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

IN THE MATTER OF

DR. DONALD MCCROSKY,
Appellant,

Docket No.
9448

HEARING ON ORAL ARGUMENT

DATE: Tuesday, May 12, 2026

TIME: 2:01 p.m.

BEFORE: Honorable Jay L. Himes

LOCATION: FTC Headquarters

600 Pennsylvania Avenue Northwest

Washington, DC 20580

REPORTED BY: Matthew Schenkel

JOB NO.: 8163412

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A P P E A R A N C E S

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Office of Administrative Law Judges (by
videoconference)
Sarah Botha, Federal Trade Commission (FTC)
Office of General Counsel (by videoconference)

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
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(None marked.)

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. I am Judge
3 Himes, and I'm the ALJ at the Federal Trade Commission
4 who has been assigned to this case, matter of
5 McCrosky, Docket Number 9448. This is the oral
6 argument on the trafficking charge that HIWU has
7 brought.

8 Let me begin with the appearances of
9 the parties. Would you please identify yourself and
10 anyone else who is with you on your side in the
11 virtual hearing room?

12 I'll start with counsel for
13 Dr. McCrosky.

14 MR. CUETO: Thank you, Your Honor.
15 Lloyd Cueto on behalf of the appellant, Dr. Donald
16 McCrosky.

17 THE COURT: Okay. And I take it that
18 Dr. McCrosky is not joining; is that right?

19 MR. CUETO: Correct, Your Honor.

20 THE COURT: Fine.

21 Ms. Farrell, who do you have besides
22 yourself?

1 MS. FARRELL: Thank you, Your Honor.
2 Obviously myself, Allison Farrell on behalf of HIWU.
3 And then I also have my co-counsel, Carlos Sayao, and
4 we represented HIWU at the arbitration below.

5 THE COURT: Okay. And I gather that we
6 have Ms. Price and Mr. Reinhardt, but they don't
7 expect to participate; correct?

8 MS. FARRELL: Correct.

9 THE COURT: Okay. And by the way,
10 since I expect we're going to talk about the facts on
11 the record here, I'll probably be referring most to
12 HIWU. But if at any point I refer to HIWU or I refer
13 to the authority and I've got it wrong, because it
14 matters, then by all means, you know, try to get my
15 attention and tell me that I've just made a mistake
16 and I really should be talking about one or the other,
17 but I don't expect that will be a problem.

18 Now, of course, the hearing's being
19 conducted via video conferencing and it is being
20 transcribed by a court reporter.

21 Will the court reporter just identify
22 himself for the record, please?

1 THE REPORTER: Afternoon, Your Honor.
2 My name is Matthew Schenkel, and I am a court
3 reporter.

4 THE COURT: Thank you.

5 And we have in the hearing room FTC
6 staff from the Office of the Administrative Law
7 Judges, and I do not see anyone from the Office of the
8 Secretary or the Office of General Counsel who
9 sometimes do come to these things, but I take it
10 they're not going to be here today.

11 Just very briefly on the logistics,
12 we've sent the parties instructions and procedures,
13 and I'm only going to go over a couple points.

14 If you are counsel speaking today, you
15 must have your video on at all times and your audio on
16 only when you are speaking. Before speaking, please
17 identify yourself for the court reporter. It's just
18 an extra signal for him.

19 And with that, I think we can start. I
20 obviously have the briefing by the parties, and I've
21 reviewed the record. I have -- I need some
22 clarification on trafficking and that's why I asked

1 for this argument.

2 So I'm going to call on Ms. Farrell. I
3 understand that Dr. McCrosky sold two syringes to
4 Trainer Castro. Now you tell me why the facts that
5 you've proven add up to trafficking; okay?

6 MS. FARRELL: Yes, Your Honor. Thank
7 you for the opportunity.

8 For the court reporter, again, Allison
9 Farrell.

10 So it's HIWU's position -- first, let
11 me say this. This is the first trafficking charge
12 that has come through the ADMC program. So this is
13 squarely and fairly the first time that this charge
14 has been decided either at the arbitral body level or
15 gone up upon appeal.

16 And it is HIWU's position that the
17 arbitrator was right to find the trafficking ADRV
18 substantiated in this case.

19 So I intend to address four matters
20 this afternoon. And first, I will start with the
21 undisputed facts supporting the trafficking charge.

22 So I'm going to start with what's not

1 in dispute. Appellant admitted under oath that in
2 July of 2025, he sold two loaded syringes to Trainer
3 Castro in a Rural King parking lot for \$20.

4 He knew Trainer Castro was a trainer of
5 covered horses at Fairmount Park. He also knew
6 trainers like Castro are prohibited from possessing
7 syringes at the racetrack under both HISA and Illinois
8 Racing Board rules, two sets of rules.

9 THE COURT: I'm going to interrupt you.
10 Why does that matter? You're proving trafficking, not
11 aiding or abetting.

12 MS. FARRELL: It goes to his conscious
13 and deliberate intent to sell the syringes to a
14 covered person in contravention of the rules. I agree
15 that that act of selling the syringes is not an
16 element of trafficking here. But it goes to his
17 intent.

18 THE COURT: Okay.

19 MS. FARRELL: Furthermore, he never
20 examined the patient, the horse, for whom the syringes
21 were ostensibly intended. In fact, he couldn't
22 examine the horse because he'd already been banned

1 from racetrack property by Fairmount Park. And he
2 specifically and consciously intended for Trainer
3 Castro to use those syringes on a covered horse.

4 The syringes were subsequently
5 recovered by HIWU investigators from Trainer Castro's
6 tack room a month later concealed in a barrel beneath
7 blankets. With handwritten labels in what appears to
8 be a Sharpie pen, one syringe was labeled A and the
9 other B. Syringe A also bore a handwritten label on
10 the barrel --

11 THE COURT: Counsel, I know the record
12 on this. So tell me what facts you have that prove
13 Dr. McCrosky sold banned substances to Castro. You
14 agree he had to sell banned substances, don't you?

15 MS. FARRELL: Yes.

16 THE COURT: Okay. So what's your
17 evidence on that?

18 MS. FARRELL: Okay. We understand that
19 there's no -- the appellant says that there's no
20 direct evidence that the syringes contained
21 testosterone and glaucine at the moment of transfer.
22 We accept that there is no contemporaneous lab

1 analysis from July of 2025 prior to the time he sold
2 the loaded syringes in the parking lot.

3 But the comfortable satisfaction
4 standard does not require direct evidence. It does
5 permit findings based on circumstantial evidence and
6 reasonable inferences.

7 And so the inferential case that
8 supports the trafficking of banned substances, first,
9 appellant admitted that he routinely possessed and
10 administered testosterone to covered horses and non-
11 covered horses. He was found to have a partially
12 filled bottle of testosterone on his van at the track
13 during a HIWU search just three months before this
14 July sale to Trainer Castro.

15 Appellant had testosterone. He used
16 testosterone. Not only did he admit to using
17 testosterone on the covered horse Childersattack, he
18 himself produced a billing record in the matter
19 establishing that he administered testosterone --

20 THE COURT: I get all that, but we're
21 talking about whether there was testosterone in one of
22 two syringes that he sold to Castro in July of 2025.

1 What happened in October of 2024 with Tigger Attack,
2 what happened in a search in April of 2025 really
3 doesn't have very much, if any, weight in proving what
4 was in those syringes in July of 2025.

5 MS. FARRELL: Okay. I understand.
6 HIWU does take a different view of that in that we
7 believe that you can reasonably draw inferences from
8 the fact that he possessed testosterone, he routinely
9 used testosterone in his practice to conclude that the
10 only logical source of testosterone in those syringes
11 is Dr. McCrosky himself.

12 THE COURT: Well, you haven't proved
13 they're in the syringes yet. You've proved that he
14 has access to testosterone. Okay. He's a vet, I get
15 it. They use testosterone. He's got a non-covered
16 horse practice. This doesn't -- you know, has no
17 weight, frankly, in proving what was in those syringes
18 when he sold them to Castro.

19 MS. FARRELL: I think the fact that he
20 had all this access to testosterone, used it, and also
21 coupled with the handwritten race day labeling on
22 syringe A is inconsistent with his narrative and

1 contradicts his explanation for what's in -- what he
2 says is in the syringes.

3 THE COURT: I'm sorry. What is it
4 that's written on those syringes that you think you
5 can read? I can read an A and a B, which actually
6 could be -- you could infer mean aspirin and banamine.

7 MS. FARRELL: You could, that's your --

8 THE COURT: The rest of the scribbling
9 on those syringes, it doesn't seem to me that I can
10 read even when I make the images larger digitally.
11 They're scribbles and even your own investigator,
12 Meyer [ph], gave pretty evasive or equivocal testimony
13 about how he reads them. But there's no evidence that
14 he asked Castro at the time of the seizure what those
15 words were and what they referred to.

16 So he's speculating about what must
17 have been in somebody else's mind. And Dr. McCrosky
18 gave kind of equivocal testimony about whether he
19 wrote one of the letters and didn't know whether he
20 wrote the other.

21 I mean, that testimony, again, it's not
22 very weighty and it doesn't say testosterone or

1 glaucine.

2 MS. FARRELL: The circumstantial
3 evidence is what HIWU bases its case on.

4 And the reasonable inference that
5 Appellant sold the syringes containing the
6 testosterone and glaucine, the admitted sale of the
7 syringes, the Eqias lab analysis, and the labeling on
8 the syringes and his possession and use of
9 testosterone on the covered horses, the totality of
10 that evidence, albeit circumstantial, coupled with the
11 lack of credibility that the arbitrator found
12 regarding his testimony, that -- those facts are the
13 basis of HIWU's case to substantiate the trafficking
14 ADRV.

15 THE COURT: You don't care about the
16 lab certificates at all, in other words?

17 MS. FARRELL: No, I did mention the
18 Eqias forensic results.

19 THE COURT: Okay. So the lab tests are
20 done a month -- more than a month. The lab doesn't
21 even get the syringes until the first part of
22 September. Supposedly the syringes were sold in July

1 that the labs analyzed residue, or what evidence? The
2 lab certificates don't say that. They say "Other."
3 Where's the evidence that residue was analyzed?

4 MS. FARRELL: I would say the lab --
5 we'd have to rest on the lab certificates.

6 THE COURT: You would say -- I'm
7 sorry -- the lab certificate? Doesn't say that.

8 I have to say this. You know, I am
9 struck by the fact that there is no lab documentation
10 accompanying the proof of this charge. And, you know,
11 I cannot help but wonder about that when you put in
12 many pages of lab documentation and affidavits from
13 lab people to prove the use offense.

14 But there is literally nothing here but
15 two certificates. They say that "other," somehow or
16 another, whatever that "other" was, was analyzed.
17 There's no affidavit. And that's not to mention that
18 you've got nothing that connects up the syringes at
19 the time of search with what apparently were sold a
20 month earlier.

21 So I'm having a lot of trouble and I'm
22 trying to figure out whether there's something I'm

1 missing here.

2 MS. FARRELL: I think you understand
3 the case.

4 THE COURT: Yeah. I think I do. I
5 think maybe there's more here than meets the eye, but
6 you just can't tell me. I mean, that's frankly my
7 conclusion. Do you have anything more?

8 MS. FARRELL: I was prepared to talk
9 about the veterinarian exception as well as --

10 THE COURT: But that doesn't really
11 matter if you can't prove that there were banned
12 substances in the syringes when sold. You haven't
13 proved trafficking, and the exception for therapeutic
14 uses doesn't even come into play.

15 And, frankly, I mean, he testified,
16 obviously, you either believe him or you don't, that
17 there was a therapeutic use, the tying up of the
18 horse; right? You would acknowledge that's a
19 therapeutic use, wouldn't you? You don't think they
20 were used for that? I get it. Okay.

21 MS. FARRELL: Yeah, I --

22 THE COURT: But your evidence coming

1 from Meyer [ph] in his contemporaneous reports says
2 tying up. McCrosky says tying up. So how do you
3 challenge that? I mean, what facts do you have that
4 could challenge that?

5 MS. FARRELL: That the horse was in
6 fact needing treatment for tying up?

7 THE COURT: Yeah.

8 MS. FARRELL: You just have to look at
9 the credibility of the witness who claims it. You
10 don't --

11 THE COURT: Well, but it's your burden,
12 I guess -- you're right. You're right. If you proved
13 somehow or another that there was a banned substance
14 in one or both of those syringes, then tying up is a
15 defense and it's his problem. But I'm having a lot of
16 trouble with the first part, because you have to prove
17 that to my comfortable satisfaction.

18 Okay. So let's pass therapeutic use.
19 You had two other points? Go ahead.

20 MS. FARRELL: The other point was just
21 addressing the credibility of Dr. McCrosky. And, you
22 know, as you're aware, HIWU looked at the totality of

1 the circumstantial evidence and also the credibility
2 of Dr. McCrosky and the testimony that he gave about
3 the castration of the horse.

4 And, you know, we agree with the
5 arbitrator's --

6 THE COURT: I get all the credibility
7 problems with Dr. McCrosky. I do get -- I really do
8 get that. Okay? The trouble is, it's your burden,
9 and just saying you can't believe McCrosky doesn't
10 satisfy your burden.

11 Point four?

12 MS. FARRELL: No, that -- I did have
13 those four points. You know, the case is -- the
14 evidence is established by inference from -- you know,
15 that's our position.

16 Based on the totality of the
17 circumstances and the credibility of the witness, that
18 HIWU submits -- satisfies the burden -- satisfies its
19 burden to establish the trafficking ADRV. But, of
20 course, that is your call to make.

21 THE COURT: Okay. I said that I wanted
22 to make sure I wasn't missing something very

1 significant here, and I haven't heard that, you know,
2 I am.

3 I understand what you're saying. I
4 just have a lot of trouble when we don't know what was
5 in the two syringes at the time, and the photos of
6 them show them to be empty and the lab analysis takes
7 place more than a month after the sale itself. And,
8 again, there's no backup to the lab analysis frankly.

9 MS. FARRELL: If I may make one
10 additional point, Your Honor?

11 THE COURT: Sure.

12 MS. FARRELL: So, you know, and I
13 believe this is even said in your order on the request
14 for the stay, you know, intent is often not able to be
15 proven by direct evidence. And we have to look at --

16 THE COURT: Your problem isn't intent.
17 It's what was in the syringes. Okay? I mean, he has
18 admitted selling the things.

19 MS. FARRELL: Right. I understand.

20 THE COURT: You got intent. I mean, he
21 intended a sale. He just happens to say he was
22 selling controlled substances, and you say he was

1 selling testosterone and glaucine. And it's your
2 burden and I don't see the evidence relating to what
3 was actually sold at the time of sale.

4 MS. FARRELL: I understand your
5 position, Your Honor.

6 THE COURT: Okay. Anything more?

7 MS. FARRELL: No, thank you.

8 THE COURT: Mr. Cueto?

9 MR. CUETO: Your Honor, I don't have
10 much to add to the hearing. I believe Your Honor's
11 questions tracked the positions outlined probably more
12 articulately, but it tracked the positions outlined in
13 our briefs and at the arbitration, which is just that
14 HIWU and counsel have not met their burden.

15 And, in particular, with any form of
16 direct evidence of a banned substance as the rule
17 requires, as well as all the concerns Your Honor has
18 raised about the timeline and chain of custody of
19 these substances, what was in them and what was
20 actually tested by the lab. So I don't believe I have
21 anything further to add.

22 THE COURT: Good argument. If you're

1 ahead, you keep quiet. Okay?

2 MR. CUETO: I'm just smart enough for
3 that, Your Honor. Yes, sir. Yes, sir.

4 THE COURT: And, you know, Ms. Farrell,
5 you can have the last word if you want it, but I
6 think, you know, you've been pretty clear and I've
7 been pretty clear.

8 MS. FARRELL: Yeah, no, I think you
9 understand our position in advancing the ADRV, and I
10 understand your analysis of the evidence that we've
11 offered and, you know -- yeah.

12 THE COURT: I mean, I think I get the
13 record on trafficking for sure. And, frankly, I get
14 the record in the whole case, so. Okay?

15 Well, I'm not going to keep anybody any
16 longer, but I do thank you all for making yourself
17 available on relatively short notice. And I do find
18 that you've made clear I'm not missing anything here.

19 MS. FARRELL: Correct.

20 THE COURT: Thank you very much. I
21 think we can adjourn.

22 MS. FARRELL: Thank you.

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(Whereupon, at 2:23 p.m., the
proceeding was concluded.)

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CERTIFICATE

I, MATTHEW SCHENKEL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



MATTHEW SCHENKEL

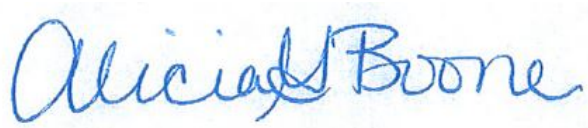
Notary Public in and for the
District of Columbia

Dated: May 21, 2026

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CERTIFICATE OF TRANSCRIBER

I, ALICIA BOONE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ALICIA BOONE

Dated: May 21, 2026

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[attack - court]

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