

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

**ADMINISTRATIVE LAW JUDGE:**

**HON. JAY L. HIMES**

**IN THE MATTER OF:**

**DR. DONALD MCCROSKY**

**APPELLANT**

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**THE AUTHORITY’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND SUPPORTING LEGAL BRIEF**

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Comes now the Horseracing Integrity and Safety Authority, Inc. (“**HISA**” or the “**Authority**”) pursuant to the Administrative Law Judge’s Order on Application for Review and Stay of Sanctions, dated March 31, 2026, and submits the following Proposed Findings of Fact, Conclusions of Law, Order, and Supporting Legal Brief.

**PUBLIC****CERTIFICATE OF SERVICE**

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of the Authority's Proposed Findings of Fact, Conclusions of Law, Order and Supporting Legal Brief is being served on April 23, 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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## PROPOSED FINDINGS OF FACT

1. Appellant is a licensed Veterinarian and Covered Person under the Anti-Doping and Medication Control Program (“**ADMC Program**”) pursuant to ADMC Program Rule 3020.<sup>1</sup>

### **I. Facts Relevant to Possession Charges**

2. On April 22, 2025, HIWU Investigators conducted a search of Appellant’s minivan parked at the Fairmount Park Racetrack in Collinsville, Illinois (“**Fairmount Park**”) and subsequently interviewed Appellant (the “**Search**”).<sup>2</sup>

3. During the Search, HIWU Investigators found the following Banned Substances in Appellant’s minivan:<sup>3</sup>

- a. One partially filled 200 mg/25 mg bottle of Testosterone Cypionate/DHEA (“**Testosterone**”), located on the floor in the rear hatch area of the minivan;
- b. Two unopened one-pound containers of Levothyroxine (“**Thryo-L**”), located on the floor in the middle of the seat area;
- c. Three 50 mL vials of Ammonium Sulfate, located in a cabinet in the rear of the minivan;
- d. One 100 mL bottle of Ammonium Chloride (“**P-Bloc**”), located in a cabinet in the rear of the minivan; and
- e. One unopened bottle of Clodronate (Clodronic acid) (“**OsPhos**”), located in a cabinet in the rear of the minivan.

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<sup>1</sup> HISA Appeal Book (“**AB**”), p. 2397, para. 1 (Uncontested Stipulation of Fact (“**USF**”). For clarity, HISA’s submissions refer to the ADMC Program as encompassing the entirety of the HISA Regulations numbered Rule Series 1000 and 3000-7000 contained in 88 Fed. Reg. 17. Any reference to a Rule refers to an ADMC Program Rule. All capitalized terms not defined herein have the meanings given to them in the ADMC Program.

<sup>2</sup> AB, p. 2397, para 2 (USF).

<sup>3</sup> AB, p. 2398, para 3 (USF).

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4. Appellant admitted that the Testosterone found during the Search was used on Covered Horses.<sup>4</sup>

5. Appellant admitted that there was no urgency for any non-Covered Horses to be treated with the Thyro-L, Ammonium Sulphate, P-Bloc, or Osphos found during the Search.<sup>5</sup>

6. Appellant did not submit any prescriptions or other medical records concerning the intended use of the Banned Substances found during the Search.<sup>6</sup>

7. On May 16, 2025, HIWU sent Appellant an Equine Anti-Doping (“**EAD**”) Notice Letter (“**May 2025 Notice Letter #1**”) informing him (among other things) that he was found to be in Possession of five Banned Substances located by HIWU Investigators during the April 22, 2025 Search of his minivan.<sup>7</sup>

8. On June 12, 2025, HIWU charged Appellant with five Possession ARDVs.<sup>8</sup>

## **II. Facts Relevant to Use Charge**

9. During the Search, Appellant discussed a prior Atypical Finding (“**ATF**”) for Testosterone in Tigger Attack, a Covered Horse and gelding medically cared for by Appellant, owned by his wife, Lois McCrosky, and trained by Trainer Vance Childers.<sup>9</sup>

10. Tigger Attack tested positive for Testosterone in a Post-Race Sample collected on October 29, 2024, after Race 2 at Fairmount Park. The presence of Testosterone in the Tigger Attack Sample at a concentration above the ADMC Program Threshold for geldings (i.e., 100

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<sup>4</sup> AB, p. 181, para 7-8(a), 11(a) (Witness Statement of Matthew Meyer, dated December 5, 2025 (“**Meyer Statement**”)); HISA Appeal Book 2 (“**AB2**”), 2750:10-2751:17 (McCrosky), 2827:14-2828:4 (McCrosky).

<sup>5</sup> AB2, 2760:18-23; 2839:17-2840:18 (McCrosky).

<sup>6</sup> AB, pp. 1924-1925, para 7-11 (Meyer Statement); AB2, 2639:20-2640:12 (Meyer), 2641:11-2642:14 (Meyer), 2831:21-2832:7 (McCrosky), 2836:15-2837:3 (McCrosky), 2841:11-2843:13 (McCrosky).

<sup>7</sup> AB, p. 2398, para 5 (USF).

<sup>8</sup> AB, p. 2398, para 6 (USF).

<sup>9</sup> AB, p. 2399, para 7 (USF); AB2, 2563:6-14 (Meyer), 2763:12-24 (Meyer).

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pg/mL) was confirmed in both the A Sample and B Sample by separate analyses conducted by two ADMC Program Laboratories.<sup>10</sup>

11. When discussing the Tigger Attack ATF during the Search, Appellant admitted to administering Testosterone to Tigger Attack, as he was advised by a groom that the horse was not eating well. Appellant further stated that he tries to make sure that he administers Testosterone no shorter than seven to ten days out from a race and that he does not regularly use Testosterone. Instead, he described his use of Testosterone as only every once in a while and only if a horse is not eating.<sup>11</sup>

12. On May 16, 2025, HIWU sent Appellant a Notice Letter ("**May 2025 Notice Letter #2**") informing him that he had engaged in the Use of the Banned Substance Testosterone in Tigger Attack.<sup>12</sup>

13. On June 12, 2025, HIWU charged Appellant with a Use ADRV.<sup>13</sup>

14. During the hearing on January 14, 2026, Appellant testified that he administered Testosterone to Tigger Attack consistent with his admission to HIWU Investigators during the Search.<sup>14</sup>

### **III. Facts Relevant to Tampering Charge – Repossession of Banned Substances**

15. During the April 22, 2025 Search, Appellant repossessed one container of Thyro-L and one bottle of OsPhos from HIWU Investigators, after HIWU Investigators had warned

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<sup>10</sup> AB, p. 2399, para 8 (USF); AB, p. 2056, para 10 (Witness Statement of Petra Hartmann, dated December 5, 2025, ("**Hartmann December Statement**")).

<sup>11</sup> AB, p. 2399, para 9 (USF).

<sup>12</sup> AB, p. 2399, para 10 (USF).

<sup>13</sup> AB, p. 2399, para 11 (USF).

<sup>14</sup> AB2, 2761:2-2762:16 (McCrosky), 2818:22-2820:17 (McCrosky), 2825:7-22 (McCrosky).

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Appellant that repossession of these Banned Substances would be in violation of the ADMC Program.<sup>15</sup>

16. It is not standard practice for HIWU Investigators to return Banned Substances found in the Possession of Covered Persons in the middle of a case; rather, such Banned Substances are retained and stored by HIWU as evidence.<sup>16</sup>

17. The May 2025 Notice Letter #1 sent to Appellant on May 16, 2025, also informed him (among other things including alleged Possession as stated above) that he was found to have Tampered with the Doping Control process by repossessing Banned Substances located by the Investigators during the Search.<sup>17</sup>

18. On June 12, 2025, HIWU charged Appellant with a Tampering ARDV concerning the above facts (the “**Repossession Tampering ADRV**”).<sup>18</sup>

#### **IV. Facts Relevant to Tampering Charge – Representations Regarding Castration of Childersattack**

19. Like Tigger Attack, Childersattack is a Covered Horse medically cared for by Appellant, owned by his wife, and trained by Trainer Childers.<sup>19</sup>

20. An Out-of-Competition (“**OOC**”) blood Sample collected from Childersattack on October 16, 2024 tested positive for Testosterone and Childersattack was identified as a gelding on the Sample Collection Form for this test.<sup>20</sup>

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<sup>15</sup> AB, p. 2400, para 12 (USF). AB2, 2572:24-2573:20 (Meyer).

<sup>16</sup> AB2, 2606:9-2607:1 (Meyer), 2612:13-2613:1 (Meyer), 2640:14-23 (Meyer).

<sup>17</sup> AB, p. 2400, para 13 (USF).

<sup>18</sup> AB, p. 2400, para 14 (USF).

<sup>19</sup> AB, p. 2400, para. 15 (USF).

<sup>20</sup> AB, p. 2400, para. 17 (USF).

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21. Trainer Childers, the Responsible Person for Childersattack, was served with a Notice of ATF regarding the presence of Testosterone above the Threshold for geldings in Childersattack on November 12, 2024 (“**November 2024 Notice Letter**”).<sup>21</sup>

22. On November 18, 2024, Appellant sent a handwritten note to HIWU trying to explain Childersattack’s Testosterone ATF in response to the November 2024 Notice Letter. In the note, Appellant stated that he performed a castration on Childersattack in March 2022, but the horse had one Testosterone-producing undescended testicle left intact after the castration such that the horse’s gender status was ridgling rather than gelding.<sup>22</sup>

23. On December 10, 2024, HIWU sent a Demand for Business Records to Appellant that requested that he disclose Childersattack’s medical records and subsequently requested that Childersattack be made available for examination. Appellant did not respond to these requests.<sup>23</sup>

24. On April 2, 2025, Appellant sent a second handwritten note to HIWU stating that he had removed the remaining testicle from Childersattack on December 2, 2024.<sup>24</sup>

25. On April 21, 2025, Dr. Mary Scollay, HIWU’s then-Chief of Science, conducted a search of the Jockey Club’s InCompass database, which indicated that Childersattack was a gelding and was castrated on November 20, 2020 (some 16 months before Appellant claims to have castrated the horse in March 2022).<sup>25</sup>

26. Appellant admitted to knowingly and intentionally misrepresenting the gender status of his intact male horses (including Childersattack) as geldings on the Jockey Club’s

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<sup>21</sup> AB, p. 2401, para. 18 (USF).

<sup>22</sup> AB, p. 2401, para. 19 (USF); AB2, 2767:14-20 (McCrosky), 2789:9-2793:16 (McCrosky).

<sup>23</sup> AB, p. 2401, para. 20 (USF).

<sup>24</sup> AB, p. 2401, para. 21 (USF).

<sup>25</sup> AB, p. 2021, paras. 16-17 (Witness Statement of Dr. Mary Scollay, dated December 5, 2025 (“**Scollay December Statement**”)).

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InCompass database in order to save paperwork associated with changing their registration from intact male to gelding after castration.<sup>26</sup>

27. Per HISA Rule 2251(b), every Veterinarian who examines or treats a Covered Horse is required, within 24 hours, to submit all information regarding the examination and treatment (including the date and time of any surgeries) to the HISA Portal. A search of the HISA Portal for the horse Childersattack did not disclose any medical records relating to a castration performed in December 2024 (or at any other time).<sup>27</sup>

28. During the April 22, 2025 Search, Appellant was served with a Notice Letter, dated April 22, 2025, informing him that he was alleged to have Tampered with the Doping Control process.<sup>28</sup>

29. On May 16, 2025, Appellant was charged with one Tampering ADRV in relation to the above facts (the “**Childersattack Tampering ADRV**”).<sup>29</sup>

30. Childersattack could not have been a ridgling horse at the time of his October 16, 2024 positive Testosterone result as claimed by Appellant; rather, the most likely explanation for that positive result is exogenous administration of Testosterone:<sup>30</sup>

- a. Childersattack had a prior negative result (*i.e.*, no presence of Testosterone) from a Vet’s List sample collected on September 24, 2024. This negative test is consistent with the horse’s gender status as gelding rather than a ridgling at the time of the October 16, 2024 Sample collection that resulted in a positive Testosterone result.<sup>31</sup>

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<sup>26</sup> AB2, 2811:16-2812:1 (McCrosky).

<sup>27</sup> AB, p. 1927, paras 18-19 (Meyer Statement) and AB, p. 1992 (HISA Portal Search Results); AB2, 2571:16-2572:21 (Meyer).

<sup>28</sup> AB, p. 2401, para. 22 (USF).

<sup>29</sup> AB, p. 2401, para. 23 (USF).

<sup>30</sup> AB2, 2677:16-2678:12 (Scollay).

<sup>31</sup> AB, p. 2400, para. 16 (USF); AB, p. 2022, para 18 (Scollay December Statement); AB2, 2657:13-2659:23 (Scollay). See also AB2, 2814:22-2817:10 (McCrosky).

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- b. Neither the September 24 Vet's List Sample nor the October 16 OOC Sample contained the Banned Substance, Nandrolone. The lack of the detection of Nandrolone in these Samples is consistent with the horse's gender status as a gelding rather than a ridgling as of the dates of those respective tests.<sup>32</sup>
- c. Endogenous testosterone levels of male horses tend to increase in the spring, peak in the summer, decrease in the fall, and are at their lowest in the winter. Accordingly, the variance in the Testosterone concentrations in Childersattack's September 24 Vets' List Sample (below the 100 pg/mL Threshold) and October 16 OOC Sample (reported as 579 pg/mL) cannot be explained by endogenous changes in Testosterone alone.<sup>33</sup>

## V. Facts Relevant to Trafficking Charge

31. On August 19, 2025, HIWU Investigators conducted a compliance inspection of Trainer Isidro Castro's tack room at Fairmount Park.<sup>34</sup>

32. During this search, the Investigators found, photographed, and seized two syringes located in a grey barrel in the tack room. The syringes were labelled A and B. Syringe A also appeared to be labelled with the word "Day" and possibly "Race."<sup>35</sup>

33. Trainer Castro was present for the search and stated to the HIWU Investigators that he purchased the confiscated syringes from Appellant approximately one month prior for \$20. The syringes were purchased from Appellant personally in a Rural King parking lot.<sup>36</sup>

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<sup>32</sup> AB, p. 2350, para. 8 (Witness Statement of Petra Hartmann, dated January 2, 2026 ("**Hartmann January Statement**")); AB, p. 2391, para. 3 (Witness Statement of Mary Scollay, dated January 2, 2026 ("**Scollay January Statement**")); AB2, 2673:13-2674:2 (Scollay), 2685:9-2687:24 (Scollay).

<sup>33</sup> AB2, 2675:5-2676:13 (Scollay); AB, p. 2018, para 5 (Scollay December Statement); AB, p. 2028 (Certificate of Analysis).

<sup>34</sup> AB, p. 2402, para 24 (USF).

<sup>35</sup> AB, p. 2402, para 25 (USF).

<sup>36</sup> AB, p. 2402, para 26 (USF).

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34. At the time of the syringe sale, Trainer Castro was responsible for sixteen Covered Horses housed at Fairmount Park.<sup>37</sup>

35. Appellant admitted that he sold the syringes to Trainer Castro but claimed that they contained Banamine (Flunixin) and aspirin, respectively.<sup>38</sup>

36. Appellant admitted that he never evaluated the Covered Horse who Trainer Castro intended to use the syringes on and that he instead sold the syringes solely based on Trainer Castro's representation that the horse was "tying up."<sup>39</sup>

37. Appellant admitted that he understood Mr. Castro would use them on Covered Horses at Fairmount Park Racetrack and that he sold them in conscious violation of HISA and Illinois Racing Board ("IRB") Rules that prohibit Trainers from possessing syringes at Fairmount Park.<sup>40</sup>

38. Syringes A and B were sent for forensic analysis to an ADMC Program Laboratory, which confirmed the presence of two Banned Substances, one in each syringe. Syringe A contained Testosterone and Syringe B contained Glaucine.<sup>41</sup>

39. On November 18, 2025, Appellant was served with a Notice Letter informing him that he was alleged to have Trafficked Banned Substances by selling the two syringes to Trainer Castro.<sup>42</sup>

40. On November 26, 2025, HIWU charged Appellant with one Trafficking ADRV.<sup>43</sup>

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<sup>37</sup> AB, p. 2402, para 27 (USF).

<sup>38</sup> AB2, 2774:2-20 (McCrosky), 2847:18-2848:2 (McCrosky).

<sup>39</sup> AB2, 2850:22-2852:11 (McCrosky).

<sup>40</sup> AB2, 2850:22-2854:12 (McCrosky), 2858:17-23 (McCrosky); AB, p. 2334, para. 5 (Witness Statement of Daniel Mathis, dated January 2, 2026 ("**Mathis Statement**")) and AB, pp. 2337-2343 (HISA and IRB Rule Excerpts).

<sup>41</sup> AB, p. 2402, para 28 (USF).

<sup>42</sup> AB, p. 2402, para 29 (USF).

<sup>43</sup> AB, p. 2402, para 30 (USF).

## VII. Facts Relevant to Imposed Consequences

41. Appellant has a mixed veterinary practice, half of which consists of treating Covered Horses at Fairmount Park and the other half consists of off-track treatment of non-Covered Horses.<sup>44</sup>

42. Prior to the ADRVs charged against Appellant in this case, Appellant had two prior violations of the ADMC Program (which did not rise to the level of ADRVs) resulting in sanctions, namely:<sup>45</sup>

- a. In March 2024, Appellant violated Rule 3510(a) (a prohibition against engaging in disruptive or offensive conduct towards a Doping Control official or other Person involved in Doping Control that does not rise to the level of Tampering), resulting in a 30-day period of Ineligibility and \$2,500 fine; and
- b. In May 2024, Appellant violated Rule 3329 (concerning status during a period of Ineligibility) by participating in activities related to Covered Horses during the period of Ineligibility imposed for his Rule 3510(a) violation, resulting in a further 30-day period of Ineligibility.

## VIII. Facts Relevant to Due Process

43. The Arbitrator held a preliminary case conference on September 2, 2025, attended by both parties. By agreement of the parties established at that hearing, the Arbitrator directed in Procedural Order No. 1 that the hearing would be held on January 14, 2026 and continue on January 15, 2026, if additional time was necessary.<sup>46</sup>

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<sup>44</sup> AB2, 2739:14-21 (McCrosky).

<sup>45</sup> AB, p. 1917 (HIWU Notice of Case Resolution Without a Hearing); AB, p. 1919 (HIWU Notice of Case Resolution Without a Hearing); AB2, 2543:17-2545:23 (Meyer).

<sup>46</sup> AB, p. 121 (Procedural Order #1).

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44. The hearing dates were confirmed on November 26, 2025, in Procedural Order No. 2.<sup>47</sup>

45. On December 22, 2025, Appellant requested a continuance of the hearing to a date after February 17, 2026, on the basis that he would be out of state for a family commitment that would prevent him from attending the hearing in person.<sup>48</sup>

46. On December 23, 2025, the Arbitrator denied the continuance finding that the reasons given did not meet the exceptional circumstances threshold but permitted the Appellant to attend the hearing virtually.<sup>49</sup>

47. Appellant raised no due process, fairness, or other concerns prior to or during the hearing stemming from his virtual appearance, including regarding his ability to present evidence.

### **PROPOSED CONCLUSIONS OF LAW**

1. Appellant was in Possession of the five Banned Substances found by HIWU Investigators in Appellant's minivan on April 22, 2025, at Fairmount Park Racetrack in Collinsville, Illinois: Testosterone; Thyro-L; Ammonium Sulfate; P-Bloc; and OsPhos.<sup>50</sup>

2. Appellant had the burden to establish a "compelling justification" for each of the five charged Possession ADRVs by a preponderance of the evidence.<sup>51</sup>

3. As an exception to the rule prohibiting Possession, the "compelling justification" defense should be interpreted restrictively, and the scenarios where this exception applies will be a small minority.<sup>52</sup>

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<sup>47</sup> AB, p. 144 (Procedural Order #2).

<sup>48</sup> AB, p. 2185, para. 3 (Order on Continuance, dated December 23, 2025 ("Continuance Order")).

<sup>49</sup> AB, p. 2185, para 8-9 (Continuance Order). *See also* Rule 7170(h).

<sup>50</sup> Rule 1020, definition of *Possession*.

<sup>51</sup> Rule 3214(a).

<sup>52</sup> *Jason Scott v. Horseracing Integrity & Safety Authority (2025)*, No. 2:25-cv-632-SMD-GJF, p. 16 (D.N.M. Oct. 22, 2025) ("**Scott**"); *In the Matter of Dr. Scott Shell DVM* ("**Shell**"), FTC Docket No. 9439,

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4. Absent proof that a Banned Substance is required on a regular basis for emergency treatment, a Veterinarian whose practice mix consists of 50% Covered Horses cannot claim “compelling justification” based solely on the inconvenience of additional travel time associated with storing that Banned Substance at their off-track office as opposed to carrying it with them at a Covered Racetrack for use off-track.<sup>53</sup>

5. Appellant failed to demonstrate that he had a compelling justification for any of the Possession ADRVs charged against him. Appellant therefore committed five Possession ADRVs.<sup>54</sup>

6. Appellant committed a Use ADRV based on his express admission that he gave the Banned Substance Testosterone to the Covered Horse, Tigger Attack. Since Use is a strict liability offense, Appellant’s stated therapeutic intention or justifications for such Use cannot constitute a valid defense.<sup>55</sup>

7. Intent to obstruct or deceive for the purposes of a Tampering ADRV can be established through reasonable inferences drawn from circumstantial scientific and other evidence and witness credibility.<sup>56</sup>

8. Appellant’s repossession of seized Thyro-L and OsPhos containers during questioning by HIWU Investigators during the April 22, 2025 Search constitutes a Tampering ADRV. Appellant intentionally interfered with and obstructed HIWU’s Investigation and Results Management (and therefore the Doping Control process) of his Possession of these two Banned Substances.<sup>57</sup>

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p. 16 (Mar. 6, 2025) (“compelling justification is the exception” and should “be interpreted restrictively”); [In the Matter of Larry Rickman Overly \(“Overly”\)](#), FTC Docket No. 9443, pp. 23-24 (Jan. 27, 2026)

<sup>53</sup> [Overly](#), pp. 49-53; [HIWU v. Dr. Scott Shell](#), JAMS Case 1501000653, September 9, 2024, para 7.21.

<sup>54</sup> Rule 3214(a).

<sup>55</sup> Rule 3213.

<sup>56</sup> [Order on Application for Review and Stay of Sanctions](#), dated March 31, 2026 (“**Stay Order**”), p. 23 and authorities cited at footnote 105.

<sup>57</sup> Rule 1020, definition of *Tampering*; Rule 3216(a).

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9. Falsifying documents submitted to HIWU constitutes a Tampering ADRV. Appellant submitted false information in response to an ATF Notice for Testosterone detected in Childersattack's Sample, with the intention of explaining away a potential Presence ADRV.<sup>58</sup>

10. Appellant committed a Trafficking ADRV by selling to Covered Person, Isidro Castro, syringes containing the Banned Substances, Testosterone and Glaucine, on or around July 19, 2025. Even if Appellant did not know that the syringes contained Banned Substances, Appellant did not have a legal justification for the sale as he understood Mr. Castro would use them on Covered Horses at Fairmount Park in violation of HISA and IRB Rules prohibiting anyone who is not a Veterinarian from possessing or using syringes at a racetrack.<sup>59</sup>

11. The Consequences imposed by the Arbitrator are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. They are supported by, and rationally connected to, the evidence.<sup>60</sup>

12. Rule 3228(d) authorizes the imposition of consecutive periods of Ineligibility for multiple ADRVs arising out of common facts (such as a single investigative search).<sup>61</sup>

13. Appellant failed to establish No Fault or Negligence or No Significant Fault or Negligence for any of the ADRVs.<sup>62</sup>

14. The proportionality principle should only be applied exceptionally and restrictively to reduce the global Consequences that would otherwise apply pursuant to the ADMC Program; it should not become the norm.<sup>63</sup>

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<sup>58</sup> Rule 1020, definition of *Tampering*; Rule 3212; Rule 3216(a).

<sup>59</sup> Rule 3214(b); Rule 1020, definition of *Trafficking*.

<sup>60</sup> [15 U.S.C. § 3058\(b\)\(2\)\(A\)](#). See also [FTC Rule 1.146\(b\)\(1\)-\(3\)](#); [Overly](#), pp. 21-22.

<sup>61</sup> [Overly](#), pp. 86-92; [Shell](#), pp. 44-50;

<sup>62</sup> Rules 1020, definitions *Fault*, *No Fault or Negligence*, and *No Significant Fault or Negligence*, 3224, 3225.

<sup>63</sup> [Overly](#), p. 64.

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15. The Arbitrator did not err in declining to apply the proportionality principle to reduce the overall Consequences imposed against Appellant, having regard to the gravity of Appellant's conduct in committing nine separate ADRVs, Appellant's prior history of violations on the ADMC Program, and mitigation of the sanction's impact on Appellant's veterinary career given that he could continue the half of his practice treating non-Covered Horses.<sup>64</sup>

16. Arbitrators are empowered to order a Covered Person, such as Appellant, to participate virtually in for all or part of an arbitration hearing involving ADRV charges.<sup>65</sup>

17. Appellant's self-imposed scheduling constraints did not justify granting a continuance of the arbitration hearing, which had been scheduled on dates agreed to by the Appellant.<sup>66</sup>

18. Appellant's virtual participation did not violate due process.<sup>67</sup>

19. Appellant's appeal is dismissed, and the Consequences imposed in the Amended Final Decision (the "**Decision**") issued by the Arbitrator on February 6, 2026, are affirmed.<sup>68</sup>

### **PROPOSED ORDER**

Based on the foregoing findings of fact and conclusion of law, incorporated herein, the undersigned Administrative Law Judge ("**ALJ**") **ORDERS AND ADJUDGES** that the Decision is **AFFIRMED**, and the civil sanctions imposed in the Decision are **UPHELD**.

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<sup>64</sup> AB, p. 2513, paras 8.48-8.50 (Decision); [Shell](#), at p. 50; [Overly](#) at p. 62.

<sup>65</sup> Rule 7110(a).

<sup>66</sup> See [Stay Order](#), p. 16 and authorities cited at footnote 68.

<sup>67</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).

<sup>68</sup> AB, p. 2514, para 9.1 (Decision).

## SUPPORTING LEGAL BRIEF

### **I. Introduction**

This appeal concerns a review of the Decision, in which the Arbitrator concluded that Appellant committed nine separate ADRVs and imposed Consequences including a 24-year period of Ineligibility and a \$300,000 fine.

The gravity, breadth, and recurrence of Appellant's misconduct, as found by the Arbitrator, is unprecedented in the almost three years in which the ADMC Program has been in force. The nine ADRVs committed by Appellant cover four different types of violations: Possession; Use; Tampering; and Trafficking. The ADMC Program expressly recognizes that the latter two types of ADRVs, Tampering and Trafficking, are particularly serious offences as they each carry more severe presumptive sanctions than those attaching to more common ADRVs such as Possession, Use, and Presence.<sup>69</sup>

Appellant requests that the Decision be "reversed, modified, or remanded" on five specific grounds, disclaiming liability for seven of the nine charged ADRVs and arguing that the overall 24-year period of Ineligibility imposed on him be reduced by "concurrent or partially concurrent" sanctions and/or application of the principle of proportionality.

Appellant's arguments have no merit. The Arbitrator correctly determined, and the evidence establishes, that Appellant committed the nine ADRVs charged by HIWU and that the sanctions imposed by the Arbitrator are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Contrary to Appellant's assertions, and by way of summary:

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<sup>69</sup> Tampering and Trafficking each result in a presumptive four-year period of Ineligibility and a \$50,000 maximum fine, whereas Presence, Possession, and Use each result in a presumptive two-year period of Ineligibility and \$25,000 maximum fine. *See* Rule 3223(b).

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1. With respect to the five Possession ADRVs, the Arbitrator adopted the correct standard for establishing the “compelling justification” defense and correctly found that Appellant did “not come close” to meeting it.<sup>70</sup>
2. The Arbitrator correctly held that, by submitting false information to HIWU in response to a potential ADRV concerning Childersattack, Appellant intentionally subverted the Doping Control process, thereby committing the Childersattack Tampering ADRV.
3. The Arbitrator properly affirmed the Trafficking ADRV based on the totality of the evidence and his assessment of the credibility of Appellant’s testimony.
4. The ADMC Program permits the periods of Ineligibility for each of the nine ADRVs charged against Appellant to be imposed consecutively, and the Arbitrator correctly declined to apply the proportionality principle to reduce the overall period of Ineligibility imposed on Appellant.
5. The Arbitrator’s denial of Appellant’s late-breaking request to continue the hearing and Appellant’s resultant virtual participation satisfied due process.

For the reasons that follow, the Authority respectfully requests that the ALJ dismiss Appellant’s appeal and affirm the Consequences imposed in the Decision.

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<sup>70</sup> AB, p. 2508, para 8.20 (Decision).

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### **III. Use ADRV and Repossession Tampering ADRV Not Addressed by Appellant**

Notably, Appellant does not dispute his liability for or otherwise address the Use ADRV and the Repossession Tampering ADRV. Given the *de novo* nature of the ALJ's review,<sup>71</sup> the Authority nonetheless addresses (briefly) such liability before responding to each of Appellant's grounds of appeal.

#### **a. Use ADRV Should be Affirmed**

Use is defined broadly in the ADMC Program and includes, "the utilization, application, ingestion, injection, or consumption by any means whatsoever of any Prohibited Substance [...] in relation to a Covered Horse".<sup>72</sup> A Use ADRV is a strict liability violation whereby it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person.<sup>73</sup> Use can be proven by "any reliable means" including admissions, witness testimony, and documentary evidence.<sup>74</sup> Testosterone is classified as an S1 Banned Substance (anabolic agents) and, like all Banned Substances, is prohibited at all times.<sup>75</sup>

There can be no doubt that the Arbitrator correctly upheld the Use ADRV on the basis of Appellant's own admissions, both under oath at the hearing and to HIWU Investigators during the Search, that he gave Testosterone to Tigger Attack.<sup>76</sup> Any alleged ignorance by Appellant that Testosterone is banned at all times under the ADMC Program or claimed miscalculation of

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<sup>71</sup> See e.g., [In the Matter of Philip Serpe](#), Docket No. 9441, Federal Trade Commission Administrative Law Judge Decision, September 12, 2025, p. 22.

<sup>72</sup> Rule 1020, Definition of *Use*.

<sup>73</sup> Rule 3213(b).

<sup>74</sup> [HIWU v. Efren Loza, Jr.](#), JAMS Case 1501001014, May 28, 2025, at para 8.7; [World Anti-Doping Code 2021](#), Footnote 9 (Comment to Article 2.2).

<sup>75</sup> Rule 3111(a)(1), 4112(a).

<sup>76</sup> Proposed Finding of Fact ("PFF") #11, #14.

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Testosterone's clearance time in the equine is irrelevant in light of the strict liability nature of the Use ADRV.<sup>77</sup>

**b. Repossession Tampering ADRV Should be Affirmed**

A Tampering ADRV is committed through “intentional conduct that subverts the Doping Control” process, which includes (among other things) any “... fraudulent act upon the Agency ... to affect Results Management ..., and any other similar interference or attempted interference with any aspect of Doping Control ....”<sup>78</sup>

Appellant admitted to repossessing the seized Banned Substances Thyro-L and OsPhos before the conclusion of the April 22, 2025 Search. He did so despite prior warnings from HIWU Investigators that such conduct could amount to a violation.<sup>79</sup> Appellant thereby intentionally interfered with HIWU's ability to complete the standard steps in its Investigation (part of the Doping Control process) into potential Possession ADRVs, which include storing seized substances as evidence, in case they are needed for testing or otherwise in the Results Management process.<sup>80</sup> Arbitrator correctly determined that Appellant's conduct constitutes Tampering.<sup>81</sup>

**IV. Response to Appellant's Grounds of Appeal**

**a. Possession: Appellant Cannot Establish the Compelling Justification Defense**

To avoid liability for Possession, Appellant must establish a “compelling justification” that he needed to possess each of the five Banned Substances at the specific time they were found in

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<sup>77</sup> Rule 3213(b); AB, p. 2509, paras 8.21-8.22 (Decision).

<sup>78</sup> Rule 1020, Definition of *Tampering*.

<sup>79</sup> PFF #15.

<sup>80</sup> PFF #16. *See also* Rule 1020, definitions of *Doping Control* and *Results Management*.

<sup>81</sup> AB, p. 2509, paras 8.23-8.25 (Decision). *See also* [CAS 2019/A/6148](#) *WADA v. Sun Yang and FINA* at paras 41-45, 372-374.

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his minivan at Fairmount Park for the purposes of his non-Covered practice, and he must do so through concrete evidence of this need, such as billing or medical records.<sup>82</sup> Indeed, ALJ authority holds that permitting proof of compelling justification merely “‘through any records’ would so dilute Rule 3214(a)’s compelling justification requirement as to render Possession charges against a veterinarian with a non-Covered Horse practice effectively illusory.”<sup>83</sup>

The Arbitrator’s holding that compelling justification is “a high bar that must be applied with caution”<sup>84</sup> is consistent with binding District Court and ALJ authority that this defense must be applied restrictively, as it is the exception to a violation contained within a regulatory regime aimed at eradicating doping in the Thoroughbred horseracing industry.<sup>85</sup>

Appellant failed to produce a single prescription label or medical record demonstrating that any of the Banned Substances found in his Possession were intended for non-Covered Horses.<sup>86</sup>

In particular:

- a. **Testosterone:** Appellant admitted that the Testosterone found during the Search was used on Covered Horses,<sup>87</sup> which admission is the antithesis of a compelling justification (and was relied on by HIWU to charge Appellant with the Use ADRV).
- b. **Thyro-L:** Appellant produced a single text message chain indicating that a client, Katie Nelson, requested Thyro-L the day before the Search to be used “off-track” at some unspecified time.<sup>88</sup> Moreover, although Appellant claimed he intended to

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<sup>82</sup> *Overly*, pp. 22-24, 49-52; *Shell*, pp. 33-34.

<sup>83</sup> *Shell*, p. 34.

<sup>84</sup> AB, p. 2508, para 8.20 (Decision).

<sup>85</sup> *Scott*, p. 16; *Overly*, pp. 23-24; *Shell*, p. 16.

<sup>86</sup> PFF #6; AB, p. 2508, para 8.18 (Decision).

<sup>87</sup> PFF #4.

<sup>88</sup> AB, p. 1925, para 11(b), p. 1975 (Meyer Statement).

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deliver the Thyro-L to Ms. Nelson the same day of the Search,<sup>89</sup> Investigator Meyer testified that Appellant told him during the Search that he planned to deliver it the following day.<sup>90</sup> In any event, Appellant admitted that Thyro-L treatment was not urgent “for the horse” even if the client might wish to receive it at a particular time.<sup>91</sup> Appellant did not call Ms. Nelson to testify.<sup>92</sup>

- c. **Ammonium Sulfate** and **P-Bloc**: Although Appellant testified that these two Banned Substances were intended for his “off-track clients,”<sup>93</sup> he failed to provide any evidence of when it needed to be administered and produced no documentary proof whatsoever to corroborate these claims. Moreover, like Thyro-L, Appellant admitted that treatment with these two substances was not urgent.<sup>94</sup>
- d. **OsPhos**: Appellant did not produce any documentary evidence regarding the intended use of this Banned Substance. He merely testified that another “off-track” client, Michelle Crowder, required the OsPhos the afternoon of the Search.<sup>95</sup> In contrast, according to Investigator Meyer’s investigation report prepared just one week after the Search, Appellant stated during the Search that the OsPhos was needed “the following day.”<sup>96</sup> Again, however, Appellant admitted that treatment with OsPhos was not urgent for the horse.<sup>97</sup> Appellant did not call Ms. Crowder to testify.<sup>98</sup>

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<sup>89</sup> AB2, 2752:2-16 (McCrosky).

<sup>90</sup> AB2, 2610:13-22 (Meyer).

<sup>91</sup> PFF #5; AB, p. 2507, para 8.14 (Decision).

<sup>92</sup> AB, p. 2507, para 8.14 (Decision).

<sup>93</sup> AB2, p. 2753:11-2754:17 (McCrosky).

<sup>94</sup> PFF #5.

<sup>95</sup> AB2, 2754:20-2756:9 (McCrosky).

<sup>96</sup> AB, p. 1933 (although Appellant denied this: AB2, 2842:21-2843:13 (McCrosky)).

<sup>97</sup> PFF #5.

<sup>98</sup> AB, p. 2507, para 8.14 (Decision).

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Having failed by a significant margin to discharge his burden to demonstrate a compelling justification for possessing any of the five Banned Substances found in his minivan during the April 22, 2025 Search, Arbitrator correctly affirmed the five Possession ADRVs charged against Appellant.<sup>99</sup>

**b. Childersattack Tampering ADRV: Appellant Submitted False Information to Interfere with Doping Control**

The ADMC Program’s definition of Tampering expressly includes “falsifying documents submitted to the Agency,” as a specific example of “intentional conduct that subverts the Doping Control” process.<sup>100</sup>

Appellant admitted to sending HIWU a handwritten note dated November 18, 2024, in response to an ATF Notice concerning Childersattack, which Notice forms part of the Doping Control process. In an attempt to explain Childersattack’s Testosterone ATF, Appellant’s note stated that Childersattack was a ridgling with a retained undescended testicle producing endogenous Testosterone.<sup>101</sup> This information is demonstrably false based on the scientific evidence adduced at the hearing, which established that the source of Childersattack’s Testosterone ATF could not be endogenous Testosterone as claimed by Appellant’s note, but was instead exogenous administration of Testosterone to the horse.<sup>102</sup>

In finding that Appellant’s falsified note constituted intentional subversion of the Doping Control process, the Arbitrator drew a reasonable inference based on the totality of the evidence, including Appellant’s admission of intentionally falsifying information in the Jockey Club’s

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<sup>99</sup> AB, p. 2508, para 8.19-8.20 (Decision).

<sup>100</sup> Rule 1020, definition of *Tampering*.

<sup>101</sup> PFF #21, #22.

<sup>102</sup> PFF #30.

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records concerning Childersattack's gender status (and the gender status of his other horses).<sup>103</sup>  
The Arbitrator did not err in affirming the Childersattack Tampering ADRV.<sup>104</sup>

**c. Trafficking: Arbitrator Relied on Totality of Evidence and Appellant Credibility**

Appellant incorrectly asserts that the Arbitrator imposed liability for Trafficking “almost entirely [based] on the uncorroborated out-of-court statement of Trainer Castro, a self-interested witness who faced his own rule violations for possessing the syringes and had clear motive to shift responsibility.” Rather, the Arbitrator was comfortably satisfied that Appellant committed a Trafficking ADRV based in large part on his finding that it was “highly unlikely” that Appellant did not know that the syringes he sold to Trainer Castro contained the Banned Substances Testosterone and Glaucine.<sup>105</sup>

It was open to the Arbitrator to make this credibility finding based the totality of the evidence, including undisputed forensic evidence confirming that the syringes did in fact contain Testosterone and Glaucine,<sup>106</sup> and Appellant's own admission that he sold the syringes to Trainer Castro without ever medically evaluating the Covered Horse for whom the syringes were destined and in conscious violation of the HISA and IRB Rules prohibiting Trainers from possessing syringes at Fairmount Park.<sup>107</sup>

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<sup>103</sup> PFF #26. AB, p. 2510, para 8.28 (Decision).

<sup>104</sup> AB, p. 2510, para 8.27, 8.28, 8.31 (Decision).

<sup>105</sup> AB, p. 2510, para 8.27-8.31(Decision).

<sup>106</sup> PFF #38.

<sup>107</sup> PFF #34-#37.

**PUBLIC****d. Consecutive Ineligibility is Proper and Proportionality Reduction Unwarranted**

The 24-year period of Ineligibility and other Consequences imposed by the Arbitrator are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Such Consequences are supported by, and rationally connected to, the evidence.

First, ALJ authority affirms that Rule 3228(d), properly interpreted, authorizes the imposition of consecutive periods of Ineligibility for multiple ADRVs charged separately arising out of “common facts.”<sup>108</sup> Here, HIWU has charged five separate Possession ADRVs and the Use ADRV arising out of the April 22, 2025 Search, such that the periods of Ineligibility for each ADRV can run consecutively, totaling twelve years of Ineligibility. In addition, the Repossession Tampering ADRV was committed in connection with the Doping Control process resulting in the Possession ADRVs, such that pursuant to Rule 3228(c)(3), this Tampering ADRV “shall be treated as a stand-alone violation and the period of Ineligibility for such violation shall be served consecutively to, rather than concurrently with, the period of Ineligibility imposed for the other [ADRVs].” That brings the total consecutive period of Ineligibility up to sixteen years. While the Childersattack Tampering ADRV and the Trafficking ADRV did not arise directly from the Search, there is no basis in the ADMC Program Rules for the resultant periods of Ineligibility to run concurrently with the sixteen years of Ineligibility resulting from the other ADRVs.

Second, in the specific circumstances of this case, there are no legitimate grounds to apply the principle of proportionality to reduce the overall 24-year period of Ineligibility resulting from each of the nine ADRVs having consecutive sanctions. ALJ authority affirms that proportionality is a “case law-derived exception [and] should not become the norm.”<sup>109</sup> Here, the Arbitrator

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<sup>108</sup> [Overly](#), at pp. 86-92; [Shell](#), at pp. 44-50.

<sup>109</sup> [Overly](#), p. 64.

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properly declined to reduce the overall sanction on grounds of proportionality, a determination that was rationally connected to the facts and based on a consideration of relevant factors,<sup>110</sup> including:

- a. Appellant’s misconduct was severe, as he engaged in “intentional and egregious conduct” across nine separate ADRVs (which also closes the door to any mitigation of Consequences of grounds of No Fault or No Significant Fault);
- b. Appellant had a prior history of regulatory sanctions, namely two separate but related non-ADRV ADMC Program Rule violations committed in March and May 2024 that each resulted in 30-day periods of Ineligibility (with the March 2024 violation also attracting a \$2,500 fine);<sup>111</sup> and
- c. The mitigated impact of the sanction on Appellant’s veterinary career, as Appellant would be free to continue the “off-track” half of his practice during Ineligibility.<sup>112</sup>

While not expressly raised in the Arbitrator’s proportionality analysis, Appellant’s admitted fraudulent reporting of his horses’ gender status to the Jockey Club database<sup>113</sup> (separate from his false representations to HIWU underlying the Childersattack Tampering ADRV), and his general disdain for, and failure to comply with, HISA’s reporting requirements,<sup>114</sup> are further justifications to refrain from reducing the global Consequences by application of the principle of proportionality.

Appellant has not identified any failure on the part of the Authority to act within “a zone of reasonableness” in imposing the 24-year period of Ineligibility and the other Consequences ordered by the Arbitrator based on the unique facts of this case – nor can he point to any plain error

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<sup>110</sup> AB, p. 2513, paras. 8.48-8.50 (Decision); [Shell](#), pp. 13, 50; [Overly](#), p. 62.

<sup>111</sup> PFF #42.

<sup>112</sup> PFF #42.

<sup>113</sup> PFF #26.

<sup>114</sup> AB2, 2769:13-2771:7, 2806:19-2810:13 (McCrosky).

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or unjustified exercise of discretion by the Arbitrator such that the sanction or any other part of the Decision is “clearly against the logic and effect of the facts as [were] found.”<sup>115</sup>

**e. Appellant’s Due Process was Respected**

Appellant’s claim that his virtual participation violated due process should be rejected. As an initial matter, the Arbitrator properly denied Appellant’s continuance on the basis that the reasons given, namely family obligations, fell short of demonstrating “exceptional circumstances” under Rule 7170(h).<sup>116</sup> Indeed, such reasons amount to self-imposed scheduling constraints, which seldom justify granting an arbitration hearing continuance.<sup>117</sup> Moreover, Appellant’s continuance request was untimely: it was made on December 22, 2025, approximately three weeks before the January 14 hearing date (and on the eve of the year-end holiday season), and at a time when the hearing date had been agreed and established for nearly four months and had been reconfirmed just one month prior.<sup>118</sup>

In addition, Arbitrators are expressly empowered under Rule 7110(a) to order a Covered Person’s virtual participation for part of the hearing. The Arbitrator’s decision to permit Appellant to participate virtually if he could not attend the hearing in person conformed to the ADMC Program Rules and was reasonable.

Finally, Appellant raised no due process, fairness, or other concerns at any point before or during the hearing stemming from his virtual appearance, including regarding his ability to present evidence.<sup>119</sup> Appellant’s virtual appearance satisfied due process, which requires only procedures

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<sup>115</sup> *Shell*, at pp. 13-14.

<sup>116</sup> PFF #45, #46. *See also* Rule 7170(f).

<sup>117</sup> *See Stay Order*, p. 16 and authorities cited at footnote 68.

<sup>118</sup> PFF #43-#45.

<sup>119</sup> PFF #47.

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reasonably calculated to afford a fair hearing in the specific circumstances — not the party's preferred format.<sup>120</sup>

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23<sup>rd</sup> day of April, 2026.

/s/Bryan H. Beauman

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<sup>120</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).