

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

In the Matter of)
)
JASON SCOTT, DVM,)
)
Appellant,)
vs.) **Matter No. _____.**
)
THE HORSERACING INTEGRITY &)
SAFETY AUTHORITY, a federal)
administrative agency.)
Appellee.)

APPELLANT’S UNOPPOSED APPLICATION FOR STAY

Appellant Jason Scott, pursuant to 15 U.S.C. § 3058(d) and 16 C.F.R. § 1.148, and following a meet-and-confer, submits this *unopposed* application to stay the five remaining months of the period of ineligibility lasting from March 9, 2026, through August 13, 2026; a fine of \$25,000; \$5,000 in adjudication costs; and public disclosure.

1. Appellant is likely to succeed on review

For purposes of the stay, Dr. Scott will focus on the probability of success on whether a violation occurred, though he is likely to succeed on the rulemaking and constitutional challenges as well. (*See* Briefs in Support of Rule 7090 Objections.) “Possession” is a per se violation in the absence of a compelling justification. Rule 3214(a). In all three prior cases involving veterinarians with “Banned Substances” for Covered Horses (Thoroughbreds) — *Perez*, *Shell*, and *Overly* — the veterinarians did not even *argue* that their possession of the substances was for treatment of a non-covered horse at the racetrack on the day of the search. The failure of proof on this point was fatal to each veterinarian’s case.¹

¹ *In the Matter of Perez*, Docket No.9420 (Decision of the Commission) at 4; *HIWU v. Shell*, JAMS Case No. 1501000653, ¶ 7.2; *HIWU v. Overly*, JAMS Case No. 1501000995, ¶¶ 7.5.6(a),(b); 7.5.7(a),(b).

This case is the opposite. Dr. Scott used a pre-race protocol for Quarter Horses that included Sarapin 48 hours pre-race and Adenosine Monophosphate 24 hours pre-race. He used this protocol on 49 Quarter Horses in the weeks leading up to the search and intended to use the medication on 8 more on the day of the search. He corroborated the existence and legitimacy of this protocol with the uncontradicted testimony of two veterinarians, who explained that such protocol was universally understood as lawful in New Mexico and, indeed, was considered standard-of-care and *universal practice* at the time.² These “basic facts are not in dispute.”³ That is because HIWU never produced “affirmative” proof that contradicted Dr. Scott’s evidence; they simply “questioned” credibility and engaged in speculation, neither of which creates a question of fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256–57 (1986); *see also Alcala v. Ortega*, 128 F.4th 1298, 1306 (10th Cir. 2025).

The Authority’s case turned on whether the pre-race protocol was “necessary” or “legal” under *New Mexico Racing Commission* (NMRC) law — which are not questions the Authority has direct jurisdiction to answer. Regardless, NMRC treated both medications as legal for decades. Finding no helpful precedent, HIWU’s counsel committed a probable ethical violation and secured an ex parte legal determination *about this case* from NMRC Executive Director Ismael Trejo (“Trejo”), all in violation of New Mexico law.⁴ N.M.S.A. §§ 12-8-13, 12-8-2(E)); NMAC 15.2.1.10(C)). When that misconduct was exposed, HIWU claimed that the letter was a mere “witness statement,” which the arbitrator found lacked credibility.⁵

The Authority cannot apply its rules to activities involving other breeds, nor can the Authority reframe jurisdictional defects as affirmative defenses. 15 U.S.C. § 3054(l). If the

² See Scott Findings of Fact, ¶¶ 10-60 and corresponding record citations.

³ Final Sanction at 35.

⁴ Respondents’ Final Exhibit Book, Exs.21-22; HIWU Ex.E.

⁵ Final Sanction at 34.

Authority suspected some violation involving non-Covered Horses, the Authority's power is limited to a referral to the applicable agency. 15 U.S.C. § 3060(b). And if the Authority could exercise jurisdiction *at all*, guidance and precedent either expressly states or implies that the Possession Rule is "inapplicable" (as a "compelling justification") where there is no dispute that the medications were part of a non-covered practice *at the time and place of the search*.⁶

2. Appellant will suffer irreparable harm

NMRC is reciprocating the Authority's five-month suspension, thus barring him from both Covered and Non-Covered practice and putting him completely out of work for a five-month period. During that time, he cannot garner income. He will also be forced *to transfer his accounts to his direct competitors* for a lengthy period of time, which will virtually certainly result in a permanent loss of some customers and goodwill. Appellant has no cause of action to recover compensatory damages against HIWU or the Authority for damage his business or reputation, so these damages are irreparable.

3. A stay prevents injuries to third parties and to horses

Appellant is the head of a business with employees, who rely on his ability to practice to garner their own income. The suspension would disemploy not only Dr. Scott but also his staff. And though transferring a handful of horses might be unproblematic, Dr. Scott cares for hundreds of horses. The administrative burdens of transferring care, records, etc., for a high volume of horses makes the task exceedingly difficult and takes time, during which the horses are deprived of pre- or post-race veterinary care by a veterinarian with knowledge of their unique conditions. The immediate, bulk transfer of hundreds of horses is likely to result in injury and harm to horses.

⁶ See Scott FOF at ¶¶ 55-60; Closing Demo at 1, 19-23.

4. A stay is in the public interest

The Authority agrees that a stay is warranted here. This case is a quintessential “test-case.” Existing law offers *no guidance* for jurisdictions like New Mexico where Covered Veterinarians treat Covered and Non-Covered Horses that race at the same meet and are stabled at the same facilities — including Covered Racetracks. Dr. Scott is a pillar of New Mexico’s racetrack veterinary community. He was cooperative and committed no violations during the pendency of this case. No provisional suspension was imposed for the twelve months this case was litigated. The arbitrator credited Dr. Scott with a probated suspension for that same period. Though the parties disagree on the merits, there is no need to impose penalties now while the important legal questions this case raises are decided. Further, when substantial questions are raised as to the validity of an exercise of jurisdiction, the public deserves confidence that regulatory bodies proceed with caution and do not place the *entire* risk of error on the person subjected to the challenged regulatory action.

Dated: March 10, 2026.

Respectfully submitted,

/s/ Joseph C. DeAngelis

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the foregoing is being served this 10th day of March, 2026, via First Class mail, e-filing, and/or email upon the following:

Office of the Secretary

Federal Trade Commission
600 Pennsylvania Avenue NW, Suite CC-5610
Washington, DC 20580

Office of Administrative Law Judges

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW Washington, DC 20580
(Via e-mail to oalj@ftc.gov and electronicfilings@ftc.gov)

Horseracing Integrity and Safety Authority

Samuel Reinhardt (email samuel.reinhardt@hisus.org)
Michelle Pujals, HIWU General Counsel (email mpujals@hiwu.org)
Allison Farrell, HIWU Litigation Counsel (email afarrell@hiwu.org)
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Lexington, KY 40507

/s/ Joseph C. DeAngelis _____

**BEFORE THE HORSERACING INTEGRITY AND SAFETY AUTHORITY'S ANTIDOPING
AND MEDICATION CONTROL PROGRAM ARBITRATION PANEL
ADMINISTERED BY JAMS, CASE NO. 1501001099**

In the Matter of the Arbitration Between:

HORSE RACING INTEGRITY WELFARE UNIT,

Claimant,

v.

DR. JASON SCOTT,

Respondent.

FINAL DECISION

I, the undersigned Arbitrator, having been designated, and having been sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties, and after a full evidentiary hearing occurring in person and via Zoom in Dallas, Texas, on November 19 and 20, 2025, pursuant to the Horseracing Integrity and Safety Act of 2020 and its implementing regulations, do here FIND and DECIDE as follows:

1. INTRODUCTION

1.1 This case involves allegations of the presence of Prohibited Substances in a van owned and occupied by Respondent, Dr. Jason Scott.

1.2 Claimant, the Horse Racing Integrity Welfare Unit ("HIWU"), is the United States government-recognized entity responsible for sample collection and results management in the anti-doping testing of thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity Act of 2020, 15 U.S.C. Secs.

3051-3060. HIWU is represented by Allison J. Farrell, Paul J. Greene, and Ryan Lipes of Global Sports Advocates.

1.3 Dr. Scott is a veterinarian who treats thoroughbred and quarter horse racehorses in New Mexico and Texas, and who resides in the State of Texas.

2. THE FACTS ACCORDING TO HIWU

A. Jurisdiction

2.1 Dr. Jason Scott is a veterinarian who treats both Covered and non-Covered Horses at racetracks in New Mexico, including Sunland Park.

2.2 Sunland Park is a racetrack in New Mexico regulated by the New Mexico Racing Commission (“NMRC”). Both Covered Horses and non-Covered Horses race at Sunland Park.

2.3 Sunland Park is a Covered Racetrack, and HIWU has jurisdiction over Covered Persons and Covered Horses at Sunland Park.

2.4 The parties have stipulated and agreed that the seat of this arbitration is Sunland Park, New Mexico.

B. The Search of Dr. Scott’s Vehicle on February 13, 2025

2.5 On February 13, 2025, HIWU Investigators Brian Bennett, Lane Ruddick, and Bret Smith conducted a search of Dr. Scott’s veterinary truck at Sunland Park.

2.6 Only Covered Horses were racing at Sunland Park on February 13, 2025.

2.7 The search began at approximately 7:30 AM, as HIWU investigators did not want to delay veterinarians like Dr. Scott on a race day.

2.8 According to Investigator Bennett, Dr. Scott was reluctant to provide access to his veterinary truck, saying that he had to give Lasix to a horse that was racing that day.

2.9 When Investigator Bennett mentioned that no horse was racing until 12:20 PM (and thus the earliest Lasix could be given was 8:20 AM), Dr. Scott stated that the horse needing Lasix was housed at the Frontera Training Center.

2.10 Investigator Bennett became suspicious of this reasoning because Lasix administration for a horse racing at Sunland Park is not permitted off-track at Frontera; however, Investigator Bennett assured Dr. Scott that the search should only take 15-20 minutes.

2.11 During the search, Investigator Bennett found two bottles clearly labeled as Pitcher Plant, also known as Sarapin, and placed them in evidence as BB-1 and BB-2.

- a. BB-1 was found in the top left drawer of Dr. Scott's veterinary cabinet.
- b. BB-2 was found inside a blue plastic tote, which also included hypodermic needles and other medications.

2.12 Dr. Scott admitted possessing and using the Pitcher Plant, but he stated to Investigator Bennett that he only used it on non-Covered Quarter Horses for the treatment of "sacroiliac issues."

2.13 Investigator Bennett also found two bottles of Adenosine Monophosphate, also known as AMP, in the top middle drawer of Dr. Scott's

veterinary cabinet, and placed them in evidence as BB-3 and BB-4.

2.14 Each AMP bottle stated: "Each ml contains: 200 mg of Adenosoine-5-Monophosphoric acid in Benzyl Alcohol 1.5% as preservative."

2.15 Dr. Scott admitted possessing and using the AMP, but he told Investigator Bennett that he used AMP only on Quarter Horses for treatment of issues associated with "tying up."

2.16 Dr. Dionne Benson, an expert in veterinary medication regulations and an experienced regulatory veterinarian, testified that Pitcher Plant and AMP must be controlled by possession rules because neither substance can be successfully identified in post-race anti-doping testing.

C. Pitcher Plant is a Banned Substance

2.17 Pitcher Plant is explicitly Banned at all times under ADMC Program Rule 4117.

D. AMP is a Banned Substance

2.18 AMP, although not explicitly named in the ADMC Program Rules, is prohibited under Rule 4111 as an S0 Non-Approved Substance.

2.19 A substance is Banned under Rule 4111 when it is (i) not otherwise listed in Rules 4112 through 4117, (ii) not approved by any governmental regulatory health authority for veterinary or human use, and (iii) the substance is not universally recognized by a veterinary regulatory organization as a valid veterinary use.

2.20 Dr. Benson testified that the FDA withdrew any approval for AMP in 1973, and no other governmental authority in the United States has approved AMP for veterinary or human use

2.21 Dr. Scott's expert, Dr. Clara Fenger, agreed that AMP is not FDA approved in the United States, but asserted that Australia has approved a medication containing AMP.

2.22 But as Dr. Benson testified, the FDA bans the importation of medications not approved in the United States.

2.23 Additionally, the bulk drug application for AMP—which was ultimately rejected by the FDA—explicitly states that the Australian version of AMP is “not available in the United States.”

2.24 AMP is also not universally recognized by veterinary regulatory authorities as having a valid veterinary use.

2.25 In 2015, the FDA reiterated that AMP is “neither safe nor effective for its intended uses as a vasodilator and an anti-inflammatory.”

2.26 Additionally, Dr. Benson opined that there is no scientific literature that supports the use of AMP to treat “tying up” (also referred to as “rhabdomyolysis”).

2.27 Rule 4111 also has two exceptions: if the drug is compliant with the Animal Medicinal Drug Use Clarification Act (“AMDUCA”), and if the drug is compliant with the FDA's Guidance for Industry (“GFI”) #256.

2.28 AMP is not compliant with the AMDUCA because only FDA-approved medications can be compliant with the AMDUCA.

2.29 The AMP here did not comply with GFI #256 because:

a. GFI #256 only applies in narrow circumstances when no other medically appropriate treatment option exists; however, there are recognized, FDA-approved treatments for tying-up that include FDA-approved tranquilizers and non-steroidal anti-inflammatories combined with fluid therapy.

b. Additionally, FDA-approved preventative medications are available for tying up, including phenytoin and dantrolene.

c. The bottles did not comply with GFI #256's labeling requirements by failing to state (i) the species of the patient(s) and the indication(s) for which it will be used, (ii) contact information for the manufacturer, (iii) name and contact information for the veterinarian ordering office stock, (iv) an FDA-required statement about reporting suspected adverse reactions, (v) an FDA-required statement that it is a compounded drug, (vi) an FDA-required statement that the drug cannot be used in food-producing animals, and (vii) an FDA-required warning that restricts the drug to use by or on order of a veterinarian.

2.30 Dr. Benson testified that, for these reasons, AMP is a Banned Substance under ADMC Program Rule 4111.

2.31 On the other hand, Dr. Scott's expert, Dr. Clara Fenger, asserted that the labeling information is sometimes included on the packaging or an insert, although she indicated she had not seen compliant packaging in this case.

2.32 Nor did Dr. Scott produce an insert or packaging compliant with GFI #256 during the hearing.

2.33 Based only on the possibility that a label with the correct information might exist, Dr. Fenger opined that there was insufficient evidence to find that AMP was possessed in violation in Rule 4111.

2.34 Other panels, however, have repeatedly found that Dr. Fenger is not credible, including:

a. In *HIWU v. Mario Dominguez*, where the arbitrator found that “Dr. Fenger does not have the degree of independence required of an impartial expert offering expert opinions on the pertinent issues in this case.”

b. In *HIWU v. Natalia Lynch*, where the arbitrator found that “Dr. Fenger has a long-standing and ongoing relationship with the Horsemen, which substantially detracts from her impartiality, and thus, the persuasive value of any substantive testimony she might otherwise offer.”

c. In *Per Engblom (Trainer) v. New Jersey Racing Commission*, where the Commission found that her conclusion was “flawed,” her theory was “conjecture,” and rejected a state Administrative Law Judge’s finding that her testimony and expert report were “credible.”

2.35 As AMP did not meet any of the exceptions in Rule 4111, it is a Banned Substance.

E. HIWU’s Notice and Dr. Scott’s Explanation to HIWU

2.36 On April 30, 2025, HIWU sent Dr. Scott a Notice of Alleged Anti-Doping Rule Violations for the Possession of Pitcher Plant and AMP at Sunland Park.

2.37 On May 21, 2025, Dr. Scott responded by letter to HIWU.

2.38 In his letter, Dr. Scott asserted that he was “clearly aware that Sarapin [Pitcher Plant] is not to be administered to covered thoroughbred horses,” and that

he only used it to treat non-Covered Quarter Horses.

2.39 Likewise, Dr. Scott asserted that in “deference to HISA rules relating to treatment of covered thoroughbreds” he did not treat Covered Horses with AMP.

2.40 Rather, Dr. Scott indicated that he used AMP only in Quarter Horses “who exhibit acute exertion with rhabdomyolysis,” and that he kept AMP on his veterinary truck “for exigency treatment of quarter horses.”

2.41 On June 5, 2025, HIWU charged Dr. Scott with two Anti-Doping Rule Violations for Possession of the Banned Substances Pitcher Plant and AMP.

2.42 Dr. Scott requested arbitration, and the hearing was held on November 19-20, 2025.

F. Dr. Scott’s Asserted Compelling Justification at the Hearing

2.43 ADMC Program Rule 3214(a) prohibits possession of Banned Substances like Pitcher Plant or AMP unless a Covered Veterinarian establishes a compelling justification for the possession by a preponderance of the evidence.

2.44 At the hearing, Dr. Scott asserted that he had a compelling justification to possess Pitcher Plant and AMP because he used these two substances to treat non-Covered Quarter Horses at Sunland Park.

2.45 Specifically, Dr. Scott testified that he gave Pitcher Plant and AMP to non-Covered Horses as part of a pre-race routine that involved giving Pitcher Plant two days before a race, and AMP one day before a race, as a prophylactic measure to prevent tying-up.

2.46 Before the hearing, Dr. Scott produced redacted billing records purportedly of Quarter Horses showing the administration of Pitcher Plant and AMP to the Quarter Horses before races:

Ticket/Invoice	Doctor	Date	Description	Quantity	Amount
Horse 45					
[REDACTED]	Scott, J	2/7/25	Sarapin Inj	1	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	1	
[REDACTED]	Scott, J	2/8/25	AMP 200/Adenosine Monophosphat Inj	1	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] x	1	
[REDACTED]	Pickard, J	2/9/25	Oral Electrolytes-Post Race	1	
				Subtotal: [REDACTED] Tax 8.4375% Tax: [REDACTED] Total: [REDACTED]	

2.47 Additionally, the billing records showed that Horse 47 appears to have been administered Sarapin [Pitcher Plant] and AMP twice on the same day, with no apparent justification.

2.48 The billing records did not contain any medical impressions, diagnoses, or treatment records, and Dr. Scott did not provide any additional medical records.

2.49 At the hearing, Dr. Scott produced unredacted billing records, which are under a confidentiality order.

2.50 The unredacted billing records showed 17 times (on different dates and two different invoices) when Dr. Scott administered phenylbutazone, commonly known as "Bute," to Quarter Horses on the day before a race, in violation of the New Mexico Racing Commission Rules and the Association of Racing Commissioners International Guidelines.

2.51 Dr. Scott testified that the dates of the Bute administration must be a clerical error.

G. The New Mexico Racing Commission Rules on Compounded Medications

2.52 Dr. Scott testified to his belief that the New Mexico Racing Commission permits the use of Pitcher Plant and AMP in Quarter Horses, and that other veterinarians use these substances.

2.53 He also relied on a text message from the New Mexico Racing Commission's Equine Health and Safety Advisor, Dr. Joan D'Alonzo, who told Dr. Scott after he was searched that she did not "see anything in the New Mexico rules about there being any banned substances for vets to have in their trucks," while also advising him that "you have to follow federal guidelines regarding controlled substances and compounded products."

2.54 In a letter, New Mexico Racing Commission Executive Director Ismael Trejo indicated that both compounded substances violate the New Mexico Racing Commission's Compounded Medications Rule, N.M.R.C. Rule 15.2.6.8(B)(10).

2.55 Additionally, under New Mexico Racing Commission Rule 15.2.6.9(3), veterinarians must submit to the New Mexico Racing Commission the name of any medication not listed in the Uniform Classification Guidelines, as maintained by the Association of Racing Commissioners International ("ARCI"), if they want to use it on the backside of a racetrack so that it may be submitted to the ARCI for consideration of classification.

2.56 During the hearing, Mr. Trejo testified that he did not believe there had been any enforcement of the compounding rule against veterinarians in New Mexico, primarily due to resource constraints on his office and the lack of routine vet searches by the Racing Commission.

2.57 Mr. Trejo had no record that either substance was ever officially submitted to the New Mexico Racing Commission for submission to the ARCI.

2.58 Dr. Benson credibly opined that neither Pitcher Plant nor AMP are permitted under the New Mexico Racing Commission's compounded medication rule.

2.59 New Mexico Racing Commission Rule 15.2.6.8(B)(10) permits veterinarians who possess and dispense compounded medications at racetracks to do so only if:

- a. The medication is prescribed consistent with the AMDUCA;
- b. The medication meets enumerated New Mexico Board of Pharmacy Rules; and
- c. The New Mexico Racing Commission's labelling rules are followed.

2.60 Pitcher Plant cannot meet these requirements because:

- a. Pitcher Plant cannot be prescribed consistent with the AMDUCA because it is not a new, FDA-approved medication;
- b. Pitcher Plant cannot meet the enumerated New Mexico Board of Pharmacy Rules because those rules do not allow for compounding of injectable drugs; and
- c. The New Mexico Racing Commission's drug labeling rules were not followed.

2.61 AMP cannot meet these requirements because:

- a. AMP cannot be prescribed consistent with the AMDUCA because it is not a new, FDA-approved medication;

b. AMP cannot meet the enumerated New Mexico Board of Pharmacy Rules because those rules do not allow for compounding of injectable drugs; and

c. The New Mexico Racing Commission's drug labeling rules were not followed.

2.62 Dr. Benson explained that the Pitcher Plant and AMP in Dr. Scott's possession were necessarily compounded because neither substance is FDA-approved, and neither is available in a non-compounded form in the United States.

3. THE FACTS ACCORDING TO DR. SCOTT

3.1 Dr. Jason Scott has never used or intended to use Pitcher Plant (Sarapin) or Adenosine Monophosphate (AMP) on a Covered Horse.

3.2 On February 13, 2025, Dr. Scott intended to treat eight Quarter Horses stabled at the racetrack and scheduled to race on February 14 or 15, with a routine pre-race protocol that included treatments of AMP or Sarapin, but was precluded from doing so when HIWU investigators seized the medications.

3.3 Dr. Scott developed these pre-race treatment protocols based on his clinical judgment, training, education, and experience after discussing the horses' needs with each trainer.

3.4 The use of AMP by racetrack veterinarians as a prophylactic treatment for exertional rhabdomyolysis in Quarter Horses is the uniform standard of care for veterinary treatment in New Mexico, and has been so for decades.

3.5 The use of Sarapin as a substitute for or adjunct to chemical NSAIDS for prophylactic treatment of Quarter Horses is the uniform standard of care for veterinary treatment in New Mexico, and has been so for decades.

3.6 Pitcher Plant Extract is a naturally occurring substance that cannot create a change in the normal physiological performance of a racehorse.

3.7 AMP is an endogenous substance found in every racehorse (and every living thing), and it cannot create a change in the normal physiological performance of a racehorse.

3.8 Dr. Scott genuinely and reasonably believed that both medications were permitted for use in Quarter Horses in New Mexico and could be possessed at racetracks.

3.9 Despite the widespread, open, and notorious use of compounded AMP and Sarapin at racetracks in New Mexico, and several searches of veterinarians carrying the medications, neither the NMRC nor any commissioner or agent of the NMRC took any action prior to August 1, 2025, that would imply that the possession or use of either substance was prohibited.

3.10 Dr. Scott asserts the following facts based on the testimony and the evidence presented:

- a. A billing record reflecting the dates and times of treatment. The treatment records were reviewed unredacted at the hearing to permit an inspection of the full pre-race treatment protocol for Quarter Horses and to disclose the names of the Quarter Horses treated, subject to a confidentiality agreement.
- b. His own testimony and witness statement explaining his pre-race treatment protocols and his understanding of the rules.
- c. Proof that his explanation remained consistent from the time of the search through the completion of the arbitration.
- d. The corroborating testimony of two practicing racetrack veterinarians regarding:

- i. The standard of care for pre-race treatment of Quarter Horses in training in New Mexico;
 - ii. The reasonableness of Dr. Scott's medical decision-making;
 - iii. The known uses of the medications and the historic regulatory approaches to the medications;
 - iv. The medical need to treat conditions prophylactically and the unavailability of alternatives;
 - v. The NMRC's historic tolerance regarding the use of these substances, including details of NMRC searches of veterinarians carrying these substances and the lack of subsequent regulatory action; and
 - vi. Undisputed veterinary opinions that rhabdomyolysis is a serious and preventable post-race condition that can result in death if not treated.
- e. Proof that was never contradicted, including:
- i. The undisputed fact that eight Quarter Horses stabled at Sunland Park Racetrack and under Dr. Scott's care were scheduled to race over the next two days.
 - ii. The undisputed fact that those Quarter Horses would have been treated *at the racetrack* consistent with a pre-race protocol that had been employed for at least 49 Quarter Horses in the five weeks preceding the search.
 - iii. The protocol involved the use of AMP for the Quarter Horses racing the next day, and Sarapin for the Quarter Horses racing two days out.
 - iv. Dr. Scott requested the medications back specifically so that he could treat Quarter Horses at the racetrack that day.

3.11 Undisputed Facts:

- a. HIWU presented no witness testimony, documentary evidence, or circumstantial facts tending to disprove any of Dr. Scott's

explanations or points of fact.

- b. HIWU produced no document, treatment record, admission, or testimony to contradict Dr. Scott's evidence that the possessed medications had ever been used on a Covered Horse.
- c. HIWU produced no document, treatment record, admission, or testimony to contradict the existence of Dr. Scott's treatment protocol.
- d. HIWU produced no testimony on the standard of care, community practice, or historic understanding of veterinary treatment of Quarter Horses in New Mexico.
- e. HIWU produced no witness with any experience as a licensed veterinarian in treating racehorses in training to contradict Dr. Scott's evidence of the standard of care or historic understanding regarding the use of either medication.
- f. HIWU produced no evidence that the NMRC has taken any enforcement action against a veterinarian for the possession or use of compounded substances (including AMP or Sarapin) at a racetrack.
- g. HIWU has not alleged Use, Administration, Attempted Use, Attempted Administration, or Trafficking of the medications, all of which would have required proof that the medications were used or intended for use on a Covered Horse.

3.12 HIWU attempted only (1) to dispute the *characterization* of the records as "medical records," (2) to dispute the credibility of the treatment record itself, and (3) to establish that "accidents" or "mistakes" can happen. None of these points create a genuine question of fact. Indeed, HIWU counsel acknowledged on cross-examination of Dr. Scott that it "goes without saying" that the medications were used and intended for use on Quarter Horses.

3.13 The Arbitrator accepts Dr. Scott's explanation that certain entries for phenylbutazone 24 hours before a race were clerical errors by his billing staff. Dr.

Scott explained that he knows them to be inaccurate because (1) they would have triggered positive findings, and (2) his protocol requires phenylbutazone at least 48 hours before a race.

3.14 Dr. Scott is a licensed, practicing racetrack veterinarian with over two decades of experience treating racehorses in training in New Mexico. Dr. Scott treats Covered Horses (Thoroughbreds) and Non-Covered Horses (Quarter Horses) that are stabled at New Mexico Racetracks.

3.15 Dr. Scott's only prior citation for a violation of any racing regulation was self-reported when he inadvertently administered Lasix to a horse that was not entered to race on Lasix, which resulted in a small fine.

3.16 On February 13, 2025, Dr. Scott intended to treat eight Quarter Horses stabled at the Sunland Park Racetrack in accordance with a routine pre-race treatment protocol that involved the use of Sarapin 48 hours, and AMP 24 hours, before a race.

3.17 Those horses were identified to HIWU before the hearing to be the Quarter Horses *Chicks Comanchee*, *Chimes Effort*, *Kool Kue Blue*, *Prince of Fast*, *Tren Ra*, *FS Stars and Stripes*, *Scout Over Baby*, and *Jess A Bug N D Ocean*, all of which were scheduled to race on February 14 or 15, 2025.

3.18 Dr. Scott's protocols involving Sarapin and AMP are used exclusively for Quarter Horses.

3.19 Dr. Scott has never used either medication on a Covered Horse.

3.20 Dr. Scott has never “dispensed” injectable AMP or Sarapin for use by a client.

3.21 Dr. Scott used these same protocols on at least 49 Quarter Horses who raced at Sunland Park, most of which were stabled at the racetrack. Dr. Scott communicated that use to his billing staff, who recorded that use in the billing software.

3.22 Dr. Scott has used these medications in plain view of racetrack security and regulators on Quarter Horses stabled at the racetrack for decades.

3.23 AMP is a naturally occurring substance in every living thing, and it has no capacity to change the normal physiological performance of a racehorse. Both parties’ witnesses corroborated this fact:

- a. Dr. Benson admitted that there was no evidence that AMP can create a change in the normal physiological performance of a racehorse.
- b. Dr. Benson further admitted that AMP is “obviously not” a substance that is “prohibited in a horse on a race day” for purposes of the NMRC possession rule.

3.24 Sarapin is a naturally occurring substance, and it has no capacity to change the normal physiological performance of a racehorse. Both parties’ witnesses corroborated this fact: Dr. Benson admitted that Sarapin is not a substance that can affect the performance of a racehorse.

3.25 The Association of Racing Commissioners International intentionally chose not to include Sarapin and AMP on their list of prohibited substances because they have no capacity to influence racing performance.

3.26 Both Sarapin and AMP have been in use as pre-race medications for Quarter Horses in New Mexico for over four decades, and the medications are used by virtually all racetrack veterinarians to treat Quarter Horses *at racetracks* in New Mexico.

3.27 At the time of the search, Dr. Scott's use of AMP and Sarapin was considered the standard of care for treating Quarter Horses before a race.

3.28 AMP and Sarapin are considered safe, prophylactic medications for common post-race conditions, including rhabdomyolysis. Dr. Scott prefers the use of these medications because they are naturally occurring substances that are easier on the horse's body compared to chemical NSAIDs.

3.29 Rhabdomyolysis ("tying up") is a life-threatening condition that can occur in response to intense physical exertion. Rhabdomyolysis causes the muscles to tense and become "so hard, you couldn't drive a nail into them." It is "absolutely" a life-threatening condition that causes severe pain and muscle death and can progress to organ failure.

3.30 There is no way to predict which Quarter Horses will tie up during or after a particular race. It is reasonable and consistent with the standard of care to provide routine prophylactic treatment to prevent rhabdomyolysis. AMP is commonly used in the Quarter Horse community for that purpose.

3.31 There are no FDA approved medications for the prophylactic treatment of rhabdomyolysis in racehorses or alternatives to AMP that can be administered with any efficacy prior to a race.

3.32 In 2014, Dr. Scott submitted a list of compounded medications, including AMP, to the New Mexico Racing Commission's Medication Committee for classification in 2014.

3.33 The NMRC has conducted repeated searches of veterinarians at racetracks while they were in the possession of compounded Sarapin and compounded AMP. No search resulted in any regulatory action against the veterinarian.

3.34 At no point prior to the search did the NMRC take any action consistent with any belief by the NMRC that the substances could not be used — for example, notices to veterinarians, investigators, or stewards, or regulatory actions against veterinarians.

3.35 The New Mexico Board of Veterinary Medicine has twice informed the NMRC that it has no jurisdiction to regulate which medications veterinarians carry, and that nothing in the NMRC regulations prohibit the possession or use of compounded substances.

3.36 Dr. Scott genuinely believes that licensed veterinarians in New Mexico are permitted to possess and use AMP and Sarapin at racetracks in New Mexico.

3.37 In response to this action, Dr. Scott has since stopped the use of AMP and Sarapin in pre-race treatment protocols for Quarter Horses. As a result, his horses have suffered emergency and exigent conditions during or following a race.

A. HIWU's Search and Lack of Investigation

3.38 On February 13, 2025, HIWU Investigator Brian Bennett conducted a targeted search of Dr. Jason Scott's mobile-practice vehicle at the Sunland Park Racetrack, during which he discovered four bottles, two each labeled "Pitcher Plant" and "Adenosine Monophosphate."

3.39 Mr. Bennett searched no other veterinarians at Sunland Park, although several other mobile practice vehicles were present in the area where Dr. Scott parked his vehicle. It is probable (a virtual certainty) that the six or more other veterinarians at the racetrack that day would have been carrying Pitcher Plant or Adenosine Monophosphate in their mobile practice vehicles.

3.40 Dr. Scott immediately informed Mr. Bennett that the medications were intended exclusively for use on Quarter Horses.

3.41 Dr. Scott's explanation has remained consistent and unchanged from the day of the search through the conclusion of this arbitration.

3.42 After the search, Dr. Scott treated a Quarter Horse with Lasix at the Frontera Training Center. HIWU investigator Bennett mistakenly believed that the horse was scheduled to race (which would make the treatment a violation). Dr. Scott explained that the horse was scheduled to "work," not "race."

3.43 After completing the Lasix treatment, he called NMRC Equine Medical Adviser, Dr. Joan D'Alonzo, who informed him that the NMRC had no rules prohibiting the possession of substances by veterinarians.

3.44 Within hours, Dr. Scott confronted Mr. Bennett at the Sunland Park Test Barn and requested he return the medication specifically so that he could

render treatment to non-Covered Quarter Horses stabled at the racetrack.

3.45 Mr. Bennett refused to return the medications, thereby preventing the treatments from occurring.

3.46 HIWU investigator Bennett admitted that he conducted no investigation whatsoever into the circumstances of Dr. Scott's use of the medications and had no evidence that Dr. Scott ever used either medication on a Covered Horse.

3.47 Dr. Benson admitted that the identity of compounded substances can be proved only through testing. Even so, HIWU never confirmed the identity of the seized medications through testing.

3.48 HIWU never confirmed, or attempted to confirm, the contents of the bottles with the manufacturer.

3.49 The labels on the seized medications incorporate by reference an "accompanying insert." As a matter of routine, Dr. Scott discarded the package insert when he discarded the boxes in which the Sarapin or AMP were shipped to him.

3.50 To this day, HIWU has never asked Dr. Scott to produce the package insert.

3.51 HIWU did not raise an issue with labelling in either its "EAD Notice" or the "EAD Charge Letter." The first time HIWU raised a labelling issue was in early August 2025 when HIWU submitted its pre-hearing brief.

3.52 By that time, Dr. Scott had stopped using both medications and, thus,

did not have the insert available.

3.53 HIWU interviewed no knowledgeable witnesses, including trainers, staff, owners, or practicing racetrack veterinarians who would be familiar with the use of AMP or Sarapin in New Mexico or in Dr. Scott's practice.

3.54 HIWU's "investigation" was comprised solely of an ex parte phone call with Ismael Trejo. Mr. Trejo originally took a position of non-involvement in this matter, but he changed that position at HIWU's request because he and HIWU have a "partnership."

3.55 Mr. Trejo's opinion was drafted by HIWU prosecutor Allison Farrell. Making only typographical edits, he signed a letter drafted by HIWU attorney Allison Farrell taking the position that AMP and Sarapin were prohibited in New Mexico.

3.56 By Mr. Trejo's admission, he was only "somewhat familiar" with NMRC regulations.

3.57 Mr. Trejo did not seek Dr. Scott's input adopting HIWU's opinion as to the applicability of NMRC regulations to compounded AMP or Sarapin.

3.58 The NMRC has taken no action against veterinarians — including Dr. Scott — for the possession or use of compounded, injectable Sarapin or AMP, a fact Mr. Trejo confirmed.

B. HISA's Lack of Guidance for Possession for a Non-Covered Practice at a Racetrack

3.59 The ADMC Protocol provides no specific guidance for the Possession

of an allegedly Banned Substance intended for use on non-Covered Quarter Horses stabled at a Covered Racetrack.

3.60 Prior to the Search on February 13, 2025, HIWU's former Chief Scientist, Dr. Mary Scollay, had issued the following guidance for veterinarians:

“ . . . [I]f the veterinarians are practicing also on a population of [N]on-Covered Horses, they're taking care of quarter horses or they've got a country practice part-time they are able to possess a Banned Substance because we don't have control over those horses, and so to the extent that they want to use bisphosphonates on a Non-Covered Horse, we can't ban them from possessing them... [W]e can't penalize people for something that we don't have control over so, you know, let's just say because we have the ability to investigate, if the story starts to get a little weird or a little extreme, you're going to get more than a raised eyebrow. But at the end of the day if someone is practicing out in the country, we don't have the authority to control the medications they administer or carry for Non-Covered Horses . . . [T]he regulation addresses if there is a justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates Non-Cov ered horses.”

HIWU v. Shell, JAMS Case No. 1501000653, ¶ 2.23.

3.61 Prior to the Search on February 13, 2025, HISA's Regulatory Veterinarian Handbook described the ADMC Protocol as a “horse-centric approach to regulation” with “a set of rules that ***follow the Covered Horse***,” as opposed to a set of rules that applies “to people and horses when they arrive[] at the racetrack grounds.”

3.62 Prior to the Search on February 13, 2025, neither HISA nor HIWU had issued any formal or informal guidance identifying specific actions a racetrack veterinarian should take to comply with the Possession Rule if a Non-Covered Practice at the racetrack includes the use of Banned Substances.

3.63 To this day, neither HISA nor HIWU has issued any formal or informal guidance identifying specific actions a racetrack veterinarian should take to comply with the Possession Rule if a Non-Covered Practice at the racetrack includes the use of Banned Substances.

3.64 In July 2025, Dr. Scott was considering purchasing Sarapin for use in Quarter Horses. Realizing that such act would constitute "Possession," he asked for guidance from HIWU on the specific steps regarding how to conduct himself. HIWU responded only that he would need to have a "compelling justification" for possessing the substance.

C. Scope and Credibility of Witness Testimony

3.65 HIWU offered the following witnesses to give legal opinions:

- a. HIWU offered the testimony of Ismael Trejo, Executive Director of the NMRC, to speak to his understanding of NMRC regulations.
- b. HIWU offered the testimony of Dr. Dionne Benson to speak to her understanding of (1) the legal meaning of laws, including the ADMC Protocol, AMDUCA, GFI#256, federal and state compounding regulations, federal and state labelling regulations, NMRC's "possession" regulations, federal and state "pharmacy" regulations, and New Mexico's legal requirements for "medical records"; and (2) whether Dr. Scott's conduct complied with these laws.

3.66 A purported expert's legal opinion is not evidence and cannot be considered as evidence of the correct meaning or the correct application of the law.

3.67 Mr. Trejo's letter, though submitted on NMRC letterhead, was not the product of an agency adjudication, rulemaking, or agency declaration under NMAC 15.2.1.10I.

3.68 Mr. Trejo's testimony is entitled to no weight.

3.69 Mr. Trejo demonstrated a complete lack of awareness about pertinent facts.

3.70 Mr. Trejo ultimately testified to no factual issue in dispute, and he expressly disclaimed any ability to do so.

3.71 The Arbitrator finds that Dr. Benson did not testify as an independent expert. Dr. Benson sat with HIWU's attorneys through the entire hearing, passed notes to HIWU attorneys during examinations, and otherwise participated with HIWU as part of their trial team throughout the course of the hearing.

3.72 Dr. Benson openly admitted that she formed her opinions based on incomplete facts and chose not to review relevant evidence, such as Dr. Scott's detailed witness statement explaining his protocol.

3.73 Dr. Benson offered no testimony regarding the standard of care for the pre-race treatment of Quarter Horses in New Mexico.

3.74 Dr. Benson agreed with Dr. Scott's experts on the following points:

- a. Dr. Benson admitted that “compounding” a substance does not make a substance a “prohibited substance” as that term is defined by New Mexico Racing Commission regulations.
- b. Dr. Benson admitted that there was no evidence that AMP can create a change in the normal physiological performance of a racehorse.
- c. She further admitted that AMP is “obviously not” a substance that is “prohibited in a horse on a race day” for purposes of the possession rule.
- d. Dr. Benson admitted that Sarapin is not a substance that can affect the performance of a racehorse.
- e. Dr. Benson agreed that at the time of the search in this case, AMP was a substance that could legally be compounded under GFI #256. Dr. Benson agreed that the AMP formulation Dr. Scott allegedly possessed has regulatory approval in Australia.

3.75 Dr. Benson expressly withdrew the following opinions after cross-examination:

- a. Dr. Benson conceded that the treatment records were reliable evidence.
- b. Dr. Benson conceded that she could discern from the billing records that AMP and Sarapin were used as part of a routine, pre-race treatment.
- c. She withdrew her opinion that “dantrolene” could be an alternative to AMP after she admitted that doing so would be an anti-doping violation.
- d. She also withdrew her opinion that the substances violated GFI #256 after she conceded that she could not form an opinion on that matter without reviewing the entire label. “I can’t make that determination without seeing the rest of the label.”.)]

3.76 Dr. Benson admitted that her opinions were not based on any

personal or professional experience or training; ***her only basis for interpreting and applying the rules was that she “just read them.”***

3.77 HIWU failed to demonstrate that Dr. Dionne Benson has the necessary training, education, or experience to offer any opinions about the “regulatory framework, terminology, purposes, and background” regarding any of the laws for which she was called to testify. *Tang Cap. Partners, LP v. BRC Inc.*, 757 F. Supp. 3d 363, 392 (S.D.N.Y. 2024).

- a. HIWU called Dr. Benson to testify about medical alternatives. Yet at no point when she was licensed by any racing commission has Dr. Benson ever been an attending veterinarian for a racehorse. In her entire career as a licensed veterinarian, she has never been asked to develop and implement a prophylactic pre-race treatment protocol for a racehorse in training. She has never provided prophylactic treatment to a racehorse.
- b. HIWU called Dr. Benson to testify to whether billing records qualify as “medical records” under the New Mexico Veterinary Practice Act. Yet Dr. Benson has never had a mobile practice and, thus, has no experience generating records in a mobile practice. She has also never billed a client for veterinary treatment and thus, has never generated a billing record.
- c. HIWU called Dr. Benson to testify about regulations applicable to compounded medications. Dr. Benson has never compounded a medication from bulk substances or labeled a medication compounded from bulk substances. Dr. Benson has never been retained by anyone to give legal advice about compliance with FDA legal requirements. Benson has never given input to the FDA prior to finalizing GFI #256. Dr. Benson has never been a member of any committee that gave input to the FDA prior to finalizing GFI #256. Her only experience in the field is comprised of authoring two, single-page opinion pieces that were neither peer reviewed nor represented as guidance documents.

3.78 Dr. Scott produced opinion evidence that not a single practicing racetrack veterinarian would consult Dr. Benson for advice regarding how to treat a racehorse in training. Dr. Fenger testified that she would not seek Dr. Benson's advice regarding how to treat a racehorse in training. She knows of no practicing racetrack veterinarian who would ever seek Dr. Benson's advice regarding how to treat a racehorse in training. Dr. Pickard testified similarly.

3.79 Dr. Fenger recounted an event in which she "came very close to submitting a complaint to the Vet Medical Board" against Dr. Benson. She recounted that Dr. Benson, while working as a regulatory veterinarian, and without consulting the trainer, consulting the horse's nearby attending veterinarian, doing a physical examination, or taking a history to determine potential allergies to the medication, administered "emergency" detomidine to the horse intravenously because it was a hot day, all without any valid client-patient relationship. The medication is contraindicated in the absence of seizures (there were none) because it reduces the horse's ability to dissipate heat, so its use put the horse in unnecessary danger.

3.80 Dr. Scott's experts, Dr. Clara Fenger and Dr. Tony Pickard, both have decades of experience as practicing racetrack veterinarians and must conduct themselves, on a day-to-day basis, in a manner that comports with the laws discussed in this case.

3.81 Dr. Fenger's qualifications are:

- a. Dr. Fenger is a founding member of the North American Association of Racetrack Veterinarians; is a member of the American Academy of Veterinary Pharmacology and Therapeutics; is a diplomate of the American College of Veterinary Medicine, the AVMA, the KVMA and

the KAEP; and is a board member of the Equine Health and Welfare Alliance.

- b. Dr. Fenger has been retained by Lisa Lazarus, now the CEO of HISA, as an expert on two separate cases.
- c. Dr. Fenger has published approximately 45 peer-reviewed scientific articles and chapters in veterinary textbooks about the medical treatment of active racehorses. These articles have appeared in the Equine Veterinary Journal, the Journal of Comparative Exercise Physiology, and others.
- d. Unlike Dr. Benson, Dr. Fenger has extensive experience with compounded medications and with ensuring compliance with regulations governing compounded medications.
- e. Unlike Dr. Benson, Dr. Fenger provided input to the FDA for the development of GFI #256 in her personal capacity and as a member of committees for industry organizations that put together recommendations for the FDA.
- f. Unlike Dr. Benson, Dr. Fenger has been received as an expert in state and federal court in criminal cases and veterinary malpractice cases, and in administrative cases before racing commissions.
- g. Unlike Dr. Benson, Dr. Fenger has published several scientific papers on rhabdomyolysis.

3.82 The Arbitrator finds Dr. Fenger’s testimony to be credible. Of note, every single one of the facts HIWU claimed demonstrated Dr. Fenger’s bias was equally true — if not more true — for Dr. Benson.

3.83 Dr. Tony Pickard has been a practicing, mobile racetrack veterinarian in New Mexico for over four decades. He explained that the community of racetrack veterinarians in New Mexico was very small, with only a handful of practicing veterinarians. He is familiar with the standard of care for treating racehorses in training.

3.84 Dr. Pickard testified that AMP and Sarapin have been used in Quarter Horses in New Mexico since before he started practicing over forty years ago. Dr. Pickard explained that over 99% of racetrack veterinarians in New Mexico would have these medications on their truck for Quarter Horses, and that if the Possession Rule was applied to possession of these medications for Quarter Horses, there would be no practicing racetrack veterinarians in New Mexico and, consequently, no racing.

3.85 Dr. Pickard testified that both medications are considered by practicing veterinarians to be safe, prophylactic medications for common conditions that occur during racing, including rhabdomyolysis. Their use before a race is considered the standard of care in New Mexico. Dr. Pickard testified that their use was well known to the New Mexico Racing Commission and has never been considered illegal.

3.86 Dr. Pickard testified that he has been searched numerous times by NMRC investigators while in possession of these medications at the racetrack, and NMRC investigators never took the position that AMP or Sarapin were illegal to possess. Mr. Trejo's letter was the first time anyone at the NMRC took the position that the medications were illegal.

3.87 Dr. Pickard explained that HIWU's reading of NMRC rules was nonsensical because it would ban every injectable compounded medication, regardless whether it contained a prohibited substance. That reading would, for example, ban the use of diluted vitamins and oral electrolytes, which are compounded injectable substances that are routinely administered by every veterinarian to horses in every barn, including at racetracks, and have never been

considered “prohibited substances.”

3.88 He explained that the rule is more reasonably understood as articulating the requirements for “dispensing” non-injectable substances (like an oral medication or ointment) to trainers for later use on a racehorse. The rule does not address dispensing *injectable* substances because, Dr. Pickard explained, only a veterinarian can administer an injectable substance to a racehorse (i.e., a trainer cannot possess an injectable substance). Dr. Pickard ultimately concluded that the rule most likely clarified the procedure for dispensing non-injectable substances to non-veterinarians, rather than prohibited the use of all compounded injectable substances.

4. EXHIBITS

HIWU submitted 16 exhibits which were admitted into evidence.

Dr. Scott submitted 25 exhibits which were also admitted into evidence

5. WITNESSES

HIWU called the following witnesses who testified concerning the facts and the evidence: Brian Bennett, Ismael Trejo and Dr. Dionne Benson.

Dr. Scott called the following witnesses who testified concerning the facts and the evidence: Dr. Clara Fenger, Dr. Tony Piccard and Dr. Jason Scott.

6. ANALYSIS

The facts in this case were thoroughly presented by both parties. On the morning of February 13, 2025, HIWU Investigators Brian Bennett, Lane Ruddick and Brett Smith conducted a search of Dr. Scott’s veterinary truck at Sunland Park, New Mexico. The search began at approximately 7:30 a.m., as HIWU Investigators did

not want to delay veterinarians like Dr. Scott on a race day. On this day, only Covered Horses were racing at Sunland Park.

Dr. Scott told Investigator Brian Bennett (“Bennett”) that he had to give Lasix to a horse that was racing that day. When Bennett mentioned that no horse was racing until 12:20 p.m. (and thus the earliest Lasix could be given was 8:20 a.m.), Dr. Scott stated that the horse needing Lasix was housed at the Frontera Training Center. Bennett became suspicious of this reasoning, because Lasix administration for a horse racing at Sunland Park is not permitted off-track at Frontera. Investigator Bennett assured Dr. Scott that the search should only take 15 – 20 minutes.

Although there were at least seven other vans parked along the fence and located in New Mexico or Texas, only one van was stopped and searched -- the one belonging to Dr. Scott.

During the search of Dr. Scott’s truck, Investigator Bennett found two bottles clearly labeled as Pitcher Plant, also known as Sarapin, and placed them in evidence as BB-1 and BB-2.

- a. BB-1 was found in the top left drawer of Dr. Scott’s veterinary cabinet.
- b. BB-2 was found inside a blue plastic tote, which also included hypodermic needles and other medications.

Dr. Scott admitted to possessing and using the Pitcher Plant, but stated to Investigator Bennett that he only used it on non-Covered Quarter Horses for the treatment of “sacroiliac issues.”

Investigator Bennett also found two bottles of Adenosine Monophosphate, also known as AMP, in the top middle drawer of Dr. Scott’s veterinary cabinet and placed them in evidence as BB-3 and BB-4. Each AMP bottle stated: “Each ml.

contains: 200 mg of Adenosine-5-Monophosphoric acid and Benzyl Alcohol 1.5% as preservative.” Dr. Scott admitted to possessing and using the AMP, but he told Investigator Bennett that he used AMP only on Quarter Horses for treatment of issues associated with tying-up.

Dr. Scott had previously sent a written request to HIWU for an interpretation of the Rules and received a courteous reply. He had also testified as an expert witness in a case where the HIWA sought to, and did, prove previous violations of the code by a trainer who trained Thoroughbreds and Quarter Horses in Texas and New Mexico.

Dr. Benson, HIWU’s expert on veterinary medicine regulations, testified that Pitcher Plant and AMP must be controlled by possession rules because neither substance can be successfully identified in post-race anti-doping testing.

Pitcher Plant is explicitly banned at all times under ADMC Program Rule 4117. Thus, Dr. Scott had two prohibited substances at a Covered Racetrack on a day covered Thoroughbreds were running.

He also had inconsistencies in his billing records which he said were mistakes made by his administrative staff. He testified that he had never knowingly violated any rules of the HISA and had committed no known violations of the New Mexico Racing Commission (“NMRC”) rules and regulations.

The evidence also shows that Dr. Scott’s van was selectively identified for a search by Investigator Bennett out of the seven or eight vans parked along the fence in either New Mexico or Texas that day. The evidence further demonstrates that Dr. Scott had requested information from HISA’s general counsel’s office concerning what substances were covered in the treatment of Quarter Horses. He testified he

had previously served as an expert witness adverse to HIWU in at least one case involving a New Mexico veterinarian.

In his more than two decades as a veterinarian treating Thoroughbreds and Quarter Horses, Dr. Scott had only one reported violation, and that was a violation he self-reported. He did not use Pitcher Plant or AMP on any Thoroughbreds on the day of the inspection, and he stated that he only intended to use the substances on Quarter Horses.

He followed the standard practices of the veterinarians in New Mexico at that time, and it was unclear, at best, if the NMRC was following the rules set out for enforcement at HIWU. In fact, the commissioner of the NMRC was somewhat confused about what was covered before the investigation of Dr. Scott's truck.

Dr. Scott admitted to having both AMP and Pitcher Plant in his van and was generally cooperative throughout the investigation. He turned over his AMP and Pitcher Plant bottles when requested to do so.

Dr. Scott is a widely recognized veterinarian who routinely treats horses trained by noted, reputable trainers in New Mexico and Texas, and by many national and international trainers as well. He is recognized as a leader in veterinarian organizations and has served on boards and committees at the local and national levels as well.

The parties elicited both general and technical expertise from numerous witnesses and produced exhibits, including correspondence, emails, scientific and technical information from experts in the field of medication and treatment of racehorses, test results, and various reports and selections of literature related to this matter. They also cited relevant cases and statutes.

The pleadings and briefs submitted and reviewed demonstrated outstanding advocacy by the parties' respective counsel in their Pre-Hearing Briefs and Rebuttal Briefs; Findings of Fact and Conclusions of Law; Post-Hearing and Rebuttal Briefs, and in their detailed analysis of the law and appropriate standards of conduct. The parties agreed that the site of the arbitration was Sunland Park, New Mexico, to avoid any jurisdictional disputes. Each and every fact in evidence, and the cases cited, are analyzed and discussed in their extensive briefing and analysis.

The basic facts are not in dispute, but the basis for the selection of Dr. Scott's van by Investigator Bennett remains questionable.

FINAL AWARD

Therefore, based upon everything previously discussed and presented in this matter, I hereby Award and Rule as to Dr. Scott:

A period of ineligibility of eighteen (18) months from the date of the initial inspection (February 13, 2025) for possession of two prohibited substances. The 18 month period of ineligibility will expire on August 13, 2026.

A fine of \$25,000 and a payment of \$5,000 in adjudication costs based upon all of the facts and evidence presented.

No other remedies are appropriate.

Dated: February 12, 2026

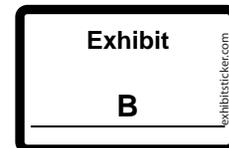


Hugh E. Hackney, Arbitrator



Mary Scollay
Chief of Science
HIWU

...[i]f the veterinarians are practicing also on a population of non-Covered horses, they're taking care of quarter horses or they've got a country practice part-time they are able to possess a Banned Substance because we don't have control over those horses, and so to the extent that they want to use bisphosphonates on a Non-Covered horse, we can't ban them for possessing them ... we can't penalize people for something that we don't have control over so, you know, let's just say because **we have the ability to investigate**, if the story starts to get a little weird or a little extreme, you're going to get more than a raised eyebrow. But at the end of the day if someone is practicing out in the country, we don't have the authority to control the medications they administer or carry for Non-Covered Horses ... the regulation addresses if there is justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates Non-Covered horses.



An administrative body must, at the time the action was taken, show on the record that it “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”

-Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (Adopted in Shell, JAMS Op. at 7.18 (“An agency must defend an its actions based on the reasons it gave.”)).

Explanation Required in Rulemaking Proposal (16 CFR 1.142)(a)	Answer
The reasons for adopting Rule 3214(a)	NONE
Any problems Rule 3214(a) was intended to address	NONE
How Rule 3214(a) will resolve those problems	NONE
A description of reasonable alternatives to Rule 3214(a) that may accomplish the stated objective	NONE
The reasons the Authority chose Rule 3214(a) over its alternatives	NONE
How Rule 3214(a) will affect covered persons	NONE
Why Rule 3214(a) is consistent with the requirements of the Act	NONE
How HISA considered the 15 USC 3055(b)	NONE
Whether Rule 3214(a) is more or less restrictive than any statutory baseline	NONE

POINT 1

Has HIWU Ever Prosecuted Another Possession Case Where a Veterinarian Asserted [1] Same-Day Intended Use of a Medication [2] on a Non-Covered Horse [3] at the Racetrack?

Answer: **NO**

What Makes this Case Exceptional?

No Other Veterinarian Even Argued That The Medication Was Part of Their Non-Covered Practice At The Racetrack

<u>Original</u> explanation was that the Medication was Intended for Use . . .	Perez	Shell	Overly	Scott
On a Non-Covered Horse	NO	YES/NO	NO	YES
At the Racetrack	NO	NO	NO	YES
That Day	NO	NO	NO	YES

All Three Vets Lost for the Same Reason:

- “Dr. Perez submitted no evidence that he in fact needed the substance to, for example, *treat noncovered horses at Belmont Park that day.*” (FTC Op. at 4)
- Proof of a non-covered practice in West Virginia “is not by itself a compelling justification for possessing Banned Substances *at an Ohio Racetrack.*” (JAMS Op. at ¶ 7.20)
- Dr. Overly’s explanations provided “no reason” to carry the substance “at Los Alamitos on July 23, 2024 [the day of the search] *for his Non-Covered Practice there.*” (JAMS Op. at ¶ 7.5.6(a),(b); 7.5.7(a),(b)).

HIWU v. Perez

- Alleged Justification:
 - Possession of Thyro-L was Part of His Non-Covered Practice
- Why Was *That Explanation* Not Compelling?
 - There is no “blanket exemption” for covered veterinarians who have a non-covered practice. (ALJ Op. at 9.)
 - Dr. Perez repeatedly admitted he had not used the medication in months (JAMS Op. at ¶ 2.13(a); ¶ 2.10(d))
 - Dr. Perez “completely forgot” about the Thyro-L in his trailer. (JAMS Op. at ¶ 2.13(d))
 - “Non-Covered Horse” Explanation was a “theoretical justification raised by his counsel, after the fact” that was *inconsistent with his initial explanation* (ALJ Op. at 6.)

HIWU v. Shell

- Alleged Justification
 - “He argues that Dr. Scollay told him he could possess Banned Substances on a racetrack if he had a Non-Covered Practice. Period.” (JAMS Op. at ¶ 7.16)
 - “He further asserts that he has an ethical duty to carry those medications at all times to have them available.” (JAMS Op. at ¶ 7.16)

- Why Were *These Explanations* Not Compelling?
 - There is no “blanket immunity” for veterinarians with a non-covered practice. (JAMS Op. at ¶ 7.40)
 - ***Records did not support need to carry the medications “at all times”***
 - “Treating farm horses or West Virginia horses once a week for non-emergency conditions likely would not justify possessing the Banned Substances every day at an Ohio Racetrack.” ((JAMS Op. at ¶ 7.20)
 - Under the circumstances, “the inconvenience of additional time . . . does not qualify as a compelling justification for keeping these banned substances on a truck or on a covered racetrack.” (JAMS Op. at ¶ 7.21)
 - “Dr. Shell was using, or facilitating the use of, West Virginia as a loophole to supply Banned Substances to Thoroughbred racehorses” (JAMS Op. at ¶ 7.25)

HIWU v. Overly

- Alleged Justification
 - The vast majority of Dr. Overly’s Practice is Non-Covered. (JAMS Op. at ¶ 7.5.6(a),(b); 7.5.7(a),(b)).
 - Hypothetically, requiring unloading and unloading of the truck between covered and non-covered practice creates “ethical conundrums” (JAMS Op. at ¶ 7.5.4).
 - Testosterone was occasionally administered to a single non-covered horse as part of a farm practice. (JAMS Op. at ¶ 7.5.6(b)).
 - Isoxsuprine was loaded on the truck a week earlier to treat a single non-Covered horse off the racetrack. (JAMS Op. at ¶ 7.5.7(b)).
- Why was *That Explanation* Not Compelling?
 - Without more, a non-covered practice is not a compelling justification. Dr. Overly must have shown that *his* non-covered practice justified his possession of Testosterone and Isoxsuprine *at the racetrack that day*. (JAMS Op. at ¶ 7.5.5)
 - Dr. Overly offered no evidence that he had ever used **testosterone at the racetrack**, and he did not administer testosterone as part of his farm practice **that day**. (JAMS Op. at ¶ 7.5.6(a),(b))
 - Dr. Overly “did not know why **isoxsuprine** was on the truck,” did not identify “a single instance in which he treated a Non-Covered Horse with isoxsuprine,” and failed to explain why the substance remained on the truck six days after its alleged use. (JAMS Op. at ¶ 7.5.7(a), (b)).

Why Were Explanations of a “Need” As Part of an Off-Track Practice Not “Compelling”?

Reasoning of All Three Cases Involving Veterinarians:

- There is no “blanket exemption” for the Possession Rule for veterinarians with a Non-Covered Practice.
- The pertinent question is whether the medications were part of the veterinarian’s *Non-Covered Practice at the racetrack.*
- *If not*, the veterinarian must explain and prove why their *off-track practice* requires them to carry the medication *at the racetrack.*

All Three Vets Lost for the Same Reason:

- “Dr. Perez submitted no evidence that he in fact needed the substance to, for example, *treat noncovered horses at Belmont Park that day.*” (FTC Op. at 4)
- Proof of a non-covered practice in West Virginia “is not by itself a compelling justification for possessing Banned Substances *at an Ohio Racetrack.*” (JAMS Op. at ¶ 7.20)
- Dr. Overly’s explanations provided “no reason” to carry the substance “at Los Alamitos on July 23, 2024 [the day of the search] *for his Non-Covered Practice there.*” (JAMS Op. at ¶ 7.5.6(a),(b); 7.5.7(a),(b)).

No Prior Case Turned on the “Credibility” of Records

<u>Fact Shown By HIWU</u>	Perez	Shell	Overly
Vet Denied/Never Asserted Using the Medication on a Non-Covered Horse at the Racetrack During Search	X	X	X
Vet Admitted Not Using the Substance at the Racetrack	X	X	X
Vet “Forgot”/Did Not Know They Possessed the Medication	X		X
Explanation at Hearing Was <u>Completely</u> Inconsistent with the Veterinarians Original Explanation	X		X
“Overwhelming” Evidence of a Doping Program Designed to Circumvent ADMC Rules		X	
NO EVIDENCE of treating a racehorse at the racetrack with the medications	X	X	X

All Three Vets Lost for the Same Reason:

- “Dr. Perez submitted no evidence that he in fact needed the substance to, for example, *treat noncovered horses at Belmont Park that day.*” (FTC Op. at 4)
- Proof of a non-covered practice in West Virginia “is not by itself a compelling justification for possessing Banned Substances *at an Ohio Racetrack.*” (JAMS Op. at ¶ 7.20)
- Dr. Overly’s explanations provided “no reason” to carry the substance “at Los Alamitos on July 23, 2024 [the day of the search] *for his Non-Covered Practice there.*” (JAMS Op. at ¶ 7.5.6(a),(b); 7.5.7(a),(b)).

POINT 2

Is There a Genuine Factual Dispute
that Dr. Scott Possessed the
Medications to Treat Quarter Horses
at the Racetrack on February 13,
2025?

Answer: **NO**

What is the Burden for “Compelling Justification”?

Burden of Proof: Preponderance of the Evidence

Multi-Factor Test/Mathematical Formula? No.

- “Of necessity, this defense is fact-driven and thus case-specific.” (Shell ALJ Op. at 16)
- No case has ever required a complete medical record, statements of diagnosis, or any particular document to prove a compelling justification.

How is “Compelling Justification” Shown?

- **Documentary Evidence** (Shell ALJ Op. at 34 (“A veterinarian may be able to prove compelling justification despite imperfect recordkeeping, of course.”))
- **Witness Testimony** (Shell ALJ Op. at 34 (“To be sure, the testimony of fact witnesses can be probative of compelling justification.”))
- **Party Statements** (Consistent/Inconsistent Statements)
- **Circumstantial Proof** (Conduct, Time, Place, Context)

Dr. Scott's Burden to "Justify" Conduct is Irrelevant if There is No Genuine Dispute of Fact

Black-Letter Law:

- Only “genuinely” disputed facts are subject to adjudication.
- When a party presents proof showing the existence or non-existence of a fact, the non-movant must produce evidence to the contrary

When is a dispute “genuine”?

- Evidence supports competing inferences, so that a rational trier of fact could resolve the issue either way
- Movant’s evidence must be “controverted” with “affirmative evidence.”
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986)

When is a dispute *not* “genuine”?

- A party cannot create a question of fact with “mere speculation, conjecture, or surmise.”
Alcala v. Ortega, 128 F.4th 1298, 1306 (10th Cir. 2025)
- **A party cannot create a question of fact by simply questioning the credibility of movant’s evidence, standing alone.**
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256–57 (1986)

What is the Evidence That The Medications Were Part of Dr. Scott's Quarter Horse Practice At the Racetrack?

Direct or Circumstantial Evidence	Proven
Dr. Scott Explained to Investigator on the Day of the Search that the Medications Were For Use on Quarter Horses at the Racetrack	✓YES
This Truthful Explanation Remained Consistent and Unchanged	✓YES
Dr. Scott's Actions Corroborated His Explanation (He Asked For the Medications Back So He Could Use Them That Day on Quarter Horses At the Racetrack/Communication with NMRC Vet)	✓YES
Search Occurred on a non-racing QH day when veterinarians would normally treat QH at the Racetrack	✓YES
Quarter Horses Treated by Dr. Scott Were Stabled At the Racetrack	✓YES
Record of Treating Quarter Horses at the Racetrack With These Medications During the Meet Before the Search	✓YES
Explanation of Clinical Pre-Race Protocol/Stable Prescription that includes Sarapin and AMP	✓YES
Identification of Horses Vet Intended to Treat on February 13, 2025	✓YES
Widespread Understanding that the Medications Were Not Prohibited in Quarter Horses in New Mexico	✓YES
Common and Long-Standing Use of the Medications in the Community on New Mexico Quarter Horses	✓YES
No Notice or Legal Ruling Prior to Day of Search that the Substances Are Illegal in New Mexico	✓YES
Corroborating Witness Testimony of Knowledgeable Witness	✓YES
Dr. Scott's Reputation for Honesty and Compliance with Regulations	✓YES
HIWU Believes Dr. Scott's Statements to Establish the Identity of the Substances	✓YES

Did HIWU Present Any Evidence (or Argument) That The Medication Was *Not* Part of Dr. Scott’s Non-Covered Practice?

Direct or Circumstantial Evidence	Offered?
Evidence from HISA Treatment Portal Showing Administration to Covered Horses	X NO
Inconsistent/Shifting Explanation About Reason for Use	X NO
Allegation or Proof of Cheating/Use of Non-Covered Practice as a “Loophole”	X NO
“I don’t know why [Sarapin/AMP] is on the truck”	X NO
Eyewitness Testimony that the Medication Was Used in a Covered Horse	X NO
Admission that the Medication Was Used in a Covered Horse	X NO
History of Non-Compliance with Regulations?	X NO
Unusual or Exotic Drug?	X NO
Proof that the Substances are Performance-Enhancing Substances	X NO
Any New Mexico Case Where Trainer/Vet Was Penalized for Use in Quarter Horses	X NO
Any Evidence that, on February 13, Anyone Would Have Suspected That New Mexico Prohibited Veterinarians From Possessing These Substances For Quarter Horses at the Racetrack	X NO

Dr. Scollay: HIWU must do more than simply “raise an eyebrow” at the facts.

Did HIWU Even *Genuinely Question* Dr. Scott's Explanation?

Basic Investigative Actions:	HIWU
Make a reasonable request for particular documents	X NO
Ask Dr. Scott about the horses he intended to treat	X NO
Interview practicing veterinarians or racetrack practitioners	X NO
Interview the NMRC equine medical director	X NO
Interview owners	X NO
Interview trainers	X NO
Interview <i>anyone</i> with personal knowledge	X NO
Review agency precedent to verify legal propositions	X NO

What Did HIWU Do Instead?

- Make a non-specific request for “explanation and information” in a charge letter.
- Manufacture a fake legal ruling purporting to be on behalf of the New Mexico Racing Commission on NMRC Letterhead.
- When that ex parte involvement was exposed, reframe the letter as a “witness statement.”
- Scrutinize documentary evidence for compliance with the record-keeping requirements of other agencies without questioning the truth of the information contained in the record.

[PUT ON NMRC LETTERHEAD]

HIWU
4801 Main Street, Suite 350
Kansas City, MO 64112

August 1, 2025

HIWU:

In response to your inquiry, I am writing to explain the regulation of compounded Sarapin and Adenosine Monophosphate (“AMP”) under the New Mexico Racing Commission Rules.

New Mexico Racing Commission Rule 15.2.6.9(3) requires Veterinarians to submit to the New Mexico Racing Commission the name of any medication that the Veterinarian would like to use on a Quarter Horse at a New Mexico track when that medication is not listed on the Association of Racing Commissioners’ (“ARCI”) Uniform Classification Guidelines for Foreign Substances so that it may be submitted to ARCI for consideration of classification.

Neither Sarapin nor AMP are listed on ARCI’s Uniform Classification Guidelines for Foreign Substances. The New Mexico Racing Commission has not received any request to submit Sarapin or AMP to ARCI for consideration of classification.

Even if such a request had been made, Sarapin and AMP would not be permitted under New Mexico Racing Commission Rule 16.2.6.8(B)(10) unless these compounded substances met the criteria of the Rule, being 1) they were prescribed consistent with the Animal Medicinal Drug Use Clarification Act (“AMDUCA”); 2) they met New Mexico Board of Pharmacy Rules; and 3) the New Mexico Racing Commission’s labeling rules were followed.

Under the New Mexico Racing Commission Rules, compounded Sarapin and AMP are not permitted for use in Quarter Horses at New Mexico racetracks.

Sincerely,

Ismael “Izzy” Trejo
Executive Director



DIONNE BENSON

**THE KEY QUESTION IS
WHETHER THE SUBSTANCE
AMP IS A LEGAL MEDICATION
THAT CAN BE GIVEN TO
HORSES RACING IN NEW
MEXICO.**

POINT 3

Can HIWU Negate its Lack of Jurisdiction over Non-Covered Horses Under the Rubric of “Compelling Justification”?

Answer: **NO**

Basic Principles of Subject-Matter Jurisdiction

1. Administrative bodies are creatures of statute and have no power except what a statute gives them.
2. “[W]hat cannot be done directly from defect of power, cannot be done indirectly.”
See Wayman v. Southard, 23 U.S. 1, 50 (1825).
3. Administrative bodies cannot alter, amend, or enlarge statutory jurisdiction through rules.
4. There is a presumption *against* federal statutory jurisdiction.
See Marcus v. Kan. Dep’t of Revenue, 170 F.3d 1305, 1309 (10th Cir.1999).
5. The administrative body bears the burden to prove jurisdiction (here, “to the comfortable satisfaction of the hearing officer”).

The Possession Rule *Does Not Apply* To a Veterinarian's Quarter-Horse Practice at the Racetrack

“In his petition for review, he posits a situation in which a covered veterinarian is treating both covered horses (to which the proscription applies) and noncovered horses (*to which the proscription does not apply*).”

(HIWU v. Perez (FTC Op. at 4))

“... [i]f the veterinarians are practicing also on a population of non-Covered horses, they're taking care of quarter horses or they've got a country practice part-time *they are able to possess a Banned Substance because we don't have control over those horses*, and so to the extent that they want to use bisphosphonates on a Non-Covered horse, we can't ban them from possessing them ... *we can't penalize people for something that we don't have control over*”

(HIWU v. Shell, ALJ Op. at 21 (quoting HIWU Chief Scientist Dr. Mary Scollay))

The ADMC Protocol is a “horse-centric approach to regulation” with “a set of rules that *follow the Covered Horse*,” as opposed to a set of rules that applies “to people and horses when they arrive[] at the racetrack grounds.”

(Ex.7, HISA Regulatory Veterinarian Handbook)

Can HIWU Regulate This Conduct?

Purpose	Express Limitation	Citation
Personal Use	“For the avoidance of doubt, the Protocol does not regulate the use of drugs or medications by human participants in Covered Horseraces.”	HISA Rule 3010(c)
Use on Quarter Horse	No jurisdiction over Quarter Horses unless the State (New Mexico) specifically elects additional breed coverage.	15 U.S.C. 3054(1)

“what cannot be done directly from defect of power, cannot be done indirectly.”

Wayman v. Southard, 23 U.S. 1, 50 (1825).

Can HIWU Regulate This Conduct?

Purpose	Express Limitation	Citation
Use on Quarter Horse (Medical Justification)	Power to assess “medical diagnosis and treatment” is expressly limited to “covered horses.”	15 U.S.C. 3055(b)(5)
Use on Quarter Horse (Access to Records)	Investigative powers limited to “records, and personal property of covered persons that are used in the care, treatment, training, and racing of covered horses”	15 U.S.C. 3054(c)(1)(A)(i)
Use on Quarter Horse (Compliance with FDA/federal laws)	Compliance with FDA/federal law/AMDUCA is not a category of anti-doping violations under the Act	15 U.S.C. 3057
Use on Quarter Horse (Compliance with State Law)	No power to adjudicate violations of state law. Power limited to referral to agency with jurisdiction	15 U.S.C. 3060(b)

“what cannot be done directly from defect of power, cannot be done indirectly.”

Wayman v. Southard, 23 U.S. 1, 50 (1825).

***“what cannot be done directly from defect of power,
cannot be done indirectly.”***

Wayman v. Southard, 23 U.S. 1, 50 (1825).

The “Real Issues” in this Case:

- Are these medications “medically necessary” for use in Quarter Horses?
- As a matter of first impression under New Mexico law, do NMRC regulations prohibit veterinarians from possessing compounded AMP and Sarapin?
- Would the FDA hypothetically exercise “enforcement discretion” against Dr. Scott under AMDUCA and GFI #256?
- Must the arbitrator ignore the *undisputedly true* statements in Dr. Scott’s treatment record if they do not exactly comport with record-keeping rules?

“These are drugs you cannot possess anywhere, at any time”
– HIWU (Hearing on Motion for Summary Disposition)

- Medications to Treat Common Health Conditions
 - High Blood Pressure/Heart Disease
 - Diabetes (Metformin, Insulin)
 - Thyroid Disorders
- Medications to Treat Mental Health
 - OCD
 - Anxiety/Depression
 - Insomnia
- Hormone Therapies and Sex-Related Medications
 - Birth Control
 - Fertility Medications
 - Cancer Medications
 - Testosterone
 - Viagra
- Recreational Substances
 - Ethanol (Grain Alcohol)
 - Marijuana, THC, Cannabinoids

“These are drugs you cannot possess anywhere, at any time”
 – HIWU (Hearing on Motion for Summary Disposition)

Most Prescribed Medications	Total Banned	Tot. Prescriptions Annually	Tot. Patients Annually	Prescription Containing Banned Drugs
Top 8	6 (75%)	427,136,994	103,988,049	Metformin; Levothyroxine; Lisinopril; Amlodipine; Metoprolol; Losartan
Top 100	37 (37%)	903,334,351	216,427,849	[Top 8 plus] Sertraline; (Dextroamphetamine; Dextroamphetamine Saccharate; Amphetamine; Amphetamine Aspartate); Hydrochlorothiazide; Bupropion; Fluoxetine; Trazodone; (Acetaminophen/Hydrocodone); Insulin Glargine; Duloxetine; Carvedilol; Citalopram; Oxycodone; Methylphenidate; Venlafaxine; Spironolactone; Zolpidem; (Hydrochlorothiazide/Lisinopril); Quetiapine; Clonazepam; (Hydrochlorothiazide/Losartan); Topiramate; Paroxetine; (Budesonide/Formoterol); Atenolol; (Ethinyl Estradiol/Norethindrone); Insulin Lispro; Valsartan; (Acetaminophen/Oxycodone); Olmesartan; (Ethinyl Estradiol/Norgestimate); Mirtazapine; Lorazepam
Top 200	78 (39%)	<u>1,064,373,844</u>	<u>262,465,679</u>	[Top 100 plus] Insulin Aspart; Diltiazem; Sumatriptan; Alendronate; (Hydrochlorothiazide/Triamterene); Testosterone; Nifedipine; Benzonatate; Chlorthalidone; Donepezil; Dexmethylphenidate; Irbesartan; Methylprednisolone; Norethindrone; Meclizine; (Ethinyl Estradiol/Levonorgestrel); Memantine; Sildenafil; Insulin Degludec; Insulin Detemir; (Drospirenone/Ethinyl Estradiol); (Insulin Human/Insulin Isophane Human); Valproate; Atomoxetine; Olanzapine; Phentermine; (Ethinyl Estradiol/Etonogestrel); Benazepril; Timolol; Risperidone; Verapamil; Doxazosin; Telmisartan; (Amlodipine/Benazepril); Lithium; Nebivolol; Torsemide; Anastrozole; Enalapril; Tretinoin; (Sacubitril/Valsartan)

*2023 Drug Usage Statistics from the annual Medical Expenditure Panel Survey (MEPS)

**Data Includes Outpatient Prescriptions Only; Excludes Inpatient Usage and Over-the Counter Purchases

Source: <https://clincalc.com/DrugStats/>
<https://perma.cc/CMW2-MTYU>

How did WADA Make “Justified Possession” The Exception, Rather than the Rule?

- 2.6.1 Possession ***by an Athlete*** In-Competition of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete Out-of-Competition of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition unless the Athlete establishes that the Possession is consistent with a ***Therapeutic Use Exemption (“TUE”)*** granted in accordance with Article 4.4 or other acceptable justification.
- 2.6.2 Possession ***by an Athlete Support Person*** ***In-Competition*** of any Prohibited Substance or any Prohibited Method, or Possession by an Athlete Support Person ***Out-of-Competition*** of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition ***in connection with an Athlete, Competition or training***, unless the Athlete Support Person establishes that the Possession is ***consistent with a TUE granted to an Athlete*** in accordance with Article 4.4 or other acceptable justification
- [Cmt 13] Acceptable justification may include, for example, (a) an Athlete or a team doctor carrying Prohibited Substances or Prohibited Methods for dealing with ***acute*** and ***emergency situations***

How Did Other Sports Authorities Ensure That Only “Limited Circumstances” Would Justify “Possession”?

THEY ESTABLISHED LIMITS.

Possession Rule	ARCI/New Mexico	WADA	HISA
Rule Differentiates Regulated Persons	Yes (excludes vets)	Yes (different rule for “Support Person”)	No
Rule is Limited by Location/Context	Yes (Racetrack or Training Facility Only)	Yes (different rules for in-competition and out-of-competition)	No
Allows Procedure for Advance/Retroactive Exemptions	Yes	Yes	No
OOB Prohibition Requires Proof of “Connection With” Covered Athlete, Competition, Training	n/a	Yes	No

POINT 3

Was Dr. Scott's Use of AMP and Sarapin for Use in Quarter Horses at the Racetrack on February 13, 2025, a Lawful Exercise of His Clinical Judgment?

Answer: YES



DIONNE BENSON

**THE KEY QUESTION IS
WHETHER THE SUBSTANCE
AMP IS A LEGAL MEDICATION
THAT CAN BE GIVEN TO
HORSES RACING IN NEW
MEXICO.**

NMRC Possession/Labelling Rules Exempt Veterinarians

(Possession Rule – NMAC 15.2.6.8(B)(4))

No person *other than a veterinarian* licensed to practice veterinary medicine in this jurisdiction and licensed by the commission, or a veterinary assistant licensed by the commission acting under the direct supervision of a licensed veterinarian, shall possess on any location under the jurisdiction of the commission any of the following unless approved by the commission:

(Medication Labelling Rule – 15.2.6.9(H)(1))

No person on association grounds where horses are lodged or kept, *excluding veterinarians licensed by the commission*, shall have *in or upon association grounds* which that person occupies or has the right to occupy, or in that person's personal property or effect or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance *that is prohibited in a horse on a race day* unless the product is labeled in accordance with this subsection.

Is NMAC 15.2.6.8(B)(10) a Substantive Rule or Mere Guidance?

“Administrative bodies are creatures of statute and can act only on those matters which are within the scope of authority delegated to them. An agency cannot amend or enlarge its authority through rules and regulations.”

See Matter of Proposed Revocation of Food & Drink Purveyor's Permit for House of Pancakes, 691 P.2d 64, 67 (NM Ct. App. 1984)

- NMRC has statutory jurisdiction to enforce violations of Horse Racing Act. NMSA 60-1A-5.
- NMRC has *no statutory jurisdiction* to enforce violations of other state or federal statutes. (Veterinary Practice Act; AMDUCA; Board of Pharmacy Rules.)
- NMRC statutory authority is limited to establishing rules “for the imposition of penalties for the *use* of prohibited substances.” NMSA 60-1A-11(E).
- Penalties must be established by rule. NMSA 60-1A-11(E).
- There is no penalty for “possession” by a veterinarian. *Compare* NMAC 15.2.6.8(7).

“Prohibited Substance”

NMRC statutory authority is limited to establishing rules “for the imposition of penalties for the *use of prohibited substances.*”

NMSA 60-1A-11(E).

NMAC 15.2.1.7(P)(16) “Prohibited substance” is any drug, chemical, or other substance which, when administered to a horse can create **a change in the normal physiological performance of the horse’s racing ability**, including

- (a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or
- (b) that may interfere with testing procedures; or
- (c) that is a therapeutic medication present in excess of established acceptable levels; or
- (d) that is present in the horse in excess of levels that could occur naturally; or
- (e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.

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Do “Labelling” or “Compounding” Issues Make a Substance a “Prohibited Substance”?

NMAC 15.2.1.7(P)(16)	Compounding	Label
“Prohibited substance” is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability	NO	NO
[including] (a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or	NO	NO
[including] (b) that may interfere with testing procedures; or	NO	NO
[including] (c) that is a therapeutic medication present in excess of established acceptable levels; or	NO	NO
[including] (d) that is present in the horse in excess of levels that could occur naturally; or	NO	NO
[including] (e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.	NO	NO

AMP is Not an NMRC “Prohibited Substance”

NMAC 15.2.1.7(P)(16)	AMP	Reason
<p>“Prohibited substance” is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability</p>	NO	“like a placebo”
<p>[including] (a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or</p>	NO	Not defined by ARCI
<p>[including] (b) that may interfere with testing procedures; or</p>	NO	n/a (endogenous)
<p>[including] (c) that is a therapeutic medication present in excess of established acceptable levels; or</p>	NO	n/a (not a threshold substance)
<p>[including] (d) that is present in the horse in excess of levels that could occur naturally; or</p>	NO	Post-race test only (if it impacts racing ability)
<p>[including] (e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.</p>	NO	Not a substance “specified by rule”

Sarapin is Not an NMRC “Prohibited Substance”

NMAC 15.2.1.7(P)(16)	Sarapin	Reason
<p>“Prohibited substance” is any drug, chemical, or other substance which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability</p>	NO	No effect on performance; no masking or blocking
<p>[including] (a) stimulants or depressants or other substances as defined by the association of racing commissioners international; or</p>	NO	Not defined by ARCI
<p>[including] (b) that may interfere with testing procedures; or</p>	NO	No Evidence
<p>[including] (c) that is a therapeutic medication present in excess of established acceptable levels; or</p>	NO	n/a (not a threshold substance)
<p>[including] (d) that is present in the horse in excess of levels that could occur naturally; or</p>	NO	n/a (not endogenous)
<p>[including] (e) that is a substance specified by rule that is not allowed to appear in an out of competition or hair sample.</p>	NO	Not a substance “specified by rule”

POINT 4

Did HIWU Carry Its Burden to Prove
that Dr. Scott Was In Possession of
“Banned Substances”?

Answer: **NO**

What Must HIWU Prove to Show that the Seized Medications are “S0 Prohibited Substances”?

Required Factual Element	AMP	Sarapin
Identity of the substance	X	X
Substance is “Pharmacological”		
Substance is not addressed by Rules 4112 through 4117		
Substance has no current approval by any governmental regulatory authority for veterinary or human use	X	
Substance is not universally recognized by veterinary regulatory authorities as a valid veterinary use		
Compounded Product is not compliant with AMDUCA		
Compounded Product is not compliant with GFI #256	X	



DIONNE BENSON

THE GFI #256 IS AN FDA GUIDANCE DOCUMENT THAT PROVIDES A NARROW EXCEPTION TO AMDUCA. WHEREBY THE FDA WILL EXERCISE DISCRETIONARY ENFORCEMENT FOR THE COMPOUNDING OF ANIMAL DRUGS.

THE GFI #256 PORTION OF THE CARVEOUT ALLOWS FOR THE EXCEPTION FROM SO BANNED SUBSTANCE STATUS UNDER THE ADMC PROGRAM WHEN SPECIFIC REQUIREMENTS ARE MET.

SPECIFICALLY, UNDER GFI #256, THERE MUST BE AN ACTIVE APPLICATION FOR AN EXCEPTION. AT THE TIME OF THE SEIZURE THERE WAS AN ACTIVE APPLICATION FOR FDA REVIEW OF THIS SUBSTANCE.

“Any Pharmacological Substance that . . . (ii) has no current approval by any governmental regulatory health authority for veterinary or human use”



Australian Government
**Australian Pesticides and
 Veterinary Medicines Authority**

Product: NV A.M.P. 5 INJECTION

Status: Registered (2025-07-01)

Product number: 51114

General details

Registrant: CEVA ANIMAL HEALTH PTY LTD

Category: VM - Veterinary Medicine

Product type: CARDIOVASCULAR SYSTEM

Formulation type: PARENTERAL LIQUID/SOLUTION/
 SUSPENSION

Poison schedule: 0

Registration date: 1998-09-16

Expiry date: 2026-06-30

Constituents details

Constituent name	Chemical group	Type	Amount	Units
ADENOSINE-5-MONOPHOSPHATE	UNGROUPED	Active	200.0	mg/ml

Pack size details

Pack size information	20mL
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Source: Public Chemical Registration Information System
 Search

POINT 5

Can HIWU Punish Dr. Scott with a
Four-Year Suspension and a \$50,000
Fine

Answer: **NO**

Proportionality/Absence of Fault

- “Both ADRVs at issue here arose from a single occurrence” (*Overly*) (One transaction = One ADRV).
- Dr. Scott believed in good faith that he could possess Sarapin and AMP at New Mexico Racetracks.
- All notice about New Mexico law was produced *after* the date of the search (and manufactured by HIWU for litigation purposes).
- There is not a single case in New Mexico where a trainer or veterinarian was punished for the possession or use of Sarapin or AMP.
- There is not a single case in New Mexico where a veterinarian was punished for the possession of Sarapin or AMP under a “compounding” or “labelling” theory.
- AMP and Sarapin have been used on Quarter Horses in New Mexico for decades without issue.
- “Enforcement Discretion” would have afforded Dr. Scott an opportunity to correct any error without punitive legal action.
- HISA has **No Guidance** for veterinarians with a regular practice of Quarter Horses at racetracks.
- No evidence of use on a Covered Horse.
- No evidence of any intent to cheat.
- Neither substance is a performance-enhancing substance and, thus, cannot be used to cheat.
- HISA/HIWU offered conflicting and vague guidance to veterinarians.
- HISA/HIWU did not discharge its own obligation to explain the scope of the rule.
- HISA/HIWU refused to provide specific guidance when asked.



Mary Scollay
Chief of Science
HIWU

...[i]f the veterinarians are practicing also on a population of non-Covered horses, they're taking care of quarter horses or they've got a country practice part-time they are able to possess a Banned Substance because we don't have control over those horses, and so to the extent that they want to use bisphosphonates on a Non-Covered horse, we can't ban them for possessing them ... we can't penalize people for something that we don't have control over so, you know, let's just say because we have the ability to investigate, if the story starts to get a little weird or a little extreme, you're going to get more than a raised eyebrow. But at the end of the day if someone is practicing out in the country, we don't have the authority to control the medications they administer or carry for Non-Covered Horses ... the regulation addresses if there is justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates Non-Covered horses.

Does HIWU Provide Any Guidance?

Before February 13, 2025

- No published decision involving a veterinarian treating Quarter Horses with the medications at a racetrack that day
- No case involving a mixed meet
- No returnable result through a portal search
- Statements implying exemption to possess medications to treat Quarter Horses at racetracks

After February 13, 2025

- Shell ALJ Opinion (March 2025)
- June 11 Email Advisory that AMP, ATP, and Adenosine are “S0 Prohibited Substances”
- Overly JAMS Opinion (No treatment on the day of the search)
- **No Guidance for Treatment at Racetracks**

Substances

HISA Controlled & Banned Substances Lookup.

*Although HIWU takes reasonable care to ensure the information contained within this lookup feature is accurate at the time of its publication, no representation or guarantee (including liability toward third parties), express or implied, is made as to its accuracy, reliability, or completeness.

We're sorry, we couldn't find an exact match for "adenosine monophosphate"

Tips to improve results:

1. Make sure you have spelled the search term correctly.
2. Use different keywords and try again.

Search Cases

Filter by 

This info may be updated any day of the week. Updates will typically be made between 12-5 p.m. ET.

We're sorry, we couldn't find an exact match for "adenosine monophosphate"

Tips to improve results:

1. Make sure you have spelled the search term correctly.
2. Use different keywords and try again.

Proportionality

WARNING LETTER

CMS #576577

07/02/2019

VIA UPS OVERNIGHT

Mr. Nalin Parikh
President
High Chemical Company

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Top ()

23 Mantoloking Lane
Waretown, NJ 08758

Dear Mr. Parikh:

The U.S. Food and Drug Administration (FDA) inspected your drug manufacturing facility, High Chemical Company, a Division of National Generic Distributors at 3901-A Nebraska Street, Levittown, Pennsylvania, from [December 17, 2018 to February 8, 2019](#).

This warning letter summarizes significant deviations from current good manufacturing practice (CGMP) for active pharmaceutical ingredients (API).

Conclusion

Deviations cited in this letter are not intended as an all-inclusive list. You are responsible for investigating these deviations, for determining the causes, for preventing their recurrence, and for preventing other deviations.

Correct the deviations cited in this letter promptly. Failure to promptly correct these deviations may result in legal action without further notice including, without limitation, seizure and injunction. Unresolved deviations in this warning letter may also prevent other Federal agencies from awarding contracts.

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Top ()

Until these deviations are corrected, we may withhold approval of pending drug applications listing your facility. We may re-inspect to verify that you have completed your corrective actions. We may also refuse your requests for export certificates.

After you receive this letter, respond to this office in writing within 15 working days. Specify what you have done since our inspection to correct your deviations and to prevent their recurrence. If you cannot complete corrective actions within 15 working days, state your reasons for delay and your schedule for completion.

“Warning Letter”

“Correct the deviations cited in this letter promptly. Failure to promptly correct these deviations may result in legal action. . . . After you receive this letter, respond to this office within 15 working days. Specify what you have done since our inspection to correct your deviations and to prevent their recurrence. If you cannot complete your corrective actions within 15 working days, state your reasons for delay and your schedule for completion.”

PROPOSED FINDINGS OF FACT

*[Note for Arbitrator: For all findings with an *asterisk, HIWU presented no contrary evidence, opinion, or argument.]*

A. Statement of Undisputed and Uncontested Facts

1. Only genuinely disputed facts are subject to adjudication. To create a genuine question of fact, the party “disputing” the fact must produce “affirmative” proof that contradicts the proffered evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256–57 (1986). Bare attacks on credibility or attempts to discredit testimony do not create a question of fact. *Id.* Likewise, a party cannot create a question of fact with “mere speculation, conjecture, or surmise.” *Alcala v. Ortega*, 128 F.4th 1298, 1306 (10th Cir. 2025).
2. The following facts were established by uncontradicted proof in the form of documentary evidence, witness testimony, expert testimony, and circumstantial evidence more fully elucidated below. HIWU made no attempt to dispute the following facts at the hearing:
 - a. *Dr. Jason Scott has never used or intended to use Pitcher Plant (Sarapin) or Adenosine Monophosphate (AMP) on a Covered Horse.
 - b. *On February 13, 2025, Dr. Scott intended to treat eight Quarter Horses stabled at the racetrack and scheduled to race on February 14 or 15, with a routine pre-race protocol that included treatments AMP or Sarapin, but was precluded from doing so when HIWU investigators seized the medications.
 - c. *Dr. Scott developed these pre-race treatment protocols based on his clinical judgment, training, education, and experience after discussing the horses’ needs with each trainer.
 - d. *The use of AMP by racetrack veterinarians as a prophylactic treatment for exertional rhabdomyolysis in Quarter Horses is the uniform standard of care for veterinary treatment in New Mexico, and has been so for decades.
 - e. *The use of Sarapin as a substitute for or adjunct to chemical NSAIDS for prophylactic treatment of Quarter Horses is the uniform standard of care for veterinary treatment in New Mexico, and has been so for decades.
 - f. *Pitcher Plant Extract is a naturally occurring substance that cannot create a change in the normal physiological performance of a racehorse.
 - g. *AMP is an endogenous substance found in every racehorse (and every living thing), and it cannot create a change in the normal physiological performance of a racehorse.
 - h. *Dr. Scott genuinely and reasonably believed that both medications were permitted for use in Quarter Horses in New Mexico and could be possessed at racetracks.

- i. *Despite the widespread, open, and notorious use of compounded AMP and Sarapin at racetracks in New Mexico and several searches of veterinarians carrying the medications, neither NMRC nor any commissioner or agent of NMRC took any action prior to August 1, 2025, that would imply that the possession or use of either substance was prohibited.
3. As discussed below, Dr. Scott supported these facts with:
 - a. A billing record reflecting the dates and times of treatment. The treatment records were reviewed unredacted at the hearing to permit an inspection of the full pre-race treatment protocol for Quarter Horses and to disclose the names of the Quarter Horses treated, subject to a confidentiality agreement.
 - b. His own testimony and witness statement [Ex.1] explaining his pre-race treatment protocols and his understanding of the rules.
 - c. Demonstrated proof that his explanation remained consistent from the time of the search through the completion of the arbitration.
 - d. The corroborating testimony of two practicing racetrack veterinarians regarding:
 - i. The standard of care for pre-race treatment of Quarter Horses in training in New Mexico;
 - ii. The reasonableness of Dr. Scott’s medical decision-making;
 - iii. The known uses of the medications and the historic regulatory approaches to the medications;
 - iv. The medical need to treat conditions prophylactically and the unavailability of alternatives;
 - v. The NMRC’s historic tolerance regarding the use of these substances, including details of NMRC searches of veterinarian’s carrying these substances and the lack of subsequent regulatory action; and
 - vi. Undisputed veterinary opinions that rhabdomyolysis is a serious and preventable post-race condition that can result in death if not treated.
 - e. Circumstantial proof that was never contradicted, including:
 - i. The undisputed fact that Eight Quarter Horses stabled at Sunland Park Racetrack and under Dr. Scott’s care were scheduled to race over the next two days.
 - ii. The undisputed fact that those Quarter Horses would have been treated *at the racetrack* consistent with a pre-race protocol that had been employed for at least 49 Quarter Horses in the five weeks preceding the Search.

- iii. The undisputed fact that the protocol involved the use of AMP for the Quarter Horses racing the next day and Sarapin for Quarter Horses racing two days out.
 - iv. The undisputed fact — corroborated by Mr. Bennett — that Dr. Scott requested the medications back specifically so that he could treat Quarter Horses at the racetrack that day.
- 4. HIWU never contradicted any of these facts with contrary proof.
 - a. HIWU presented no witness testimony, documentary evidence, or circumstantial fact tending to disprove any of Dr. Scott’s explanations or points of fact.
 - b. HIWU produced no document, treatment record, admission, or testimony to contradict Dr. Scott’s evidence that the Possessed medications had ever been used on a Covered Horse.
 - c. HIWU produced no document, treatment record, admission, or testimony to contradict the existence of Dr. Scott’s treatment protocol.
 - d. HIWU produced no testimony on the standard of care, community practice, or historic understanding of veterinary treatment of Quarter Horses in New Mexico.
 - e. HIWU produced no witness with any experience as a licensed veterinarian in treating racehorses in training to contradict Dr. Scott’s evidence of the standard of care or historic understanding regarding the use of either medication.
 - f. HIWU produced no evidence that NMRC has taken any enforcement action against a veterinarian for the possession or use of compounded substances (including AMP or Sarapin) at a racetrack.
 - g. HIWU has not alleged Use, Administration, Attempted Use, Attempted Administration, or Trafficking of the medications, all of which would have required proof that medications were used or intended for use on a Covered Horse.
- 5. HIWU attempted only (1) to dispute the *characterization* of the records as “medical records” (2) to dispute the credibility of the treatment record itself, and (3) to establish that “accidents” or “mistakes” can happen. None of these points create a genuine question of fact. Indeed, HIWU counsel acknowledged on cross-examination of Dr. Scott that it “goes without saying” that the medications were used and intended for use on Quarter Horses. [Hr. 11/20/25 at 5:17:41–5:17:48.]
- 6. The arbitrator accepts Dr. Scott’s explanation that certain entries for phenylbutazone 24 hours before a race were clerical errors by his billing staff. He explained that he knows them to be inaccurate because (1) they would have triggered positive findings and (2) his protocol requires phenylbutazone at least 48 hours before the race. [Hr. 11/20/25 at 5:15:29–5:16:21; 5:41:43–5:42:27.]

7. Regardless, the targeted attack on the credibility of select records is insufficient, as a matter of law, to draw contrary conclusions or to create an issue of fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256–57 (1986). HIWU does not dispute the truth of the record as to Sarapin and AMP.
8. Further, HIWU disputes none of the additional evidence (described above) tending to prove that Dr. Scott used the medications exclusively for Quarter Horses as part of a routine, pre-race treatment protocol.
9. In sum, the facts set forth in ¶ 2 are legally undisputed by virtue of HIWU’s failure to produce any affirmative proof tending to contradict those facts. As such, the facts identified in ¶ 2 are uncontested and, thus, accepted as true.

B. Dr. Scott’s Pre-Race Treatment Protocol and Undisputed Intended Use of the Medications

10. *Dr. Scott is a licensed, practicing racetrack veterinarian with over two decades of experience treating racehorses in training in New Mexico. Dr. Scott treats Covered Horses (Thoroughbreds) and Non-Covered Horses (Quarter Horses) that are stabled at New Mexico Racetracks.
11. *His only prior citation for a violation of any racing regulation was a self-reported where he inadvertently administered Lasix to a horse that was not entered to race on Lasix, which resulted in a small fine. [Hr. 11/20/25 at 3:39:03–3:40:12.]
12. *On February 13, 2025, Dr. Scott intended to treat eight Quarter Horses stabled at the Sunland Park Racetrack in accordance with a routine pre-race treatment protocol that involved the use of Sarapin 48 hours and AMP 24 hours before a race. [Ex.1, ¶ 31.]
13. *Those horses were identified to HIWU before the hearing to be the Quarter Horses *Chicks Comanchee, Chimes Effort, Kool Kue Blue, Prince of Fast, Tren Ra, FS Stars and Stripes, Scoot Over Baby, and Jess A Bug N D Ocean*, all of which were scheduled to race on February 14 or 15, 2025. [Ex.1, ¶ 31.]
14. *Dr. Scott’s protocols involving Sarapin and AMP are used exclusively for Quarter Horses. [Hr. 11/20/25 at 3:27:19–3:27:36 (Dr. Scott).]
15. *Dr. Scott has never used either medication on a Covered Horse. [Hr. 11/20/25 at 3:27:19–3:27:36 (Dr. Scott).]
16. *Dr. Scott has never “dispensed” injectable AMP or Sarapin for use by a client. [Hr. 11/20/25 at 3:50:39–3:51:13 (Dr. Scott).]
17. *Dr. Scott used these same protocols on at least 49 Quarter Horses who raced at Sunland Park, most of which were stabled at the racetrack. Dr. Scott communicated that use to his billing staff, who recorded that use in the billing software. [Ex.1.2; Ex.1, ¶¶ 25-26.]

18. * Dr. Scott has used these medications in plain view of racetrack security and regulators on Quarter Horses stabled at the racetrack for decades. [Hr. 11/20/25 at 3:41:05–3:41:28.]
19. *AMP is a naturally occurring substance in every living thing, and it has no capacity to change the normal physiological performance of a racehorse. Both parties’ witnesses corroborated this fact:
 - a. Dr. Benson admitted that there was no evidence that AMP can create a change in the normal physiological performance of a racehorse. [Hr. 11/19/25 at 5:08:45–5:08:53; 5:12:11–5:12:25.]
 - b. Dr. Benson further admitted that AMP is “obviously not” a substance that is “prohibited in a horse on a race day” for purposes of the NMRC possession rule. [Hr. 11/19/25 at 5:11:25–5:11:47.]
20. *Sarapin is a naturally occurring substance, and it has no capacity to change the normal physiological performance of a racehorse. Both parties’ witnesses corroborated this fact:
 - a. Dr. Benson admitted that Sarapin is not a substance that can affect the performance of a racehorse. [Hr. 11/19/25 at 5:12:34–5:12:59.]
21. *The Association of Racing Commissioners International intentionally chose not to include Sarapin and AMP on their list of prohibited substances because they have no capacity to influence racing performance. [Hr. 11/20/25 at 0:05:01–0:07:16 (Dr. Fenger).]
22. *Both Sarapin and AMP have been in use as pre-race medications for Quarter Horses in New Mexico for over four decades, and the medications are used by virtually all racetrack veterinarians to treat Quarter Horses *at racetracks* in New Mexico. [Ex.3 (Dr. Tony Pickard); *see* Hr. 11/20/25 at 3:24:15–3:24:42; 3:30:55–3:31:27 (Dr. Scott).]
23. *At the time of the search, Dr. Scott’s use of AMP and Sarapin was considered the standard of care for treating Quarter Horses before a race. [Testimony of Dr. Pickard; Hr. 11/20/25 at 3:26:27–3:27:01 (Dr. Scott).]
24. *AMP and Sarapin are considered safe, prophylactic medications for common post-race conditions, including rhabdomyolysis. [Ex.3 (Dr. Pickard).] Dr. Scott prefers the use of these medications because they are naturally occurring substances that are easier on the horses’ body compared to chemical NSAIDs. [Ex.1 at ¶ 19 (Dr. Scott).]
25. *Rhabdomyolysis (“tying up”) is a life-threatening condition that can occur in response to intense physical exertion. Rhabdomyolysis causes the muscles to tense and become “so hard, you couldn’t drive a nail into them.” [Hr. 11/19/25 at 6:27:54–6:28:05 (Dr. Fenger).] It is “absolutely” a life-threatening condition that causes severe pain and muscle death and can progress to organ failure. [Hr. 11/19/25 at 6:30:56–6:31:52 (Dr. Fenger).]
26. *There is no way to predict which Quarter Horses will tie up during or after a particular race. [Hr. 11/19/25 at 6:29:10–6:29:47 (Dr. Fenger).] It is reasonable and consistent with the standard of care to provide routine prophylactic treatment to prevent rhabdomyolysis.

[Hr. 11/19/25 at 6:29:48–6:30:55 (Dr. Fenger).] AMP is commonly used in the Quarter Horse community for that purpose. [Hr. 11/19/25 at 6:33:13–6:33:42 (Dr. Fenger).]

27. *There are no FDA approved medications for the prophylactic treatment of rhabdomyolysis in racehorses or alternatives to AMP that can be administered with any efficacy prior to a race. [Hr. 11/19/25 at 6:31:54–6:33:13 (Dr. Fenger).]
28. *In 2014, Dr. Scott submitted a list of compounded medications, including AMP, to the New Mexico Racing Commission’s medication committee for classification in 2014. [Ex.1.1; Hr. 11/20/25 at 3:31:32–3:35:05.]
29. *NMRC has conducted repeated searches of veterinarians at racetracks while they were in the possession of compounded Sarapin and compounded AMP. [Ex.3 (Dr. Pickard); Hr. 11/20/25 at 3:57:14–3:57:46 (Dr. Scott).] No search resulted in any regulatory action against the veterinarian. [Hr. 11/19/25 at 2:15:35–2:15:42 (Mr. Trejo).]
30. *At no point prior to the search did NMRC take any action consistent with any belief by NMRC that the substances could not be used — for example, notices to veterinarians, investigators, or stewards, or regulatory actions against veterinarians. [Hr. 11/19/25 at 2:19:52–2:20:52; 2:15:35–2:15:42 (Mr. Trejo).]
31. *The New Mexico Board of Veterinary Medicine has twice informed NMRC that it has no jurisdiction to regulate which medications veterinarians carry and that nothing in NMRC regulations prohibit the possession or use of compounded substances. [Ex.19, Ex.20.]
32. *Dr. Scott genuinely believes that licensed veterinarians in New Mexico are permitted to possess and use AMP and Sarapin at racetracks in New Mexico. [Hr. 11/20/25 at 3:24:42–3:25:10 (Dr. Scott).]
33. In response to this action, Dr. Scott has since stopped the use of AMP and Sarapin in pre-race treatment protocols for Quarter Horses. As a result, his horses have suffered emergency and exigent conditions during or following a race. [*Id.* at 5:39:52–5:40:34.]

C. HIWU’s Search and Lack of Investigation

34. *On February 13, 2025, HIWU investigator Brian Bennett conducted a targeted search of Dr. Jason Scott’s mobile-practice vehicle at the Sunland Park Racetrack, during which he discovered four bottles, two each labeled “Pitcher Plant” and “Adenosine Monophosphate.”
35. *Mr. Bennett searched no other veterinarians at Sunland Park. It is probable (a virtual certainty) that the six or more other veterinarians at the racetrack that day would have been carrying Pitcher Plant or Adenosine Monophosphate in their mobile practice vehicles.
36. *Dr. Scott immediately informed Mr. Bennett that the medications were intended exclusively for use on Quarter Horses. [Ex.1, ¶ 28.]

37. *Dr. Scott’s explanation has remained consistent and unchanged from the day of the search through the conclusion of the arbitration.
38. After the search, Dr. Scott treated a Quarter Horse with Lasix at Frontera Training Center. HIWU investigator Bennett mistakenly believed that the horse was scheduled to race (which would make the treatment a violation). Dr. Scott explained that the horse was scheduled to “work,” not “race.” [Hr. 11/20/25 at 3:59:57–4:01:06.]
39. *Afterward completing the Lasix treatment, he called NMRC Equine Medical Adviser Dr. Joan D’Alonzo, who informed him that NMRC had no rules prohibiting the possession of substances by veterinarians. [Hr. 11/20/25 at 3:42:17–3:43:43.]
40. *Within hours, Dr. Scott confronted Mr. Bennett at the Sunland Park Test Barn and requested he return the medication specifically so that he could render treatment to non-Covered Quarter Horses stabled at the racetrack. [Hr. 11/20/25 at 3:48:08–3:49:55.]
41. *Mr. Bennett refused to return the medications, thereby preventing the treatments from occurring. [Ex.1, ¶¶ 30, 33.]
42. *HIWU investigator Bennett admitted that he conducted no investigation whatsoever into the circumstances of Dr. Scott’s use of the medications and had no evidence that Dr. Scott ever used either medication on a Covered Horse. [Hr. 11/19/25 at 1:33:04–1:33:49.]
43. *Dr. Benson admitted that the identity of compounded substances can be proved only through testing. [Hr. 11/19/25 at 5:06:28–5:06:48.] Even so, HIWU never confirmed the identity of the seized medications through testing.
44. *HIWU never confirmed the contents of the bottles with the manufacturer or attempted to do so.
45. *The labels on the seized medications incorporate by reference an “accompanying insert.” As a matter of routine, Dr. Scott discarded the package insert when he discarded the boxes in which Sarapin or AMP were shipped to him. [Hr. 11/20/25 at 4:02:23–4:03:44.]
46. *To this day, HIWU has never asked Dr. Scott to produce the package insert.
47. *HIWU did not raise an issue with labelling in either its “EAD Notice” or the “EAD Charge Letter.” The first time HIWU raised a labelling issue was in early August, 2025, when HIWU submitted its pre-hearing brief.
48. By that time, Dr. Scott had stopped using both medications and, thus, did not have the insert available. [Hr. 11/20/25 at 5:25:03–5:25:21.]
49. *HIWU interviewed no knowledgeable witnesses, including trainers, staff, owners, or practicing racetrack veterinarians who would be familiar with the use of AMP or Sarapin in New Mexico or in Dr. Scott’s practice.

50. HIWU’s “investigation” was comprised solely of an ex parte phone call with Ismael Trejo. Mr. Trejo originally took a position of non-involvement in this matter, but he changed that position at HIWU’s request because he and HIWU have a “partnership.” [1:53:00–1:53:12.]
51. Mr. Trejo’s opinion was drafted by HIWU prosecutor Allison Farrell. [Exs. 21, 22.] After making only typographical edits, he signed a letter drafted by HIWU attorney Allison Farrell taking the position that AMP and Sarapin were prohibited in New Mexico. [1:54:43–1:54:52.]
52. By Mr. Trejo’s admission, he was only “somewhat familiar” with NMRC regulations. [1:50:26–1:50:35.]
53. Mr. Trejo did not seek Dr. Scott’s input adopting HIWU’s opinion as to the applicability of NMRC regulations to compounded AMP or Sarapin.
54. NMRC has taken no action against veterinarians — including Dr. Scott — for the possession or use of compounded, injectable Sarapin or AMP, a fact Mr. Trejo confirmed. [Ex.5; Hr. 11/19/25 at 2:15:35–2:15:42.]

D. HISA’s Lack of Guidance for Possession for a Non-Covered Practice at a Racetrack

55. The ADMC Protocol provides no specific guidance for the Possession of an allegedly Banned Substance intended for use on non-Covered Quarter Horses stabled at a Covered Racetrack.
56. Prior to the Search on February 13, 2025, HIWU’s former Chief Scientist, Dr. Mary Scollay, had issued the following guidance for veterinarians:

“ . . . [I]f the veterinarians are practicing also on a population of [N]on-Covered Horses, they’re taking care of quarter horses or they’ve got a country practice part- time they are able to possess a Banned Substance because we don’t have control over those horses, and so to the extent that they want to use bisphosphonates on a Non-Covered Horse, we can’t ban them from possessing them...[W]e can’t penalize people for something that we don’t have control over so, you know, let’s just say because we have the ability to investigate, if the story starts to get a little weird or a little extreme, you’re going to get more than a raised eyebrow. But at the end of the day if someone is practicing out in the country, we don’t have the authority to control the medications they administer or carry for Non-Covered Horses . . . [T]he regulation addresses if there is a justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates Non-Covered horses.”¹

¹ *HIWU v. Shell*, JAMS Case No. 1501000653, ¶ 2.23.

57. Prior to the Search on February 13, 2025, HISA’s Regulatory Veterinarian Handbook described the ADMC Protocol as a “horse-centric approach to regulation” with “a set of rules that follow the Covered Horse,” as opposed to a set of rules that applies “to people and horses when they arrive[] at the racetrack grounds.” [Ex.7.]
58. Prior to the Search on February 13, 2025, neither HISA nor HIWU had issued any formal or informal guidance identifying specific actions a racetrack veterinarian should take to comply with the Possession Rule if a Non-Covered Practice at the racetrack includes the use of Banned Substances.
59. To this day, neither HISA nor HIWU has issued any formal or informal guidance identifying specific actions a racetrack veterinarian should take to comply with the Possession Rule if a Non-Covered Practice at the racetrack includes the use of Banned Substances.
60. In July 2025, Dr. Scott was considering purchasing Sarapin for use in Quarter Horses. Realizing that such act would constitute “Possession,” he asked for guidance from HIWU asking for specific steps regarding how to conduct himself. HIWU responded only that he would need to have a “compelling justification” for Possessing the substance. [Ex.16.]

D. Scope and Credibility of Witness Testimony

61. HIWU offered the following witnesses to give legal opinions:
 - a. HIWU offered the testimony of Ismael Trejo, Executive Director of the NMRC, to speak to his understanding of NMRC regulations.
 - b. HIWU offered the testimony of Dr. Dionne Benson to speak to her understanding of (1) the legal meaning of laws, including the ADMC Protocol, AMDUCA, GFI#256, federal and state compounding regulations, federal and state labelling regulations, NMRC’s “possession” regulations, federal and state “pharmacy” regulations, and New Mexico’s legal requirements for “medical records”; and (2) whether Dr. Scott’s conduct complied with these laws.
62. It is axiomatic that a purported expert’s legal opinion is not evidence and cannot be considered as evidence of the correct meaning or the correct application of the law.² All

² “The principle that legal opinion evidence concerning the law is inadmissible is ‘so well-established that it is often deemed a basic premise or assumption of evidence law—a kind of axiomatic principle.’” *Pinal Creek Grp. v. Newmont Mining Corp.*, 352 F. Supp. 2d 1037, 1042 (D. Ariz. 2005) (citing *In re Initial Public Offering Sec. Litigation*, 174 F.Supp.2d 61, 64 (S.D.N.Y.2001)); *see also Marx & Co. v. Diners’ Club Inc.*, 550 F.2d 505, 508-09 (2d Cir. 1977); *United States v. Perkins*, 470 F.3d 150, 158 (4th Cir. 2006); *United States v. Zipkin*, 729 F.2d 384, 387 (6th Cir.1984); *Peterson v. City of Plymouth*, 60 F.3d 469, 475 (8th Cir.1995); *United States v. Weitzenhoff*, 35 F.3d 1275, 1287 (9th Cir.1993); *Aguilar v. International Longshoremens Union Local # 10*, 966 F.2d 443 (9th Cir.1992); *Specht v. Jensen*, 853 F.2d 805, 807 (10th Cir.1988); *Montgomery v. Aetna Cas. and Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir.1990); *Am. Empire Surplus Lines Ins. Co. v. J.R. Contracting & Env’t Consulting, Inc.*, 754 F. Supp. 3d 456, 468 (S.D.N.Y. 2024); *Stobie Creek Invs., LLC v. United States*, 81 Fed. Cl. 358, 360 (2008) (“Expert testimony that testifies about what the law is or directs the finder of fact how to apply law to facts does not assist the trier of fact to understand the evidence or to determine a fact in issue”) (citation omitted); *Wollan v. U.S. Dept. of Int. Bureau of Land Management*, 997 F.Supp. 1397, 1403 (D.Colo.1998).

legal opinions are admitted for the limited purpose of showing a substantial disagreement about the meaning and application of regulations for purposes of Dr. Scott's genuine belief in his own understanding of rules and regulations.

63. Mr. Trejo's letter, though submitted on NMRC letterhead, was not the product of an agency adjudication, rulemaking, or agency declaration under NMAC 15.2.1.10(C). It was instead the product of ex parte discussions between HIWU and Mr. Trejo. Attributing Mr. Trejo's opinion to the entire agency would directly violate New Mexico administrative statutes (NMSA §§ 12-8-13, 12-8-2(E)) and regulations (NMAC 15.2.1.10(C)). Because Mr. Trejo's legal opinion was not the product of any legitimate agency process, it is entitled to no deference. *Kisor v. Wilkie*, 588 U.S. 558, 577 (2019).
64. Mr. Trejo's testimony is entitled to no weight. He testified that he was only "somewhat" familiar with NMRC regulations. [Hr. 11/19/25 at 1:50:26–1:50:35.] He conceded that he conducted no independent review of agency minutes, records, or actions [Hr. 11/19/25 at 2:29:26–2:30:12], which Dr. Scott confirmed through an open records request [Ex.6.]. His opinion is not corroborated by any agency decision or official guidance. [Ex.5.] Further, despite seemingly taking the position that Dr. Scott's conduct violated NMRC regulations, Mr. Trejo has not directed any action to be taken against Dr. Scott.
65. Mr. Trejo demonstrated a complete lack of awareness about pertinent facts. Mr. Trejo was not aware that veterinarians, including Dr. Scott, had been searched by Dr. Benson and NMRC investigators while in possession of AMP and Sarapin. [Hr. 11/19/25 at 2:16:06–2:16:22.] Mr. Trejo was not aware that AMP was a naturally occurring substance that is in every horse and in all feed. [Hr. 11/19/25 at 2:16:49–2:17:06.]. Mr. Trejo was unaware that Dr. Scott and others had submitted a list of compounded medications (including AMP) to the NMRC Medication Committee in 2014. [Hr. 11/19/25 at 2:29:26–2:30:12.]
66. Mr. Trejo ultimately testified to no factual issue in dispute, and he expressly disclaimed any ability to do so. [Hr. 11/19/25 at 2:33:07–2:33:37; 2:34:33–2:34:67.]
67. The arbitrator finds that Dr. Benson did not testify as an independent expert. Dr. Benson sat with HIWU's attorneys through the entire hearing, passed notes to HIWU attorneys during examinations, and otherwise participated with HIWU as part of their trial team throughout the course of the hearing.
68. Dr. Benson openly admitted that she formed her opinions based on incomplete facts and chose not to review relevant evidence, such as Dr. Scott's detailed witness statement explaining his protocol. [Hr. 11/19/25 at 4:44:27–4:45:52; 4:46:49–4:47:17]
69. Dr. Dionne Benson offered no testimony regarding the standard of care for the pre-race treatment of Quarter Horses in New Mexico.
70. Dr. Benson agreed with Dr. Scott's experts on the following points:
 - a. Dr. Benson admitted that "compounding" a substance does not make a substance a "prohibited substance" as that term is defined by New Mexico Racing Commission regulations. [Hr. 11/19/25 at 5:02:06–5:06:47.]

- b. Dr. Benson admitted that there was no evidence that AMP can create a change in the normal physiological performance of a racehorse. [Hr. 11/19/25 at 5:08:45–5:08:53; 5:12:11–5:12:25.]
 - c. She further admitted that AMP is “obviously not” a substance that is “prohibited in a horse on a race day” for purposes of the possession rule. [Hr. 11/19/25 at 5:11:25–5:11:47.]
 - d. Dr. Benson admitted that Sarapin is not a substance that can affect the performance of a racehorse. [Hr. 11/19/25 at 5:12:34–5:12:59.]
 - e. Dr. Benson agreed that at the time of the search in this case, AMP was a substance that could legally be compounded under GFI #256. [Hr. 11/19/25 at 5:22:20–5:22:29.]
 - f. Dr. Benson agreed that the AMP formulation Dr. Scott allegedly possessed has regulatory approval in Australia. [Hr. 11/19/25 at 5:24:11–5:29:08.]
71. Dr. Benson expressly withdrew the following opinions after cross-examination:
- a. Dr. Benson conceded that the treatment records were reliable evidence. [Hr. 11/19/25 at 4:36:19–4:36:45]
 - b. Dr. Benson conceded that she could discern from the billing records that AMP and Sarapin were used as part of a routine, pre-race treatment. [Hr. 11/19/25 at 4:39:07–4:39:27].
 - c. She withdrew her opinion that “dantrolene” could be an alternative to AMP after she admitted that doing so would be an anti-doping violation. [Hr. 11/19/25 at 5:36:32–5:36:54.]
 - d. She also withdrew her opinion that substances violated GFI#256 after she conceded that she could not form an opinion on that matter without reviewing the entire label. [Hr. 11/19/25 at 5:32:39–5:33:40 (“I can’t make that determination without seeing the rest of the label.”).]
72. Dr. Benson admitted that her opinions were not based on any personal or professional experience or training; ***her only basis for interpreting and applying the rules was that she “just read them.”*** [Hr. 11/19/25 at 4:55:47–4:56:16.]
73. HIWU failed to demonstrate that Dr. Dionne Benson has the necessary training, education, or experience to offer any opinions about the “regulatory framework, terminology, purposes, and background” regarding any of the laws for which she was called to testify. *Tang Cap. Partners, LP v. BRC Inc.*, 757 F. Supp. 3d 363, 392 (S.D.N.Y. 2024).
- a. HIWU called Dr. Benson to testify about medical alternatives. Yet at no point when she was licensed by any racing commission has Dr. Benson ever been an attending veterinarian for a racehorse. [Hr. 11/19/25 at 4:31:47–4:32:08.] In her entire career

as a licensed veterinarian, she has never been asked to develop and implement a prophylactic pre-race treatment protocol for a racehorse in training. [Hr. 11/19/25 at 4:29:51–4:30:32.] She has never provided prophylactic treatment to a racehorse. [Hr. 11/19/25 at 4:34:12–4:34:40.]

- b. HIWU called Dr. Benson to testify to whether billing records qualify as “medical records” under the New Mexico Veterinary Practice Act. Yet Dr. Benson has never had a mobile practice and, thus, has no experience generating records in a mobile practice. [Hr. 11/19/25 at 4:32:24–4:32:29.] She has also never billed a client for veterinary treatment and thus, has never generated a billing record. [Hr. 11/19/25 at 4:32:50–4:33:06.]
 - c. HIWU called Dr. Benson to testify about regulations applicable to compounded medications. Dr. Benson has never compounded a medication from bulk substances or labeled a medication compounded from bulk substances. [Hr. 11/19/25 at 5:29:55–5:30:31.] Dr. Benson has never been retained by anyone to give legal advice about compliance with FDA legal requirements. [Hr. 11/19/25 at 5:29:24–5:29:55.] Dr. Benson has never given input to the FDA prior to finalizing GFI #256. [Hr. 11/19/25 at 5:35:36–5:35:57.] Dr. Benson has never been a member of any committee that gave input to the FDA prior to finalizing GFI #256. [Hr. 11/19/25 at 5:35:36–5:35:57.] Her only experience in the field is comprised of authoring two, single-page opinion pieces that were neither peer reviewed nor represented as guidance documents. [Hr. 11/19/25 at 5:35:00–5:35:36.]
74. Dr. Scott produced opinion evidence that not a single practicing racetrack veterinarian would consult Dr. Benson for advice regarding how to treat a racehorse in training. Dr. Fenger testified that she would not seek Dr. Benson’s advice regarding how to treat a racehorse in training. [Hr. 11/20/25 at 0:22:03–0:22:13.] She knows of no practicing racetrack veterinarian who would ever seek Dr. Benson’s advice regarding how to treat a racehorse in training. [Hr. 11/20/25 at 0:24:46–0:24:58.] Dr. Pickard testified similarly.
 75. Dr. Fenger recounted an event in which she “came very close to submitting a complaint to the Vet Medical Board” against Dr. Benson. [Hr. 11/20/25 at 0:22:18–0:22:27.] She recounted that Dr. Benson, while working as a regulatory veterinarian, and without consulting the trainer, consulting the horse’s nearby attending veterinarian, doing a physical examination, or taking a history to determine potential allergies to the medication, administered “emergency” detomidine to the horse intravenously because it was a hot day, all without any valid client-patient relationship. The medication is contraindicated in the absence of seizures (there were none) because it reduces the horse’s ability to dissipate heat, so its use put the horse in unnecessary danger. [Hr. 11/20/25 at 0:22:18–0:24:47.]
 76. Dr. Scott’s experts, Dr. Clara Fenger and Dr. Tony Pickard, both have decades of experience as practicing racetrack veterinarians and must conduct themselves, on a day-to-day basis, in a manner that comports with the laws discussed in this case. [Hr. 11/19/25 at 6:09:07–6:13:41.]
 77. Dr. Fenger is qualified, as follows:

- a. Dr. Fenger is a founding member of the North American Association of Racetrack Veterinarians; is a member of the American Academy of Veterinary Pharmacology and Therapeutics; is a diplomate of the American College of Veterinary Medicine, the AVMA, the KVMA, and the KAEP; and is a board member of the Equine Health and Welfare Alliance. [Hr. 11/19/25 at 6:14:05–6:14:36.]
 - b. Dr. Fenger has been retained by Lisa Lazarus, now the CEO of HISA, as an expert on two separate cases. [Hr. 11/20/25 at 1:17:02–1:18:01.]
 - c. Dr. Fenger has published approximately 45 peer-reviewed scientific articles and chapters in veterinary textbooks about the medical treatment of active racehorses. These articles have appeared in the Equine Veterinary Journal, the Journal of Comparative Exercise Physiology, and others. [Hr. 11/19/25 at 6:10:17–6:12:06.]
 - d. Unlike Dr. Benson, Dr. Fenger has extensive experience with compounded medications and with ensuring compliance with regulations governing compounded medications. [Hr. 11/19/25 at 6:12:44–6:13:41.]
 - e. Unlike Dr. Benson, Dr. Fenger provided input to the FDA for the development of GFI#256 in her personal capacity and as a member of committees for industry organizations that put together recommendations for the FDA. [Hr. 11/19/25 at 6:15:34–6:16:57.]
 - f. Unlike Dr. Benson, Dr. Fenger has been received as an expert in state and federal court in criminal cases and veterinary malpractice cases, and in administrative cases before racing commissions. [Hr. 11/19/25 at 6:17:32–6:18:55.]
 - g. Unlike Dr. Benson, Dr. Fenger has published several scientific papers on rhabdomyolysis. [Hr. 11/19/25 at 6:25:19–6:25:50.]
78. The arbitrator finds that Dr. Fenger testimony was credible. Of note, every single one of the facts HIWU claimed demonstrated Dr. Fenger’s bias was equally true — if not more true — for Dr. Benson.
 79. Dr. Tony Pickard has been a practicing, mobile racetrack veterinarian in New Mexico for over four decades. He explained that the community of racetrack veterinarians in New Mexico was very small, with only a handful of practicing veterinarians. He is familiar with the standard of care for treating racehorses in training.
 80. Dr. Pickard testified that AMP and Sarapin have been used in Quarter Horses in New Mexico since before he started practicing over forty years ago. Dr. Pickard explained that over 99% of racetrack veterinarians in New Mexico would have these medications on their truck for Quarter Horses, and that if the Possession Rule was applied to possession of these medications for Quarter Horses, there would be no practicing racetrack veterinarians in New Mexico and, consequently, no racing.
 81. Dr. Pickard testified that both medications are considered by practicing veterinarians to be safe, prophylactic medications for common conditions that occur during racing, including

rhabdomyolysis. Their use before a race is considered the standard of care in New Mexico. Dr. Pickard testified that their use was well known to the New Mexico Racing Commission and has never been considered illegal.

82. Dr. Pickard testified that he has been searched numerous times by NMRC investigators while in possession of these medications at the racetrack, and NMRC investigators never took the position that AMP or Sarapin were illegal to possess. Mr. Trejo's letter was the first time anyone at NMRC took the position that the medications were illegal.
83. Dr. Pickard explained that HIWU's reading of NMRC rules was nonsensical because it would ban every injectable compounded medication, regardless whether it contained a prohibited substance. That reading would, for example, ban the use of diluted vitamins and oral electrolytes, which are compounded injectable substances that are routinely administered by every veterinarian to horses in every barn, including at racetracks, and have never been considered "prohibited substances."
84. He explained that the rule is more reasonably understood as articulating the requirements for "dispensing" non-injectable substances (like an oral medication or ointment) to trainers for later use on a racehorse. The rule does not address dispensing *injectable* substances because, Dr. Pickard explained, only a veterinarian can administer an injectable substance to a racehorse (i.e., a trainer cannot possess an injectable substance). Dr. Pickard ultimately concluded that the rule most likely clarified the procedure for dispensing non-injectable substances to non-veterinarians, rather than prohibited the use of all compounded injectable substances.
85. The arbitrator finds Dr. Pickard's testimony credible.

Respectfully submitted,

/s/ Joseph C. DeAngelis

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Date: December 10, 2025