PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMISNTRATIVE LAW JUDGES
FTC DOCKET NO.: D-9439

ADMINSTRATIVE LAW JUDGE: **HON. D. MICHAEL CHAPPELL**
CHIEF ADMINSTRATIVE LAW JUDGE

IN THE MATTER OF:
DR. SCOTT SHELL, DVM **APPELLANT**

APPELLANT'S REPLY TO HISA'S PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

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Appellant submits these Reply Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

Background to the Charges

1. Dr. Scott Shell ("**Appellant**") practices veterinary medicine under the corporate name Scott Shell DVM Inc. (the "**Practice**"). The Practice includes two other veterinarians, Dr. Barbara Hippie and Dr. Maggie Smyth, and a veterinary assistant, Janet Duhon ("**Duhon**").[1]

1. Agree.

2. Appellant is a Covered Person under the Horseracing Integrity and Safety Authority, Inc. (the "**Authority**") Anti-Doping and Medication Control Program ("**ADMC Program**").[2]

2. Agree.

3. On September 28, 2023, investigators from the Horseracing Integrity & Welfare Unit ("**HIWU**") conducted searches of: (i) Appellant's office at JACK Thistledown Racino (**"Thistledown"**); (ii) Appellant's veterinary truck; and (iii) a second veterinary truck registered to the Practice and operated by Dr. Hippie (collectively, the "**Search**").[3]

3. Agree.

4. During the Search, HIWU investigators recovered the following Banned Substances:

a. Two bottles of "Carolina Gold" from Appellant's veterinary truck. Carolina Gold contains Gamma Aminobutyric Acid, which is a Category S0 Banned Substance on the Prohibited List.[4] The prescription labels on these bottles indicated that they were prescribed by Appellant to "Snazzy Horse." Snazzy is a Covered Horse.[5]

b. One tub of Isoxsuprine powder from Appellant's veterinary truck.[6] Isoxsuprine is a Category S0 Banned Substance on the Prohibited List.[7]

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[1] Appeal Book Volume I ("ABI") 2012, Shell Statement ¶3.
[2] ABI 1784, Shell Amended Pre-Hearing Brief ("**Shell APHB**") ¶13.
[3] ABI 622-637, Thomas Interview Report.
[4] ABI 1174, Banned Substances List.
[5] ABI 642, Bennett Statement ¶6-7.
[6] ABI 642, Bennett Statement ¶5.
[7] ABI 1178, Banned Substances List.

c. Two boxes of Osphos, a bisphosphonate, from Appellant's office located on the backside of Thistledown.[8] Bisphosphonates are a Category S6 Banned Substance on the Prohibited List.[9]

d. One bottle of Sarapin ("**Pitcher Plant**") from the Practice's veterinary truck operated by Dr. Hippie. Pitcher Plant is a Category S6 Banned Substance on the Prohibited List.[10] The prescription label on this bottle indicated that it was prescribed by Appellant to "Totally Obsessed." Totally Obsessed is a Covered Horse.[11]

4(a)-(d). Agree but deny Appellant prescribed Carolina Gold to Snazzy Horse, and/or Sarapin to Totally Obsessed. Appellant would have affixed his own labels. Appellant's Opening Proposed Findings of Fact, 1/9/25, ("AOPFF") 26.

The Charges and Appellant's Disclosure

5. Appellant was charged with four Anti-Doping Rule Violations ("**ADRVs**") for Possession of Carolina Gold, Osphos, Isoxsuprine, and Pitcher Plant under ADMC Program Rule 3214(a).[12]

5. Agree HIWU alleged this.

6. Appellant did not dispute and confirmed that he was in Possession of the four Banned Substances.[13] However, Rule 3214(a) incorporates a "compelling justification" exception. In his Amended Pre-Hearing Brief, Appellant asserted that he had a compelling justification to possess the Banned Substances at issue because he treats non-Covered Horses.[14]

6. Agree but Appellant also argued based on Dr. Scollay's guidance his records demonstrated need to carry charged Banned Substance ("CBSs") for use/intended use in Non-Covered practice and "compelling justification." Appeal Book Vol. 1 "AB1," 1777-1809, ¶¶ 21-22, 40.

[8] ABI 643, Bennett Statement ¶11.
[9] ABI 1159, Banned Substances List.
[10] ABI 1202, Banned Substances List.
[11] ABI 643-644, Bennett Statement ¶13.
[12] ABI 16, Decision ¶1.2; ABI 508, Charge Letter; ABI 607-609, Pitcher Plant Notice.
[13] ABI 1784-1785, Shell APHB ¶16-17.
[14] ABI 1792-1793, Shell APHB ¶39-40.

7. In support of this position, Appellant produced two sets of records (the "**Records**").[15]

7. Agree.

8. Appellant made the following assertions about the Records: (i) the Records "clearly demonstrate his practice currently and/or recently treats or treated Non-Covered horses;" (ii) the Records "show that the medications in question were used only for Non-Covered farm horses and Non-Covered horses in West Virginia;" and (iii) Appellant has an "ethical duty to his Non-Covered horse clients to carry these medications at all times."[16]

8. Agree.

9. On January 8, 2024, HIWU brought a motion before Arbitrator Barbara Reeves (the "Arbitrator"), seeking production of further records from Appellant (the "Motion").[17]

9. Agree.

10. On January 16, 2024, the Arbitrator issued a decision and directed Appellant to produce some categories of records requested by HIWU (the "Discovery Order"). The Discovery Order stated that because Appellant's asserted compelling justification put the nature of his entire practice in issue, "complete veterinary medical records for all horses in [Appellant's] practice from the implementation of HIWU's regulations until he was charged are relevant and material to [his] defense."[18]

10. Agree.

11. Thereafter, Appellant produced Supplemental Disclosure, Exhibits, and Witness Statements on March 14, 2024 (together, the "**Supplemental Disclosure**").[19]

11. Agree.

12. Dr. Dionne Benson delivered an expert report dated March 29, 2024, after reviewing the Records and Supplemental Disclosure. She opined that Appellant failed to establish: (i) the Banned Substances in issue were only possessed for non-Covered Horses; and (ii) Appellant carries on an active non-Covered Horse practice.[20]

12. Agree.

13. In response, Appellant filed an expert report from Dr. Roberts dated April 5, 2024.[21]

13. Agree.

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[15] ABI 517-605, Provisional Hearing Records; ABI 2026-2038, Exhibit 1 to Shell Statement.
[16] ABI 1786-1787, 1796, Shell APHB ¶24, 49.
[17] ABI 2044-2066, Production Brief.
[18] ABI 2278, Discovery Order.
[19] ABI 2297-2438, Shell Exhibits 18-23.
[20] ABI 2703-2706, 2709-2714, March Benson Report.
[21] ABI 2969-2997, Roberts Report.

14. At the hearing, HIWU scrutinized Dr. Roberts' independence on the basis that: (i) he and Appellant sat on the Board of the North American Association of Racetrack Veterinarians ("**NAARV**") together for five years; and (ii) both NAARV, and Dr. Roberts personally, have expressed opposition to the Authority.[22]

14. Agree.

15. Dr. Roberts also made several admissions that undermined his opinion, pertaining to: (i) the definition of "imminent" treatment, which he interpreted to mean anything less than two weeks; (ii) the Arbitrator's prior ruling in the Discovery Order, which Dr. Roberts never read; and (iii) Appellant's reliance on Dr. Hippie and Dr. Smyth's farm practices as basis for carrying Banned Substances, even if Appellant had never seen or examined said farm horses.[23]

15. Agree but deny "undermined" is an unsupported legal conclusion. Appeal Book Vol. 2 "AB2" 7432 (Roberts).

The Ministerial Error Theory

16. Appellant testified that Duhon made "ministerial errors" when she ordered Carolina Gold and Pitcher Plant in the names of Covered Horses.[24]

16. Agree.

17. At the hearing, Appellant testified that Duhon was responsible for determining which substances are ordered by the Practice and for maintaining inventory of the same.[25] Conversely, Duhon testified that Appellant would specifically tell her which prescriptions to have filled.[26]

17. Agree. Both occurred. AB2 6757 (Shell).

Evidence on Carolina Gold

18. Carolina Gold is not an FDA-approved drug and cannot be legally compounded for veterinary use.[27]

18. Agree Benson testified, but disagree "cannot be legally compounded for" Non-Covered practice. AOPFF 22.

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[22] Appeal Book Volume II ("**ABII**") 7401-7413, 7425-7428, Roberts – Day 3 Transcript; ABI 3840-3842, NAARV Letter; ABI 3844, Roberts HBPA Facebook Post.
[23] ABII 7439, 7516-7522, 7498, Roberts – Day 3 Transcript.
[24] ABII 6760-6761, Shell – Day 1 Transcript.
[25] ABII 6935-6937, Shell – Day 1 Transcript.
[26] ABII 7019-7020, Duhon – Day 1 Transcript.
[27] ABII 7208-7209, 7254-7255, Benson – Day 2 Transcript.

19. Under the West Virginia Racing Commission Rules, non-FDA approved drugs are prohibited at racetracks unless the Commission provides prior approval.[28] Appellant and his expert, Dr. Roberts, acknowledged this during cross-examination.[29]

19. Agreed.

20. Dr. Roberts admitted that he does not use Carolina Gold in his practice and has never kept it on his truck.[30]

20. Agreed.

21. After the Search, Appellant re-stocked his veterinary truck with a vial of Carolina Gold to deliver to Timothy Collins, a Thoroughbred racehorse trainer, the next day.[31] The Carolina Gold that Appellant dispensed to Mr. Collins was intended for Thoroughbred racehorses in West Virginia.[32] Appellant confirmed that he previously dispensed Carolina Gold to a trainer named Christopher Logston in West Virgina for use on a Thoroughbred racehorse.[33]

21. Agree but disagree with solely "dispensed." Appellant established Non-Covered Vet-Patient relationships. AOPFF 20.

22. Appellant dispensed Carolina Gold to each of the following trainers under the generic Patient Name "Farm Use": Timothy Collins; Christopher Logston; Dennis Van Meter; Shannon Simpson; Gregory Eidschun; and Annette McCoy (together, the "Trainers"). The Trainers have all raced horses in Covered jurisdictions.[34]

22. Agreed but disagree with solely "dispensed." Appellant established Non-Covered Vet-Patient relationships. AOPFF 20.

23. On December 4, 2023, Appellant provided Carolina Gold to Resvalon, a Thoroughbred racehorse which raced in Covered jurisdictions, both before and after the administration.[35]

23. Agreed, but Appellant treated in Non-Covered W.V. practice. AB1 2026.

[28] ABI 3396, WV Rules.
[29] ABII 6914-6916, Shell – Day 1 Transcript; ABII 7493-7495, Roberts – Day 3 Transcript.
[30] ABII 7492, Roberts – Day 3 Transcript.
[31] ABII 6856-6859, Shell – Day 1 Transcript
[32] ABII 6862-6863, Shell – Day 1 Transcript.
[33] ABII 6852-6853, 6863, Shell – Day 1 Transcript.
[34] ABI 3426-3443 and 3460-3492, Shell Cross Brief; ABII 6845-6866 and 6868-6874, Shell – Day 1 Transcript
[35] ABII 6879-6883, Shell – Day 1 Transcript.

24. Appellant believed that he was permitted to possess Banned Substances for Thoroughbred racehorses while in West Virginia because Thoroughbred racehorses cannot be "Covered" so long as they are treated in West Virginia.[36] This was an erroneous belief that is not supported by the definition of a Covered Horse.[37]

24. Agree but disagree belief was "erroneous." The definition of Covered horse was created under assumption of 50 states, but inapplicable in W.V. absent jurisdiction. Trainers are responsible for horse's movement. AOPFF 11; Rules 3030, 3040(b)(10).

Evidence on Pitcher Plant

25. Possession and use of Pitcher Plant at a racetrack is prohibited under the West Virginia Racing Commission Rules because it is: (i) a non-FDA approved drug; and (ii) does not have an approved analytical method for detection.[38]

25. Agree.

26. Appellant dispensed Pitcher Plant to:

a. The following Thoroughbred racehorse trainers in West Virginia, all billed to the Patient Name "Farm Use": Eddie Clouston; Greg Eidschun; and Dennis Van Meter.[39]

Agree but for 26(a)-(d) disagree with solely "dispensed," horses were examined, herd prescriptions are FDA legal, and all treatments 26(a)-(d) were in Non-Covered W.V. AB2 6731, 6744 (Shell); AOPFF 20-21, 32.

b. Venesualean Dreamer, a Thoroughbred racehorse trained by Juan Gotera, on September 15, 2023. Ten days later, Venesualean Dreamer raced at a Covered Racetrack.[40]

26(b). Agreed.

c. The trainer Mark Tomczak, under the Patient Name "Farm Use." Mr. Tomczak has an Ohio billing address and regularly raced horses in Covered jurisdictions in 2023.[41]

26(c). Agreed. Herd prescriptions are FDA legal. PFF 21.

[36] ABII 6792-6798, Shell – Day 1 Transcript.
[37] ABI 43, 46, Decision ¶7.26, 7.52-7.53.
[38] ABI 3396, WV Rules; ABII 7224-7225, Benson – Day 2 Transcript.
[39] ABII 6977-6978, Shell – Day 1 Transcript; ABI 3578-3585, Shell Cross Brief.
[40] ABII 6978, Shell – Day 1 Transcript; ABI 3587-3588, Shell Cross Brief.
[41] ABII 6980-6984, Shell – Day 1 Transcript, ABI 3590-3594, Shell Cross Brief.

d. The trainer Larry Reed for the Thoroughbred racehorse "High Rolling Dude." Mr. Reed had an Ohio billing address and raced High Rolling Dude at Mahoning Valley in Ohio on three occasions.[42]

26(d). Agree. Appellant treated on a farm. AB2 6985-86 (Shell).

Evidence on Isoxsuprine

27. Appellant testified that he intended to use the seized Isoxsuprine to treat Cool Stance, a Thoroughbred racehorse in West Virginia trained by Santiago Echenique.[43]

27. Agree intended, but disagree as horse was ex-racehorse. AB2 6750 (Shell).

28. The only records produced for this horse show that Appellant dispensed Isoxsuprine to Cool Stance, on October 13, 2023, more than two weeks after the Search.[44]

28. Agreed but disagree with solely "dispense" -- Appellant examined the horse. AB2 6751 (Shell).

Evidence on Osphos

29. Appellant's billing records show multiple dispensations of Osphos by Dr. Hippie for a non-Covered Horse named Cat between 2016 and 2023.[45] Cat's owner, Ms. Schulman, testified that Cat has a condition for which she takes Osphos and other medications. Ms. Schulman confirmed that Appellant initially diagnosed Cat, and he and Dr. Hippie continue to provide her with veterinary care.[46] Appellant did not produce veterinary medical records justifying his need to carry Osphos for Cat specifically, or otherwise suggest that the seized Osphos was intended for Cat.

29. Agree shows Osphos, with Schulman's testimony, but deny remainder, as these veterinary records and testimony showed need to carry Osphos for Cat, Appellant's patient who he diagnosed, regularly treated with Dr. Hippie, justifying need to carry for Cat, who took Osphos daily. AB2 7045 (Shulman); AOPFF 5, 20, n. 3.

[42] ABII 6984-6988, Shell – Day 1 Transcript, ABI 3596-3601, Shell Cross Brief.
[43] ABII Shell 6750, 6996-6993 – Day 1 Transcript.
[44] ABI 2378.
[45] ABI 528-537.
[46] ABII 7045-7046, Schulman – Day 2 Transcript.

30. There is only one instance of Appellant directly dispensing Osphos in the records. On November 20, 2023, nearly two months after the Search, Appellant dispensed Osphos to a Quarter Horse named "Hornet".[47]

30. Agreed but disagree with solely "dispense" -- Appellant examined the horse.

AOPFF 20.

Evidence on General Practice

31. Appellant testified about the inconvenience of unloading and reloading Banned Substances onto his veterinary truck.[48] During cross-examination, however, Appellant admitted that he no longer carries the Banned Substances on his truck and is still able to meet his ethical obligations as a veterinarian.[49]

31. Agreed.

Dr. Scollay's Guidance

32. In his Amended Pre-Hearing Brief, Appellant argued that HIWU should be estopped from bringing charges against him based on statements made by Dr. Scollay. Appellant purported to rely on two sources of guidance: (i) educational seminars that Dr. Scollay gave at racetracks prior to the enactment of the ADMC Program; and (ii) an email communication in which Dr. Scollay provided guidance on Rule 3214(a), in response to a third-party veterinarian, Dr. Megan Naylor ("Naylor Email").[50]

32. Agreed.

33. Appellant's Pre-Hearing Brief referenced part of a seminar that Dr. Scollay gave at Will Rogers Downs, which was posted on Facebook by an attendee. During this seminar, a participant asked about veterinarians whose practice includes farm work or non-Covered Horses, and whether Rule 3214(a) would apply to them. A discussion followed in which Dr. Scollay stated the following, in part: (emphasis added)

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.[51]

33. Agreed.

[47] ABI 2035.
[48] ABII 6994, Shell – Day 1 Transcript.
[49] ABII 7002, Shell – Day 1 Transcript.
[50] ABI 1779-1780, 1785-1786, Shell APHB ¶2, 21-22.
[51] ABI 2576-2577, Scollay Statement ¶3.

34. Dr. Scollay also testified about her general practice at education seminars and explained that discussions about compelling justification would typically arise in response to audience questions. Dr. Scollay would confirm that the ADMC Program has no authority over non-Covered Horses but explain that Possession needed to be justified and would be further investigated where suspicions or inconsistencies arose.[52]

34. Agreed.

35. With respect to the Naylor Email, Dr. Scollay confirmed that Rule 3214(a) provides for the ability to justify Possession of a Banned Substance and explained that compelling justification can be demonstrated "through records, day sheets, etc.".[53]

35. Agreed.

36. Appellant admitted that he reviewed the Naylor Email before the Search and understood that a Covered Person would need to demonstrate, with records, that a Banned Substance was part of their non-Covered Horse practice.[54]

36. Agreed.

37. Appellant testified that he also spoke with Dr. Scollay after she gave an education seminar at Mahoning Valley, but never asked if he could carry Banned Substances for the purpose of dispensing them to Thoroughbred racehorses in West Virginia.[55]

37. Agreed.

The Administration Decision and Closing Argument

38. On June 11, 2024, Justice Fraser issued an award in *HIWU v. Dr. Scott Shell*, Case No. 1501000708 ("**Administration Decision**"), which imposed a two-year period of Ineligibility on Appellant from January 8, 2024 through January 7, 2026 ("**Administration Sanction**").[56]

38. Agreed.

39. The Arbitrator was aware of the Administration Decision before rendering her Decision and referred to it in her Request for Additional Authority on September 3, 2024.[57]

39. Agree, aware, it was mentioned in HIWU's Closing Submission, not cited for existing Ineligibility and not briefed. AB2 6631-6632.

[52] ABII 7066-7067, Scollay – Day 2 Transcript.
[53] ABI 2601, Naylor Email; ABII 7070-7082, Scollay – Day 2 Transcript.
[54] ABII 6804, 6811, Shell – Day 1 Transcript.
[55] ABII 6822-6833, Shell – Day 1 Transcript.
[56] ABII 6496, 6530-6531, Administration Decision ¶2.9-2.10, 9.1.
[57] ABII 6572, Request for Authority.

The Decision

40. On September 9, 2024, the Arbitrator released her final decision ("**Decision**"), which concluded that:

a. HIWU met its burden to prove Possession of each Banned Substance, but the four charges were to be treated as a single ADRV.[58]

b. Appellant failed to establish a compelling justification for any of the Banned Substances.[59]

c. The doctrine of estoppel does not apply in this case. Dr. Scollay's statements could not be read to raise a legitimate expectation that all veterinarians have a blanket immunity from Possession if they also practice on non-Covered Horses.[60]

d. Appellant did not meet the burden of proof to demonstrate No Fault or Negligence under Rule 3224.[61]

e. Appellant demonstrated Significant Fault based on the objective factors described in ¶7.56 but was entitled to a reduction based on the subjective factors described in described in ¶7.57.[62]

f. A 21-month period of Ineligibility was imposed on Appellant, beginning on October 5, 2023, the date of his Provisional Suspension, and Appellant was ordered to pay a fine of $20,000 ("**Consequences**").[63]In ordering these Consequences, the Arbitrator treated the four instances of Possession as a single ADRV.[64]

40. Agreed.

The Modification Request

41. On September 11, 2024, HIWU wrote to the Arbitrator in accordance with Rule 7380 to address a computational error in the Decision. Rule 3223(c)(2) provides that where "a Covered Person is already serving a period of Ineligibility for another violation of the Protocol, any new period of Ineligibility shall start to run the day after the original period of Ineligibility ends." In light of this rule, HIWU asserted that Appellant's period of Ineligibility should commence after the Administration Sanction ("**Modification Request**").[65]

[58] ABI 39-40, Decision ¶7.4-7.13.
[59] ABI 42-44, Decision ¶7.21-7.33.
[60] ABI 44-45, Decision ¶7.37-7.41
[61] ABI 45-46, Decision ¶7.44-7.48.
[62] ABI 46-48, Decision ¶7.54-7.60.
[63] 63 ABI 50, Decision ¶8.1.
[64] 64 ABI 49-50, Decision ¶7.67-7.74.
[65] 65 ABII 6624-6625, Modification Letter.

41. HISA cannot appeal. AB1 345-49. Agree HIWU wrote, deny it was a "computational error" AB2 6630. Admit Rule 3223(c)(2) states this, and HIWU improperly "asserted" it post-closing of the record. AB2 6631-6632.

42. The Arbitrator denied the Modification Request.[66]

42. Agreed.

43. On October 31, 2024, Hon. Jay L. Himes issued a decision in *FTC v. Dr. Scott Shell, DVM*, Docket No. 9345, upholding the Administration Sanction ("**Administration Appeal**").[67]

43. Agreed.

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to 15 U.S.C. §3058(b)(1), the final civil sanction imposed by the Authority is subject to *de novo* review by an Administrative Law Judge ("**ALJ**").

1. Agree.

2. Pursuant to 15 U.S.C. §3058(b)(2)(A)(ii) and (iii), the ALJ determines whether Appellant's acts are in violation of the ADMC Program, and whether the final civil sanction was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

2. Agree.

3. Pursuant to 15 U.S.C. §3058(b)(3)(A)(ii) and (iii), the ALJ may "affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part the final civil sanction of the Authority," and "make any finding or conclusion that, in the judgment of the [ALJ], is proper and based on the record."

3. Agree.

4. The Arbitrator did not misapply the burdens of proof. Appellant failed to meet his burden to establish a compelling justification for Possession of any of the Banned Substances in issue.

4. Disagree. Arbitrator's 9/9/24 Decision, AB2 6588-6622 ("Decision"), ¶¶ 7.15-.18.

[66] 66 ABII 6630-6632, Modification Order
[67] Dr. Scott Shell, DVM, Docket No. 9435 (October 31, 2024).

5. Estoppel does not apply Dr. Scollay's guidance to preclude Possession violations against Appellant. The Arbitrator correctly concluded that Dr. Scollay's statements could not be read to raise a legitimate expectation that all veterinarians have a blanket immunity from Possession if they also practice on non-Covered Horses.

5. Disagree. AOPFF 9, 13, 15, 17, 20.

6. Appellant's due process rights have not otherwise been violated.

6. Disagree. Rule 3214(a) is unconstitutionally vague, facially and as applied to Appellant. *United States v. Lesh,* 107 F.4th 1239, 1246 (10th Cir. 2024).

7. HIWU's enforcement of the ADMC Program does not violate the private nondelegation doctrine and is thus constitutional.

7. Disagree. *See, Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 107 F.4th 415, 435 (5th Cir. 2024).

8. Appellant failed to establish No Fault or Negligence.

8. Disagree. Appellant did due diligence, attended seminar, spoke to Dr. Scollay and based on guidance; a reasonable vet would have done nothing more. AOPFF 14-15.

9. The Arbitrator imposed a sanction that was arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law because:

a. She improperly ignored Rule 3223(c)(2) by establishing the start date of Appellant's period of Ineligibility on October 5, 2023; and

9(a). Disagree. HISA cannot appeal. AB1 345-49. HIWU identified this case as first time ADVR, provided no evidence of prior ineligibility. Arbitrator did not ignore Rule 3223(c)(2), <u>via the Administration case</u>, it was improperly raised post-closing of

the record, Appellant could not argue inapplicability where both arbitrations arose from the same search, and cannot be argued here. AB2 6631-32.

b. She wrongly engaged in one Fault analysis and imposed one period of Ineligibility by treating Possession of four *different* Banned Substances as one ADRV.

9.(b) Disagree. HIWU improperly relied on Rule 3228(d), applicable only to Banned Substances and Medication charged together, thus Arbitrator properly found one charge/ penalty and did not consider post-hearing arguments, including multiple fault analysis. AB2 6575-77, 6630-32; Decision ¶ 7.70. As a first-time charge, with no prior ineligibility, the Arbitrator properly stated Rule 3223(c)(2)'s language does not support consecutive punishments. Decision ¶¶ 7.72-.73.

10. The period of Ineligibility ordered against Appellant must commence after the Administration Sanction, in accordance with Rule 3223(c)(2).

10. Deny. HISA cannot appeal. AB1 345-49. HIWU proceeded as a first-time offense. Appellant did not get to brief Rule 3223(c)(2)'s inapplicability where both arbitrations arise from the same day's search, and can't be argued here. As a first-time charge, Arbitrator properly noted Rule 3223(c)(2)'s language does not apply. AB2 6631-32; Decision ¶¶ 7.72-.73.

11. Appellant committed four ARDVs for Possession of Carolina Gold, Isoxsuprine, Osphos, and Pitcher Plant.

11. Denied. HISA cannot appeal. AB1 345-49. AOPFF 1-37. HIWU relied on inapplicable Rule 3228(d), and Arbitrator properly rejected all post-record arguments and found one first time charge. *See also*, *HIWU v. Puype*, JAMS Case No. 1501000973, 12/3/24 ("Puype") ¶ 8.33(WADC and *lex sportiva* show cant charge multiple ADVRs for same search)

12. Based on a Fault analysis, the following period of Ineligibility should be imposed: a. Carolina Gold: 24-months;

b. Pitcher Plant: 24-months;

c. Isoxsuprine: 21-months;

d. Osphos: 21-months.

12. Deny. HISA cannot appeal. AB1 345-49. Fault based Analysis was raised post-record (AB2 6575) and cannot be argued here. The Arbitrator properly found one charge/penalty, and noted Rule 3223(c)(2) does not support consecutive punishments for one charge based on its language. Decision, ¶¶ 7.72-.73; *Puype* ¶ 8.36.

Dated: January 21, 2025

/s/ Andrew Mollica

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WORD COUNT AND SPECIFICATIONS CERTIFICATION

I Andrew Mollica, Esq. certify that the above Reply Proposed Findings of Fact and Conclusions of law were prepared using a computer, Microsoft Word Program, that I used Times New Roman Font, that HISA's proposed finding of fact and conclusions of law are single spaced and then Appellant's reply is set forth in double space, with numbers corresponding to HISA's numbering, HISA's headings, and that I conducted a word count with the Microsoft program, and not including caption, cover page, table of contents, signatures, service documents, and/or HISA's Proposed Findings of Fact and Conclusion of Law, HISA's footnotes, and HISA's Headings this document is **819 words**, including Appellant's footnotes, if any.

January 21, 2025

/s/ ***Andrew Mollica***
Andrew J. Mollica

PUBLIC

CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this **Appellant's Reply to HISA's Proposed Findings of Fact and Conclusions of Law**, is being served on this **January 21, 2025,** via Administrative E-File System and by emailing a copy to:

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