PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya

IN THE MATTER OF:
JONATHAN WONG APPELLANT

APPLICATION FOR REVIEW

Appellant Jonathan Wong appeals the Chief Administrative Law Judge's ("ALJ") April 22, 2024, decision affirming the February 9, 2024, decision in JAMS Case No. 1501000584 finding that Appellant committed an Anti-Doping Medication Control Program violation and imposing a final civil sanction ("Decision" – **Exhibit A**). The appeal is taken against the Horseracing Integrity & Welfare Unit ("HIWU") under 15 U.S.C. § 3051 *et seq.*, 5 U.S.C. § 556 *et seq.*, and 16 CFR § 1.147 *et seq.*

The Federal Trade Commission ("Commission") should conduct a *de novo* review because the Decision misapplied the Horseracing Integrity and Safety Authority ("HISA") rules approved by the Commission and incorrectly decided issues of law and policy. The Decision made four errors that warrant review.

First, despite finding that the A sample, B sample, and Further Analysis "test results are presumed valid and the departures [from HISA rules] are not a defense . . . ," Decision, 11, the ALJ failed to consider HISA Rule 7250's requirement that HIWU "present evidence to support its charge." Nor did the Decision consider HISA Rule 7260(d)'s mandate that "the admissibility, relevance, and materiality of the evidence offered" be determined. The ALJ did not determine the admissibility, relevance, and materiality of the test results, nor did he discuss the impact that HISA rule violations had on the evidentiary admissibility or weight of the test results.

Moreover, the ALJ did not address Federal Rule of Evidence 901's authentication requirement, which "may be used for guidance" under HISA Rule 7260(d). Authentication required HIWU to "account[]for the sample's handling from the time it was first collected until the time it was analyzed." *See* 77 A.L.R.5th 201. While the ALJ correctly concluded that HIWU "[did] not point to any evidence in the record showing" the chain of custody information required under HISA Rule 5510(b), his determination that the test results are "presumed valid" left unresolved whether HIWU authenticated the test results. *See* Decision, 11. The ALJ's failure to apply HISA Rules 7250 and 7260(d), as well as authentication requirements, was erroneous and involved decisions of law or policy that warrant review.

Second, despite concluding that departures from HISA Rules 5510(b), 6305(b)(1), and 6315(b) occurred, the ALJ found that Appellant "failed to meet his burden of establishing that the demonstrated departures from applicable testing standards or protocols could reasonably have caused the [Adverse Analytical Finding]." *See* Decision, 11. The ALJ did not address Appellant's extensive briefing on due process requirements that "agencies [strictly] adhere to their own rules" and "not violate their own rules . . ." *United Space All., LLC v. Solis*, 824 F. Supp. 2d 68, 82 (D.D.C. 2011) (internal citations and quotation marks omitted). The ALJ's failure to consider whether admitting the test results as evidence comported with due process law warrants review.

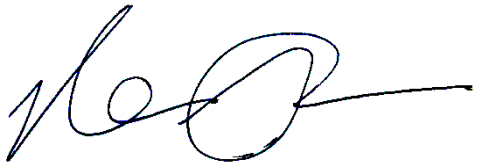
Third, rather than addressing the merits of Appellant's argument that the UC Davis laboratory's Further Analysis violated HISA Rule 3138(b), the ALJ rejected the argument for procedural reasons. *See* Decision, 10. Appellant objected to Further Analysis multiple times during the arbitration, including in pre-hearing filings and orally at the hearing. Appellant's objections were based, in part, on the definitional limitations in HISA Rule 1020. *See* HIWU Appeal Book Tabs 27 (04:47:11), 47, 58; JAMS Hearing January 10, 2024 (3:31:39).

The ALJ acknowledged that Appellant "opposed further analysis," but concluded that opposition was inadequate because Appellant did not "oppose designation of the UC Davis Lab." *see* Decision, 10. Because Appellant opposed further analysis as violating HISA Rule 3138(b), there was good cause for considering Appellant's argument that UC Davis's test results are inadmissible. Inadmissibility is dispositive because, without the test results, HIWU cannot carry its burden under HISA Rule 3212(a). Further, the ALJ granted Appellant's motion to supplement the record to include evidence of the proposed revision to HISA Rule 1020. In granting Appellant's motion, the ALJ must have found that any technicality of not specifically opposing UC Davis's designation for Further Analysis was outweighed by the relevance and materiality of the supplemental evidence.

Fourth, although the ALJ concluded that a different departure from HISA Rule 6315(b) occurred, he rejected Appellant's argument that Brendan Heffron performed the B sample laboratory analysis and therefore did not perform an "independent" review under HISA Rule 6315(b). The ALJ apparently confused Appellant's argument as suggesting that only "external scientists" may perform independent reviews, when Appellant argued that Heffron could not be independent because he performed portions of the testing that he then sought to review as a certifying scientist under HISA Rule 6315(b). The ALJ ignored that B sample laboratory personnel who were ***not*** involved in the testing could have served as certifying scientists and conducted the independent review required by HISA Rule 6315(b).

For these reasons, the Decision should be reversed in whole. If the Commission grants Appellant's application for review, Appellant intends to seek a stay of the Decision under 16 CFR 1.148(b)(2)(ii).

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 16 CFR § 1.147(b)(1) and 16 CFR § 4.2, a copy of the forgoing is being sent this 22nd day of May 2024 via first-class mail, with courtesy copies being sent via electronic mail, to:

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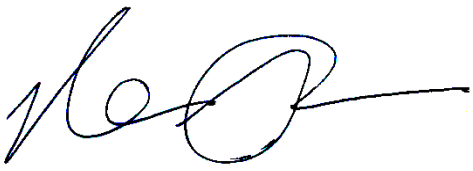

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EXHIBIT A

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

In the Matter of	)	
Jonathan Wong,	)	Docket No. 9426
Appellant.	)	

ADMINISTRATIVE LAW JUDGE DECISION
ON APPLICATION FOR REVIEW

Pursuant to 15 U.S.C. § 3058(b), 5 U.S.C. § 556 *et seq*., and 16 C.F.R. § 1.146(a), Appellant Jonathan Wong ("Appellant"), appeals the final civil sanctions imposed against him by the Horseracing Integrity and Safety Authority, Inc. ("the Authority") under its Anti-Doping and Medication Control ("ADMC") Program. As set forth below, Appellant's liability under Rule 3212(a) of the ADMC Program and the imposed final civil sanctions are AFFIRMED.

I. BACKGROUND

A. The ADMC Program

The Horseracing Integrity and Safety Act ("HISA"), 15 U.S.C. §§ 3051-3060, empowered the Authority to develop and enforce rules and sanctions on a variety of subjects, including anti-doping and medication for horses, subject to oversight by the Federal Trade Commission ("FTC"). 15 U.S.C. §§ 3053, 3055, 3057. HISA's Anti-Doping and Medication Control Rules and Regulations established the specific rules of the ADMC Program, including persons and animals covered by the ADMC Program, banned substances, and sanctions for violations. https://hisaus.org/regulations?modal-shown=true#equine-anti-doping-and-controlled-medication-protocol-rules-(rule-series-3000) ("ADMC Rules").[1] Rules for FTC oversight of the

[1] *See* 88 Fed. Reg. 5070-5201 (Jan. 26, 2023) (FTC Notice of HISA Proposed Rule and Request for Comment); Order Approving the ADMC Rule Proposed by the Authority (Mar. 27, 2023) (available at https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf); 88 Fed. Reg. 27894 (May 3, 2023) (FTC Notice of Final Rule, effective May 22, 2023).

Authority, including the Authority's imposition of civil sanctions, are set forth in 16 C.F.R. § 1.145 *et. seq.*; *see* 87 Fed. Reg. 60077 (Oct. 4, 2022) (Final Rule) (the "FTC Rules").

ADMC Rule 3010(e)(1) established the Horseracing Integrity and Welfare Unit ("HIWU") to enforce the ADMC Program for the Authority. HIWU charges for violations under the ADMC Program are adjudicated by an arbitrator. HISA Rule 7020.[2] Liability found and civil sanctions imposed by the Authority, including those imposed for violations of the ADMC Program, are reviewable by an FTC Administrative Law Judge. 15 U.S.C. § 3058(b); FTC Rule 1.146.

B. Summary of the Case

Based on the briefs of the parties and the record developed below, the following facts are undisputed. On June 1, 2023, Appellant was the trainer of a racehorse called Heaven and Earth. On June 1, 2023, Heaven and Earth finished first in a race at Horseshoe Indianapolis in Shelbyville, Indiana, and earned a purse of $21,600. Following the race, blood and urine samples from Heaven and Earth were collected and on June 2, 2023, the samples were shipped to Industrial Laboratories ("Industrial") in Denver, Colorado.

On June 22, 2023, Industrial reported an adverse analytical finding ("AAF") of the presence of Metformin in a blood and urine sample of Heaven and Earth (the "A sample"). On July 1, 2023, in accordance with ADMC Rule 3245, HIWU issued Appellant an Equine Anti-Doping Notice of Alleged Anti-Doping Rule Violation ("Notice Letter").

On July 3, 2023, Appellant requested an analysis of a second sample that had been taken from Heaven and Earth on June 1, 2023 (the "B sample") to confirm the finding by Industrial of Metformin in the A sample. On July 10, 2023, Industrial sent the urine portion of the B sample to the University of Illinois at Chicago Analytical Forensic Testing Laboratory ("UIC"). A week later, on July 18, 2023, Industrial sent the blood portion of the B sample to UIC. On August 10,

[2] HISA Rules and Regulations, other than those specifically governing the ADMC Program, are referred to as the "HISA Rules."

2023, UIC confirmed the presence of Metformin in Heaven and Earth's urine and blood B samples.

In accordance with HISA Rule 7020, the matter was referred for adjudication by an arbitrator ("Arbitrator"). On December 13, 2023, in response to various issues raised by Appellant regarding the procedures and standards used by the laboratories that found the presence of Metformin, the Authority, pursuant to ADMC Rule 3138(b), moved for an order allowing further analysis of the A and B samples by the Kenneth L. Maddy Equine Analytical Chemistry Laboratory at the University of California, Davis ("UC Davis Lab"). On December 15, 2023, the Arbitrator granted the Authority's motion and the A and B samples were sent to the UC Davis Lab for further analysis.

On December 22, 2023, the UC Davis Lab reported the presence of Metformin in both the A blood sample and the B urine sample. On January 4, 2024, Appellant filed a motion to dismiss the charge against him, or in the alternative, to preclude admission of the A and B sample evidence *in limine*, which the Arbitrator denied on January 5, 2024. Appeal Book of Horseracing Integrity and Safety Authority ("HAB") Tabs 16, 58.

The Arbitrator conducted an evidentiary hearing on January 9 and 10, 2024. On January 29, 2024, the Arbitrator issued a final decision finding that Appellant violated ADMC Rule 3212(a) (the "Decision").[3] The Decision further determined, pursuant to ADMC Rule 3223, that the appropriate sanctions for the violation should be a two-year period of ineligibility for Appellant beginning on July 1, 2023;[4] forfeiture of all distributed purses, prizes, trophies or other compensation arising from Heaven and Earth's first place finish at the June 1, 2023 race; a $25,000 fine; and payment of $8,000 of HIWU's share of the adjudication costs.

[3] On February 9, 2024, the Arbitrator issued a revised Decision, which corrected certain non-substantive errors in the Decision.

[4] "Ineligibility" means the "Covered Person is barred for a specified period of time from participating in specified activities," "involving Covered Horses, or in any other activity . . . taking place at a Racetrack or Training Facility." HISA Rule 1020 (Definitions), ADMC Rule 3229(a)(2).

On February 12, 2024, HIWU sent Appellant a Notice of Final Civil Sanctions under the ADMC Program, imposing the sanctions determined by the Arbitrator. On February 13, 2024, pursuant to FTC Rule 1.145, the Authority filed a Civil Sanction Notice with the FTC (the "Sanctions").

On February 14, 2024, Appellant filed a notice of appeal and application for review ("Application for Review") requesting an evidentiary hearing to supplement the record with one documentary exhibit, reflecting a proposed change to the rules pertaining to further analysis of samples under ADMC Rule 3138(b). On March 1, 2024, the assigned Administrative Law Judge issued an order determining that an evidentiary hearing was unnecessary to supplement the record as requested by Appellant and setting a briefing schedule ("March 1, 2024 Order"). The order took judicial notice of the proposed rule change and allowed Appellant to include the exhibit with his appellate brief.

On March 15, 2024, pursuant to the March 1, 2024 Order, the parties each filed proposed conclusions of law, a proposed order, and supporting legal briefs. On March 25, 2024, the parties filed responses to each other's March 15, 2024 filings.

C. Summary of Applicable Law

Rule 3212(a) of the ADMC Program provides, in pertinent part: "It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse(s)." [5] ADMC Rule 3212(b) further provides that sufficient proof

[5] A "Responsible Person" includes a ". . . licensed Trainer for the Covered Horse"; a "Covered Person" includes "all Trainers"; a "Covered Horse" means any "Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State Racing Commission or the breed governing organization for such horse . . . ." HISA Rule 1020 (Definitions). It is undisputed that Appellant is both a Responsible Person and a Covered Person and that Heaven and Earth is a Covered Horse under the ADMC Program.

of a Rule 3212 Anti-Doping Rule Violation is established by any of the following:

1. the presence of a Banned Substance or its Metabolites or Markers in the Covered Horse's A Sample where the Responsible Person waives analysis of the B Sample and the B Sample is not analyzed;

2. the Covered Horse's B Sample is analyzed and the analysis of the B Sample confirms the presence of the Banned Substance or its Metabolites or Markers found in the A Sample; or

3. where, in exceptional circumstances, the Laboratory (on instruction from the Agency) further splits the A or B Sample into two parts in accordance with the Laboratory Standards, the analysis of the second part of the resulting split Sample confirms the presence of the same Banned Substance or its Metabolites or Markers as were found in the first part of the split Sample, or the Responsible Person waives analysis of the second part of the split Sample.

Pursuant to ADMC Program Rule 3223(b), the penalties for a first Rule 3212 violation are: (1) a two-year period of ineligibility; and (2) a fine up to $25,000 or 25% of the total purse earnings (whichever is greater); and (3) payment of some or all of the adjudication costs and the Authority's legal costs.

This appeal requires the Administrative Law Judge to determine, on a *de novo* basis, whether Appellant violated ADMC Rule 3212. 5 U.S.C. § 3058(b); 16 C.F.R. § 1.146(b). Thus, the Administrative Law Judge must review the record "anew," as though the issue had not been heard before, and no decision had previously been rendered. *See Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006) (describing *de novo* review by appellate court of district court dismissal of complaint under Federal Rule of Civil Procedure 12(b)(6)). *De novo* review requires an independent examination of the record. *See Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002) (describing scope of *de novo* review of agency's interpretations of statute). With *de novo* review, there is no deference owed to the determinations made below. *See Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (holding that, on *de novo* review by an appellate court, there is no deference to the district court).

II. ANALYSIS

A. Contentions on Appeal

Appellant contends that the laboratory testing results upon which his liability was based should not have been admitted into evidence, due to certain alleged departures from testing standards and protocols. Absent the laboratory testing evidence, Appellant concludes, there is no basis for the finding of liability and the resulting sanctions must therefore be vacated.

The Authority responds that the alleged deviations from the testing protocol and standards do not mandate overturning the finding of liability or the resulting sanctions. The Authority argues that Appellant's expert witness in the arbitration admitted the presence of Metformin in Heaven and Earth. In addition, the Authority argues, Appellant has failed to present any evidence that the alleged departures from the testing standards and protocols could reasonably have caused the adverse analytical finding of the presence of Metformin, and that therefore, pursuant to ADMC Rule 3122(c)-(d), such alleged departures are not a defense to the presence violation.

B. Discussion

Appellant's argument that a departure from ADMC laboratory and testing standards renders a test result "inadmissible" is unsupported and is rejected. As an initial matter, per ADMC Rule 3122(c), laboratories are "presumed to have conducted Sample analysis and custodial procedures in accordance with the Laboratory Standards." ADMC Rule 3122(c) further provides a framework for rebutting the presumption:

> A Covered Person who is alleged to have committed a violation may rebut this presumption by establishing that a departure from the Laboratory Standards occurred that could reasonably have caused the Adverse Analytical Finding or other factual basis for any other violation asserted. Where the presumption is rebutted, the Agency shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding or other factual basis for the violation asserted.

Similarly, ADMC Rule 3122(d) provides that:

> Departures from any other Standards or any provisions of the [ADMC] Protocol shall not invalidate analytical results or other evidence of a violation, and shall not constitute a defense to a charge of such violation; provided, however, that if the Covered Person establishes that a departure from any other Standards or any provisions of the Protocol could reasonably have caused the Adverse Analytical Finding or other factual basis for the violation charged, the Agency shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or other factual basis for the violation.

Therefore, to invalidate an AAF, Appellant must establish both that a departure from the rules or standards of the ADMC program occurred, and that such departure could reasonably have caused the AAF. Only in the event of such a showing does the burden shift to the Authority to establish that the departure did not cause the AAF.

1. Existence of Departures

a. HISA Rule 5510

Appellant first contends that the Authority failed to demonstrate in the arbitration that the A and B samples taken from Heaven and Earth on June 1, 2023 were handled in accordance with HISA Rule 5510(b) prior to being shipped to Industrial for analysis. HISA Rule 5510(b), regarding the storage and custody of samples prior to laboratory analysis, states:

> If a urine or blood Sample is not transported to the Laboratory on the day of collection:
>
> > (1) the relevant Sample Collection Personnel shall store the urine Sample in a secure freezer or refrigerator; and
> > (2) the relevant Sample Collection Personnel shall store the blood Sample in a secure refrigerator;
> > (3) and, in each case, shall document in the Chain of Custody the location and time in and time out of the urine or blood Sample. [6]

It is undisputed that the A and B samples were collected on June 1, 2023 and shipped to Industrial on June 2, 2023. Appellant argues that the Authority failed to demonstrate how the samples were stored and to document the chain of custody of the blood and urine samples

[6] HISA Rule 1020 defines "Chain of Custody" as "the sequence of individuals or organizations who have responsibility for the custody of Sample from the provision of the Sample until the Sample has been delivered to the Laboratory for analysis."

between the time of collection and shipment to Industrial, in accordance with HISA Rule 5510(b).

The Authority does not point to any evidence in the record showing: (1) that the urine samples were stored in a secure freezer or refrigerator; (2) that the blood samples were stored in a secure refrigerator; or (3) the location and time in and time out of the samples. Instead, the Authority only argues that there is no indication that HIWU personnel improperly stored the samples.

HISA Rule 5510 places the burden on the Authority to document the storage and chain of custody of samples held prior to shipment for analyses. The Authority's failure to do so warrants a conclusion that a departure of HISA Rule 5510(b) occurred.[7]

b. HISA Rule 6305

Second, Appellant argues that UIC's testing procedure for the B sample analysis did not comply with the requirements of HISA Rule 6305(b)(1) regarding sample aliquoting.[8] HISA Rule 6305(b)(1) provides:

> For urine Samples, the Laboratory shall obtain, following proper homogenization of the Sample, an initial Aliquot containing enough Sample volume for all analytical procedures (i.e., all Initial Testing Procedures or all intended Confirmation Procedures, as applicable), by decanting the Aliquot from the urine Sample container into a secondary container (e.g., a Falcon tube). Procedure-specific Aliquot(s) shall then be taken from the secondary container.

The record shows that instead of decanting the aliquot from the urine sample container into a secondary container as required by HISA Rule 6305(b)(1), Brendan Heffron, the Director of UIC, placed a pipette in the urine sample container twice. HAB Tab 3, ¶¶ 2.107, 7.10. The language of HISA Rule 6305 does not allow for a deviation from the requirement to decant the urine, and thus the failure to decant constitutes a departure from HISA Rule 6305.

[7] Appellant attempts to frame the alleged departures from ADMC rules as due process violations. However, because ADMC Rule 3122(c)-(d) allows Appellant an opportunity to present a defense through the establishment of departures that reasonably could have caused the AAF, adequate due process has been afforded to Appellant.

[8] An "Aliquot" is "a portion of the Sample obtained from the Covered Horse." HISA Rule 1020 (Definitions).

c. HISA Rule 6315(b)

Third, Appellant contends that the B sample analysis conducted by UIC did not adhere to HISA Rule 6315(b). HISA Rule 6315(b) requires that two certifying scientists conduct "an independent review of all Adverse Analytical Findings and Atypical Findings before a test result is reported." Appellant argues that because UIC Director Heffron performed portions of UIC's analysis, he was not an "independent" reviewer of UIC's reported results under HISA Rule 6315(b). A logical reading of HISA Rule 6315(b), however, supports a conclusion that "independent" refers to the reviews themselves, rather than the testing. To find otherwise would result in an inefficient and logistically complicated process by requiring two external scientists to validate the testing. Accordingly, Appellant's argument is rejected.

Appellant further argues that the review conducted by Marc Benoit of UIC did not satisfy the requirements of HISA Rule 6315(b) because Benoit's review occurred after UIC submitted its results to HIWU, and before UIC's laboratory package was certified on August 23, 2023. HAB, Tab 23, sub-tab 16, Exhibits D-E. HISA Rule 6315(b) is clear that at least two scientists must conduct an independent review *before* a test result is reported. Benoit conducted his review on August 23, 2023, well *after* UIC reported its test result to HIWU on August 9, 2023. This constituted a departure from HISA Rule 6315(b). However, there is no evidence to support a conclusion – implied by Appellant – that UIC altered the laboratory package after Benoit's review and prior to certifying the result.

d. ADMC Rule 3138(b)

Lastly, Appellant argues that ADMC Rules barred the UC Davis Lab from conducting the further analysis testing ordered by the Arbitrator pursuant to ADMC Rule 3138(b) ("Further Analyses may be conducted, without limitation, on a Sample prior to the time that it is reported as negative or prior to the time that the Agency notifies a Covered Person that the Sample is the basis for an Anti-Doping Rule Violation or Controlled Medication Rule Violation."). Appellant relies on HISA Rule 1020, which defines "Further Analysis" to mean "additional analysis

conducted by a Laboratory on an A Sample or a B Sample after it has reported an analytical result for that A Sample or that B Sample . . . ."

According to Appellant, the foregoing definition means that any further analysis had to have been conducted by UIC, the same laboratory that previously tested the B sample, rather than by the UC Davis Lab. In support of that argument, Appellant cites a proposed revision to HISA Rule 1020, which would change the definition of "Further Analysis" from "additional analysis conducted by a laboratory on an A Sample or B Sample after *it* has reported an analytical result for that A Sample or that B Sample . . . ." to " . . . additional analysis conducted by *any laboratory* after an analytical result has been reported by a Laboratory for that Sample . . . ."[9] (emphases added).

Appellant's argument is rejected. First, the record does not reflect that Appellant made this argument in the arbitration and thus he cannot properly raise it for the first time on appeal, absent a showing of good cause. 16 C.F.R. § 1.146(a)(1) ("Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority.") Appellant has not alleged or demonstrated good cause for failing to raise this argument in the arbitration. Indeed, HISA's motion for further analysis expressly requested that the further analysis testing be conducted by the UC Davis Lab, and while Appellant opposed further analysis, Appellant did not oppose designation of the UC Davis Lab and did not assert that any further analysis had to be conducted by UIC. *See* HAB Tab 47 (Wong's Response in Opposition to Motion for Further Analysis). Moreover, as found below, Appellant has failed to rebut the presumption that the analyses of the A and B samples conducted by Industrial and UIC were valid in detecting the presence of a banned substance. In this context, whether the further analysis conducted by UC Davis failed to comply with applicable testing rules is immaterial.

2. Effect of Departures

Appellant has established that three departures from HISA and ADMC standards or protocol occurred: (1) the Authority's lack of documentation showing compliance with HISA

[9] HISA, "Proposed Changes to the Anti-Doping and Medication Control Program," September 21, 2023, https://hisaus.org/news/proposed-redline-changes-to-the-anti-doping-and-medication-controlprogram (Redline 1000 - General Provisions).

Rule 5510(b); (2) UIC's deviation from the requirement in HISA Rule 6305 to decant the urine sample; and (3) UIC's reporting of the positive test result on August 9, 2023 to HIWU, before Marc Benoit's review, contrary to HISA Rule 6315(b).

Pursuant to ADMC Rule 3122(c)-(d), in order for these departures to constitute a defense and to overcome the presumption that the testing and analysis of the A and B samples was proper, Appellant must establish that these departures could reasonably have caused the AAF. As to the first and third departures described above, Appellant does not allege, or offer any evidence indicating, that these departures could reasonably have caused the AAF. For example, regarding HISA's failure to demonstrate that the samples taken by HIWU were stored in the manner required by Rule 5510, Appellant could have, but did not, proffer expert opinion as to whether the failure to refrigerate the blood sample, or to refrigerate or freeze the urine sample, could reasonably have led to an incorrect finding of the presence of Metformin. As to the second departure, in the arbitration, Appellant's expert witness, Dr. Richard Sams, Scientific Director of KCA Laboratories, opined that any risk of contamination from failing to decant the urine sample was low and unlikely to have caused a false positive. HAB Tab 3, ¶¶ 2.101, 2.107-2.108. Accordingly, Appellant has not established that the failure to decant the aliquot could reasonably have caused the AAF.

In conclusion, Appellant has failed to meet his burden of establishing that the demonstrated departures from applicable testing standards or protocols could reasonably have caused the AAF. Therefore, pursuant to ADMC Rule 3122(c)-(d), the test results are presumed valid and the departures are not a defense to the possession violation.

3. Sanctions

Appellant does not challenge the validity of the sanctions independently of his challenge to the analytical findings upon which the finding of liability was based. As shown above, Appellant has failed to rebut the presumption that the analytical results underlying the anti-doping violation were valid. Accordingly, there is no basis presented by Appellant to support a conclusion that the resulting sanctions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 16 C.F.R. § 1.146(b)(3).

III. CONCLUSION

Having conducted the review required under 15 U.S.C. § 3058(b)(2)(A), for the reasons stated above, the finding of liability and the imposed Sanctions are AFFIRMED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: April 22, 2024