Cueto, closing argument); PFF ¶ 36. What remained was an out-of-court assertion from a trainer

who, at the time he made it, faced his own significant regulatory exposure for possessing syringes and two electric buzzers at Fairmount Park. (AB 2913) (Cueto, closing argument); PFF ¶ 38.

The comfortable satisfaction standard requires proof greater than a mere preponderance. *Serpe*, No. 9441. A single uncorroborated hearsay statement from a self-interested witness who avoided cross-examination does not meet that threshold — particularly where the declarant had obvious motive to redirect investigative attention toward someone else.

2. Dr. McCrosky's Testimony Was Uncontroverted by Any Witness With Personal Knowledge.

Dr. McCrosky testified under oath that he delivered aspirin and Banamine to Castro for a horse experiencing a tying-up episode — a legitimate therapeutic purpose. (AB 2912-2913) (Cueto, closing argument); PFF ¶ 39. He testified he did not know what glaucine was, let alone that he had trafficked in it. (AB 2912-2913) (Cueto, closing argument); PFF ¶ 40. No witness with personal knowledge contradicted that account. The Arbitrator rejected it based on the inference that "no credible veterinarian would be unaware of the contents of an injectable intended for any animal." AFD ¶ 8.33 (AB 2511); PFF ¶ 41.

That inference cannot bear the weight placed on it. It assumes the syringes Castro possessed were the same syringes Dr. McCrosky provided — a chain of custody that was never established. It assumes the contents Castro reported were the contents at the time of transfer. And it transforms an absence of knowledge into affirmative proof of trafficking in specific banned substances, which is not what the comfortable satisfaction standard permits. The charge was not delivering syringes. It was trafficking in glaucine and testosterone. (AB 2912-2913) (Cueto, closing argument); PFF ¶ 39. The record contains no direct evidence that Dr. McCrosky ever

possessed glaucine, intended to transfer glaucine, or knew glaucine was in any syringe he handled.

3. Even If the Arbitrator's Credibility Finding Is Accepted, the Veterinarian Exception Applies.

Rule 1020 defines Trafficking to exclude conduct by veterinarians "involving a Prohibited Substance used for genuine and legal therapeutic purposes or other acceptable justification." Dr. McCrosky testified the transfer was for banamine and aspirin to treat an active muscle disorder. (AB 2912-2913) (Cueto, closing argument); PFF ¶ 39. If the Arbitrator’s inference is accepted — that Dr. McCrosky knew the contents — the record still supports that the intended therapeutic purpose was treatment of tying-up syndrome, a genuine and recognized equine medical condition. The Arbitrator did not meaningfully analyze whether the veterinarian exception applied on these facts. On de novo review, this Court should do so.

IV. ON DE NOVO REVIEW, THE CHILDERSATTACK TAMPERING ADRV WAS NOT ESTABLISHED BY EVIDENCE SUFFICIENT TO MEET THE COMFORTABLE SATISFACTION STANDARD FOR INTENTIONAL FRAUD.

1. The Charge Required Proof of Intentional False Statements — A Heightened Showing the Record Does Not Clearly Support.

Unlike the Possession and Use ADRVs, Tampering is not strict liability. Rule 3216(a) requires intentional conduct. HIWU's charge was specific: that Dr. McCrosky deliberately submitted false representations regarding Childersattack's castration status to mislead the results management process. The Arbitrator found that standard met based entirely on circumstantial inference — the conflict between Dr. McCrosky's handwritten note and the Jockey Club database, and the September negative / October positive testosterone swing that Dr. Scollay testified was inconsistent with a functional ridgling. AFD ¶¶ 8.26-8.31 (AB 2509); PFF ¶¶ 31-33.

Circumstantial evidence can establish intent. But comfortable satisfaction requires that the circumstantial case be sufficiently compelling to exclude credible innocent explanations. Here, Dr. McCrosky's explanation — that he performed a partial castration, lost track of the retained testicle over time, and acted promptly to remove it upon learning of the atypical finding — was uncontroverted by any eyewitness testimony. (AB 2909-2911) (Cueto, closing argument); PFF ¶ 32. No witness with personal knowledge of the castration contradicted his account. The Jockey Club database conflict establishes a discrepancy in recorded dates. It does not establish that Dr. McCrosky knew his handwritten account was false when he wrote it.

2. The Record Evidence Is Equally Consistent With Negligent Record-Keeping as With Deliberate Fraud.

Dr. McCrosky testified consistently throughout the hearing that he does not maintain computerized medical records for his wife's horses — not selectively, not strategically, but as a matter of longstanding practice rooted in his resistance to digital record-keeping systems. (AB 2908) (Cueto, closing argument); PFF ¶ 29. The Arbitrator himself acknowledged this pattern. AFD ¶ 8.11 (AB 2507); PFF ¶ 29. A man who does not keep records because he has always resisted keeping records is not a man fabricating a paper trail. The absence of documentation supporting his castration timeline is fully consistent with his established practice of non-documentation — which predates HISA and applies universally to his wife's horses.

Where the evidence is equally consistent with negligent record-keeping as with deliberate fraud, comfortable satisfaction is not achieved. The charge stands only if this Court finds the circumstantial inference of intentional deception more compelling than the uncontroverted account of a practitioner whose documentation failures were systematic, not selective. On de novo review, this Court should find HIWU did not meet that burden.

3. Even If This ADRV Is Sustained, It Should Not Carry a Consecutive Four-Year Ineligibility Period.

If this Court sustains the Childersattack Tampering ADRV on the record, the sanction should run concurrently with — not consecutively to — the ineligibility periods imposed for the possession and use conduct. The Childersattack episode arose from the same regulatory relationship, the same covered horses, and the same period of conduct as the other charged violations. Treating it as an entirely independent sanctionable event for purposes of consecutive sentencing compounds the disproportionality of the global sanction without serving any additional deterrence function.

V. ON DE NOVO REVIEW, THE COMPELLING JUSTIFICATION STANDARD FOR RULE 3214(a) MUST BE RECONSIDERED ON A FULLY DEVELOPED RECORD.

1. Rule 3214(a) Requires Compelling Justification — Not Impossibility of Compliance.

Before reaching the specific record evidence, this Court should confront the controlling precedent directly. In *Overly*, No. 9443, this Court rejected a mixed-practice veterinarian's compelling justification defense because it was a bare assertion — an inconvenience rationale unsupported by documented links between each substance and identified non-covered patients. Dr. McCrosky's record at the arbitration level was similarly underdeveloped in documentation. On de novo review, however, this Court is not simply evaluating what was presented below — it is deciding the question fresh. 15 U.S.C. § 3058(b). The critical distinction from *Overly* is that Dr. McCrosky did more than assert inconvenience: he identified specific clients by name, produced corroborating text messages, and stated the patient, appointment date, and medical condition for each substance in real time to investigators on the day of the search. What *Overly* required — a specific, documented link between each substance and identified non-covered patients — is precisely what this record, evaluated and supplemented on de novo review, can

establish. The further evidentiary development available at the ALJ level exists for exactly this purpose.

Rule 3214(a) prohibits possession of a banned substance "unless there is compelling justification for such Possession." The Rule does not require that a covered veterinarian prove compliance was physically impossible. It requires that his justification for possession be compelling — that is, persuasive, credible, and grounded in legitimate veterinary necessity. The Arbitrator found Dr. McCrosky's showing "has not come close to discharging his high burden." AFD ¶ 8.20 (AB 2508); PFF ¶ 16. But the decision does not identify what showing would have sufficed. It applies the standard as an absolute bar rather than a contextual inquiry — and in doing so, sets a threshold that no mixed-practice veterinarian operating a mobile unit could realistically meet.

2. The Uncontroverted Record Establishes Compelling Justification for Each Substance.

Dr. McCrosky cooperated fully with the HIWU investigation, voluntarily allowed his vehicle to be searched, identified the intended use of each substance in real time, named specific off-track clients, and produced corroborating text messages. (AB 2903-2905) (Cueto, closing argument); PFF ¶ 11. The investigators found him credible enough on the day of the search that they did not seek laboratory testing of any of the five substances. (AB 2905) (Cueto, closing argument); PFF ¶ 14. HIWU never followed up with Katie Nelson regarding the thyro-L. It never contacted the client identified for the osphos. It accepted his account of each substance's intended use well enough to conclude its investigation without further inquiry — and then charged him anyway. The reliability of HIWU's investigative judgment about those justifications cannot cut both ways. If HIWU's investigators were satisfied enough by Dr. McCrosky's explanations not to test a single substance, those same explanations — corroborated by text

messages and specific client identifications — satisfy the compelling justification standard on the uncontroverted record before this Court. In *re Natalia Lynch*, No. 9423 (FTC 2024) (HISA's failure to investigate exculpatory information identified by the covered person is a material consideration in de novo review).

On the specific substances: the ammonium sulfate and ammonium chloride were nerve-blocking agents used exclusively in off-track surgical procedures, a use the HIWU investigator himself acknowledged as consistent with veterinary practice. (AB 2903) (Cueto, closing argument); PFF ¶ 11. The thyro-L was destined for a client's horse with a documented thyroid condition, needed that same day. AB 2904 (Cueto, closing argument); PFF ¶ 12. The osphos was required the following day for a client with an urgent orthopedic need. (AB 2904) (Cueto, closing argument); PFF ¶ 13. The testosterone cypionate was maintained for off-track therapeutic use — the same appetite-stimulant application Dr. McCrosky had employed in his practice for thirty years without incident. (AB 2748) (McCrosky); PFF ¶ 17. Each substance had a specific, identified, legitimate off-track purpose. That is compelling justification.

3. The AAEP's Formal Position Confirms That the Standard as Applied Is Unworkable.

The American Association of Equine Practitioners — a professional organization whose membership includes HIWU's own Chief of Science, Dr. Mary Scollay, who has belonged to it for forty years — has formally declared that Rule 3214(a) is "unworkable and impracticable" for veterinarians serving both covered and non-covered horses, and that compliance is "effectively impossible" while meeting obligations under state veterinary practice acts. (AB 2900-2901) (Cueto, closing argument); PFF ¶ 7. This Court on de novo review is not bound by the Arbitrator's interpretation of the compelling justification standard. The AAEP's position, the uncontroverted record of Dr. McCrosky's cooperation and identified off-track uses, and HIWU's

own failure to investigate the justifications he provided in real time together establish that the standard was applied at a threshold inconsistent with the Rule's text and purpose. At minimum, the compelling justification finding for each substance should be revisited individually. *Overly*, No. 9443, at 70-84.

VI. CONSTITUTIONAL ARGUMENTS ARE PRESERVED FOR COMMISSION AND CIRCUIT COURT REVIEW.

This Court is expected to follow In *re Philip Serpe*, No. 9441 (FTC ALJ Sept. 12, 2025), which rejected the Seventh Amendment and private non-delegation challenges at the ALJ level. Dr. McCrosky does not expect a different outcome here. These arguments are preserved in full for the full Commission and, if necessary, the federal circuit court.

Seventh Amendment — Right to Jury Trial. HISA's enforcement of monetary fines through private administrative adjudication, without a jury, raises serious Seventh Amendment concerns under *SEC v. Jarkesy*, 603 U.S. 109 (2024). The "public rights" exception relied upon in *Serpe* is contested and has not been resolved by the Supreme Court in the HISA enforcement context. A $300,000 fine imposed without a jury trial on disputed facts — the trafficking charge and both tampering findings turn on credibility determinations that go to the heart of Dr. McCrosky's liability — implicates the jury right that *Jarkesy* reaffirmed. *Serpe v. FTC*, No. 0:24cv61939 (S.D. Fla.) (federal constitutional challenge pending before Commission review). Private Non-Delegation. HIWU exercises investigative, charging, and prosecutorial power without adequate FTC supervision at each step of the enforcement process. The Fifth Circuit has found HISA's enforcement provisions facially unconstitutional on this ground. *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 107 F.4th 415 (5th Cir. 2024). The Supreme Court has

stayed that ruling, and the matter remains pending. Dr. McCrosky preserves this argument for Commission and circuit review.

Due Process. A 24-year ineligibility imposed by a private enforcement body, on facts disputed in their most consequential dimensions, following a hearing at which Dr. McCrosky was denied a continuance and required to participate by iPhone while opposing counsel appeared in person, raises fundamental procedural due process concerns disproportionate to any legitimate regulatory objective. The continuance denial is separately preserved as a procedural ground under COL ¶ 20.

VII. CONCLUSION

For the foregoing reasons, Dr. Donald McCrosky respectfully requests that this Court:

1. Reverse the Trafficking ADRV in its entirety on the ground that the comfortable satisfaction standard was not met on the evidence presented;
2. Reverse or reduce the Childersattack Tampering ADRV on the ground that intentional fraud was not established to the comfortable satisfaction standard on the uncontroverted record;
3. Reconsider the compelling justification determination for each of the five Possession ADRVs individually, applying the standard consistent with the text of Rule 3214(a) and the uncontroverted evidence of Dr. McCrosky's off-track veterinary purposes;
4. Restructure the global ineligibility sanction to reflect concurrent or partially concurrent periods proportionate to the totality of the conduct, with the five single-episode Possession ADRVs running concurrently; and
5. Eliminate or substantially reduce the $300,000 monetary fine on the ground that it

serves no deterrence or regulatory purpose not already fully accomplished by the ineligibility sanction, and that its imposition on an eighty-one-year-old solo rural practitioner whose covered practice has been permanently extinguished is grossly disproportionate to any legitimate penological objective.

Respectfully submitted,

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PROPOSED FINDINGS OF FACT

In the Matter of Dr. Donald McCrosky, FTC Docket No. 9448

I. THE PARTIES AND REGULATORY FRAMEWORK

1. Dr. Donald McCrosky is a licensed veterinarian who graduated from Purdue University College of Veterinary Medicine in 1968 and has practiced equine veterinary medicine for fifty-eight years. (AB 2737) (McCrosky).
2. Dr. McCrosky is eighty-one years old. (AB 2916) (Cueto, closing argument).
3. At all relevant times, Dr. McCrosky was a Covered Person under HISA and the ADMC Program. Amended Final Decision ("AFD") at ¶ 2.3.
4. Dr. McCrosky is one of two trackside veterinarians serving Fairmount Park Racetrack in Collinsville, Illinois, one of only two thoroughbred racing facilities in the State of Illinois. (AB 2899-2900) (Cueto, closing argument).

5. Approximately fifty percent of Dr. McCrosky's veterinary practice involves Covered Horses subject to HISA regulation; the remaining fifty percent involves non-Covered Horses treated off-track. (AB 2897) (Sayao, closing argument); AFD ¶ 6.3.2 (AB 2489).

6. Dr. McCrosky operates a mobile veterinary unit — a minivan — stocked with medications he uses daily to treat both Covered and non-Covered Horses across a service area spanning approximately seventy-five miles. (AB 2903) (Cueto, closing argument).

7. The American Association of Equine Practitioners ("AAEP"), a professional organization of which HIWU's Chief of Science Dr. Mary Scollay has been a member for forty years, has formally declared that ADMC Program Rule 3214(a) is "unworkable and impracticable" for veterinarians providing care to both Covered and non-Covered Horses, and that compliance with Rule 3214(a) is "effectively impossible" for practitioners at mixed-breed facilities. (AB 2900-2901) (Cueto, closing argument).

II. THE APRIL 2025 SEARCH AND POSSESSION CHARGES

8. In April 2025, HIWU investigators searched Dr. McCrosky's minivan while it was parked at Fairmount Park Racetrack. Dr. McCrosky voluntarily consented to the search. (AB 2905) (Cueto, closing argument); AFD ¶ 2.3 (AB 2467).

9. Investigators discovered five substances in the vehicle: testosterone cypionate, Thyro-L, ammonium sulfate, P-Bloc (ammonium chloride), and Osphos. AFD ¶¶ 2.3-2.4. (AB 2467)

10. Each of the five substances is classified as a Banned Substance under the ADMC Program's Prohibited List. AFD ¶¶ 6.3.1-6.3.2. (AB 2489)

11. During the search, Dr. McCrosky identified the intended off-track use of each substance in real time, named specific clients for whom the substances were intended, and provided corroborating text messages. (AB 2904-2905) (Cueto, closing argument).

12. Dr. McCrosky identified Katie Nelson as a client whose horse had a thyroid condition and required the Thyro-L that same day. (AB 2904) (Cueto, closing argument); AFD ¶ 6.3.2.a (AB 2489).

13. Dr. McCrosky identified another client, Michelle Crowder, whose horse had an urgent orthopedic need requiring the Osphos the following day. AFD ¶ 6.3.2.b (AB 2489).

14. HIWU investigators did not send any of the five seized substances to a laboratory for testing. (AB 2905) (Cueto, closing argument).

15. HIWU did not follow up with Katie Nelson or any other client identified by Dr. McCrosky to verify his stated off-track justifications. (AB 2904-2905) (Cueto, closing argument).

16. The Arbitrator found that Dr. McCrosky's showing of compelling justification "has not come close to discharging his high burden." AFD ¶ 8.20 (AB 2508).

III. THE USE ADRV — TIGGER ATTACK

17. Dr. McCrosky administered one cubic centimeter of testosterone to Tigger Attack, a Covered Horse owned by his wife, as an appetite stimulant, a use he had employed in his practice for approximately thirty years. (AB 2748) (McCrosky); AFD ¶ 2.6 (AB 2467).

18. Dr. McCrosky admitted the administration voluntarily when interviewed by HIWU investigators on the day of the search. AFD ¶¶ 2.6-2.7. (AB 2467)

19. Dr. McCrosky testified the administration occurred at least five to seven days before any scheduled race date and was not intended as a performance-enhancing measure. (AB 2748) (McCrosky).

20. The Arbitrator found the Use ADRV established under the strict liability standard applicable to Rule 3213. AFD ¶ 8.22 (AB 2509).

IV. THE TAMPERING ADRV — THYRO-L AND OSPHOS REPOSSESSION

21. Following the search, HIWU investigators seized the Thyro-L and Osphos as evidence. Dr. McCrosky subsequently repossessed both substances. AFD ¶¶ 1.2, 6.3.5 (AB 2466, 509)

22. Dr. McCrosky was warned multiple times by HIWU investigators not to repossess the seized substances before he did so. AFD ¶ 8.23 (AB 2509).

23. Dr. McCrosky testified he repossessed the substances because he had scheduled patient appointments requiring each medication and was concerned about the cost and disruption to his clients. AFD at ¶¶ 6.3.2.a-b, 8.24.

24. HIWU's investigation was not impeded by the repossession — the substances were not sent for laboratory testing and were not relied upon as physical evidence at the hearing. (AB 2905-2906) (Cueto, closing argument).

25. The Arbitrator found the repossession reflected "a disdain or disregard for the rules of the ADMC Program" and constituted Tampering. AFD ¶ 8.25 (AB 2509).

V. THE TAMPERING ADRV — CHILDERSATTACK

26. Childersattack is a Covered Horse owned by Dr. McCrosky's wife and trained by Vance Childers. AFD ¶ 2.8 (AB 2468).

27. In October 2024, a blood sample drawn from Childersattack tested positive for testosterone. A sample drawn three weeks earlier in September 2024 had tested negative. AFD ¶¶ 2.9-2.10 (AB 2468); Order at 20-21.

28. Dr. McCrosky sent HIWU a handwritten note stating he had performed a partial castration on Childersattack in March 2022, leaving one undescended testicle that he believed was producing testosterone endogenously. AFD ¶¶ 2.11-2.12. (AB 2468)

29. Dr. McCrosky testified he does not maintain computerized medical records for his wife's horses, consistent with a longstanding general practice of non-digital record-keeping that predates HISA. (AB 2908) (Cueto, closing argument); AFD ¶ 8.11 (AB 2507).

30. Dr. McCrosky removed the retained testicle on December 2, 2024, approximately three weeks after HIWU notified trainer Childers of the atypical finding. (AB 2909-2910) (Cueto, closing argument); AFD ¶ 2.16 (AB 2469).

31. HIWU's Chief of Science, Dr. Mary Scollay, testified that the September negative / October positive testosterone results would be "highly unlikely" for a ridgling with an undescended testicle unless testosterone had been administered exogenously between the two samples. AFD ¶ 2.13 (AB 2468); Order at 21.

32. No witness with personal knowledge of the castration procedure testified to contradict Dr. McCrosky's account. (AB 2910) (Cueto, closing argument).

33. The Arbitrator found that Dr. McCrosky "deliberately attempted to mislead the authorities regarding the status of Childersattack." AFD ¶ 8.31 (AB 2510).

VI. THE TRAFFICKING ADRV — CASTRO

34. HIWU investigators discovered two filled syringes in the tack room of Fairmount Park trainer Isidoro Castro, which forensic analysis revealed contained glaucine and testosterone, both Banned Substances. AFD ¶¶ 2.19-2.20. (AB 2469)

35. Isidoro Castro told HIWU investigators that Dr. McCrosky sold him the syringes in a parking lot for $20.00. AFD ¶ 2.20 (AB 2469).

36. Castro did not appear at the January 14, 2026 evidentiary hearing. Both parties had sought his testimony. (AB 2912) (Cueto, closing argument).

37. Castro's statement to HIWU investigators was not recorded, was not subject to cross-examination, and constitutes hearsay. (AB 2912) (Cueto, closing argument).

38. At the time Castro made his statement, he faced his own regulatory exposure for possessing syringes and two electric buzzers at Fairmount Park. (AB 2913) (Cueto, closing argument).

39. Dr. McCrosky testified he delivered aspirin and Banamine to Castro for a horse experiencing a tying-up episode — a recognized equine muscle disorder — and denied delivering testosterone or glaucine. (AB 2912-2913) (Cueto, closing argument); AFD ¶ 6.3.7 (AB 2491).

40. Dr. McCrosky testified he was unaware of what glaucine was. (AB 2912-2913) (Cueto, closing argument); AFD ¶ 6.3.8 (AB 2491).

41. The Arbitrator found the Trafficking ADRV proven, concluding that no credible veterinarian would be unaware of the contents of an injectable intended for a Covered Horse. AFD ¶ 8.33 (AB 2511).

VII. SANCTIONS IMPOSED

42. The Arbitrator imposed fully consecutive ineligibility periods for all nine ADRVs, resulting in a total of twenty-four years of ineligibility. AFD ¶¶ 8.48-8.51. (AB 2513)

43. The Arbitrator imposed monetary fines totaling $300,000, representing the maximum available fine for each ADRV charged. AFD ¶ 9.1 (AB 2514).

44. The Arbitrator found Dr. McCrosky "acted with intent, and with a flagrant disregard of the ADMC Program Rules." AFD ¶ 8.43 (AB 2512).

45. The Arbitrator found that "proportionality must be taken into consideration" but concluded that Dr. McCrosky's conduct "warrants the imposition of the maximum allowable fines and a consecutive period of Ineligibility." AFD ¶¶ 8.48, 8.50. (AB 2513)

46. The Arbitrator did not analyze whether running the five Possession ADRVs — arising from a single search of a single vehicle on a single day — concurrently would produce a more proportionate global sanction. AFD ¶¶ 8.48-8.51. (AB 2513)

47. HIWU's closing argument identified Dr. McCrosky's ability to continue practicing with non-Covered Horses as a factor minimizing proportionality concerns regarding the ineligibility sanction. (AB 2897) (Sayao, closing argument).

48. Dr. McCrosky's two prior violations relied upon as aggravating factors were not Anti-Doping Rule Violations — one was for refusal to allow testing and one was for breach of a prior ineligibility period. (AB 2896-2897) (Sayao, closing argument); AFD ¶ 8.45 (AB 2513).

49. A twenty-four year ineligibility period imposed on an eighty-one-year-old practitioner is the functional equivalent of a permanent lifetime ban from covered horse practice. (AB 2916) (Cueto, closing argument).

CONCLUSIONS OF LAW
In the Matter of Dr. Donald McCrosky, FTC Docket No. 9448

I. STANDARD OF REVIEW

1. This Court's review of the Arbitrator's Amended Final Decision is de novo — conducted as if the matter had not been previously heard and without deference to the Arbitrator's factual findings, credibility determinations, or legal conclusions. 16 C.F.R. § 1.146(c); Matter of Serpe, No. 9441 (FTC ALJ Sept. 12, 2025); Freeman v. DirecTV, Inc., 457 F.3d 1001, 1004 (9th Cir. 2006).

2. HIWU bears the burden of proving each charged ADRV to the comfortable satisfaction of this Court — a standard greater than a preponderance of the evidence but less than clear and convincing proof. Matter of Serpe, No. 9441; ADMC Program Rule 3261.

3. Once HIWU establishes an ADRV to the comfortable satisfaction standard, the burden shifts to Dr. McCrosky to establish any applicable defense or mitigation by a preponderance of the evidence. Matter of Serpe, No. 9441.

4. On de novo review, this Court is not bound by the Arbitrator's interpretation of the compelling justification standard under Rule 3214(a), his credibility assessments, or his proportionality analysis. This Court may reverse, modify, or remand any aspect of the Amended Final Decision. 16 C.F.R. § 1.146(c)(2).

II. THE TRAFFICKING ADRV SHOULD BE REVERSED

5. The Trafficking ADRV was not established to the comfortable satisfaction standard. The sole direct evidence connecting Dr. McCrosky to the transfer of glaucine and testosterone was the uncorroborated, out-of-court statement of Isidoro Castro — a self-interested witness who faced independent regulatory exposure, did not appear at the hearing, and was not subject to cross-examination by either party. PFF ¶¶ 35-38.

6. Dr. McCrosky's uncontroverted sworn testimony that he delivered aspirin and Banamine for a legitimate therapeutic purpose — and that he was unaware of the substance identified as glaucine — raises a credible innocent explanation that the comfortable satisfaction standard requires be excluded before liability attaches. PFF ¶¶ 39-40.

7. The inference that no credible veterinarian would be unaware of the contents of an injectable does not constitute affirmative proof that Dr. McCrosky trafficked in the specific Banned Substances charged. The Trafficking charge required proof of transfer of glaucine and testosterone — not merely proof of a syringe transaction. PFF ¶¶ 34-41.

8. In the alternative, if this Court sustains the Trafficking ADRV, the veterinarian exception under Rule 1020 applies: Dr. McCrosky's testified purpose — treatment of a horse experiencing a tying-up episode — constitutes a "genuine and legal therapeutic purpose" within the meaning of that definition. PFF ¶ 39.

III. THE CHILDERSATTACK TAMPERING ADRV SHOULD BE REVERSED OR ITS SANCTION RESTRUCTURED

9. The Childersattack Tampering ADRV required proof of intentional false statements — a heightened showing under Rule 3216(a) that comfortable satisfaction demands be established by compelling circumstantial evidence excluding credible innocent explanations. PFF ¶¶ 26-33.

10. The record evidence is equally consistent with negligent record-keeping by a practitioner who consistently maintained no digital records for his wife's horses as with deliberate fabrication of a castration narrative. Where the evidence does not compel a finding of intentional fraud over negligent omission, comfortable satisfaction is not achieved. PFF ¶¶ 29, 32.

11. In the alternative, if this Court sustains the Childersattack Tampering ADRV, its ineligibility period should run concurrently with — not consecutively to — the sanctions imposed for the Possession and Use ADRVs, as the conduct arose within the same regulatory relationship and period. PFF ¶ 26.

IV. THE $300,000 MONETARY FINE MUST BE ELIMINATED OR SUBSTANTIALLY REDUCED

12. The proportionality principle applicable to HISA proceedings governs monetary sanctions with equal force as ineligibility periods. Matter of Overly, No. 9443, at 85-95; Shell II, No. 9439, 2025 WL 1784696, at *33-34.

13. Monetary fines under Rule 3223(b) are discretionary — set at "up to" the maximum amounts specified — and do not mandate imposition of the maximum fine in every case. The Arbitrator's imposition of maximum fines without meaningful analysis of whether the fine serves a purpose not already accomplished by the ineligibility constitutes an abuse of the proportionality principle.

14. Where a period of ineligibility already permanently excludes a Covered Person from all covered horse practice for the remainder of his working life, a $300,000 monetary fine layered on top serves no additional deterrence, rehabilitation, or protective function that the ineligibility does not already fully accomplish. PFF ¶¶ 42-43, 49.

15. HIWU's own closing argument identified Dr. McCrosky's ability to continue non-Covered Horse practice as a factor minimizing proportionality concerns regarding the ineligibility sanction. HIWU cannot simultaneously argue that the survival of his non-covered practice minimizes the burden of ineligibility while also defending a $300,000 fine that directly threatens his ability to sustain that surviving practice. PFF ¶ 47.

16. The conduct underlying the five Possession ADRVs was commercially neutral and therapeutically motivated — Dr. McCrosky carried medications for identified off-track patients with specific pending appointments. Imposing maximum fines for commercially neutral possession is disproportionate to the nature of the conduct. PFF ¶¶ 11-15.

17. The two prior violations relied upon as aggravating factors to justify maximum consecutive sentences and maximum fines were not Anti-Doping Rule Violations. Weighting non-ADRV regulatory compliance failures as equivalent to prior ADRVs in the proportionality analysis inflates the global sanction beyond what the ADMC Program's graduated structure contemplates. PFF ¶ 48.

V. THE CONSECUTIVE INELIGIBILITY STRUCTURE MUST BE RESTRUCTURED

18. The five Possession ADRVs arose from a single search, a single vehicle, and a single date. Imposing five fully consecutive two-year ineligibility periods for a single possession episode treats the number of substances found in one search as an independent aggravating factor rather than as a reflection of the breadth of a mixed-practice veterinarian's therapeutic formulary. PFF ¶¶ 8-10.

19. The proportionality principle in HISA proceedings requires that the global sanction be commensurate with the totality of the conduct — not the mechanical sum of individual maximum sentences. Shell II, No. 9439, 2025 WL 1784696, at *33-34; Overly, No. 9443, at 64. The Arbitrator's failure to meaningfully engage with whether concurrent or partially concurrent sentences would better reflect the global severity of the conduct renders his proportionality analysis insufficient. PFF ¶ 46.

20. Dr. McCrosky's due process challenge to the denial of his continuance request is preserved for Commission review. The Arbitrator's denial of a continuance that required

Dr. McCrosky to appear virtually by iPhone from a remote location in a complex nine-count proceeding, while not dispositive at the ALJ level, is preserved as a ground for further review.

PROPOSED ORDER

Upon consideration of Appellant Dr. Donald McCrosky's Proposed Findings of Fact, Conclusions of Law, and Supporting Brief, and the full arbitration record, this Court hereby ORDERS as follows:

1. The Trafficking ADRV charged under Rule 3214(b) is REVERSED. The four-year ineligibility period and $50,000 fine associated with that charge are vacated.

2. The Childersattack Tampering ADRV charged under Rule 3216(a) is REVERSED, or in the alternative, the ineligibility period associated with that charge shall run CONCURRENTLY with the ineligibility periods imposed for the Possession and Use ADRVs.

3. The compelling justification determination under Rule 3214(a) for each of the five Possession ADRVs is REMANDED for individual product-by-product reconsideration consistent with the uncontroverted record evidence of Dr. McCrosky's identified off-track therapeutic purposes, and with the AAEP's formal position regarding the workability of Rule 3214(a) as applied to mixed-practice veterinarians.

4. The global ineligibility sanction is RESTRUCTURED so that the five Possession ADRVs arising from the single April 2025 vehicle search run CONCURRENTLY with one another, and that the resulting concurrent ineligibility period run PARTIALLY

CONCURRENTLY with the periods imposed for the remaining ADRVs, producing a global sanction proportionate to the totality of the conduct.

5. The $300,000 monetary fine is ELIMINATED in its entirety, or in the alternative, SUBSTANTIALLY REDUCED to reflect that the ineligibility sanction already permanently accomplishes every deterrence and protective purpose the fine would serve, and that imposition of a maximum fine on an eighty-one-year-old solo rural practitioner whose covered practice has been permanently extinguished is grossly disproportionate to any legitimate regulatory objective.

6. All adjudication costs assessed against Dr. McCrosky are STAYED pending final resolution of this review proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND ARTIFICIAL INTELLIGENCE CERTIFICATION

I hereby certify that on April 23, 2026, I caused a true and correct copy of Appellant's Proposed Findings of Fact, Conclusions of Law, Proposed Order, and Supporting Brief to be served upon the following parties by electronic mail and filed with the Office of the Secretary of the Federal Trade Commission:

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A copy has been simultaneously transmitted to the Office of Administrative Law Judges by electronic mail at OALJ@ftc.gov, and one hard copy has been delivered by overnight mail to:

Jay L. Himes,
Administrative Law Judge
Federal Trade Commission: Northeast Regional Office
1 Bowling Green, Room 318,
New York, NY 10004

ARTIFICIAL INTELLIGENCE CERTIFICATION

Pursuant to Attachment 1, Paragraph 2(b) of this Court's Order dated March 31, 2026, the undersigned hereby certifies as follows:

Portions of this filing were drafted with the assistance of generative artificial intelligence. All language in this filing that was drafted by generative artificial intelligence was reviewed and checked for accuracy by the undersigned, a licensed attorney, using printed legal reporters and online legal databases to counsel, including the hearing transcript received April 17, 2026. The undersigned takes full professional responsibility for the contents of this filing as submitted.

Date: April 23, 2026

Respectfully submitted,

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