

**BEFORE THE HORSERACING INTEGRITY AND SAFETY AUTHORITY'S
ANTI-DOPING AND MEDICATION CONTROL PROGRAM ARBITRATION PANEL**

ADMINISTERED BY JAMS, CASE NO. 1501000982

In the Matter of the Arbitration Between:

HORSERACING INTEGRITY & WELFARE UNIT (“**HIWU**” or “**Claimant**”),
Claimant

v.

CHRISTOPHER FUNG (“**Trainer Fung**” or “**Respondent**”),
Respondent.

CORRECTED FINAL DECISION

I, the undersigned arbitrator, having been designated, authorized, duly sworn, and having duly heard and considered the allegations, arguments, submissions, proofs, testimony, and evidence submitted by the Parties, and after full evidentiary hearings occurring by agreement of the Parties for both in person and virtual Zoom presentations on September 25, 2025 and December 19, 2025, pursuant to the Horseracing Integrity and Safety Act of 2020 and its implementing regulations, do hereby Find and Decide as follows:

I. INTRODUCTION

1.1 This case involves allegations of a Presence-based Anti-Doping and Medication Control Program Rule 3212 violation by a trainer of Thoroughbred racehorses.

1.2 HIWU is the United States government-recognized agency responsible for sample collection and results management in the anti-doping testing of Thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060. During these proceedings, HIWU was represented by Allison Farrell, Esq., Senior Litigation Counsel of HIWU and Carlos Sayao, Esq., of Tyr LLP based in Toronto, Canada.

1.3 Trainer Fung is a trainer of Thoroughbred racehorses. It is undisputed that Trainer Fung is a “Covered Person” under the law and rules applicable to this Arbitration. Trainer Fung is charged with the above-referenced anti-doping violation and has been represented in these proceedings by Jay Ingle, Esq., Christopher Hoskins, Esq., and Kirsten Parker, Esq., of Jackson Kelly PLLC based in Lexington, Kentucky.

1.4 Throughout this Final Decision, HIWU and Trainer Fung shall be referred to individually as “Party” and collectively as “Parties.”

II. THE FACTS

2.1 Below is a summary of the relevant facts and allegations based upon the Parties' written submissions, pleadings, evidence, and testimony presented during the hearings. Additional facts and allegations found in the Parties' written submissions, pleadings, and evidence may be addressed where relevant in connection with the discussion elsewhere in this Final Decision. Although the Arbitrator has considered all of the facts, allegations, legal arguments, evidence, and testimony submitted by the Parties in these proceedings, the Arbitrator refers in this Final Decision only to the arguments, facts, submissions, evidence, and testimony the Arbitrator considers necessary in explaining the reasoning supporting this decision. The Parties have conferred and agreed to a list of stipulated facts. In addition to the stipulated facts, additional facts, and the legal effect of many facts, remain in dispute.

The Stipulated Facts

2.2 On May 30, 2025, the Parties submitted an Uncontested Stipulation of Fact stating as follows:

1. The Horseracing Integrity and Safety Authority ("HISA") Anti-Doping and Medication Control ("ADMC") Program came into effect on May 22, 2023.
2. Christopher Fung ("Trainer Fung") has been in the horse industry for more than a decade and has trained horses since 2023.
3. Trainer Fung acquired Anointed Spirit in the summer of 2023.
4. Trainer Fung was the owner and trainer of Anointed Spirit, a Covered Horse under the ADMC Program, until Anointed Spirit was claimed on November 12, 2024.
5. Anointed Spirit has only ever raced at Finger Lakes.
6. Anointed Spirit raced at Finger Lakes on June 25, July 23, August 5, August 20, September 3, and November 12, 2024.
7. Anointed Spirit tested negative after each of the above races except for August 5 (when he was not tested) and August 20 (the sample at issue).
8. On August 20, 2024, Anointed Spirit competed in Race 7 at Finger Lakes.
9. Anointed Spirit finished second in the claiming race and earned a purse of \$2,760.
10. After the August 20, 2024 race, Sample Collection Personnel collected the following samples from Anointed Spirit:
 - a. Two bottles of urine bearing sample code U100838960; and
 - b. Four tubes of blood bearing sample code B100838960.

11. Based on DNA testing conducted by the UC Davis Veterinary Genetics Laboratory, the urine and blood samples U/B100838960 collected Post-Race on August 20, 2024, belong to Anointed Spirit.
12. The “A” urine and blood samples U/B100838960 were tested by Industrial Laboratories in Denver, Colorado (“Industrial”).
13. Industrial reported an Adverse Analytical Finding (“AAF”) for clenbuterol in respect of Anointed Spirit’s urine sample U100838960.
14. Industrial estimated the concentration of clenbuterol in urine sample U100838960 as 98.4 pg/ml.
15. Industrial tested blood sample B100838960, but did not report an AAF for the blood.
16. Clenbuterol is a β -2 agonist bronchodilator, FDA-approved and indicated for the management of horses affected with airway obstruction, among other things. There is no evidence that Anointed Spirit was prescribed clenbuterol by a veterinarian at any time.
17. On September 17, 2024, Trainer Fung was notified that Anointed Spirit’s A Sample returned an AAF for clenbuterol.
18. A Provisional Suspension was imposed immediately on Anointed Spirit.
19. Trainer Fung was interviewed by HIWU Investigator Bret Smith on September 17, 2024. Trainer Fung identified freelance groom Miguel Perez as the person that had taken Anointed Spirit to the test barn on August 20, 2024.
20. Trainer Fung’s other horses were tested without advance notice as detailed below and no AAFs were reported:

Collection Date	Horse	Sample Type
August 6, 2024	Mor Valor	Blood, Urine
September 10, 2024	Jitter Juise	Blood, Urine, Hair
September 12, 2024	Mor Valor	Blood, Hair

21. HIWU investigators also conducted a search of Trainer Fung’s barn on or about September 17, 2024, without any advance notice, as is permitted under the ADMC Program. The search of Trainer Fung’s barn revealed no evidence of clenbuterol or any other banned substance.
22. On or about October 8, 2024, the Ohio Department of Agriculture Analytical Toxicology Laboratory (the “Ohio Lab”) reported an AAF for clenbuterol in the B Sample of urine

sample U100838960.

23. On October 14, 2024, Trainer Fung was charged with an Anti-Doping Rule Violation (“ADRV”) for the presence of clenbuterol in Anointed Spirit’s August 20, 2024 post-race sample.
24. A Provisional Suspension was imposed on Trainer Fung effective October 14, 2024.
25. Trainer Fung challenged the suspensions of both him and Anointed Spirit, and both were lifted on November 4, 2024.
26. On November 27, 2024, the Parties agreed that Further Analysis would be conducted on the B Sample of urine sample U100838960 by a different Laboratory that had not previously conducted analysis of the sample.
27. On December 20, 2024, the Kenneth L. Mady Equine Analytical Chemistry Laboratory at the University of California, Davis (the “UC Davis Lab”) reported an AAF for clenbuterol in the B Sample of urine sample U100838960.
28. An OOC hair sample H100236355 was cut from Anointed Spirit’s mane on December 9, 2024.
29. Trainer Fung does not challenge the integrity or chain of custody of the hair sample H100236355.
30. The UC Davis Lab performed segmental analysis on six inches of the hair sample H100236355.
31. No clenbuterol was detected by the UC Davis Lab when it performed segmental analysis on six inches of the hair sample H100236355.
32. Trainer Fung does not contest the analytical procedures performed or results reported by the UC Davis Lab in relation to the hair sample H100236355.

Additional Facts According to HIWU

- 2.3 On September 17, 2024, Investigator Smith interviewed Mr. Perez who confirmed that he had taken Anointed Spirit from the barn to the paddock and track, and then to the test barn after the race. Mr. Perez was asked if Anointed Spirit could have been exposed to anything, specifically clenbuterol, that caused him to test positive. Mr. Perez told Investigator Smith that he knew nothing about clenbuterol and the horse was not exposed to it, and that he had no idea how the horse could have tested positive.
- 2.4 HIWU Investigative Analyst Melissa Stormer conducted searches of the veterinary records reported in the HISA Portal to determine if any Covered Horses stabled or racing at Finger Lakes in the month leading up to August 20, 2024, had been prescribed or administered clenbuterol or were on the Veterinarians’ List for clenbuterol or Ventipulmin (the commercial

name for the only FDA-approved clenbuterol syrup). Ms. Stormer determined that there is no record of any Covered Horse stabled or racing at Finger Lakes being prescribed or administered clenbuterol or Ventipulmin in the 45 days leading up to August 20, 2024. In total, only one Covered Horse was recorded as having been administered clenbuterol and/or Ventipulmin in August 2024, which was registered on the Veterinarians' List on August 4, 2024, and all entries for that horse's workout history place that horse in California at the relevant time.

2.5 Only three other Covered Horses were administered clenbuterol between the period July 12 to July 31, 2024, with treatment locations placing those horses in California, Delaware, and Iowa at all relevant times.

2.6 No Covered Horse at Finger Lakes tested positive for clenbuterol in the six months prior to August 20, 2024 other than Anointed Spirit.

2.7 In Investigator Smith's two years of serving as a HIWU Investigator, he has never come across clenbuterol in any of his searches of Finger Lakes.

Additional Facts According to Trainer Fung

2.8 During Trainer Fung's and Anointed Spirit's racing careers, neither has been accused of any other violations of the HISA rules and regulations except for the present action.

III. PROCEDURAL HISTORY

3.1 On September 17, 2024, HIWU served Trainer Fung with an EAD notice stating that the August 20, 2024 urine Sample, designated as Sample #U100838960, from Anointed Spirit Post-Race of Race 7 at Finger Lakes Gaming & Racetrack in Farmington, New York, had returned an AAF for clenbuterol.

3.2 On October 14, 2024, following testing of the B Sample by the Ohio Lab, HIWU notified Trainer Fung that it was charging him with a violation of Rule 3212 for the Presence of clenbuterol in Anointed Spirit's urine Sample #U100838960.

3.3 On October 21, 2024, HIWU initiated this arbitration against Trainer Fung pursuant to Rule 7060(a).

3.4 On November 5, 2024, the Arbitrator held a preliminary conference hearing. The Parties agreed that motions focused upon preliminary issues would be submitted on or before November 27, 2024, and responses would be submitted on or before December 13, 2024.

3.5 On November 27, 2024, Trainer Fung submitted a Request for Production of Documents, seeking: (i) "[a]ny documentation related to specimen (blood, urine, or hair) samples that were collected and/or tested for other Covered Horses that were owned and trained by Mr. Fung in August and September 2024"; and (ii) "[a]ny records of other Clenbuterol tests at Finger Lakes in the 6 months prior to August 20, 2024." Trainer Fung's Request for Production of Documents was resolved between the Parties.

3.6 Other than the discovery matters that were resolved between the Parties, no additional

preliminary motions were submitted by the November 27, 2024 deadline. The Arbitrator therefore instructed the Parties to confer and submit a proposed scheduling order in this matter.

- 3.7 On January 9, 2025, the Parties submitted a proposed procedural order, and the hearing was subsequently scheduled for March 27, 2025.
- 3.8 On January 23, 2025, HIWU informed the Arbitrator that it had “initiated DNA analysis of Anointed Spirit’s Sample which is estimated to take approximately six weeks,” and requested a continuance of the scheduled merits hearing.
- 3.9 On January 28, 2025, the Arbitrator issued a Status Report stating: “The Parties have requested a continuance of scheduling the merits hearing in this matter to allow time to complete a DNA analysis. The continuance is granted and on or before March 10, 2025, the Parties will provide an update on the status of this matter.”
- 3.10 On February 14, 2025, HIWU informed the Arbitrator that the “DNA analysis has been completed and has confirmed the integrity of the samples,” and requested a scheduling call to secure a new hearing date for this matter.
- 3.11 On February 26, 2025, the Arbitrator held a scheduling hearing. At the hearing, the Parties agreed to a hearing date and location as well to dates for pre-hearing briefs.
- 3.12 As memorialized in Procedural Order #1, dated February 27, 2025, the Arbitrator confirmed the hearing date of May 22, 2025 at 9:00 a.m. local time at a location TBD in or around the vicinity of Finger Lakes Gaming & Race Track in Farmington, NY, and set a pre-hearing briefing schedule consistent with the nature of the charges: (1) Respondent’s pre-hearing brief was due by May 1, 2025; and (2) Claimant’s pre-hearing brief was due by May 15, 2025.
- 3.13 On March 3, 2025, JAMS served the Parties with a Notice of Hearing confirming the hearing date, time, and location, as set forth in Procedural Order #1.
- 3.14 On March 31, 2025, Trainer Fung submitted a request for the lab documentation packet of Anointed Spirit’s negative hair sample. On April 7, 2025, HIWU submitted its response to Trainer Fung’s request, and on April 10, 2025, Trainer Fung submitted his reply.
- 3.15 On April 11, 2025, the Arbitrator issued an Order granting Respondent’s request for the lab documentation packet of Anointed Spirit’s negative hair sample.
- 3.16 On April 22, 2025, HIWU informed the Arbitrator that the laboratory documentation packet of Anointed Spirit’s negative hair sample had been produced to Respondent’s counsel.
- 3.17 On May 1, 2025, Trainer Fung filed his pre-hearing brief, witness disclosures, and exhibits.
- 3.18 On May 8, 2025, HIWU informed the Arbitrator that counsel for Trainer Fung had alerted HIWU to an unavoidable conflict on the scheduled May 22, 2025 hearing date.
- 3.19 On May 13, 2025, the Arbitrator held a further scheduling conference to discuss rescheduling

the hearing date.

- 3.20 On May 15, 2025, the Arbitrator issued an Amendment to Procedural Order Schedule, amending the prior schedule to provide for, *inter alia*, (1) Claimant's pre-hearing brief to be due by May 22, 2025; and (2) the hearing to be held on June 25, 2025 in Rochester, New York.
- 3.21 On May 20, 2025, JAMS served the Parties with a Notice of Rescheduled Hearing confirming the new hearing date, time, and location, as set forth in the Amendment to Procedural Order Schedule.
- 3.22 On May 22, 2025, HIWU submitted its pre-hearing brief, book of evidence and exhibits, and book of authorities.
- 3.23 On May 30, 2025, the Parties submitted an Uncontested Stipulation of Fact.
- 3.24 On June 17, 2025, the Parties submitted a draft schedule and witness order for the June 25, 2025 hearing.
- 3.25 On June 18, 2025, the Arbitrator held a prehearing conference to discuss the draft schedule and witness order and logistics for the hearing.
- 3.26 On June 24, 2025, HIWU informed the Arbitrator and counsel for Trainer Fung that "[l]ate today, HIWU and relevant parties received a Final Decision ('New Final Decision') in another recent arbitration case that will have relevance to the issues in dispute in the instant case, including the sanction, if any. The New Final Decision cannot yet be disclosed beyond the parties to that case due to, at least, the review period provided by ADMC Program Rule 7380." HIWU indicated that it intended, the following morning, to "propose an alternative schedule for closings in this matter, including the possibility of not proceeding with oral closings tomorrow but instead filing written submissions at a later date (to allow for reference to the New Final Decision) followed by oral closings by Zoom, if considered of assistance to the Arbitrator."
- 3.27 The Arbitrator and Parties convened for the scheduled hearing in this matter on June 25, 2025, at approximately 9:00 a.m. in Rochester, New York. Before the hearing commenced, counsel for Trainer Fung objected to proceeding with the hearing and requested a continuance until all Parties could review the New Final Decision and its impact on this case. After hearing from both Parties, the Arbitrator granted Trainer Fung's request for a continuance.
- 3.28 On July 17, 2025, HIWU informed the Arbitrator that "[t]he Final Decision in the HIWU v. Phillip Serpe case was issued publicly this week," and requested a scheduling call to reset the hearing in this matter.
- 3.29 On July 22, 2025, the Arbitrator held a scheduling call and following that call, and pursuant to the agreement of the Parties, the hearing in this matter was rescheduled for September 25, 2025.
- 3.30 On August 19, 2025, JAMS served the Parties with a Notice of Hearing confirming the

hearing date and time for the hearing.

- 3.31 On September 18, 2025, the Arbitrator held a further prehearing conference with the Parties.
- 3.32 On September 24, 2025, the Parties submitted an updated proposed hearing schedule, which included voir dire of each Party's expert witness.
- 3.33 Counsel for HIWU, Trainer Fung and his counsel appeared in person for the hearing on September 25, 2025, in Rochester, New York. Lisa Lazarus, HISA's Chief Executive Officer, observed the hearing remotely.
- 3.34 At the hearing, the Arbitrator admitted all of the submitted exhibits and heard the testimony of six (6) witnesses: Petra Hartmann, Director of Drug Testing Services at Industrial; Bret Smith, an investigator employed by HIWU; Melissa Stormer, an investigative analyst employed by HIWU; Trainer Fung; Dr. Daniel Eichner, an expert witness for HIWU; and Dr. Cynthia Cole, an expert witness for Trainer Fung. In addition, Trainer Fung waived his cross-examination of the following two witnesses put forward by HIWU and their witness statements were admitted: Soobeng Tan, Laboratory Director of the Ohio Lab, and Dr. Benjamin Moeller, Section Head of the Chemistry Section of the UC Davis Lab.
- 3.35 At the conclusion of the arbitration hearing, the Parties agreed as follows, as memorialized in Procedural Order No. 2 dated September 26, 2025:
- 3.35.1 Two preliminary document-related issues require briefing. First, at the hearing, Respondent reiterated his request that HIWU produce certain documents related to the Sports Medicine Research and Testing Laboratory ("SMRTL") and EQIAS Labs. Second, during the voir dire of Dr. Cole, Respondent raised an objection to Claimant's use of a non-public, redacted order from another HIWU matter. The Parties' respective opening briefs on these issues shall be due on October 6, 2025; reply briefs shall be due on October 14, 2025.
- 3.35.2 Post-hearing briefs regarding the merits of the case, including issues regarding the qualification of experts, shall be due 30 days after the Parties' receipt and approval of the final transcript of the recorded arbitration hearing.
- 3.36 On September 29, 2025, HIWU informed the Arbitrator that it had "given additional consideration to the use of the redacted order from another HIWU matter introduced during Dr. Cole's voir dire (the 'Order')," and that "[i]n the interests of procedural economy, HIWU no longer intends to rely on the Order and hereby withdraws the Order, together with all voir dire questioning on the Order. As such, there is no longer any need to brief or consider this preliminary issue." HIWU stated, however, that it "maintain[ed] its objection to Dr. Cole's qualifications based on the remaining voir dire evidence, and intends to brief this issue" in its post-hearing brief.
- 3.37 On October 6, 2025, Trainer Fung submitted a "Request for Documents Related to Dr. Eichner's Impartiality and Independence," seeking ten categories of documents relating to SMRTL, Eagle Diagnostics, EQIAS, and their respective relationships with each other and

HIWU, as well as HIWU's policies relating to the independence of laboratories under contract with HIWU. HIWU submitted its Response to Trainer Fung's Post-Hearing Request for Documents on October 14, 2025.

- 3.38 On October 27, 2025, the Arbitrator issued an Order denying Trainer Fung's request for documents as both untimely and beyond the scope of document exchange contemplated under the ADMC Program. The Arbitrator noted that "Trainer Fung had a full and fair opportunity to question Dr. Eichner regarding the relationship between EQIAS, SMRTL, and HIWU at the hearing." The Arbitrator further noted that Trainer Fung was "free to raise such arguments in his post-hearing brief addressing the admissibility of Dr. Eichner's testimony."
- 3.39 On October 29, 2025, HIWU confirmed that the final hearing transcript was received, and the Parties jointly requested that the 30-day deadline for the filing of closing submissions be extended to December 3, 2025. The Parties' jointly requested extension was granted by the Arbitrator the same day.
- 3.40 On November 19, 2025, the Parties requested a "case conference to address certain matters that have arisen in the past few days." The requested case conference was held on November 25, 2025.
- 3.41 Following the case conference, the Parties conferred and agreed to the following, as memorialized in Procedural Order No. 3 dated December 1, 2025:
- 3.41.1 The arbitration hearing will be reopened to allow Dr. Eichner to respond to allegations made by the Respondent regarding the veracity of Dr. Eichner's testimony at the arbitration hearing on September 25, 2025, with Dr. Eichner submitting further evidence-in-chief by way of written witness statement and attached documentary exhibits, to be delivered by HIWU by December 5, 2025. Respondent will be permitted to conduct cross-examination of Dr. Eichner by Zoom on December 19, 2025, the scope of which will be limited to addressing the allegations made in writing to date by Respondent, and statements and evidence contained in Dr. Eichner's witness statement, with HIWU given the opportunity to conduct redirect examination.
- 3.41.2 The parties will brief a further preliminary issue raised by Respondent, namely Respondent's request that Dr. Eichner's testimony be deemed inadmissible on account of an alleged lack of impartiality and independence caused by HIWU's General Counsel being a member of the Board of Directors of SMRTL. Respondent's Brief was to be delivered by December 8, 2025, and HIWU's Responding Brief was to be delivered by December 19, 2025.
- 3.41.3 Post-Hearing briefs regarding the merits of the case, including any remaining argument regarding the qualification of experts, shall be due 15 days after the Parties' receipt and approval of the final transcript of the recorded examination of Dr. Eichner scheduled for December 19, 2025.
- 3.42 On December 5, 2025, HIWU submitted Dr. Eichner's further evidence-in chief adduced by way of written witness statement and exhibits.
- 3.43 On December 7, 2025, Trainer Fung filed a Motion to Disqualify Dr. Eichner.
- 3.44 On December 18, 2025, HIWU filed its Response to Trainer Fung's Motion to Disqualify Dr.

Eichner.

- 3.45 On December 19, 2025, a hearing was held at which Trainer Fung conducted further cross-examination of Dr. Eichner by Zoom, and HIWU conducted further re-direct examination.
- 3.46 On February 6, 2026, HIWU confirmed that the transcript of the December 19, 2025 examination of Dr. Eichner had been finalized. The Parties jointly requested modification of Procedural Order No. 3 to extend the deadline for the filing of their post-hearing briefs to 15 days after the Panel ruled upon Respondent's pending motion to disqualify.
- 3.47 On February 19, 2026, the Arbitrator issued Amended Procedural Order No. 3, extending the deadline for the filing of the Parties' post-hearing merits briefs to 15 days after the Panel ruled upon Respondent's pending motion to disqualify Dr. Eichner's expert testimony.
- 3.48 On March 2, 2026, the Arbitrator issued an Order on Fung's Motion to Disqualify Dr. Eichner. The Order denied Trainer Fung's motion to disqualify Dr. Eichner based on HIWU's General Counsel's role as a director of SMRTL, holding that "[a]ny alleged bias by Dr. Eichner based on Ms. Pujals's position as a member of the SMRTL board does not warrant exclusion of his testimony." The Arbitrator denied without prejudice Trainer Fung's arguments that Dr. Eichner should be disqualified on the grounds that his role as president of EQIAS establishes a regulatory and financial relationship with HIWU, and that his "misrepresentations regarding his independence and relationship with EQIAS require disqualification," as beyond the agreed-upon scope of the briefing. The Arbitrator noted that "Trainer Fung remains free to raise arguments in his post-hearing brief that Dr. Eichner's financial interests and relationships diminish the weight that should be given to his testimony."
- 3.49 The same day, the Arbitrator confirmed that the Parties' post-hearing briefs regarding both the arbitration's merits issues and any remaining arguments focused upon the expert witnesses' qualification were to be submitted by March 17, 2026.
- 3.50 On March 11, 2026, the Arbitrator requested and the Parties agreed to extend to 30 days the time for entry of the Final Decision in this matter.
- 3.51 On March 17, 2026, the Parties submitted their post-hearing merits briefs.
- 3.52 On March 19, 2026, the Arbitrator issued an Order confirming, "pursuant to agreement of the parties, the hearing record is closed and the final decision in this matter will be issued on or before April 16, 2026."
- 3.53 Upon the closing of the record, the Arbitrator commenced writing this Final Decision, which was timely issued.

IV. JURISDICTION

4.1 HIWU was created pursuant to the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060 ("Act") and is charged with administering the rules and enforcement mechanisms of the HISA ADMC Program. The ADMC Program was created pursuant to the Act, approved by the Federal Trade Commission on March 27, 2023, and implemented on May 22, 2023. *See* 88 Fed. Reg. 5084-5201 (January 26, 2023). The ADMC Program sets out the applicable rules that govern this proceeding and ground the jurisdiction of the Panel over all participants. Rule 3020 provides that the anti-doping rules set out in the ADMC Program apply to and are binding on

Covered Persons:

“(a) The Protocol applies to and is binding on:

. . .

(3) the following persons (each, a Covered Person): all Trainers, Owners, Breeders, Jockeys, Racetracks, Veterinarians, Persons licensed by a State Racing Commission, and the agents, assigns, and employees of such Persons; any other Persons required to be registered with the Authority; and any other horse support personnel who are engaged in the care, treatment, training, or racing of Covered Horses.”

4.2 Pursuant to section 3054 of the Act, “Covered Persons” must register with the Authority. However, they are bound by the Protocol by undertaking the activity (or activities) that make(s) them a Covered Person, whether or not they register with the Authority.

4.3 ADMC Program Rule 3030(a) further defines a “Responsible Person” to mean: “the Trainer of the Covered Horse.”

4.4 Trainer Fung is a trainer who is required to be and is registered with HISA. As such, the Respondent is both a “Responsible Person” and a “Covered Person” who is bound by and subject to the ADMC Program.

4.5 The Rule 7000 Series of the ADMC Program sets out the arbitration procedures governing a charged violation of the ADMC Program, providing as follows:

“Rule 7010. Applicability.

The Arbitration Procedures set forth in this Rule 7000 Series shall apply to all adjudications arising out of the Rule 3000 Series.

Rule 7020. Delegation of Duties.

(a) Subject to Rule 3249, Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229 (together, ‘EAD Violations’) shall be adjudicated by an independent arbitral body (the ‘Arbitral Body’) in accordance with the Rule 3000 Series and these Arbitration Procedures. The Arbitral Body may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Arbitral Body. . . .”

4.6 Where HIWU issues a Charge Letter effecting charges on a Covered Person, arbitral proceedings are initiated pursuant to Rule 7060:

“Rule 7060. Initiation by the Agency

(a) EAD Violations. Unless Rule 3249 applies, if the Agency charges a Covered Person with an EAD Violation, the Agency shall initiate proceedings with the Arbitral Body. If a Covered Person is charged with both an EAD Violation and an ECM or Other Violation, the procedures for EAD Violations apply. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of EAD Violation cases, the Owner may be permitted to intervene and make written or oral submissions.”

4.7 In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider.

4.8 At the September 25, 2025 hearing, Trainer Fung raised an objection to proceeding with the hearing on constitutional grounds on the basis that it deprived him of the right to a jury trial. Counsel for Trainer Fung acknowledged that there are ongoing proceedings in federal court related to the issue and that he did not expect the Arbitrator to resolve the issue, but merely sought to preserve his objection.

4.9 The Arbitrator conducted this proceeding pursuant to existing law and afforded each party a full and fair opportunity to present its case. Trainer Fung’s constitutional challenge is beyond the scope of the Arbitration and is not for the Arbitrator to decide.

4.10 Accordingly, the Arbitrator finds that jurisdiction is proper here.

V. RELEVANT LEGAL STANDARDS

5.1 It is undisputed that under the ADMC Program, Trainer Fung as a trainer is a Covered Person and a Responsible Person, and that Anointed Spirit is a Covered Horse. What follows is a summary of the relevant legal standards. Additional authority may be set out, where relevant, in connection with the legal discussion elsewhere in this Final Decision.

5.2 It is alleged that Trainer Fung violated ADMC Program Rule 3212 regarding the Presence of a Prohibited Substance in a Covered Horse.

5.3 ADMC Program Rule 3212 states:

“(a) 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). Accordingly, it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3212 Anti-Doping Rule Violation.

(b) Sufficient proof 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.

(c) The general rule is that the presence of any amount of a Banned Substance or its Metabolites or Markers in a Sample collected from a Covered Horse constitutes an Anti-Doping Rule Violation by the Responsible Person of that Covered Horse.

(d) As an exception to the general rule of Rule 3212(c), the Prohibited List, Standards, or Technical Documents may establish special criteria for the reporting or the evaluation of certain Banned Substances, including a Minimum Reporting Level, Screening Limit, Threshold, or Decision Limit."

5.4 The burden of proof depends on the nature of the alleged ADRV Rule 3121 provides as follows:

"Rule 3121. Burden and Standard of Proof

(a) The Agency shall have the burden of establishing that a violation of the Protocol has occurred to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability (*i.e.*, a preponderance of the evidence) but less than clear and convincing evidence or proof beyond a reasonable doubt.

(b) Where the Protocol places the burden of proof on a Covered Person to rebut a presumption or to establish specified facts or circumstances, the standard of proof shall be by a balance of probability (*i.e.*, a preponderance of the evidence), except as provided in Rules 3122(c) and 3122(d)."

5.5 The World Anti-Doping Code ("WADC") provides the framework for a harmonious

international anti-doping system and is widely used in international sports, and expressly acknowledged as the basis for the ADMC Program. Rule 3070 provides in pertinent part that:

“(b) Subject to Rule 3070(d), the Protocol shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes. . . .

(d) The World Anti-Doping Code and related International Standards, procedures, documents, and practices (WADA Code Program), the comments annotating provisions of the WADA Code Program, and any case law interpreting or applying any provisions, comments, or other aspects of the WADA Code Program, may be considered when adjudicating cases relating to the Protocol, where appropriate.”

5.6 ADMC Program Rule 3040 sets out certain obligations of a trainer such as Trainer Fung, as both a Covered Person and a Responsible Person, in pertinent part as follows:

“Rule 3040 Core Responsibilities of Covered Persons

(a) Responsibilities of All Covered Persons

It is the personal responsibility of each Covered Person: (1) to be knowledgeable of and to comply with the Protocol and related rules at all times. All Covered Persons shall be bound by the Protocol and related rules, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto; . . .

(b) Additional Responsibilities of Responsible Persons

In addition to the duties under Rule 3040(a), it is the personal responsibility of each Responsible Person: . . .

(4) to inform all Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses of their respective obligations under the Protocol (including, in particular, those specified in Rule 3040(a));

(5) to adequately supervise all Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training or racing of his or her Covered Horses, including by (without limitation):

(i) conducting appropriate due diligence in the hiring process before engaging their services;

(ii) clearly communicating to such Persons that compliance with the Protocol is a condition of employment or continuing engagement in the care, treatment, training, or racing of his or her Covered Horses;

(iii) creating and maintaining systems to ensure that those Persons comply with the Protocol; and

(iv) adequately monitoring and overseeing the services provided by those Persons in relation to the care, treatment, training or racing of his or her Covered Horses;

(6) to bear strict liability for any violations of the Protocol by such Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in the care, treatment, or racing of his or her Covered Horses; . . .”

5.7 Pursuant to ADMC Program Rule 3223, the Ineligibility, and financial penalties for a first violation of Rule 3212 is:

- a. Two (2) years of Ineligibility, and
- b. A “Fine of up to \$25,000 or 25% of the total purse (whichever is greater); and Payment of some or all of the adjudication costs and [HIWU]’s legal costs.”

5.8 Where a violation of the ADMC Program is established, the Respondent may be entitled to a mitigation of the applicable Consequences, only where he establishes on a balance of probabilities that he acted with either No Fault or Negligence or No Significant Fault or Negligence. In Rule 1020, Fault is defined in the ADMC Program as:

“. . . any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Covered Person’s degree of Fault include (but are not limited to) the Covered Person’s experience and special considerations such as impairment, the degree of risk that should have been perceived by the Covered Person, and the level of care and investigation exercised by the Covered Person in relation to what should have been the perceived level of risk. With respect to supervision, factors to be taken into consideration are the degree to which the Covered Person conducted appropriate due diligence, educated, supervised, and monitored Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses, and created and maintained systems to ensure compliance with the Protocol. In assessing the Covered Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person’s departure from the expected standard of behavior. Thus, for example, the fact that the Covered Person would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Covered Person or Covered Horse only has a short time left in a career, or the timing of the horseracing calendar, would not be relevant factors to be considered in reducing the period of Ineligibility based on degree of Fault.”

5.9 ADMC Program Rule 3224 permits the reduction of sanctions where there is No Fault or

Negligence, as follows:

“Rule 3224. Elimination of the Period of Ineligibility Where There is No Fault or Negligence

(a) If a Covered Person establishes in an individual case that he or she bears No Fault or Negligence for the Anti-Doping Rule Violation(s) charged, the otherwise applicable period of Ineligibility and other Consequences for such Covered Person shall be eliminated (except for those set out in Rule 3221(a) and Rule 3620). When the violation is of Rule 3212 (presence of a Banned Substance), the Covered Person must also establish how the Banned Substance entered the Covered Horse’s system as a pre-condition to application of this Rule 3224(a) . . .

(b) Rule 3224 only applies in exceptional circumstances . . .”

5.10 No Fault or Negligence is defined by the ADMC Program as:

“the Covered Person establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had administered to the Covered Horse (or that the Covered Horse’s system otherwise contained) a Banned Substance or a Controlled Medication Substance, or that he or she had Used on the Covered Horse a Banned Method or a Controlled Medication Method, or otherwise committed an Anti-Doping Rule Violation or Controlled Medication Rule Violation. For any violation of Rule 3212 or Rule 3312, the Covered Person must also establish how the Prohibited Substance entered the Covered Horse’s system in order to establish No Fault or Negligence.”

5.11 ADMC Program Rule 3225 also allows for the reduction of sanctions where there is No Significant Fault or Negligence, as follows:

“Rule 3225. Reduction of the Period of Ineligibility Where There is No Significant Fault or Negligence

Reductions under this Rule 3225 are mutually exclusive and not cumulative, *i.e.*, no more than one of them may be applied in a particular case.

(a) General rule.

Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, then . . . the period of Ineligibility shall be fixed between 3 months and 2 years, depending on the Covered Person’s degree of Fault.”

5.12 No Significant Fault or Negligence is defined in the ADMC Program as:

“the Covered Person establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation or Controlled Medication Rule Violation in question. For any violation of Rule 3212 or 3312, the Covered Person must also establish how the Prohibited Substance entered the Covered Horse’s system in order to establish No Significant Fault or Negligence.”

VI. THE PARTIES’ CONTENTIONS AND CLAIMS FOR RELIEF

6.1 In their pre-hearing and post-hearing briefs and during the hearing, the Parties presented various arguments regarding their respective positions in this case including each Party’s expert’s opinions and testimony concerning the likely source of the clenbuterol in the Sample of Anointed Spirit. The below summarizes the Parties’ basic positions.

HIWU’s Contentions

6.2 In summary, HIWU asserts that Trainer Fung committed an ADRV for the presence of clenbuterol in the Covered Horse, Anointed Spirit. Trainer Fung is strictly liable for the clenbuterol as a Banned Substance in Anointed Spirit’s Sample. Additionally, Trainer Fung is unable to establish by a balance of probabilities the pre-condition of identifying how the clenbuterol entered Anointed Spirit’s system, and thus cannot pursue No Fault or No Significant Fault defenses in regard to the violation.

6.3 As a result of the presence based ADRV, HIWU requests the following consequences be imposed upon Trainer Fung:

- (i) Disqualification of the results that Anointed Spirit obtained in Race 7 on August 20, 2024, and in Race 4 on September 3, 2024, at Finger Lakes, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable) to the Race Organizer (ADMC Program Rule 3221);
- (ii) A period of Ineligibility of two (2) years for Trainer Fung as Covered Person commencing on the date set out in the Notice of Sanctions, with a credit for 21 days for time served under the imposition of the Provisional Suspension (October 14, 2024 to November 4, 2024) (ADMC Program Rule 3223);
- (iii) A fine of \$25,000 USD and payment of the full costs of adjudication (ADMC Program Rule 3223); and
- (iv) Public disclosure in accordance with Rule 3620 (ADMC Program Rule 3231).

Trainer Fung’s Contentions

6.4 Trainer Fung contends that he did not administer clenbuterol to Anointed Spirit, and it is questionable as to whether clenbuterol was in Anointed Spirit’s system considering the negative hair sample results that should have confirmed the positive clenbuterol found in the urine sample

from August 20, 2024. Trainer Fung further contends that he did not have any intent to commit or knowledge of committing any type of violation involving clenbuterol, and it is more probable than not that any transfer of clenbuterol to Anointed Spirit, if any, was inadvertent through freelance groom Mr. Perez and was completely outside of Trainer Fung's control.

6.5 Trainer Fung seeks the following relief: The presence charge invoked against Mr. Fung and Anointed Spirit in this matter should be eliminated or, alternatively, significantly reduced from the initial sanction of ineligibility of two years.

VII. ANALYSIS

A. HIWU Has Proven the Presence Violation

7.1 In this matter, Trainer Fung is charged with an ADRV for the presence of clenbuterol, a category S3 Banned Substance, in Anointed Spirit's Sample #U100838960. Clenbuterol is prohibited except "when prescribed by a Veterinarian (in the context of a valid veterinarian-patient-client relationship) for a duration not to exceed 30 days in a 6-month period and provided that, following administration of clenbuterol, the Covered Horse shall be placed on the Veterinarians' List and shall not be eligible to participate in any Timed and Reported Workout or Covered Horserace until a urine and blood Sample have been collected from it by or on behalf of the Agency, and analysis by a Laboratory of those Samples does not detect the presence of clenbuterol or its Metabolites or Markers." Rule 4114(b).

7.2 It is undisputed that Anointed Spirit was not prescribed clenbuterol by a veterinarian.

7.3 As noted at 5.4 above, the burden is on HIWU to establish that a violation of the ADMC Program Rules has occurred to the comfortable satisfaction of the Panel.

7.4 As noted at 5.3 above, Rule 3212(a) describes the strict liability duty of Trainer Fung to ensure no Banned Substances are present in the body of his Covered Horse.

7.5 As noted at 5.3 above, a Rule 3212 violation is established when "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."

7.6 Anointed Spirit's A Sample and confirmatory B Sample resulted in an AAF for clenbuterol, a prohibited substance. While Trainer Fung asserts that "the testing of the B Sample [by the Ohio Lab] was later found to be materially defective by the Arbitrator at the provisional hearing" (Fung Pre-Hearing Br. at 4), it is undisputed that the UC Davis Lab's additional analysis of the B Sample also confirmed the presence of clenbuterol.

7.7 Under Rule 3122(c), "[l]aboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the Laboratory Standards. 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." Here, Trainer Fung has not presented any evidence that a departure from the Laboratory Standards occurred that could

reasonably have caused the AAF.

7.8 Accordingly, the Agency has met its burden of establishing that Trainer Fung has committed a Rule 3212 violation.

7.9 Trainer Fung submits that the results of the segmental hair analysis, which came back negative for clenbuterol, “call[] into question whether clenbuterol was even present in Anointed Spirit’s system” because “[a] positive result should have returned in the hair if so.” (Fung Pre-Hearing Br. at 1.) Trainer Fung’s position must be rejected for a number of reasons. First, the ADMC Program is a single-matrix regime. Under Rule 1020, an AAF “means a report from a Laboratory that, consistent with the Laboratory Standards, establishes in a Sample the presence of a Prohibited Substance. . . .” A “Sample” is defined as “any biological material collected for the purposes of Doping Control or Medication Control, including urine, blood, and hair.” No supplemental testing in another matrix is required. Where, as here, the AAF reported in an A Sample of urine is confirmed in the B Sample, the ADRV is established under Rule 3212(b) regardless of the results of testing in other matrices.

7.10 Second, Rule 6313(e) expressly prohibits negative results in hair from overriding an AAF in urine: “Alternative biological matrices. Any negative Analytical Testing results obtained from hair, hoof, saliva or other biological material shall not be used to counter Adverse Analytical Findings or Atypical Findings from urine, blood (including whole blood, plasma, or serum) or hair.”

7.11 Third, Trainer Fung is estopped from using the negative hair test to counter the AAF in urine, having expressly agreed with HIWU that “[t]he results [of the segmental analysis of the hair Sample] would only be used consistent with the Rules, including without limitation Rule 6313(e).” It is well established that “when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party.” *Gibraltar Football Association v. UEFA*, CAS 2002/O/410, at para. 11. Here, HIWU agreed to conduct segmental hair analysis on the express condition that Trainer Fung would not use the results of the hair testing to counter the AAF from urine. Trainer Fung is thus barred from changing course and challenging the AAF in urine using the hair results to the detriment of HIWU.

7.12 Fourth, both expert witnesses agreed that a negative hair sample analysis cannot reliably be used to explain away a positive urine analysis. (Eichner Rep. at ¶¶ 9a, 18; Tr. at 299-300.)

7.13 And fifth, Trainer Fung improperly attempts to import an element of intent into the presence ADRV, arguing that Anointed Spirit’s “consistently negative results are evidence that any clenbuterol in Anointed Spirit’s system, if any, was not the result of any intentional administration by Mr. Fung.” (Fung Pre-Hearing Br. at 8.) But under Rule 3212, a “Responsible Person is . . . 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).” The Rules leave the Arbitrator with no discretion in this regard; urine is expressly identified as a Sample type under the Rules and the Responsible Person is strictly liable for any Banned Substance in a Sample of his Covered Horse.

7.14 Accordingly, I conclude that HIWU has met its burden of establishing that Trainer Fung has committed a Rule 3212 violation.

B. Term of Ineligibility

7.15 It is undisputed that Anointed Spirit did not have a prescription for clenbuterol under Rule 4114(b), and thus clenbuterol is a category S3 Banned Substance. Pursuant to ADMC Program Rule 3223, the presumptive period of ineligibility for a first ADRV under ADMC Program Rule 3212 (Presence) is two (2) years of Ineligibility.

C. Trainer Fung Has Failed to Meet His Burden to Receive Any Reduced Consequences Stemming from the Presence Violation

7.16 Because HIWU has met its burden of establishing an ADRV under Rule 3212, the Arbitrator next considers whether Trainer Fung is entitled to a reduction in sanctions under Rule 3224 or 3225.

7.17 The Rules expressly place the burden on the Covered Person to establish, by a balance of probabilities, how the Prohibited Substance entered the horse's system. Trainer Fung contends that he has met his burden of establishing that inadvertent transfer from Mr. Perez is the probable source of clenbuterol in Anointed Spirit's Sample. More specifically, and additionally, the basis of Trainer Fung's claim is as follows:

7.17.1 Trainer Fung was the primary individual in charge of Anointed Spirit's care and one of the only circumstances when Anointed Spirit was not under his control was when Anointed Spirit was handled by bridlers or hotwalkers on race days, in this instance Mr. Perez.

7.17.2 Mr. Perez led Anointed Spirit from the barn to the paddock and track and then to the test barn after the race on August 20, 2024. Mr. Perez is a freelance groom who works for different trainers during races. Due to the nature of his position, Mr. Perez is in contact with many different trainers and handles many different horses. An inadvertent transfer can occur through people, other horses, or equipment, and clenbuterol can be present as a result of an inadvertent transfer. An inadvertent transfer of clenbuterol from Mr. Perez to Anointed Spirit through Mr. Perez's prior handling of a horse that was administered clenbuterol or that horse's equipment, is thus, the likely source.

7.17.3 Horses on the vet's list who are administered clenbuterol for therapeutic and permissible reasons, whether training or solely being cared for, commingle with other horses on the backside of the racetrack. Handlers with horses on the vet's list also handle horses not on the vet's list. Thus, handlers can have trace amounts of clenbuterol on their hands which can be transferred during the different handling of other horses. Furthermore, clenbuterol is illegally used in the industry and thus, even if there were no other clenbuterol positives or horses permitted to use clenbuterol on the backside of the track during the relevant time, that does not mean clenbuterol was not being used outside of Trainer Fung's control on the backside.

- 7.17.4 There is no evidence that Trainer Fung possessed clenbuterol or administered clenbuterol to Anointed Spirit.
 - 7.17.5 Trainer Fung's prior history includes no violations for banned or controlled substances.
 - 7.17.6 Anointed Spirit was performing well and consistently placed in races with similar purse sizes.
 - 7.17.7 Any amount of clenbuterol in Anointed Spirit's system was a trace amount, which coincides with an inadvertent transfer of a small amount of clenbuterol from the handler's exposure to Anointed Spirit instead of intentional, long-term administration.
- 7.18 HIWU argues that there is no evidence to support Trainer Fung's theory of inadvertent transfer.
- 7.18.1 No Covered Horse stabled or competing at Finger Lakes was administered clenbuterol in the 45 days prior to August 20, 2024. There were only three Covered Horses on the Vet's List for clenbuterol during that time, and they were located in California, Delaware, and Iowa.
 - 7.18.2 Because Anointed Spirit has only ever competed at Finger Lakes, at no point could Anointed Spirit have been stabled or competed at the same location as any of the horses on the Vet's List for clenbuterol, nor could Mr. Perez have come into contact with any of those horses on or around August 20, 2024.
 - 7.18.3 No Covered Horse other than Anointed Spirit tested positive for clenbuterol at Finger Lakes in the six months prior to August 20, 2024.
 - 7.18.4 Investigator Smith has never come across clenbuterol in any of his other searches at Finger Lakes.

Evaluation of Expert Testimony

- 7.19 The Parties rely heavily on their respective expert witnesses, as described herein, in support of their positions regarding the likely source of clenbuterol in Anointed Spirit's Sample.
- 7.20 Trainer Fung relies on the testimony of his expert witness, Dr. Cynthia Cole. Dr. Cole provided the following opinions:
- 7.20.1 The clenbuterol detected in Anointed Spirit's Sample is "a small concentration of clenbuterol in a horse and below therapeutic levels," and "appears to be inconsistent with an intentional [and] prolonged use of clenbuterol given the results of other testing." (Cole Rep. ¶ 17; 9/25/25 Tr. at 313.)
 - 7.20.2 "If a small concentration of clenbuterol in the urine sample was from a therapeutic dosing regimen completed some days prior, clenbuterol should have been detectable in the hair for up to 360 days." (Cole Rep. ¶ 24.)
 - 7.20.3 Dr. Cole "cannot entirely rule out the possibility that a single dose of clenbuterol could

have been administered several days before the urine sample was collected and the dose was not large enough to be detected in the hair.” (*Id.* ¶ 26.)

7.20.4 “Given the need for a prolonged regimen in order to achieve any therapeutic effect and the fact that studies reflect a 100 pg/ml finding occurs days to weeks after a 30 day regimen, it seems unlikely that the findings here were a result of a single intentional dose.” (*Id.* ¶ 27.)

7.20.5 “Clenbuterol can be present as a result of inadvertent transfer.” (*Id.* ¶ 28.)

7.20.6 “The inadvertent transfer and/or environmental contaminant of trace amounts of clenbuterol is always possible. This could potentially occur through contact with the horse or horse’s equipment, feed, bedding, stall walls, other horse’s equipment, opening gate, and testing barns.” (*Id.* ¶ 30.)

7.21 HIWU relies on the testimony of its expert witness, Dr. Daniel Eichner. Dr. Eichner provided the following opinions:

7.21.1 The positive result of the urine Sample collected from Anointed Spirit on August 20, 2024 and the doping control results for Anointed Spirit over the period of July to December 2024 “are consistent with multiple potential exposure scenarios, including among potentially others, collection (i) 2-3 hours post-administration of a single (inhaled) dose of clenbuterol; (ii) 12 hours to [2] days post-administration of a single (inhaled) dose of clenbuterol; and (iii) 5-7 days post-administration of a sustained (oral) therapeutic or sub-therapeutic/microdosing regime of clenbuterol.” (Eichner Rep. ¶¶ 9(b), 28; 9/25/25 Tr. at 371-72.)

7.21.2 “[T]he very recent (within a few hours) exposure scenario . . . is less likely than either of the other two scenarios” because “[t]he blood sample collected from Anointed Spirit on August 20, 2024, was reported as negative for clenbuterol. As clenbuterol is generally detected in the blood shortly after exposure, [Dr. Eichner] would have expected a positive finding of clenbuterol if exposure was just a few hours prior to sample collection.” (Eichner Rep. ¶ 31.)

7.21.3 “For the same reason, any theoretical suggestion of cross-contamination from the groom, Miguel Perez, who walked the horse to the track and the testing barn approximately an hour prior to sample collection is less likely than [the other two scenarios described] above. For a scenario of very recent cross-contamination, [Dr. Eichner] would have expected the blood to have reported positive for clenbuterol on August 20, 2024, but it was negative.” (*Id.* ¶ 32.)

7.21.4 “[T]he negative hair and blood sample result for Anointed Spirit combined with the urine sample results from June 23, August 20, and September 3, 2024, are most likely to have been caused by either a single inhaled dose of clenbuterol 1-[2] days prior to sample collection or prolonged therapeutic, sub-therapeutic, or micro-dosing over the period from July 24 to mid-August 2024.” (*Id.* ¶ 33.)

7.21.5 Clenbuterol is often administered as a syrup, and thus does not lend itself to cross-contamination. (*Id.* ¶¶ 9(c), 36.)

- 7.22 At the hearing, the independence and impartiality of both Parties' respective expert witnesses were challenged on *voir dire*.
- 7.23 In its post-hearing merits brief, HIWU states that it "no longer contests Dr. Cole's independence or impartiality." The Arbitrator thus finds no basis to exclude Dr. Cole's testimony. (HIWU Post-Hearing at 15.)
- 7.24 Trainer Fung continues to challenge the admissibility of Dr. Eichner's testimony, arguing that "Dr. Eichner's opinions should be excluded from consideration because he is a biased expert with a lack of sound support for his opinions." (Fung Post-Hearing Br. at 19.) Specifically, Trainer Fung argues:
- 7.24.1 "Dr. Eichner has a direct relationship with HIWU that prevents him from being independent and impartial," and he "was not forthcoming with this information when first requested at the adversarial hearing in September 2025." (*Id.*) "Despite Dr. Eichner's reassurances that there is no relation between SMRTL and EQIAS . . . SMRTL, not Eagle, submitted the proposal to the University of Kentucky to purchase the laboratory that became EQIAS" and "SMRTL was awarded the sale." (*Id.* at 20.)
- 7.24.2 "Despite his efforts to suggest he has nothing to do with Eagle and EQIAS, he is the head of the company." (*Id.*)
- 7.24.3 "Dr. Eichner cannot be impartial in a matter in which he is testifying on behalf of HIWU, which brings revenue to his affiliated companies and impacts his compensation." (*Id.* at 21.)
- 7.24.4 "Dr. Eichner's compensation is also determined by the board of SMRTL, which includes HIWU's general counsel, Michelle Pujals." (*Id.*)
- 7.24.5 ADMC Program Rule 6610 precludes Dr. Eichner from testifying as an outside expert for any party, including HIWU. (*Id.* at 23.)
- 7.24.6 Dr. Eichner is "unqualified to testify regarding the matters at issue" as "[h]e does not have personal experience in the equine industry, other than his own personal ownership of horses and being involved in equine testing" and "has not published any equine articles or articles regarding equine athletes nor clenbuterol in horses." (*Id.*)
- 7.25 The Arbitrator finds no basis to exclude Dr. Eichner's testimony. First, Trainer Fung's assertion that Dr. Eichner is unqualified to testify is meritless. Dr. Eichner testified that SMRTL is accredited to do testing on equine athletes, it just does not have HEAL accreditation, and as Trainer Fung acknowledges Dr. Eichner has been "involved in equine testing." Contrary to Trainer Fung's assertion, Dr. Eichner has extensive experience in both human and equine anti-doping.
- 7.26 Nor do the ADMC Program Rules preclude Dr. Eichner from testifying as an expert in this case. Rule 6610 provides, in relevant part, that "[l]aboratories shall not provide analytical services in a Doping Control adjudication, unless specifically requested by the Agency or an adjudication body as part of a Results Management process." A "Laboratory" is defined under the ADMC Program as a "laboratory approved by the agency." Dr. Eichner is not, in his capacity as an expert witness, providing analytical services on behalf of any laboratory approved by HIWU. And the laboratory that employs him, SMRTL, does not provide

analytical services for HIWU.

7.27 The Arbitrator also rejects Trainer Fung’s argument that Dr. Eichner’s testimony should be excluded based on his role as President of Eagle, and Eagle’s ownership of the EQIAS laboratory. Dr. Eichner initially testified at the September 25, 2025 hearing that he has nothing to do with managing EQIAS, yet later acknowledged that he is the President of Eagle, which owns EQIAS. Dr. Eichner subsequently clarified that despite being President of Eagle, he has “no involvement in the day-to-day operations, management or oversight of the EQIAS lab.” (Eichner 12/5/25 WS ¶ 17.) While Dr. Eichner’s initial testimony certainly could have been clearer in this regard, the Arbitrator does not believe the testimony provided was intentionally misleading, nor does it otherwise warrant exclusion of his testimony.

7.28 The Arbitrator notes that given the limited pool of qualified anti-doping laboratory experts, it is not uncommon for experts to testify in cases for anti-doping agencies with which the expert’s lab conducts testing (recognizing again, here, however, that Dr. Eichner’s laboratory, SMRTL, does not provide testing for HIWU). But, in any event, any purported bias based on financial interests or relationships Dr. Eichner, SMRTL, Eagle or EQIAS have with HIWU go to the probative weight or credibility of testimony rather than admissibility. *See, e.g., Cruz-Vazquez v. Mennonite Gen. Hosp., Inc.*, 613 F.3d 54, 59 (1st Cir. 2010) (holding district court erred in excluding expert testimony based on a determination the witness would be biased because “considerations such as an expert witness’s pecuniary interest in the outcome of a case or his status as an expert witness only for one side of an issue . . . go to the probative weight of testimony, not its admissibility”); *Den Norske Bank AS v. First Nat’l Bank of Boston*, 75 F.3d 49, 58 (1st Cir. 1996) (denying motion to exclude experts who were employees of plaintiff because “such matters may bear heavily on witness credibility, bias, and the weight of the evidence, [b]ut these are matters for the factfinder”); *Knowledge Based Techs., Inc. v. Int’l Bus. Mach. Corp.*, 1998 WL164791, at *1 (S.D.N.Y. Apr. 8, 1998) (denying motion to exclude expert because “courts routinely permit expert testimony by parties, employees, and others with financial and other plain interests in the outcome of the litigation”). ADMC jurisprudence likewise supports that an expert’s relationships are appropriately addressed in assessing the weight, rather than the admissibility, of expert testimony. *See HIWU v. Lynch*, JAMS No. 1501000597, ¶ 6.17 (holding expert’s relationship with a third-party adverse to Claimant “substantially detracts from her impartiality, and thus, the persuasive value of any substantive testimony she might otherwise offer”); *HIWU v. Dominguez*, JAMS No. 1501000577, ¶ 7.12 (considering “historical, personal, and financial contractual relationships of [expert] in evaluating the independence and impartiality of her opinions” as a matter of weight, rather than admissibility).

7.29 Accordingly, Trainer Fung’s request that Dr. Eichner’s opinions be excluded is DENIED.

Trainer’s Fung Has Failed to Meet his Burden of Proving Source by a Balance of Probabilities

7.30 Having concluded that Dr. Eichner’s opinions will not be excluded, the Arbitrator next turns to whether Trainer Fung has proven, by a balance of probabilities, the source of the clenbuterol in Anointed Spirit’s Sample.

7.31 As discussed above, Dr. Eichner presented three potential exposure scenarios: (i) collection 2-3 hours post-administration of a single (inhaled) dose of clenbuterol; (ii) collection approximately 12 hours to 2 days post-administration of a single (inhaled) dose of clenbuterol;

and (iii) collection approximately 5-7 days post-administration of a sustained (oral) therapeutic or sub-therapeutic microdosing regime of clenbuterol. As Dr. Cole confirmed at the hearing, all three scenarios presented by Dr. Eichner are consistent with the doping control results for Anointed Spirit. (Tr. at 311.) The Arbitrator thus gives due consideration to Dr. Eichner's testimony regarding these exposure scenarios, and finds no basis to diminish the weight given to Dr. Eichner's opinions in this regard.

7.32 Notwithstanding the foregoing, the Arbitrator is persuaded that Scenario 1—collection just 2-3 hours post-administration of a single dose—is not among the probable exposure scenarios resulting in Anointed Spirit's positive test. Indeed, Dr. Eichner acknowledged that this scenario is "less likely" because "[t]he blood sample collected from Anointed Spirit on August 20, 2024, was reported as negative for clenbuterol. As clenbuterol is generally detected in the blood shortly after exposure," one "would have expected a positive finding of clenbuterol if exposure was just a few hours prior to sample collection." (Eichner Rep. ¶ 31.)

7.33 Trainer Fung has failed, however, to persuade the Arbitrator that inadvertent exposure is more probable than the other potential exposure scenarios identified by Dr. Eichner for the following reasons:

7.33.1 Trainer Fung has failed to provide any evidence that Mr. Perez could have been exposed to clenbuterol at Finger Lakes. No horses at Finger Lakes were on the Vet's List for clenbuterol nor did any horse test positive for clenbuterol in the six months prior to Anointed Spirit's positive test.

7.33.2 Mr. Perez denied having any knowledge of how Anointed Spirit could have tested positive for clenbuterol, and Trainer Fung failed to present testimony or evidence from Mr. Perez at the hearing. While Trainer Fung sought to discredit Investigator Smith, testifying that Investigator Smith is "lying" when he claims Mr. Perez spoke to him in English because Mr. Perez does not speak English, the Arbitrator found Investigator Smith to be a truthful witness, and has no reason to doubt the statements reflected in Investigator Smith's contemporaneous report.

7.33.3 Trainer Fung's theory of inadvertent exposure from Mr. Perez shortly before the race is inconsistent with Anointed Spirit's negative blood test. Trainer Fung has failed to provide any cogent explanation for how such inadvertent exposure shortly before the test could have caused a positive urine test but a negative blood test.

7.34 In light of the evidence undermining his inadvertent exposure theory, Trainer Fung speculates that Mr. Perez could have been exposed to clenbuterol that was illegally administered to another horse at Finger Lakes. But it is not enough for Trainer Fung to suggest possibilities or speculate. Trainer Fung has "a stringent requirement to offer persuasive evidence" of the source of the AAF. *WADA v. CPA & Karim Gharbi*, CAS 2017/A/4692, at para. 53. Here, Trainer Fung has presented mere speculation, rather than persuasive evidence, regarding his theory of inadvertent exposure.

7.35 Trainer Fung's expert Dr. Cole does not provide any affirmative evidence of inadvertent exposure either. While Dr. Cole opined that "clenbuterol can be present as a result of inadvertent transfer" and "inadvertent transfer and/or environmental contaminant of trace amounts of clenbuterol is always possible" (Cole Rep. ¶¶ 28, 30), at the hearing Dr. Cole

testified that that there was no evidence that had been shared with her supporting the theory that inadvertent transfer may have occurred close to the time of Anointed Spirit's sample collection. (Tr. at 319-20.)

- 7.36 In an effort to bolster the probability of inadvertent exposure, Trainer Fung attempts to refute Dr. Eichner's proposed scenarios. Specifically, Trainer Fung argues that inhaled doses are not a probable mode of exposure because they require a nebulizer, which is not commonly used. Trainer Fung also argues that a sustained therapeutic dose should have been detectable in hair. But as Dr. Cole testified, the mode of administration "doesn't really matter." Instead, "it's all about the dose." (Tr. at 277.) Dr. Cole acknowledged that "a single dose of clenbuterol could have been administered several days before the urine sample was collected and the dose was not large enough to be detected in the hair." (Cole Rep. ¶ 26.) Although Dr. Cole testified that she believed inadvertent exposure was more likely because a single low dose would have no benefit to the horse and she thus didn't "see the logic in administering that" (Tr. at 276), given the evidence undermining the plausibility of the inadvertent exposure scenario presented by Trainer Fung, the Arbitrator finds Trainer Fung has failed to meet his burden of proving, by a balance of probabilities, the source of clenbuterol in Anointed Spirit's Sample.
- 7.37 The Arbitrator notes that there is no evidence that Trainer Fung intentionally administered a long-term therapeutic dosing regimen of clenbuterol to Anointed Spirit, particularly given the negative segmental hair analysis. The Arbitrator concludes only that Trainer Fung has failed to meet his burden of proving source by a balance of probabilities.
- 7.38 Trainer Fung's argument that even if the Arbitrator disagrees with his arguments regarding the establishment of source, his sanction should be reduced under the doctrine of proportionality is rejected. Trainer Fung argues that that his "conduct should not equate to the maximum penalty that would be given to someone intentionally using Clenbuterol" and "a gap in the rules could arguably dictate that and result in a disproportionate ruling." (Fung Post-Hearing Br. at 27.) Here, no gap exists and, in any event, the Arbitrator does not consider the application of the prescribed sanction to violate the principle of proportionality in the circumstances of this case. While Trainer Fung may disagree with the ADMC Program's imposition of a 2-year sanction absent evidence of intentional administration, the Rules are clear that Rule 3212 is a strict liability offense and requires no evidence of intent. Where, as here, source has not been established by a balance of probabilities, the ADMC Program requires the imposition of a two (2) year period of Ineligibility.
- 7.39 Trainer Fung's reliance on *Puerta v. ITF*, CAS 2006/A/1025, is misplaced. In that case, the athlete was subject to an eight (8) year ban for a second doping offense despite bearing No Significant Fault or Negligence for the second offense. In the specific facts of that case, the Panel found that the athlete's "ingestion of the prohibited substance was inadvertent, and that the degree of fault or negligence that he exhibited was so small as almost to amount to No Fault or Negligence." *Id.* ¶ 90. The Panel noted that "[t]he circumstances in which a tribunal might find that a gap or lacuna exists in the WADC in relation to sanctions for breach of its provisions will arise only very rarely," and "in all but the very rarest of cases the sanction stipulated by the WADC is just and proportionate." *Id.* ¶¶ 95-96. Here, Trainer Fung has failed to prove, by a balance of probabilities, the threshold requirement of source to obtain the benefit of any reduction of sanction for No Fault or Negligence or No Significant Fault or Negligence. The facts here simply do not present one of "the very rarest of cases," and the

Arbitrator finds no merit to Trainer Fung's argument that the 2-year period of Ineligibility should be reduced under the doctrine of proportionality.

7.40 In sum, I conclude that Trainer Fung cannot benefit from mitigated consequences since he has failed to prove, by a balance of probabilities, how clenbuterol entered Anointed Spirit's system. Therefore, his sanction stands at two (2) years of Ineligibility.

D. Fine, Payment Toward Arbitration Costs

7.41 Under the ADMC Program, the punishment for a first offense ADRV includes, in addition to a period of Ineligibility, a "Fine of up to \$25,000 . . . and Payment of some or all of the adjudication costs and the Agency's legal costs." Rule 3223(b).

7.42 HIWU requests that the Arbitrator impose a fine of \$25,000 here.

7.43 The Arbitrator determines based on the specific facts and circumstances of this case, the substantial consequences imposed, and the purpose of the regulatory scheme as applied here, the fine should be set at \$10,000, to be paid by the end of the period of Ineligibility.

7.44 HIWU has not requested any payment towards its legal fees, and the Arbitrator declines to require any such payment.

7.45 HIWU does, however, request an order that Trainer Fung pay the full costs of the arbitration based on "Trainer Fung's litigation conduct." (HIWU Post-Hearing Br. at 39.) In particular, HIWU argues that Trainer Fung "brought two unsuccessful post-hearing motions . . . and otherwise made disproportionate demands of HIWU and the Arbitrator in connection with his repeated and baseless allegations of bias against Dr. Eichner." (*Id.*) The Arbitrator agrees that Trainer Fung's multiple unsuccessful post-hearing motions justify some contribution to HIWU's arbitration costs, and determines that a contribution of \$10,000, to be paid by the end of the period of Ineligibility, is appropriate under the facts and circumstances of this case.

7.46 All other arguments by the Parties have been considered and rejected.

VIII. AWARD

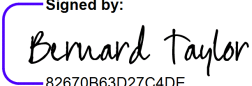
8.1 Based on the foregoing facts, legal analysis, and conclusions of fact, the Arbitrator renders the following decision:

- a. Trainer Fung is found to have committed a first-offense Rule 3212 Presence ADRV, as described above. As a result:
 - i. Trainer Fung shall be suspended for a period of Ineligibility of two (2) years, commencing on the date consistent with the language in the Notice of Sanctions, with a credit for 21 days for time served under the imposition of the Provisional Suspension;
 - ii. Trainer Fung shall be fined \$10,000 to be paid to HIWU by the end of the period of Ineligibility described above;
 - iii. Trainer Fung shall pay a contribution of \$10,000 toward HIWU's share of the arbitration costs of this proceeding by the end of his period of Ineligibility;

- iv. The results of Anointed Spirit obtained in Race 7 on August 20, 2024, and in Race 4 on September 3, 2024, at Finger Lakes are disqualified, including forfeiture of all purses and other compensation, prizes, trophies, points, and rankings and repayment or surrender (as applicable) to the Race Organizer; and
 - v. There will be public disclosure of these findings in accordance with the ADMC Program Rules.
- b. This Decision shall be in full and final resolution of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED.

Dated: April 22, 2026

Signed by:

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Bernard Taylor Sr., Arbitrator