

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9449**

ADMINISTRATIVE LAW JUDGE:

JAY L. HIMES

IN THE MATTER OF:

JASON SCOTT, DVM

APPELLANT

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

CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of the Authority’s Response is being served on May 4, 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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The Horseracing Integrity and Safety Authority, Inc. (the “**Authority**”) hereby responds to the Application For Review filed by Appellant Jason Scott, DVM, on March 10, 2026, pursuant to 15 U.S.C. §3058(b) and 16 C.F.R. §1.146. Contrary to Appellant’s attempt to limit the review of the Final Decision of the Arbitrator under the Authority’s Anti-Doping and Medical Control (“**ADMC**”) Program, the imposed “sanction[s] shall be subject to de novo review.” 15 U.S.C. § 3058(b)(1); *see* 16 C.F.R. §1.146(b) & (d)(3).

Appellant has not proven (and cannot prove) “compelling justification” for his two violations of Rule 3214(a). *See In re Dr. Larry Overly, DVM*, FTC Dkt. No. 9443, at p. 66 (Jan. 27, 2026) (“*Overly*”) (HISA Book of Authorities (“**BOA**”), at p. 73 (finding no compelling justification and holding that “Sanctions must be imposed individually for each of the two proven ADRV Possession violations”). To the extent it has been requested, the Authority does not oppose an evidentiary hearing in this matter. If the ALJ determines that such a hearing is necessary to supplement the record, the Authority requests that it be permitted to present evidence and witnesses at the hearing, including relevant rebuttal witnesses.¹

RESPONSES TO APPELLANT’S FIVE POINTS

I. The Authority has Jurisdiction over Appellant

First, the Authority has jurisdiction over Appellant since he is a Covered Person as a veterinarian engaged in the care, treatment, training, or racing of Covered Horses. Additionally, Sunland Park is a Covered Racetrack where Covered Horses race. On the day that Appellant was

¹ The Authority notes that there are missing portions of the transcript because the JAMS audio recording did not capture the entire proceeding. For this reason, an evidentiary hearing before the ALJ could be appropriate.

searched and found to be in Possession of Banned Substances at Sunland Park (February 13, 2025), only Covered Horses were racing at that Covered Racetrack.

II. There was no Compelling Justification to Possess Two Banned Substances

Second, Appellant did not have a compelling justification to possess two Banned Substances at Sunland Park. Compelling justification is the “exception” and to be “interpreted restrictively.” *In the Matter of Shell*, FTC Dkt. No. 9439, at p. 16, BOA, at p. 122 (March 6, 2025) (“*Shell*”). The instances where compelling justification exists to permit possession of a Banned Substance by a Covered Person are a “small minority.” *Scott v. HISA*, 2025 U.S. Dist. LEXIS 208979, at *23, BOA, at pp. 184-185 (D.N.M. Oct. 22, 2025) (“*Scott*”). If adopted, Appellant’s proposed interpretation of “compelling justification”—that he needed to carry Banned Substances for the routine treatment of Quarter Horses on a day that only Thoroughbreds were racing—is an exception that would swallow the rule and permit him (and all other Veterinarians) to carry Banned Substances at all times, with impunity. Simply put, Appellant’s interpretation would turn the exception into the rule.

Compelling justification must require something more, like a demonstrated need to carry the medication for a legitimate emergency. *See Shell*, at p. 33, BOA, at p. 139. In this case, the routine nature of Appellant’s possession of the Banned Substances is not a compelling justification, and he did not produce a single record showing that he had ever needed to use either Banned Substance in an emergency.

In any event, his Possession of compounded Pitcher Plant and compounded AMP violated the New Mexico Racing Commission Rules (as well as the ADMC Program). Just because New Mexico has not *enforced* its ban on veterinary possession of these two substances, as Appellant has argued, does not mean these substances are permitted. Appellant cannot reasonably assert

that he has a compelling justification to possess these Banned Substances to treat Quarter Horses when New Mexico law prohibits their use in Quarter Horses.

III. Appellant’s Challenges to the Authority’s Rulemaking Process and the Constitutionality of the ADMC Program Fail

Appellant’s final three points challenge the validity of the Authority’s rulemaking process and the constitutionality of the ADMC Program. All lack merit.

Appellant’s argument that certain Rules violate 16 C.F.R. § 1.142 fails for at least two reasons. Rule 1.142 is a procedural rule intended primarily to facilitate the Federal Trade Commission’s (“FTC”) consideration of Authority proposals and thus is not subject to review in this circumstance. In any event, the Authority’s submission of the proposed rules for the FTC’s consideration complied with Rule 1.142—as confirmed by the FTC’s publication of the proposals for public comment and the FTC’s subsequent approval.

Appellant’s argument that Rule 3214(a) is void for vagueness has been rejected by the ALJ multiple times. *See Overly*, at pp. 61-62, BOA, at pp. 68-69. It was also rejected by the United States District Court in Appellant’s current lawsuit in New Mexico. *See Scott*, at pp. *22-23, BOA, at pp. 184-185. That Court strongly hinted that it would find Appellant’s constitutionality argument to be invalid if it ruled on the merits:

Veterinarians can always comply with Rule 3214 by not possessing the substances it prohibits. Because Rule 3214 imposes strict liability for possession, the scenarios where the “compelling justification” exemption applies will be a small minority. Again, Plaintiff’s burden is to show that “there is no set of circumstances where the rule would be valid.” . . . [A] regulation “need not spell out all situations” where an activity is prohibited, nor speak with mathematical precision, to be constitutional.

Scott, at p. *23, BOA at pp. 184-185 (citations omitted).

Appellant’s non-delegation arguments also fail. The Act provides an intelligible principle for the development of the rules and confers on the FTC oversight and control over their

enforcement. *See Oklahoma v. United States*, 163 F.4th 294, 313-314, BOA, at pp. 200-201 (6th Cir. 2025).

RESPECTFULLY SUBMITTED THIS 4th day of May, 2026.

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