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

*ADMINISTERED BY JAMS, CASE NO. 1501000995*

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In the Matter of the Arbitration Between:

HORSERACING INTEGRITY WELFARE UNIT ("HIWU" or "Claimant"),

Claimant

v.

DR. LARRY OVERLY ("Dr. Overly" or "Respondent"),

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CORRECTED FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties, after a full evidentiary hearing occurring by zoom on May 28, 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 commitment of a two Equine Anti-Doping Rule Violations ("ADRVs") for Possession of Banned Substances, Testosterone and Isoxsuprine by Dr. Overly under the Horseracing Integrity and Safety Authority's ("HISA") Anti-Doping and Medication Control Program ("ADMC Program") Rule 3214 on July 23, 2024.

1.2 HIWU is the Claimant in this case and is the United States government-recognized entity responsible for sample collection and results management in the anti-doping testing of thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity Act of 2020, 15 U.S.C. secs. 3051-3060. HIWU was represented in these proceedings by Allison Farrell, Esq., Senior Litigation Counsel of HIWU, and Alexandria Matic of Tyr, LLP, of Toronto, Ontario, Canada.

1.3 Dr. Overly is a veterinarian who cares for and treats both throroughbred racehorses at Los Alamitos Race Course in Cypress, California ("Covered Horses") and quarterhorses and other horses not covered by the HISA regulations ("Non Covered Horses") predominantly at the Los Alamitos Race Course but also at other locations in California. Dr. Overly was represented in these proceedings by Andrew J. Mollica based in Garden City, New York.

1.4 Throughout this Final Award, HIWU and Dr. Overly shall be referred to individually as "Party" and collectively as "Parties."

## II. PROCEDURAL HISTORY

2.1 Pursuant to the HIWU Anti-Doping Medication Control Program Rules 7290 (Arbitration Procedures) a preliminary conference was held by Zoom on December 10, 2024 with all parties. Allison Farrell, Esq., and Alexandra Matic, Esq. appeared on behalf of HIWU. Andrew Mollica, Esq. appeared on behalf of Dr. Overly (individually, HIWU and Dr. Overly shall be referred to herein as "Party" and collectively as "Parties").

2.2 On December 10, 2024, the Arbitrator issued Procedural Order No. 1, which provided in pertinent part:

> *"4. Briefs and Exhibits*
>
> *a. Each Party shall serve and file electronically a prehearing Brief on all significant disputed issues, setting forth briefly the party's positions and the supporting arguments and authorities, on the dates specified below:*
>
> *i. Claimant's Pre-Hearing Brief: January 17, 2025;*
>
> *ii. Respondent's Pre-Hearing Brief: January 31, 2025; and*
>
> *iii. Claimant's reply Pre-Hearing Brief: February 14, 2025.*
>
> *b. The Parties shall submit their exhibits to be used at the hearing, electronically to the Arbitrator and the other party on the dates their respective initial pre-hearing briefs are due. The parties also shall include with their respective submissions an index to the exhibits.*

*c. Claimant shall use letters and Respondent shall use numbers to mark their exhibits. To the extent that one party has submitted an exhibit that another party also intends to use (such as the World Anti-Doping Code or the USADA Protocol), the other should not include a second copy of that document in its own exhibits but should otherwise refer to the exhibit submitted by the other side. The Parties shall endeavor to agree on a joint set of exhibits to minimize duplication. If possible, to make the hearing proceed more smoothly electronically, the Parties shall file their exhibits as an indexed .pdf file such that the Arbitrator and any Party could click on the index and be taken directly to the exhibit within the .pdf file of all exhibits.*

*d. The Parties also agreed to deliver a hard copy of their submissions, including witness statements and exhibits, printed double sided, to the Arbitrator at 655 Longfellow Avenue, Hermosa Beach, CA 90254 with no signature required.*

*5. Stipulation to Extend Time and Waiver of Jurisdictional Time Limits.*

*The Parties met and conferred before the preliminary conference and stipulated and agreed at the preliminary conference to extend the time limits for filing their briefs and holding the Hearing. The Parties expressly stipulated that they waived any jurisdictional time limits.*

*6. Stipulations of Uncontested Facts and Procedure.*

*The Parties agreed to submit a Stipulation of Uncontested Facts on or before the date the first pre-hearing brief is due from Claimant.*

*7. Witnesses.*

*a. Claimant shall serve and file a disclosure of all witnesses reasonably expected to be called by Claimant on or before the due date of its pre-hearing brief.*

*b. Respondent shall serve and file a disclosure of all witnesses reasonably expected to be called on or before the due date of its initial pre-hearing brief.*

*c. The disclosure of witnesses shall include the full name of each witness, a short summary of anticipated testimony sufficient to give notice to the other side of the general areas in which testimony shall be given, copies*

*of experts' reports and a written C.V. of any experts. If certain required information is not available, the disclosures shall so state. Each party shall be responsible for updating its disclosures as such information becomes available. The duty to update the information continues up to and including the date that hearing(s) in this matter terminate. The Arbitrator encourages the Parties to submit sworn witness statements which would constitute their direct testimony, requiring only cross-examination after a witness confirms their witness statement.*

*d. The parties shall coordinate and make arrangements to schedule the attendance of witnesses at the Hearing (defined below) so that the case can proceed with all due expedition and without any unnecessary delay.*

*e. The Parties shall on or before February 21, 2025 agree upon and submit to the Arbitrator the order of witnesses to testify at the hearing that they have been able to agree upon; if the Parties are unable to so agree, they shall submit their respective positions by said deadline.*

*8. Hearing.*

*The Parties agreed the Hearing in this matter will commence before the Arbitrator in person on February 26, 2025 starting at 9:00 am local time at the JAMS Los Angeles Resolution Center located at 555 W. 5th Street, 32nd Floor, Los Angeles, CA 90013.*

*9. Submission of Documents.*

*All documents due to be submitted hereunder shall be submitted using the JAMS Access system and hard copies shall also be delivered to the Arbitrator, no signature required, at 655 Longfellow Avenue, Hermosa Beach, California 90254.*

*10. Further Disputes Process.*

*To the extent any dispute arises between the Parties beyond what has been stated already, any Party wishing to bring that dispute to the attention of the Arbitrator shall do so promptly after such dispute arises by sending a brief email to the Arbitrator, copied to the other side and JAMS (and filing on the JAMS Access system), outlining in basic, brief, general terms the nature of the dispute, their position thereon, and the relief being requested with relation*

*thereto. The other side shall file a response, distributed to the same email list (and file with JAMS Access) and in line with the original email shortly thereafter briefly outlining in basic, general terms the nature of the dispute and their position thereon. There shall be no response to that email. The Arbitrator will, based on these two emails, determine the next steps with respect to resolving the dispute.*

*11. Miscellaneous Provisions.*

*a. All deadlines and requirements stated herein will be strictly enforced. Any deviation requires the permission of the Arbitrator based on a showing of good cause by the Party seeking an extension of time.*

*b. The Parties shall not have any ex parte contact with the Arbitrator. All communications with the Arbitrator are to be copied to the other side, and the JAMS case manager, at the same time as the communications are made to the Arbitrator and in the same form.*

*c. Unless specified otherwise herein, for all deadlines for any Party to take any action under this Order, the time by which such action shall be due for each such designated action shall be midnight Pacific Time on the date given.*

*d. The Parties' attention is drawn to the relevant provisions of the procedural rules that limit the liability of the Arbitrator in these proceedings. The Arbitrator agrees to participate in these proceedings on the basis that, and in reliance on the fact that, those provisions apply and the Parties agree to be bound by them. If any Party disagrees that those provisions apply here, they must notify the Arbitrator within seven (7) days of the date of this order in writing."*

2.3 The Parties complied with the deadlines and other requirements set forth in Procedural Order No. 1:

a. On or about January 17, 2025, HIWU submitted its pre-hearing brief ("HPHB"), book of authorities and a book of evidence and exhibits which contained Exhibits A – D, Exhibit E (the written witness statement of Brian Bennett dated January 17, 2025 with Exhibits A- E thereto).

b. On or about January 31, 2025 Dr. Overly submitted his pre-hearing brief ("OPHB"), book of authorities and book of evidence and exhibits which contained: the declaration and witness statement of Dr. Overly, Exhibits Tab 2, and Tab 3, the declaration and witness statement of Jessica Ingram dated January 31, 2025, the declaration and witness statement of Cassandra Corbett dated January 31, 2025 and Exhibits 1-4 attached thereto, Exhibit Tabs 6, Tab7 and Tab 8.

c. On or about February 15, 2025, HIWU submitted its reply brief ("ARB"), its reply book of authorities and its reply book of evidence and exhibits ("ARBE"), which contained: the witness statement of Dr. Mary Scollay dated February 12, 2025, with Exhibit A thereto, a second witness statement from Mr. Brian Bennett dated February 13, 2025, and an expert report from Dr. Dionne Benson dated February 14, 2025 together with Exhibit A thereto (her cv).

2.4 On or about February 24, 2025, the Parties notified JAMS that they had reached a settlement and the evidentiary Hearing scheduled for February 26, 2025 was taken off calendar.

2.5 In April of 2025, the Parties notified JAMS that the settlement had fallen through and asked that the evidentiary Hearing be reset.

2.6 A zoom conference was held with the Parties on or about April 18, 2025. Following that conference the Parties notified JAMS they had agreed to hold the evidentiary Hearing on May 28, 2025. The Parties provided an agreed upon procedure on or about April 23, 2025.

2.7 On or about May 20, 2025, the Parties submitted a revised schedule and witness order.

2.8 Pursuant to the agreement of the Parties, both HIWU and Dr. Overly made submissions to supplement the written record on or about May 20, 2025. HIWU submitted Supplementary Authorities Tabs 1 and 2. Dr. Overly submitted Supplemental Exhibits 1A-1F, and 2.

2.9 On or about May 22, 2025, HIWU objected to Dr. Overly including the Pre-Hearing Demand letter as Exhibit Dr. Overly submitted objections to HIWU Authority 1 and 2 contained within HIWU's Supplemental Authorities.

2.10 A final pre-hearing conference was held on May 23, 2025 with the Parties. Ms. Farrell and Ms. Matic appeared for HIWU and Mr. Mollica appeared for

Respondent. The Parties agreed that each side would present brief opening statements at the start of the Hearing.

**Evidentiary Hearing**

2.11 The evidentiary Hearing proceeded in person at the JAMS Resolution Center in Los Angeles on May 28, 2025. Ms. Farrell and Ms. Matic appeared for HIWU and Mr. Mollica appeared for Dr. Overly. Dr. Overly was also present. At the start of the Hearing, the witness statements provided by both Parties were admitted into evidence along with the exhibits the Parties had submitted.

2.12. The following witnesses and experts testified at the Hearing:

a. Brian Bennett, lead HIWU investigator testified as to his search of Dr. Overly's truck on July 23, 2024 and his subsequent investigation;

b. Dr. Mary Scollay, HIWU's Chief of Science testified as to the education seminars she conducted prior to the enactment of the ADMC Program and the obligations of Covered Persons under the Program;

c. Dr. Dionne Benson, Chief Veterinary Officer of I/ST Racing provided her expert opinion on the records Dr. Overly produced to support his proffered justification for possessing Testosterone and Isoxsuprine, the use of those substances in a veterinary practice and DEA record keeping obligations;

d. Cassandra Corbett, the manager of Dr. Overly's veterinary practice testified how she had compiled the records produced from Dr. Overly's practice;

e. Dr. Overly testified about statements he made during the search of his truck, the nature of his practice, and the circumstances surrounding his Possession of Isoxuprine and Testosterone at Los Alamitos race track on July 23, 2024 and why he believed he had a compelling justification to possess those Banned Substances at Los Alamitos;

f. Jessica Ingram, Dr. Overly's veterinary technician testified about Dr. Overly's treatment of her horse Cosmo with Testosterone and the circumstances that led her to load expired Isoxsuprine onto Dr. Overly's truck on July 17, 2024.

2.13 The following additional exhibits were introduced and admitted at the Hearing: BB-1, BB-2, AA, AB, AC, AD and AE.

2.14 Before adjourning the evidentiary Hearing, the Parties agreed to submit simultaneous post hearing briefs on July 10, 2025 and to hold closing arguments by zoom on July 14, 2025.

2.15 On or about June 2, 2025, HIWU submitted a Supplementary Book of Evidence and Exhibits containing Exhibits AA, AB, AC, AD, and AE which had been introduced and admitted at the Hearing.

2.16 Pursuant to their agreement, HIWU filed its post hearing brief ("ACB") and book of additional authorities on July 10, 2025 and Dr. Overly filed his post hearing brief ("OCB") together with a book of additional authorities on July 10, 2025[1].

2.17 Closing arguments were held on July 14, 2025 by zoom. Ms. Farrell and Ms. Matic appeared for HIWU and Mr. Mollica argued for Dr. Overly. At the conclusion of their arguments, the Parties stipulated to waive the statutory time for the Arbitrator to issue this Award and extended such time to August 13, 2025.

2.18 On July 14, 2025 the Arbitrator closed the Hearing.

2.19 Upon closure of the Hearing, the Arbitrator commenced writing this Final Award, which issued within the time stipulated to by the Parties.

## III. JURISDICTION

3.1 HIWU was created pursuant to the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. secs. 3051-3060 ("Act"), and is charged with administering the rules and enforcement mechanisms of the Horseracing Integrity and Safety Authority's ("HISA") Anti-Doping and Medication Control Program ("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 violations by Covered Persons, and Covered Persons are defined under ADMC Program Rule 1020:

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

[1] Dr. Overly also submitted a book of evidence, which contained copies of exhibits previously submitted as well as the transcript of the Hearing ("AT").

…

(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."

3.2 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.

3.3 Dr. Overly is a veterinarian engaged in the care and/or treatment of Covered Horses and is thus a Covered Person who is bound by and subject to the ADMC Program.

3.4 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."

3.5 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."

3.6 In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. At the Pre-Hearing Administrative Conference conducted with the Parties, the Parties agreed that the Arbitrator would serve as the sole arbitrator in this proceeding.

3.7 No Party disputed jurisdiction here and all Parties fully participated in the proceedings without objection.

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

## IV. FACTUAL ALLEGATIONS AND FINDINGS.

4.1 Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced at the May 28, 2025 arbitration Hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While 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 submissions and evidence the Arbitrator considers necessary to explain the reasoning supporting this decision. Other than the uncontested and stipulated facts set forth below, a number of facts and the legal effects of those facts and many of the stipulated facts were disputed.

**4.2 Uncontested and Stipulated Facts.** On or about January 17, 2025, the Parties submitted the following uncontested and stipulated facts:

4.2.1 On July 23, 2024, HIWU Investigators attended Los Alamitos Race Course ("Los Alamitos") in Cypress, California and conducted a search of Dr. Overly's

veterinary truck (the "Search"). Dr. Overly and his veterinary technician, Jessica Ingram, were present during the Search.

4.2.2 The Search began at approximately 10:15 AM. Dr. Overly's veterinary truck was parked within the Barn area of Los Alamitos. The truck was a 2003 Hummer Utility Vehicle, with the California Personalized License Plate "EQ VET". Registration paperwork contained in the vehicle's glove box indicated that the vehicle's California License #7ASD028 was registered to EQUINE SPORTS MEDICINE LRO INC, 5550 Cerritos Avenue, Suite C, Cypress, California 90630. Dr. Overly is the sole Officer of EQUINE SPORTS MEDICINE LRO INC.

4.2.3 During the Search, Investigators found and seized the following substances from Dr. Overly's veterinary truck:

a. One jar of Isoxsuprine Powder, located inside a large plastic box containing various medications, on the vehicle's passenger side, rear seat. The Isoxsuprine Powder had JAMS, CASE NO. 15010007082 an Equine Sports Medicine prescription label affixed to the jar; however, the label lacked any date prescribed, horse, or trainer information. The label also lists a Use by date of 07/09/2023. The Isoxsuprine Powder, which is a Category S0 Banned Substance, was seized and labeled as Evidence Item #BB-1.

b. Four injectable vials of Testosterone, located inside the left top drawer of the medication cabinet located in the rear cargo area of Dr. Overly's veterinary truck. The vials lacked any prescription information. One vial had been opened and was nearly empty. The remaining three vials retained their plastic caps and appeared full and unopened. During the Search, Dr. Overly denied using the Testosterone on Covered Horses. The four vials of Testosterone, which are Category S1 Banned Substances, were seized and labeled as Evidence Item #BB-2.

4.2.4 The Search was completed by approximately 11:00 AM. Dr. Overly was issued a HIWU Evidence Report/Receipt for the items seized.

4.2.5 On August 30, 2024, Attorney Andrew Mollica submitted a written response and records to HIWU on behalf of Dr. Overly, pertaining to the four vials of Testosterone seized during the Search ("Overly Response").

4.2.6 The Overly Response states that the records attached thereto are "prescription invoices demonstrating that the testosterone was obtained from Victor Medical Company on February 28, 2024 and March 4, 2024, and another order on

July 23, 2024[2], as well as medical records/controlled Substance Research records, documenting treatment for the Non-Covered horse "Cosmo", which demonstrates that Dr. Overly administered the testosterone to this horse with regularity, including pre-and-post seizure on July 20, 2023, September 20, 2023, March 1, 2024, and July 30, 2024."

4.2.7 On October 17, 2024, HIWU sent an Equine Anti-Doping ("EAD") Notice letter ("EAD Notice") to Dr. Overly, pursuant to ADMC Program Rule 3245, informing him that he had been found in Possession of two (2) Banned Substances, and that this may result in ADRVs. A Provisional Suspension was imposed effective October 17, 2024, but subsequently lifted on November 4, 2024, after the HISA Board requested that HIWU limit the circumstances under which they exercise their discretion to impose a Provisional Suspension on Covered Persons.

4.2.8 On November 4, 2024, HIWU sent a letter, formally alleging Dr. Overly committed two Possession ADRVs ("Charge Letter").

4.2.9 Dr. Overly has no prior ADMC Program violations.

### 4.3 Additional Facts According to HIWU

4.3.1 Upon seeing Investigators remove the Isoxsuprine from his truck, Dr. Overly spontaneously stated, "That's been in there for a long time. I haven't used it."

4.3.2 During the Search, Dr. Overly denied using the Testosterone on Covered Horses and stated to Investigator Bennett that he kept Testosterone in his veterinary truck's medication cabinet for personal use, injecting himself with a dose every Friday.

4.3.3 On October 17, 2024, at approximately 9:45 AM, HIWU Investigator Bennett returned to Los Alamitos and interviewed Dr. Overly's veterinary technician, Jessica Ingram.

### 4.4 Additional Facts According to Dr. Overly[3]

[2] The "other order" was placed with "AmerisourceBergen, MWI Animal Health."

[3] This list of additional facts according to Dr. Overly is included as an aid to summarizing Dr. Overly's positions. Many of the additional facts according to Dr. Overly were rebutted, impeached, or the credibility of Dr. Overly's evidence of those facts was placed at issue during the Hearing. The Arbitrator need not delineate the issues with each such additional fact according to Dr. Overly, and instead incorporates her assessment of credibility and the validity of these additional facts in the Discussion and Analysis Section of this Award.

4.4.1 Dr. Overly is a veterinarian licensed to practice veterinary medicine in the State of California, in good standing.

4.4.2 Los Alamitos, where Dr. Overly performs most of his work, is a unique, mixed-facility, unlike most others in the U.S., stabling a majority of Non-Covered horses.

4.4.3 Prior to the HISA ADMC Program taking effect, Dr. Overly had no violations at Los Alamitos.

4.4.4 In 2024, 73 of Dr. Overly's patients were Non-Covered horses outside Los Alamitos, with 68.35% of his total practice being Non-Covered.

4.4.5 In preparation for the HISA ADMC Program going into effect, and on an ongoing basis, Dr. Overly read everything put out by HISA/HIWU. He regularly reviews ADMC Rules and continues to review HISA/HIWU literature and industry blogs to stay knowledgeable about updates and instructs his staff about HISA Banned Substances and controlled medications.

4.4.6 As a result of reviewing industry blogs, prior to July 2024, Dr. Overly became aware of presentations given by Dr. Scollay and statements made therein.

4.4.7 In March 24, 2023, Dr. Scollay gave a presentation at Will Rogers Downs in Oklahoma, about the ADMC program, and in response to a question asked by one attendee about farm work, Dr. Scollay proclaimed:

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

4.4.8 On July 23, 2024, at Los Alamitos, HIWU Investigators approached Dr. Overly's veterinary truck and advised Dr. Overly they had authority to search his truck. Dr. Overly was shocked but compliant.

4.4.9 Dr. Overly was parked in the Los Alamitos Barn area, not specifically near Barn 6 as HIWU asserts.

4.4.10 Dr. Overly was not scheduled to work that day, but being a diligent veterinarian, he was conducting rounds to ensure the Practice was not overwhelmed. Dr. Overly was accompanied by veterinary technician, Jessica Ingram ("Ms. Ingram").

4.4.11 Given Dr. Overly's practice composition, there was between a 65.71% and 79.58% likelihood Dr. Overly would perform Non-Covered work at Los Alamitos where there were 1400 available stalls and only 485 Covered horses in July 2024.

4.4.12 Investigator Bennett searched Dr. Overly's truck, and confiscated: one jar of compounded Isoxsuprine, located in a large plastic box containing various medications, located on the vehicle's passenger side rear seat. The Isoxsuprine had an Equine Sports Medicine24 prescription label on the jar; did not have a prescription date, horse, or trainer information. The jar had "use by" date of July 9, 2023.

4.4.13 Thereafter, the investigators asked Dr. Overly if he had any controlled substances and believing HIWU was going to confirm proper storage, Dr. Overly showed the investigators: four injectable 10 mL vials of Testosterone Cypionate 200mg/mL located inside the left top drawer of the medication cabinet located in the rear cargo area of the veterinary truck. The vials contained no prescription information. One vial was opened and nearly empty. The remaining three vials retained their plastic caps and were full and unopened.

4.4.14 Dr. Overly advised HIWU that the Testosterone was not for his Covered practice, and Ingram also advised HIWU the Testosterone was for older horses off the racetack, but HIWU confiscated the Testosterone.

4.4.15 Being in shock, and without lawyer's counsel, Dr. Overly tried to make light of the situation and stated in jest that the Testosterone was "for personal use, [and that he] injected himself with a dose every Friday."

4.4.16 Dr. Overly told investigators the Isoxsuprine had "been in there for a long time. I haven't used it," as Dr. Overly assumed Isoxsuprine was on his truck for a while as it had not been used recently.

4.4.17 On July 17, 2024, Dr. Overly had an appointment to examine Brownie, a Non-Covered horse outside of Los Alamitos, in Rolling Hills Estate, whose owner requested Isoxsuprine for Ringbone. In preparation for an exam, Ms. Ingram loaded the Isoxsuprine on the truck to prepare Dr. Overly for Non-Covered practice. Dr. Overly was not aware Isoxsuprine was on his truck, and ultimately prescribed another medication to Brownie.

4.4.18 Testosterone was carried as part of Dr. Overly's Non-Covered practice and used/intended to be used in Non-Covered practice, including Cosmo, owned by Ingram.

4.4.19 Dr. Overly treated Cosmo at no charge for a valued member of his practice. Dr. Overly provided HIWU with pharmacy records showing Testosterone was ordered from Victor Medical Company, on February 28, 2024 and March 4, 2024, and veterinary records/Controlled Substance Research Records, demonstrating that Cosmo received 5cc's of testosterone July 20, 2023, 5cc's on September 20, 2023, and 8cc's on March 1, 2024.

4.4.20 After the seizure, Dr. Overly ordered Testosterone from AmerisourceBergen, MWI Animal Health to replenish his stock, and he provided additional Controlled Substance records, showing Cosmo received Testosterone on July 30, 2024, after receipt of the new supply.

4.4.21 On October 17, 2024, HIWU sent Dr. Overly an EAD Notice Letter, informing him that he had been found in Possession of Banned Substances and HIWU may elect to charge him for a two violations of Rule 3214(a). Dr. Overly was provisionally suspended.

4.4.22 On November 4, 2024, the Provisional Suspension was lifted, based on a change in the Rules. However, HIWU formally charged Dr. Overly with two alleged violations of Rule 3214(a), based on the Testosterone and Isoxsuprine, and notified Dr. Overly that HIWU was seeking two years ineligibility and $25,000 for each alleged violation, for a combined Period of Ineligibility of four years and a combined fine of $50,000. Charge Letter, Agency Book of Evidence ("ABE"), Tab C.

**4.5 Additional Material Factual Findings.**

4.5.1 Besides serving as Chief of Science for HIWU, Dr. Scollay has been a racing regulatory veterinarian since 1987, with 38 years of industry experience.

Arbitration Transcript ("AT") Day 1 142:23- 143:13; ARBE Tab 4 at ¶1 (Scollay Witness Statement).

4.5.2 After HISA's enactment, Dr. Scollay made public presentations throughout the country to educate horserace industry participants on the new, not yet effective, ADMC Program. AT 1, 145:11 – 150:20, ARBE at Tab 4. The presentations were themselves substantially the same, and each afforded those attending an opportunity to ask questions. AT 1 146:12-22.

4.5.3 Dr. Scollay's slide presentation of HISA's ADMC Program, including the voice over of her remarks, was and is available on the HIWU Website. AT 1 146:22-147:1. Dr. Scollay's presentation distinguishes between controlled substances and banned substances and reminds viewers that banned substances (specifically including Isoxsuprine) are prohibited at all times and that if a Covered Person possesses it, it is the same as if it is detected in a horse's sample. AT 1 150:10-20.

4.5.4 Dr. Scollay testified that her discussion of compelling justification as a defense to Banned Substance possession charges under Rule 3214(a) typically arose in response to audience questions, and she acknowledged that having Non-Covered horses in their practice could be a component of that justification. AT 154:7-155 20; 189:18 – 190:7.

4.5.5 Dr. Scollay's presentation also made clear that HIWU was available for stakeholder engagement (including telephone consultations) and provided her email and personal cell phone call and encouraged anyone with questions to call her and she credibly testified that she received many calls following her presentations. See, e.g. AT 1 160:20 -162:15. Those calls included veterinarians with questions about how they could comport themselves at mixed use tracks where Covered Horses are the minority. AT 1 183:11-20.

4.5.6 Dr. Scollay credibly testified that no veterinarian has ever told her one of the HISA Banned Substances is a drug they needed to have immediately at hand for their Non-Covered practice.

4.5.7 Los Alamitos, where Dr. Overly performs most of his work, is a mixed-facility, stabling a majority of Non-Covered horses.

4.5.8 Dr. Overly's practice at Los Alamitos in 2024 consisted of 573 Non Covered horses and 299 Covered horses, for a split of 65.71% Non-Covered horses and 34.29% Covered horses. AT 1 315:23 – 316:22. Dr. Overly's medical records at Los Alamitos in 2024 show he performed 15,857 treatments on Non-Covered horses

and 4070 treatments on Covered Horses, for a spilt of 79.58% Non-Covered horses and 20.42% Covered Horses. AT 1 317:6-18.

4.5.9 Ms. Corbett, Dr. Overly's practice manager, credibly testified that Dr. Overly also has 73 Non-Covered horses who he saw off-track in 2024. AT 1 281:6-19. Including the off track horses, Dr. Overly's Non Covered Horses constituted 68% of his practice in 2024.

## V. RELEVANT LEGAL STANDARDS

5.1 Rule 3214(a) of the ADMC Program provides as follows:

> "The following acts and omissions constitute Anti-Doping Rule Violations by the Covered Person(s) in question: . . . Possession of a Banned Substance or a Banned Method, unless there is compelling justification for such Possession."

5.2 Dr. Overly is a Covered Person under the ADMC Program. It is alleged that Dr. Overly was in possession of both Isoxsuprine and Testosterone, which are identified on the Prohibited List – Technical Document as a Category S0 and S1 Banned Substances, respectively.

5.3 The ADMC Program defines "Possession" as follows:

> "Possession means actual, physical possession, or constructive possession (which shall be found only if the Covered Person has exclusive control or intends to exercise exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists). If the Covered Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Covered Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it. There shall be no Anti-Doping or Controlled Medication Rule violation based solely on Possession if, prior to receiving notification of any kind of any violation, the Covered Person has taken concrete action demonstrating that the Covered Person never intended to have possession and has renounced possession by explicitly declaring it to the Agency. Notwithstanding anything to the contrary in this definition, the act of purchasing (including by any electronic or other means) a Banned

Substance or Banned Method constitutes Possession by the Covered Person who makes the purchase, whether or not the Banned Substance or Banned Method purchased is ever delivered to the Covered Person."

5.4 In summary, under the ADMC Program, Possession is established (in the absence of a compelling justification for the Possession) by the act of purchasing a Banned Substance, where a Covered Person has exclusive control or intends to exercise exclusive control of the substance or premises where the substance is located, or knew of the presence of the substance and intended to exercise control over it.

5.5 Pursuant to Rule 3121, the burden of proof is on HIWU to establish that a violation of the ADMC Program has occurred to the comfortable satisfaction of the Panel. "This standard of proof is higher than a balance of probabilities but lower than clear and convincing evidence or proof beyond a reasonable doubt." Rule 3121.

5.6 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."

5.7 The definition of Possession in the ADMC Program is substantively identical to the definition of possession in the WADC (see Article 2.6).

5.8 ADMC Program Rule 3040 sets out certain obligations of a veterinarian such as Dr. Overly, as a Covered 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; . . .

5.9 Pursuant to ADMC Program Rule 3223, the ineligibility, and financial penalties for a first anti- doping rule Violation of Rule 3214(a) (Possession) is:

a. Two (2) years of Ineligibility, and

b. A "Fine up to $25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]'s legal costs."

5.10 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. 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."

Rule 1010, Definitions.

5.11 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)…
>
> (b) Rule 3224 only applies in exceptional circumstances…"

5.12 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."

5.13 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."

5.14 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 The Parties asserted various arguments in their pre-hearing briefs, at the Hearing, in their closing briefs and during their closing arguments. The below is an effort to summarize their fundamental positions. To the extent necessary, the Arbitrator will address the various arguments that were made in the Analysis section below.

### 6.2 HIWU's Contentions and Claims

6.2.1 By having Testosterone and Isoxuprine on his veterinary truck at the Los Alamitos race track facilities on the date it was found, after the effective date of the ADMC Program, Dr. Overly committed ADRVs for Possession of each Banned Substance and should be separately sanctioned for each violation.

6.2.2 Dr. Overly failed to prove he had a compelling justification for being in possession of either Isoxuprine or Testosterone at the Los Alamitos race track on July 23, 2024.

6.2.3 Whether a veterinarian has a compelling justification for being in Possession of a Banned Substance is a narrow, fact driven exception that requires an analysis with respect to each Banned Substance. As stated in the Himes ALJ Decision, the Possession Rule is "part of a regulatory scheme directed to banishing doping from thoroughbred horseracing" and a compelling justification excusing Possession is an "exception" that should be interpreted restrictively.

6.2.4 Once the fact of Possession is established, Covered Persons have the burden of proving this defense by a balance of probabilities (preponderance of the evidence standard).

6.2.5 Dr. Overly failed to meet his burden of proof to establish compelling justification with respect to Testosterone because the evidence showed 1) he originally told investigators it was for personal use (and doubled down on this explanation, repeating it during the search; 2) after the search Dr. Overly claimed Testosterone was used to treat Non-Covered horse Cosmo, but the records produced by Dr. Overly only show sporadic administration for over a year for which there is no clear medical rationale; 3) Dr. Overly submitted pharmacy invoices which fail to match the lot numbers on the Treatment logs or vials themselves and the Treatment Logs fail to meet DEA and California veterinary standards; and 4) Dr. Overy failed to show any need (let alone a compelling justification) for keeping Testosterone on his veterinary truck at Los Alamitos.

6.2.4 Dr. Overly failed to meet his burden of proof to establish compelling justification with respect to Isoxsuprine because 1) Dr. Overly provided inconsistent and unsubstantiated reasons, first telling Investigator Bennett that it "had been there for a while and he hadn't used it" then with his Pre-Hearing brief claiming it was loaded on his truck on July 17, 2024 to at the request of the owner of a Non-Covered horse (Brownie); 2) the records produced by Dr. Overly do not show he treated Brownie on July 17, 2024; 3) at the Hearing Dr. Overly claimed his associate Dr. Chapparo treated Brownie, that records exist but he could not explain why they were not produced and 4) even accepting Dr. Overly's factual justification he did not offer any rationale for why he needed to keep Isoxsuprine on his truck at Los Alamitos almost a week after the appointment, since he testified his veterinary truck is regularly loaded, unloaded and re-loaded approximately 10 times per week.

6.2.5 The fact that Dr. Overly services a majority of Non-Covered horses cannot support compelling justification in this case for Possession of either Testosterone or Isoxsuprine at Los Alamitos where there is not a single record showing Dr. Overly used Testosterone or Isoxsuprine at Los Alamitos.

6.2.6 Dr. Scollay's formal guidance cannot be reasonably interpreted to suggest Covered Persons can carry Banned Substances at Covered Racetracks based solely on the composition of their practice.

6.2.7 Dr. Scollay's testimony confirmed that the specific intended use of a Banned Substance must be considered to determine if there is compelling justification to have it at a Covered Racetrack.

6.2.8 Dr. Overly failed to present evidence of any specific need to have Testosterone or Isoxsuprine at Los Alamitos.

6.2.9 Dr. Overly's testimony does not establish a compelling justification to carry either Testosterone or Isoxsuprine for his off-track practice, as he generally sees patients outside of Los Alamitos on Wednesday afternoons and Dr. Overly admitted his truck is generally reloaded at his office before making those off-track trips.

6.2.10 Dr. Overly can and should be separately sanctioned for each violation. The decision in *In the Matter of Dr. Scott Shell, DVM*, Docket No. 9439 (Administrative Law Judge Decision on Application for Review, Decision of March 6, 2025) ("*Himes ALJ Decision*") confirmed that Rule 3228(d) of the ADMC Program should be interpreted to permit HIWU to charge a Covered Person with an ADRV for each Banned Substance found in their Possession.

6.2.11 Proportionality can be considered to determine whether individual sanctions should be imposed for each charged and established ADRV, or whether the individual sanctions should be combined to allow for an overall reduction in penalty.

6.2.12. The factors that led Judge Himes to combine the sanctions on Dr. Shell do not apply to Dr. Overly in this case because 1) Dr. Overly does not come to this proceeding with clean hands having violated CHRB Rules on four occasions; 2) the ADRVs in Dr. Shell's case arose from his mistaken belief concerning his ability to possess Banned Substances for his farm practice in West Virginia (which is currently outside of HIWU's jurisdiction) and there is no such misunderstanding here; 3) unlike Dr. Shell, Dr. Overly cannot point to any regular, documented use of Testosterone or Isoxsuprine in his Non-Covered practice; 4) Dr. Shell was close to retirement and an 8 year period of Ineligibility for the four ADRVs would result in a permanent expulsion and $100,000 penalty would inflict an undue financial burden.

6.2.13 Dr. Overly bears the burden of establishing on a balance of probabilities that he acted with No Fault or Negligence ("No Fault") or No Significant Fault or Negligence ("No Significant Fault").

6.2.14 To establish No Fault, a Covered Person must show that despite the exercise of utmost caution they could not have reasonably known or suspected they were committing an ADRV. The case law makes it clear that a finding of No Fault only applies in exceptional circumstances.

6.2.15 Dr. Overly cannot establish No Fault for either of the ADRVs. Because there is no dispute Dr. Overly knew Testosterone and Isoxsuprine are Banned Substances under the ADMC Program and Dr. Overly admitted he made no effort to

contact Dr. Scollay or anyone else at HIWU to discuss the mixed nature of his practice and whether he was at risk of violating the Possession Rule, he cannot show he used "utmost caution."

6.2.16 ADMC Program Rule 3225 allows for the reduction of sanctions where there is No Significant Fault, which 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 … in question."

6.2.17 In *HIWU v. Poole*, JAMS Case 15010000576 (decision of August 8 2023), Arbitrator Benz confirmed that the No Significant Fault analysis requires consideration of both the "objective" and "subjective" elements of fault set forth in *Cilic v. International Tennis Federation* CAS 2013/A/3327 and that the objective elements should be considered to determine which of three Ineligibility ranges for violations of the ADMC Program applies: (i) Slight or Insignificant Fault – three to ten months; (ii) moderate fault – ten to seventeen months; and (iii) Significant Fault – seventeen to twenty four months. The subjective elements of Fault allow the Arbitrator to move the Covered Person within the range of Fault determined by the objective elements.

6.2.18 Under the *lex sportiva*, a delegated third party's misdeed is imputed to the Covered Person. The assessment of Fault is directed at the Covered Person's choice and duty of utmost care in the delegation of their obligations.

6.2.18 Dr. Overly did not carry his burden of proving No Significant Fault for either of the ADRVs. His actions, in light of the standard of care that could reasonably be expected of a veterinarian in his position, fall under the Significant Fault range for each ADRV.

6.2.19 The ADMC Program instituted a change in horseracing standards nationwide, including imposing stringent sanctions for Possession ADRVs. The advent of the ADMC Program was a time for reasonable veterinarians to take stock of their practices and existing routines to assure compliance. Dr. Overly failed to seek direct guidance from HIWU and failed to change his existing practice systems. Since he has his veterinary truck loaded and reloaded twice a day, five days a week, there was no reason for him to carry Testosterone for Cosmo on his truck at Los Alamitos and no reason for Isoxsuprine loaded for Brownie on July 17th to still be on his truck six days later.

6.2.20 Dr. Overly has not presented evidence to justify reducing his sanctions under the subjective *Cilic* factors. The Himes ALJ Decision confirms that the No

Significant Fault analysis needs to consider the Covered Person's dealings with each Banned Substance. Dr. Overly did not provide medical records that support a need for the Testosterone or Isoxsuprine on his truck[4].

6.2.21 HIWU requested the following sanctions be imposed on Dr. Overly in its pre-hearing and post-hearing Briefs:

"a. A period of Ineligibility of between seventeen (17) months and two (2) years for Possession of Isoxsuprine;

b. A period of Ineligibility of two (2) years for possession of Testosterone; and

c. A fine of USD $25,000 and payment of some or all of the adjudication costs for each ADRV." HIWU PHB at 2.

HIWU acknowledged that the Arbitrator has discretion to determine the appropriate fine. In the absence of mitigating circumstances, however, the Agency submits that it is appropriate in each case to impose a $25,000.00 fine. At the evidentiary hearing, HIWU asserted the view that the fine follows the fault; in other words, given the "up to" language, the amount of the fine should be commensurate with any corresponding level of fault finding. [Also at the evidentiary hearing, HIWU agreed that it was no longer seeking a contribution toward its legal fees.]

### 6.4. Dr. Overly's Contentions

6.4.1 On July 23, 2024, at Los Alamitos Racecourse, a mixed-use facility, staging Thoroughbred and Quarter Horse ("QHs") racing, where, in 2024, 65.71% of Dr. Overly's patients were Non-Covered QHs, in one transaction and occurrence, HIWU seized from Dr. Overly, Testosterone, a legal medication, permissible to carry at Los Alamitos under Cal. Code Regs., Tit. 4, § 1869, and Isoxsuprine, also legal, but with a blurred racing history under Cal. Code Regs., Tit. 4, § 1867(b)

6.4.2 HIWU improperly overcharged Dr. Overly with two counts of "Possession" of a Banned Substance under the ADMC Program Rule 3214(a) and improperly seeks two years ineligibility fore each count and a $25,000 fine for each count, despite the findings in *HIWU v. Shell*, *HIWU v. Puype*, the ADMC Rules and the recent clarification from FTC Administrative Law Judge Himes stating that both *lex sportiva* and the proportionality principle dictate two different Banned Substances

[4] HIWU also argues that the evidence showed Dr. Overly's practice did not have a system in place to check for or dispose of expired Banned Substances and if one had been in place there would have been no opportunity for the Isoxsuprine to have been loaded on his truck.

recovered in the same transaction and occurrence should be treated as one possession charge for penalty purposes.

6.4.3 HISA and HIWU have no jurisdiction over Non-Covered horses and Non-Covered veterinary practice including Non-Covered QHs at Los Alamitos.

6.4.4 Non-Covered Practice/Use can establish a Rule 3214(a) defense of "Compelling Justification" to possess Banned Substances and the composition/percentage of a vet's Non-Covered practice is a factor in the compelling justification analysis.

6.4.5 Dr. Overly met his burden by a preponderance of the evidence, to show he had compelling justification to carry Testosterone and Isoxsuprine at Los Alamitos, which stables a majority of Non-Covered QHs considering 66% of Dr. Overly's patients were Non-Covered QHs, and the charged Banned Substances were used or intended to be used in Dr. Overly's Non-Covered practice.

6.4.6 Compelling justification is not defined in the ADMC Rules but is fact driven and case specific. Dr. Scollay testified that what vets need/should carry in their vehicles is largely based on the population of horses they are caring for and use of a Banned Substance on a Non-Covered horse "could be" justification for Possession of a Banned Substance.

6.4.7 Dr. Overly established that at Los Alamitos 65.71% of his patients were Non-Covered QHs and 79.58% of his treatments were rendered on Non-Covered horses. Incorporating the 73 Non-Covered horses he treated outside of Los Alamitos, Dr. Overly had almost a 70% Non-Covered practice. This weighs heavily in favor of finding Dr. Overly had a compelling justification to carry/possess legal medications at Los Alamitos for use in his Non-Covered practice.

6.4.8 Testosterone is a legal medication which Dr. Overly was permitted to carry at Los Alamitos under California regulations. Dr. Overly voluntarily showed HIWU the Testosterone vials, which were stored in a lockable medicine cabinet in the back of his vet truck[5]. The Controlled Medication Logs submitted by Dr. Overly and the testimony of Dr. Overly and Ms. Ingram demonstrate the Testosterone was kept for, used on, and intended for further use on Cosmo, a Non-Covered horse. The Controlled Medication Logs identify the horse's name, the owner, medicine name,

[5] Dr. Overly testified the medicine cabinet was unlocked to begin work at Los Alamitos.

size of containers, lot numbers[6], expiration dates, amounts and dates of use, and Dr. Overly's DEA license.

6.4.9 The Controlled Medication Logs were made in the ordinary course of business and show Dr. Overly properly treated Cosmo with Testosterone for general malaise, poor appetite and appearance. Dr. Benson admitted that Testosterone is proper and efficacious to treat horses for lack of appetite.

6.4.10 With respect to Isoxsuprine, Dr. Overly argues that for more than 25 years he could carry Isoxuprine at Los Alamitos and that although it is no longer FDA approved, a vet can still legally order it from equine pharmacies in California and has discretion to use it in a Non-Covered practice.

6.4.11 Dr. Overly testified he had no knowledge Isoxuprine was on his truck on July 23, 2024 and the testimony by Ms. Ingram established it was placed on his truck in good faith for purposes of supporting his Non-Covered practice, as both he and Ms. Ingram testified Brownie's owner had asked for Isoxsuprine before his July 17, 2024 appointment with Brownie[7].

6.4.12 The *Himes ALJ Decision* notes "testimony of fact witnesses can be probative of compelling justification" and the Arbitrator has no reason to discredit the testimony of Dr. Overly and Ms. Ingram.

6.4.13 HISA and HIWU have never issued guidance defining compelling justification; have never stated vets have to have an emergency to possess Banned Substances for Non-Covered use or that a vet needed to use it on the same day; and have never stated compelling justification cannot be proven by showing a vet stocked a medication he might need in the future for his Non-Covered practice. Using the plain language of compelling justification, Dr. Overly has powerful, convincing" reasons to possess Testosterone and Isoxsuprine at Los Alamitos for use/intended use in his almost 70% Non-Covered practice.

6.4.14 It is impractical to require an ambulatory vet to treat every Covered Horse at Los Alamitos, go back and get possible medications that might be needed for Non-Covered horses, and then treat the Non-Covered horses with a Non-Covered loaded truck. Dr. Overly treated horses at Los Alamitos on the same day he treated

[6] Dr. Overly argues that HIWU's arguments about the lot numbers on the pharmacy invoices not matching the lot numbers for Testosterone administered to Cosmo are irrelevant as Dr. Overly is not being charged with administration to Cosmo or for record keeping deficiencies. Dr. Overly also argues the Pharmacy records support Dr. Overly's general legal purchase of Testosterone for his practice.

[7] Dr. Overly testified that Dr. Chaparro in his practice also attended the July 17, 2024 visit and did the medical examination to explain why there was no record supporting the visit.

Non-Covered horses in Rolling Hills and Orange (as was the case with Cosmo on March 4, 2024) and it would be illogical to unload all Non-Covered items and load for every trip[8].

6.4.15 Both the impracticality and "high potential for ethical conundrums" associated with total unloading and reloading of an ambulatory practice truck creates compelling justification under the facts of this case in light of Dr. Overly's majority Non-Covered practice and Los Alamitos' majority Non-Covered population.

6.4.16 If the Arbitrator finds liability, Dr. Overly established "No fault" and/or "No-Significant Fault" such that the penalties should be expunged and/or limited to the lowest side of the lowest fault category, with a small fine, keeping in mind that Dr. Overly cannot be penalized separately and consecutively for two Banned Substances seized in one transaction and occurrence.

6.4.17 Applying the three-tiered *Cilic* approach – which requires consideration of both "objective" and "subjective" elements of fault, and the principle of proportionality, Dr. Overly argues the objective factors show he had minimal if any fault.

6.4.18 With respect to the "objective" factors, Dr. Overly argues he used a standard of care reasonable for a Covered Person in his situation because he did due diligence, located Dr. Scollay's statement that a Non-Covered practice could provide compelling justification, communicated with Dr. Blea[9] (the Chief Veterinary Officer at Los Alamitos) about compliance, and removed bisphosphonates from his truck. Dr. Overly asserts that given his total almost 70% Non-covered practice "any reasonable person would have believed they could carry legal Testosterone" and in light of the lack of enforcement and uncertainty surrounding Isoxsuprine Dr. Overly's belief he could lawfully possess both substances was objectively reasonable.

6.4.19 There is no evidence that Dr. Overly possessed either Banned Substance for use on any Covered horse and thus there was no possibility of cheating.

6.4.20 With respect to the subjective factors, Dr. Overly has minimal fault if any because of the long time he practiced without incident, his antidoping education, the reasonableness of his mistake and the absence of cheating and/or use on Covered

[8] Dr. Overly acknowledges he testified staff loaded his truck each morning and again at mid-day, but argued he did not state they unpack the entire truck, but instead they usually "go back through the truck and try to load whatever has been used through the course of treatments that day."

[9] Dr. Overly argues that he did not know he could call Dr. Scollay and Dr. Blea was the "go to person" for compliance at Los Alamitos.

horses. Dr. Overly contends his most recent Los Alamitos violation was seven years ago and this is his first ADMC offense.

6.4.21 The lowest NSF is supported by HIWU's press release in the Bealmear case, in which HIWU found Dr. Bealmar on the low end of fault based on similar factors as those here: 1) it was a first HISA offense and Dr. Overly had only four ancient fines at Los Alamitos in 25 years, 2) Dr. Overly cooperated with investigators and provided records showing Non-Covered use and 3) there is no evidence of cheating or using Banned Substances on Covered horses.

6.4.22 HIWU's EAD Notice and Charge Letter do not cite a Rule with language allowing HIWU to charge Dr. Overly with two counts of Rule 3214(a) and that No HISA Rule specifically permits two charges.

6.4.23 The Arbitrator should follow *HIWU v Puype*, in which Arbitrator Reeves rejected HIWU's attempt to charged a trainer with two Rule 3214(a) violations for Isoxsuprine and Thyro-L, both recovered on April 24, 2024, in one transaction and occurrence. Dr. Overly contends in *Puype*, Arbitrator Reeves rejected HIWU's reliance on Rule 3223(c)(2),15 seeking "a period of Ineligibility for each of the two violations...to be served consecutively" and properly found the "plain language of Rule 3223(c)(2) does not support consecutive sanctions for first-time offenders, as it explicitly refers to Covered Persons "already serving a period of Ineligibility for another violation of the Protocol." Dr. Overly further argues Arbitrator Reeves properly found reliance on Rule 3223(c)(2) is at odds with Article 10.9.3.1 of the World Anti-Doping Authority Code ("WADC"), which the ADMC Program is based on and upon which HIWU regularly relies.[10]

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[10] Dr. Overly argues the ADMC definition of "Possession" is "substantively identical to the definition...in the WADC."18 and Reeves thus interpreted the Rules using "WAD[C] and the *lex sportiva* that interprets it [to find] possession of more than one banned substance in a scenario such as this one should be treated as a single violation". Dr. Overly notes WADC, Article 10.9.3.1 provides: "For purposes of imposing sanctions under Article 10.9...an [ADRV] will only be considered a second violation if the Anti-Doping Organization can establish that the...Person committed the additional [ADVR] after the ...Person received notice pursuant to Article 7, or after the Anti-Doping Organization made reasonable efforts to give notice of the first anti-doping rule violation. If the Anti-Doping Organization cannot establish this, the violations shall be considered together as one single first violation." Dr. Overly argues Article 10.9.3.1 clarifies what is evident in the text of the ADMC Rules - there are no ADMC Rule allowing HIWU to treat one of two different Banned Substances recovered in the same transaction on the same day as a prior or subsequent possession offense, and nothing in Rule 3223 or Rule 3228 permits charging two "possession" counts, "consecutive ineligibility" or a fine for each of the two different Banned Substances recovered in that same transaction in a first time Possession charge.

6.4.24 Rule 3223(a)(1) states "periods of Ineligibility and financial penalties set out in this Rule 3223 apply to the Covered Person's first doping offense. Where an offense is not the Covered Person's first doping offense, Rule 3228 applies.

6.4.25 In *Shell I*, Arbitrator Reeves found Rule 3228(d) only applies where "both Banned Substance...and a Controlled Medication Substance..." are charged, OCBA, Tab 1, ¶¶ 7.7, and similar to *Puype*, found Rule 3223(c)(2)'s language "would not support consecutive punishments based on its language." *Shell I*, ¶ 7.73. Dr. Overly contends the *Himes ALJ Decision* was wrong when it found Arbitrator Reeves should have recognized that the word "and" in Rule 3228(d) could be read as an "or" because Banned Substance violations carry heavier penalties than controlled medications because Rule 3228(d) is not a charging rule, it is a procedural rule.

6.4.26 Even if HIWU could charge two counts, the principles of proportionality and *lex sportiva* preclude double penalties from being assessed following the *Himes ALJ Decision*, in which ALJ Himes rejected HIWU's effort to impose sanctions for each ADRV as he agreed that "despite Rule 3228(d)'s charging authority...an over-arching consideration is inescapable...*Puype*...accords with many decisions in the sports world globally." *ALJ Himes Decision*, "[I]t is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement." *W v FEI* CAS 99/A246 at ¶31 Accordingly, multiple ADRVs, based on a common set of facts, are often treated as a single violation for sanctions purposes. Dr. Overly argues the Himes ALJ Decision recognized the principal of "proportionality" is related to fault, as CAS has stated that "the seriousness of the penalty [...] depends on the degree of the fault committed by the person responsible" *W. v. FEI*, at ¶ 31

## VII. DISCUSSION AND ANALYSIS.

7.1 The only charge at issue in this case is Possession under the ADMC Program. Rule 3214(a) of the ADMC Program provides as follows:

> "The following acts and omissions constitute Anti-Doping Rule Violations by the Covered Person(s) in question: . . . Possession of a Banned Substance or a Banned Method, unless there is compelling justification for such Possession."

7.2 Pursuant to Rule 3121, the burden of proof is on HIWU to establish that a violation of the ADMC Program has occurred to the comfortable satisfaction of the

Arbitrator. The Parties do not dispute that Dr. Overly was in possession of both Isoxsuprine and Testosterone, which were Banned Substances as set forth in ADMC Rule 3214(a). As set forth above, the Parties stipulated that HIWU Investigators found and seized two Banned Substances (Testosterone and Isoxsuprine) from Dr. Overly's veterinary truck at the Los Alamitos Racetrack on July 23, 2024.

7.3 Rule 3214 is clear that Dr. Overly's possession of a Banned Substance is an ADRV "unless there is compelling justification for such Possession." Because compelling justification is a defense, Dr. Overly has the burden to establish this defense. Accordingly, HIWU has satisfied its burden of proof that Dr. Overly committed an ADRV with respect to both Testosterone and Isoxsuprine unless Dr. Overly can prove he had a compelling justification to have possessed each of the Banned Substances on his veterinary truck at Los Alamitos on July 23, 2024.

7.4 The issues for the Arbitrator to determine are thus 1) Whether Dr. Overly has carried his burden of proving a compelling justification for carrying the Banned Substances on his veterinary truck at Los Alamitos on July 23, 2024; 2) If Dr. Overly cannot prove compelling justification for both Banned Substances, whether Dr. Overly is properly charged with two ADRVs (one for possession of each Banned Substance found on July 23, 2024) or a single ADRV (since both substances were found in one search); 3) If Dr. Overly is properly charged with two ADRVs, is he subject to individual sanctions for each of the two Possession violations under the proportionality principle and *lex sportiva*; 4) Is Dr. Overly entitled to under the No Fault or Negligence or No Significant Fault or Negligence provisions in Rule 3224 or 3225 to elimination or reduction of the two year Ineligibility period applicable to Possession violations or to any other part of the sanctions.

**7.5. Did Dr. Overly Establish He Had a "Compelling Justification" to Carry Testosterone and Isoxsuprine at Los Alamitos on July 23, 2024.**

7.5.1 Compelling justification is a fact specific, case by case inquiry that must be determined by the evidence. Dr. Overly must show that he was justified in having both Banned Substances in his possession in his truck at Los Alamitos Racetrack on July 23, 2024, for a legitimate and legal veterinary purpose that is not connected to Thoroughbred horseracing[11].

7.5.2 Dr. Overly asserts he had a compelling justification to possess the Banned Substances at issue because he treats Non-Covered horses at Los Alamitos for 65.7% of his practice and additionally treats Non-Covered horses outside of Los Alamitos

[11]There is no dispute that Dr. Overly has shown the Banned Substances were not prescribed to or used by Covered Horses.

for 68.7% of his practice. The overwhelming evidence shows that indeed 65.7% of Dr. Overly's practice at Los Alamitos was for Non-Covered horses. That, however, does not in and of itself create a compelling justification for carrying a Banned Substance at Los Alamitos.

7.5.3 Instead, to carry his burden of proving a compelling justification, Dr. Overly must establish that he needed to keep the particular Banned Substances at issue in the alleged ADRVs in his truck at Los Alamitos on July 23, 2024 for use in his Non-Covered practice.

7.5.4 Dr. Overly argues that both the impracticality[12] and "high potential for ethical conundrums" associated with total unloading and reloading of an ambulatory practice truck creates compelling justification under the facts of this case in light of Dr. Overly's majority Non-Covered practice and Los Alamitos' majority Non-Covered population.

7.5.5 Even accepting that the potential for a prophylactic need to carry a Banned Substance for use in a veterinarian's Non-Covered practice could provide compelling justification, Dr. Overly still bears the burden of establishing that **his** Non-Covered practice created such a need to justify his possession of Testosterone and Isoxsuprine in this case. The Arbitrator considers his evidence with respect to each of the Banned Substances separately.

7.5.6 Testosterone. The evidence in the record shows that the Testosterone seized from Dr. Overly's truck was found without a prescription label or any other information indicating how it was to be used in Dr. Overly's practice. Cite. When asked by HIWU Investigator Bennett why he possessed Testosterone, Dr. Overly did not tell Dr. Bennett he needed it for his Non-Covered practice[13].

a. Non-Covered Practice at Los Alamitos. Although Dr. Overly established that, in round numbers, 66% of the horses he saw at Los Alamitos were Non-Covered horses, and almost 80% of the treatments he performed at Los Alamitos were for Non-Covered horses, Dr. Overly did not produce any records that would support his position that he had a compelling justification to carry Testosterone on his truck at Los Alamitos for his Non-Covered practice.

[12]Dr. Overly argues it is impractical to require an ambulatory vet to treat every Covered Horse at Los Alamitos, go back and get possible medications that might be needed for Non-Covered horses, and then treat the Non-Covered horses with a Non-Covered loaded truck. Dr. Overly also argues that he treated horses at Los Alamitos on the same day he treated Non-Covered horses in Rolling Hills and Orange (as was the case with Cosmo on March 4, 2024) and it would be illogical to for him unload all Non-Covered items and load for every trip.

[13] Although Dr. Overly and Ms. Ingram testified Ms. Ingram told Mr. Bennett the Testosterone was for use on older, Non-Covered horses, that evidence was inconsistent with Mr. Bennett's credible testimony that no such statement was made. Ms. Ingram's testimony was impeached on this point. See AT 2 193:9-199:2.

None of the records produced by Dr. Overly showed that he had ever administered Testosterone to a Non-Covered horse at Los Alamitos. AT 1 278:1-24. In fact, as Dr. Benson explained, it was unlikely Dr. Overly would treat any of his Non-Covered patients at Los Alamitos with Testosterone because under the CHRB regulations such a treatment would result in the horse being placed on a "vets list" and precluded from racing for six months. Because the evidence in the record shows that Dr. Overly had not used Testosterone in his Non-Covered practice at Los Alamitos and had no reason to prophylactically carry it for his Non-Covered practice at Los Alamitos, Dr. Overly failed to carry his burden of proving he had a compelling justification to carry Testosterone at Los Alamitos on July 23, 2024 for his Non-Covered practice there.

b. Non-Covered Off Track Practice. The only evidence in the record of Dr. Overly using Testosterone in his Non-Covered off-track practice is for his treatment of his veterinary technician's horse Cosmo. In support of his justification for carrying Testosterone, Dr. Overly submitted his testimony and the testimony of Ms. Ingram that Dr. Overly had treated her Non-Covered horse Cosmo at a private residence in Orange, California with testosterone, controlled substance logs showing four administrations of testosterone to Cosmo on 7/23/23, 9/20/23, 3/1/24 and 7/30/24, and invoices showing purchases of testosterone[14] including a purchase made on 7/23/24 after the vials of testosterone were confiscated by HISA Investigator Bennett for Cosmo's scheduled July 30, 2024 appointment. See AT Day 2 91:4-95:1; 96:1-99:4; 100:5-106:10; 111:20-23; 117:3-23. Even if the Arbitrator accepts Dr. Overly's evidence that he in fact was treating Cosmo with testosterone,[15] Dr. Overly has still not met his burden of proving that he had a compelling justification for

[14] The lot numbers in the invoices produced by Dr. Overly do not match the controlled substance log he produced or the confiscated vials.

[15] The Arbitrator agrees with HIWU about the significant evidence gap concerning the treatment of Cosmo, including Dr. Overly's failure to produce any SOAPS, which he and Ms. Ingram claimed at the Hearing existed. HIWU also argues Ms. Ingram's admitted romantic relationship with Dr. Overly significantly undermines her credibility in this case because "Ms. Ingram is directly entangled in Dr. Overly's proffered justification for possessing each of the Banned Substances at issue. As the Arbitrator will recall, Ms. Ingram is the owner of the sole horse in Dr. Overly's practice allegedly treated with Testosterone. She created the Treatment Logs for Cosmos' alleged administrations of Testosterone, and purportedly possesses Cosmos' unproduced veterinary medical records. Moreover, Ms. Ingram is the only witness that was put forward to support Dr. Overly's assertion that he visited Brownie on July 17, 2024,25 in place of either Dr. Chapparo or Brownie's owner, and in the absence of any records confirming that the appointment ever occurred." APHB at ¶19. The Arbitrator agrees that Ms. Ingram's romantic relationship with Dr. Overly, which was not disclosed until the Hearing, casts doubt on her credibility.. However, even accepting all of Dr. Overly and Ms. Ingram's evidence as to his treatment of Cosmo with testosterone, that evidence of sporadic treatments in Orange California is insufficient to support a finding that Dr. Overly had a compelling justification to have Testosterone on his truck at Los Alamitos on July 23, 2024. The Arbitrator thus does not need to make a factual finding on whether Dr. Overly proved he treated Cosmo with Testosterone.

carrying Testosterone at Los Alamitos on July 23, 2024. The record does not show Dr. Overly was scheduled to treat Cosmo on July 23rd, but instead Dr. Overly testified he had an appointment to treat Cosmo a week later – on July 30, 2024. AT 2 117:3-23. Dr. Overly admitted that his truck was loaded before he left his clinic to go to Los Alamitos each morning, that his practice was always to go back to his clinic after completing his treatments at Los Alamitos, and that his truck was unloaded and reloaded as necessary before going out to see his other, off-track patients (predominantly in Rolling Hills on Wednesday afternoons). AT 2 76:5-78:11; 157:19-160:11. There was no reason Dr. Overly could not have had Testosterone he needed to treat Cosmo loaded after he returned from the Los Alamitos track on the days he was scheduled to see Cosmo. In light of Dr. Overly's admissions that his veterinary truck was typically loaded and unloaded/reloaded twice a day, five days a week, there was certainly no need for Testosterone to be loaded onto his truck for Cosmo a week before his next scheduled appointment.

7.5.7 Isoxsuprine. The Isoxsuprine seized from Dr. Overly's truck was found without a prescription label or any other information indicating how it was to be used in Dr. Overly's practice and it had expired in 2023. Dr. Overly did not tell the HIWU Investigators that he needed to carry Isoxsuprine for his Non-Covered Practice, but instead told them it was old and he did not know why it was on the truck[16].

a. Non-Covered Practice at Los Alamitos. Dr. Overly did not produce any evidence that would support his position that it was necessary for him to carry Isoxsuprine in his truck at Los Alamitos for prophylactic use for his Non-Covered horse practice, and in fact he admitted it could not be used on Non-Covered horses at Los Alamitos. AT 2 79:10-14.

b. Non-Covered Off Track Practice. The veterinary records produced by Dr. Overly did not show a single instance in which he had treated a Non-Covered horse with Isoxsuprine and thus do not establish a compelling justification to prophylactically carry Isoxsuprine for that part of his mixed practice. To explain why there was Isoxsuprine on his truck on July 23, 2024, Dr. Overly and Ms. Ingram testified that a client requested he bring Isoxuprine to his July 17, 2024 treatment of her Non-Covered horse "Brownie." Dr. Overly and Ms. Ingram also both testified that Ms. Ingram placed the Isoxsuprine in Dr. Overly's truck on July 17th because of that client request. However, Dr. Overly did not produce any veterinary medical record for

[16] Ms. Ingram claimed she did not tell Mr. Bennett that she had loaded the Isoxsuprine on the truck because of the July 17th request by a Non-Covered horse's owner "because she wasn't asked", and "didn't think she needed to" even though she also claimed she told Mr. Bennett the Testosterone was for older, Non-Covered horses. See AT 2 205:22-206:15.

his July 17, 2024 treatment of Brownie[17]. Even accepting his testimony and Ms. Ingram's testimony as true[18], there is no explanation for why the expired tub of Isoxsuprine – which Dr. Overly acknowledges is banned at Los Alamitos for Covered and Non-Covered horses - was still on his truck six days later. There certainly is no compelling justification for it to have been on his truck on July 23, 2024.

7.5.8 Because, as set forth above, the evidence produced by Dr. Overly is not sufficient to justify possession of either Isoxsuprine or Testosterone in his truck at the Los Alamitos, the Arbitrator finds HIWU has established Dr. Overly's possession of those banned substances was a violation of Rule 3214.

**7.6. Does Dr. Overly's Possession of Two Banned Substances Support Two ADRVs.**

7.6.1 HIWU asserts that under Rule 3228(d) possession of each of the Banned Substances at issue in this proceeding constitutes a separate ADRV and therefore seeks the imposition of Consequences as set out in Rule 3223 for each ADRV.

7.6.2 Rule 3228(d) provides in pertinent part:

> (d) Violations involving both a Banned Substance or Method and a Controlled Medication Substance or Method.
>
> Where a Covered Person is found, based on a common set of facts, to have committed a (1) violation involving one or more Banned Substance(s) or Banned Method(s), and (2) a violation involving one or more Controlled Medication Substance(s) or Controlled Medication Method(s), they shall be treated as separate violations, but shall be adjudicated together in consolidated proceedings pursuant to the procedure that applies to Anti-Doping Rule Violations under the Arbitration Procedures.

[17] The Arbitrator agrees with HIWU that there was a significant "evidence gap" in Dr. Overly 's evidence here as Ms. Corbett testified that there were only three records Dr. Overly treated Brownie in 2024 which did not include July 17th. AT 2 255:10-21; 289:6-12. Although Dr. Overly claimed to understand he had the burden of proof, he did not produce the records he and Ms. Ingram clamed existed to show the July 17th appointment for Brownie with Dr. Chapparo, nor did he produce a statement from Brownie's owner or Dr. Chapparo.

[18] Although he acknowledged he understood it was his burden to prove his defenses, Dr. Overly inexplicably failed to produce records he and Ms. Ingram claimed at the Hearing he had to support the July 17, 2024 appointment with Brownie. Nor did Dr. Overly submit a witness statement from Dr. Chapparo (who he testified for the first time at the Hearing was the one who treated Brownie on July 17th) or from Brownie's owner that she requested the Isoxsuprine. HIWU raised legitimate concerns about the credibility of the testimony of Ms. Ingram and Dr. Overly, but because the Arbitrator finds this evidence even if accepted as true does not support a finding of compelling justification, she need not resolve the factual issue.

7.6.3. In the *ALJ Himes Decision*, Judge Himes considered *de novo* the question of whether HIWU had the ability to charge separate ADRVs for four banned substances recovered in a single search and concluded that it could. Following the *ALJ Himes Decision*, the Arbitrator finds that HIWU properly charged Dr. Overly with two separate ADRV's under Rule 3228(d) one for each of the Banned Substances he was found to be carrying on his truck on July 23, 2024[19].

**7.7. Is Dr. Overly Subject to Individual Sanctions and Consecutive Periods of Ineligibility for Each ADRV**

7.7.1 Having found Dr. Overly was properly charged with separate ADRVs for Possession of Testosterone and Isoxsuprine on July 23, 2024 at Los Alamitos, the Arbitrator considers whether, applying the principles of proportionality and *lex sportive,* Dr. Overly is subject to individual sanctions which HIWU seeks here for such Possession and consecutive periods of Ineligibility.

7.7.2 Dr. Overly argues that the principles of proportionality and *lex sportiva* preclude double penalties from being assessed following the *Himes ALJ Decision*, in which ALJ Himes rejected HIWU's effort to impose sanctions for each ADRV.

7.7.3 Relevant case law supports Dr. Overly's contention that multiple ADRVs based on a common set of facts have been treated as a single violation for sanctions purposes. The *ALJ Himes Decision* relied on the case of *HIWU v. Mike Puype*, JAMS Case No. 1501000973 (December 12, 2024) in which a single HIWU search at Santa Anita disclosed two Banned Substances in the possession of a trainer and Covered Person, noting that the arbitrator in *Puype* declined to separately sanction the trainer for two violations that arose from the same investigation. The ALJ Himes Decision also noted it "is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement," citing *W. v. FEI*, CAS 99/A/246 at ¶31 (May 11, 2000). The *ALJ Himes Decision* found that the four ADRVs arose from Dr. Shell's professed but mistaken belief that he was able to possess Banned Substances for his Non-Covered practice and that imposing consecutive Ineligibility periods and cumulative fines on him for each of the Possession violations would be "grossly disproportionate" to the underlying misconduct. *ALJ Himes Decision* at p. 50.

7.7.4 HIWU acknowledges in its closing brief that the principle of proportionality permits -- but does not require -- the Arbitrator to determine whether individual sanctions should be imposed for each of the charged and established ADRVs, or whether individual sanctions should be combined to allow for an overall

[19] The Arbitrator does not repeat Judge Himes' reasoning here.

reduction in the penalty. ACB at ¶¶40, 41. HIWU argues that the proportionality considerations that led Judge Himes to combine the individual sanctions do not apply here, because unlike Dr. Shell, Dr. Overly does not come into this proceeding with clean hands, having violated CHRB Rules on four occasions, and unlike Dr. Shell Dr. Overly did not have a "misunderstanding" about his ability to possess Banned Substances for his Non-Covered practice (because Dr. Overly cannot point to any regular, documented use of Testosterone or Isoxsuprine in his Non-Covered Practice), and Dr. Overly is not nearing the end of his veterinary career such that imposing a four year period of Ineligibility would result in a permanent expulsion from practicing in the HISA covered racing industry. ACB at ¶40

7.7.5 Applying relevant case law, the Arbitrator finds that both ADRVs at issue here arose from a single occurrence – the July 23, 2024 Search. The Arbitrator also finds both of the ADRVs are related to Dr. Overly's professed and mistaken belief that because he had a majority of Non-Covered horses in his practice, he was able to carry Banned Substances on his truck at Los Alamitos which were intended for use in his Non-Covered practice without having to articulate or establish a specific need to carry that Banned Substance at Los Alamitos for any particular part of his Non-Covered practice. Considering Dr. Overly's professed belief and the widely accepted general principle of sports law that the severity of a penalty should follow the fault, the Arbitrator cannot find the fact that HIWU found two Banned Substances on Dr. Overly's truck on July 23, 2024 supports two separate sanctions and periods of Ineligibility and instead, as in the *ALJ Himes Decision* and *HIWU v. Puype*, finds the sanctions should be combined.

**7.8 Ineligibility**

7.8.1 Having determined that the principles of proportionality require the sanctions for Dr. Overly 's two ADRVs for Possession of a Banned Substance under the ADMC Program on July 23, 2024 to be combined, the Arbitrator considers whether the standard two (2) years Period of Ineligibility for a Possession ADRV may be eliminated or reduced by considering whether there was No Fault, or No Significant Fault or Negligence.

7.8.2 For a charge of Possession, unlike for charges of Use or Presence, there is no predicate to reaching the No Significant Fault or Negligence standard (such as having to show source). Accordingly, in Possession cases, once the elements of Possession are found to be present, the analysis proceeds directly to the fault analysis to the extent that has been asserted by a charged party.

7.8.3 Elimination of Sanctions. To eliminate entirely the sanctions that may be imposed for an ADRV, Dr. Overly has the burden of proving "no fault or negligence" ("No Fault") on his part. Rule 3224(a). The definition of No Fault is as follows:

> "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. . . ."

7.8.4 With respect to Possession, No Fault is established where the accused "did not know or suspect, and could not have reasonably known or suspected, even with the exercise of utmost caution," that the elements of Possession were satisfied. Thus, to establish No Fault, Dr. Overly must show that despite the exercise of utmost caution he could not have reasonably known or suspected he was committing an ADRV by having Testosterone and/or Isoxsuprine on his veterinary truck at Los Alamitos.

7.8.5 Here, the undisputed evidence shows: 1) Dr. Overly was aware of the new HISA regulations and claims to have studied them; 2) Dr. Overly knew Testosterone and Isoxsuprine are Banned Substances under the new HISA regulations; 3) Dr. Overly knew he had Testosterone on his veterinary truck at Los Alamitos and Dr. Overly's veterinary technician Ms. Ingram knew she had loaded Isoxsuprine on his veterinary truck on July 17, 2024[20]. AT Dau 2 35:18-36:12. Dr. Overly admitted he read the rules, did due diligence, and claimed to have read and relied on Dr. Scollay's statement about compelling justification before July 23, 2024. However, Dr. Overly also admitted that he made no effort to reach out to Dr. Scollay or anyone else at HIWU to discuss the mixed nature of his practice, his need to carry Testosterone (or Isoxsuprine) at Los Alamitos and whether he was at risk of violating the Possession Rule. AT 2 46:16-47:12; Nor did he make any effort to review her full presentation which was available on the HIWU website. AT 2: 43:3-7.

7.8.6 On these facts, Dr. Overly cannot show he used "utmost caution" to avoid committing an ADRV. The case law makes it clear that a finding of No Fault only applies in exceptional circumstances and this is not such a case. See, e.g., *FIS v.*

[20] Dr. Overly testified that Ms. Ingram loaded the Isoxsuprine on his truck on July 17, 2024 at the request of Brownie's owner. AT 358:4 – 359: 20; 362:10- 363:4. Ms. Ingram's knowledge is imputed to Dr. Overly and he is strictly liable for ensuring that the staff he delegates responsibility to for loading and unloading substances on his veterinary truck comply with the Rules.

*Johaug*, CAS 2017/A/5015 & 5110, ¶ 190 (Aug. 21, 2017) ("[A]thletes have a duty to cross-check assurances given by a doctor even where such a doctor is a sports specialist."). Rule 3224 does not apply. Elimination of any sanction for either ADRV is unwarranted.

7.8.7 Reduction of sanctions. Failing proof of No Fault, Dr. Overly may reduce the sanctions by proving "no significant fault or negligence" ("NSF"" or "No Significant Fault"). Rule 3225(a); See *In re Poole,* FTC No. 9417 at 10-11 (ALJ Decision on Application for Review, Nov. 13, 2023); *In re Lewis*, (ALJ Decision on Application for Review) FTC No. 9434 at 12-13.

7.8.8 No Significant Fault 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. . . ." (Emphasis added).

7.8.9 If the Arbitrator finds No Significant Fault, then Dr. Overly could be Ineligible for anywhere between three (3) months and twenty-four (24) months for the Possession ADRVs, depending on the level of fault. Rule 3225(a). This is a broad range of possible Ineligibility. Other cases considering this issue across a similarly broad range, including *HIWU v. Poole, supra*, have found it useful, analytically, to break the range into three basic groupings. This Arbitrator finds such a grouping to be useful for analyzing fault in Possession cases.

7.8.10 In CAS 2013/A/3327 *Cilic v. International Tennis Federation*, the CAS panel determined that such broad fault ranges can be broken down into categories of month ranges of fault based on level of fault and then the precise punishment within those category ranges could be further broken down into precise fault-based punishments on a monthly basis. As stated by the CAS Panel:

> "71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.
>
> 72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

73. The subjective element can then be used to move a particular athlete up or down within that category."

7.8.11 The Arbitrator finds the analysis in *HIWU v. Poole* persuasive that roughly adhering to the *Cilic* ranges on the three (3) to twenty-four (24) months overall range, the 21 months of possible Periods of Ineligibility for each ADRV within the 3 to 24 month overall range could be broken down into roughly three (3) seven (7) month ranges of objective fault. The period of three (3) to ten (10) months could be described as slight or insignificant fault. The period of ten (10) to seventeen (17) months could be described as moderate fault. The period of seventeen (17) months to twenty-four (24) months could be described as significant fault. *HIWU v. Poole*, ¶7.17.

7.8.12 The objective factors considered in *Cilic* are those factors that describe the standard of care that could have been expected from a reasonable person in this situation and look to what steps the Covered Person took to avoid committing an ADRV. *Cilic*, ¶¶71, 74, 75.

7.8.13. Applying the *Cilic* ranges as a guide, the Arbitrator determines that Dr. Overly's conduct demonstrates that his fault or negligence was significant in relation to the ADRVs here and thus objectively falls into the "considerable" fault range for the following reasons:

a. Dr. Overly was aware that the ADMC Program was new and that it regulated the use and possession of certain substances that may have previously been permitted. AT 2 35:18-36:16.

b. Dr. Overly testified that after he heard about the HISA Rules he educated himself, listened to blogs, and read all the information on the HISA/HIWU website and whatever data that was emailed to him, met with colleagues and met with Dr. Blea, the Equine Medical Director for CHRB and talked with him numerous times about the rules and how they differ from California regulations. AT 1 323:6 – 324:11.

c. Dr. Overly further testified that as part of his research he learned about a statement made by Dr. Scollay "from a blog" and was aware that she was the scientific director of HISA. AT 1 332:14 – 333:18; 336:14 – 337:9. Specifically, Dr. Overly claims he was aware of Dr. Scollay's statement that the regulations addresses if there is a justification for them to be in possession of a banned substance because of a practice incorporating Non-Covered horses. AT 1 334:21 – 335:18.

d. Dr. Overly testified that he took Dr. Scollay's statement to mean that if he was working on Non-Covered horses he was entitled to carry the medication that he was legally allowed to have. AT 1 338:2 – 24.

e. Despite being concerned about Rule 3214, Dr. Overly did not make any effort to contact Dr. Scollay or anyone else at HIWU to talk about compliance. AT 2 45:19-47:05.

f. Although he claimed to have read everything available to him, Dr. Overly acknowledged he had not read all of the cases posted on the HIWU website and could not remember reading any of the cases. AT 2 36:11-37:06. Dr. Overly similarly did review Dr. Scollay's full presentation which was available on the HIWU website. AT 2 43:19-43:7.

g. After reading the HISA Rules and taking inventory, even though he knew Testosterone and Isoxsuprine were both Banned Substances under the ADMC Program, Dr. Overly only removed biphosphonates from his truck (and instructed his staff not to load biphosphonates on his truck) because they were banned by both CHRB and HISA rules. AT 2 73:5-10.

g. Dr. Overly admits his truck was loaded and unloaded twice a day, five days a week (typically before going to Los Alamitos each morning and after returning from Los Alamitos and going to see off-track patients) and that he delegated the responsibility for packing his truck to his vet technician assistants, including Ms. Ingram. The rules are clear that delegation of this sort, of a task that he would bear responsibility for under the ADMC Program, remains his responsibility and the Isoxuprine was on his truck at the Los Alamitos on July 23, 2024 as a result of his delegation.

h. Dr. Overly had no explanation for why a tub of expired Isoxsuprine "fell through the cracks" in his office and was still in a bin.

7.8.14 A reasonable veterinarian in Dr. Overly 's position would not have assumed he or she had a right to carry Banned Substances at Los Alamitos without a specific need for those substances in his or her Non-Covered practice simply based on the Dr. Scollay statement. Instead, a reasonable veterinarian would have perceived risk in carrying Banned Substances at Los Alamitos (as Dr. Overly acknowledges he did) and would have taken steps to mitigate that risk – including reaching out to HIWU and/or Dr. Scollay. Based on all the evidence in the record, the Arbitrator does finds Dr. Overly did not take sufficient steps to mitigate that reasonably perceived risk and the ADRVs are the direct result of his failure to do so. The Arbitrator thus finds

that Dr. Overly's objective fault is considerable, putting him in the uppermost range of objective fault.

7.8.15 In determining the next analytical issue, his subjective level of fault, the *Cilic* factors include consideration of whether there are any special factors which impacted Dr. Overly's ability to take reasonable steps to avoid ADRVs, such as youth, inexperience, language barriers, etc.

7.8.16 The Arbitrator does not find that any of the *Cilic* subjective factors apply to Dr. Overly. The only factor that weighs in Dr. Overly's favor with respect to subjective fault is that there was no evidence that Dr. Overly ever intended to or did treat any Covered horse (or any Non-Covered horse other than Cosmo) with Testosterone. There is similarly no evidence that Dr. Overly used the expired Isoxsuprine with a Covered horse or any Non-Covered horse (including Brownie. Thus there was no evidence that Dr. Overly intended to cheat (*see, e.g*., CAS 2008/A/1490 *World Anti-Doping Agency (WADA) v. United States Anti-Doping Agency (USADA) & Eric Thompson*).

7.8.17 As a result, the Arbitrator determines that Dr. Overly may only benefit from a very slight reduction in his subjective level of fault. After consideration of the factors in the prior paragraph, the Arbitrator determines that Dr. Overly should receive the benefit of a very modest 1 month reduction in his level of fault from what normally would have been twenty-four (24) months[21].

7.8.18 For the above stated reasons, the Arbitrator finds Dr. Overly should suffer a Period of Ineligibility of 23 months, commencing immediately upon issuance of this Corrected Award but with credit for time served under the prior Period of Ineligibility and subsequent Voluntary Provisional Suspension.

7.9 Sanctions: Fine and Payment Toward Legal Fees and Arbitration Costs

7.9.1 Under the ADMC Program, the sanctions for an ADRV Possession violation include, in addition to a Period of Ineligibility, a, "Fine up to $25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]'s legal costs". Rule 3223(b). These consequences appear to be mandatory in their application; in other words, upon finding a violation, the Arbitrator must also make a finding on the applicable fine and the payment of the adjudication costs and HIWU's legal costs.

[21] Because the Arbitrator has found principles of proportionality preclude imposition of consecutive periods of Ineligibility for the two separate ADRVs here, it is appropriate to use the high end of the range for objective fault as the starting point.

7.9.2 From reading Rule 3223(b), it is clear that the use of "and" after the statement of the period of Ineligibility is conjunctive, and requires the Arbitrator to issue a fine of some amount "up to $25,000". The amount of this fine, however, appears to be entirely discretionary with the Arbitrator (which HIWU concedes in its brief), though some amount of fine appears to be mandatory. This Arbitrator is of the view that the notion that the fine should follow the fault is a useful convention for assessing a fine in any particular case arising under the ADMC Program.

7.9.3 Both sides agreed with the principle that the fine should follow the fault. In other words, the amount of the fine under the range allowed of "up to $25,000" should be commensurate with the amount of fault found.

7.9.4 Because the Arbitrator finds that Dr. Overly had significant fault a penalty of $25,000 is appropriate, particularly in light of the finding that only a single financial penalty will be imposed for the two ADRVs[22].

7.9.5 With respect to issues of costs to be assessed, the Arbitrator notes that HIWU has stated it does not seek reimbursement of or contribution to its legal fees in this case. HIWU does seek contribution to the costs of the arbitration proceeding, including the compensation of the Arbitrator and the arbitral bodies fees. While the assessment of some portion of costs appears to be mandatory given the conjunctive language used in Rule 3223(b), the amount of the contribution toward the arbitration costs appears, like the fine, to be purely discretionary with the Arbitrator.

7.9.6 Using the same factual and equitable considerations for assessing the fine above, the Arbitrator determines that Dr. Overly should make a contribution to the arbitration costs of HIWU of $15,000, to be paid by the end of his period of Ineligibility. This is not a scientific calculation, but one determined by the Arbitrator to be appropriate given the circumstances and the ease with which Dr. Overly could have avoided his predicament or the expense of arbitration fees by HIWU balanced against his conduct and the circumstances.

## AWARD

On the basis of the foregoing facts, legal analysis, and conclusions of fact, the Arbitrator timely renders the following decision:

8.1 Dr. Overly is found to have committed two anti-doping rule violations, for Possession of the Banned Substance Testosterone and for Possession of the

[22] With the fault following the fine for a single ADRV, the Arbitrator would calculate a fine at 22/24ths of $25,000, or $22,917. Because the Arbitrator concludes principles of proportionality limit what would otherwise be a $50,000 penalty for two ADRVs to a $25,000 penalty, no further reduction is necessary.

Banned Substance Isoxsuprine on July 23, 2014 in violation of Rule 3214(a). Dr. Overly's July 23, 2024 ADRV violations are his first anti-doping rule violations for Possession. As a result, Dr. Overly shall:

a. Be suspended for a period of Ineligibility of 23 months, commencing immediately upon on the date of issuance of this Corrected Final Award, less 169 days credit for time served under the prior Period of Ineligibility and subsequent Voluntary Provisional Suspension.[23]

b. Be fined $25,000.00 (twenty five thousand U.S. dollars) to be paid to HIWU by the end of the Period of Ineligibility; and

c. Be required to pay a contribution of $15,000.00 (fifteen thousand U.S. dollars) toward HIWU's share of the arbitration costs of this proceeding by the end of his Period of Ineligibility.

8.3 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 AND AWARDED.

Dated: August 21, 2025

Laura C. Abrahamson, C. Arb, F.Coll.Arb
Arbitrator

[23] HIWU and Dr. Overly agree that Dr. Overly is entitled to 169 days credit for time served.