



CASE RESOLUTION WITHOUT A HEARING/FINAL DECISION

On October 3, 2024, Horseracing Integrity & Welfare Unit (“HIWU”) Investigators, along with investigators from the Kentucky Horse Racing and Gaming Corporation (“KHRGC”), conducted a compliance search of Dr. Benjamin Bealmear’s veterinary vehicle at the Thoroughbred Training Center located in Lexington, Kentucky. During the search of his vehicle, Dr. Bealmear identified for Investigators two bottles of a compounded pharmacological substance labeled “B BLEND - PELPHERY” which contains, among other ingredients, the vasodilator Adenosine Triphosphate, otherwise known as “ATP.” Investigators seized one bottle as evidence, properly labeled it as evidence, and shipped it to HIWU’s evidence storage room in Kansas City, Missouri.

Upon review of the substance labeled B BLEND – PELPHERY, HIWU determined that this substance, which was compounded by Boothwyn Pharmacy, is a Category S0 Banned Substance pursuant to ADMC Program Rule 4111, as it is a pharmacological substance that: (i) is not addressed by Rules 4112-4117; (ii) has no current approval by any governmental regulatory health authority for veterinary or human use; and (iii) is not universally recognized by veterinary regulatory authorities as a valid veterinary use. As a result, it is prohibited at all times under the Anti-Doping and Medical Control (“ADMC”) Program.

On November 27, 2024, Dr. Bealmear was served an Equine Anti-Doping (“EAD”) Notice for his Possession of the category S0 Banned Substance “B BLEND - PELPHERY.” The Notice Letter advised Dr. Bealmear that he was alleged to be in violation of ADMC Program Rule 3214(a) for Possessing the Banned Substance in the absence of a “compelling justification.” In the Notice Letter, he was provided an opportunity to provide HIWU with an explanation for his Possession of this Banned Substance.

In response to the EAD Notice, Dr. Bealmear provided a written explanation that ultimately failed to establish a “compelling justification” for his Possession of B BLEND – PELPHERY under ADMC Program Rule 3214(a). While Dr. Bealmear noted that the bottles were produced by Boothwyn Pharmacy on June 29, 2022 and expired on September 27, 2022, and said that his acquisition and use of the B BLEND – PELPHERY pre-dated the ADMC Program’s launch on May 22, 2023, he failed to set forth a “compelling justification” for possessing the B BLEND – PELPHERY on October 3, 2024, more than two years later.

Dr. Bealmear further contended that he did not know that B BLEND – PELPHERY was a Banned Substance because, in part, neither B BLEND – PELPHERY nor any of its ingredients are listed by name on the Prohibited List – Technical Document; however, this argument is unavailing, as it fails to take into account the provision of ADMC Program Rule

4111 set forth above, which includes the standard for whether a substance that is not specifically listed on the Prohibited List is considered a Banned Substance under the ADMC Program. In addition, pursuant to ADMC Program Rule 3040(a)(1), all Covered Persons are required to “to be knowledgeable of and to comply with the Protocol and related rules at all times.”

Dr. Bealmear was subsequently served with a Charge Letter for Possession of a Banned Substance on January 31, 2025. Newly retained counsel for Dr. Bealmear then contacted HIWU and offered to provide an explanation and corroborating evidence that he contended would establish not a “compelling justification” for the Possession but rather would illustrate that Dr. Bealmear should be found to bear No Significant Fault or Negligence for the Possession of B BLEND – PELPHERY under ADMC Program Rule 3225. The application of Rule 3225 is discussed in detail, below.

Based upon evidence and cooperation provided by Dr. Bealmear, HIWU accepts that the two B BLEND - PELPHERY bottles found by Investigators in his veterinary vehicle on October 3, 2024 were purchased by Dr. Bealmear in 2022, and used only for certain racehorses that Dr. Bealmear acquired as patients from Dr. Rick Pelfery in late 2021. HIWU accepts that Dr. Bealmear used B BLEND – PELPHERY on Thoroughbred racehorses in the Lexington, Kentucky area between October 7, 2021 and September 19, 2022, which predates the launch of the ADMC Program. HIWU accepts Dr. Bealmear’s statement, as corroborated by voluntarily produced veterinary medical records, pharmacy records, and the physical evidence of the bottles, that he has not used B BLEND – PELPHERY since September 19, 2022.

However, the B BLEND - PELPHERY bottles he purchased in 2022 remained in his veterinary vehicle for the next two years, despite the fact that the pharmacological substance in the bottles expired on September 27, 2022, and despite the fact that the ADMC Program came into force on May 22, 2023. Moreover, Dr. Bealmear stated to HIWU that he *did* conduct a search of his veterinary vehicle in advance of the launch of the ADMC Program in an effort to purge Banned Substances but nonetheless failed to remove the B BLEND – PELPHERY from the vehicle. It is Dr. Bealmear’s position that he did not know that B BLEND – PELPHERY was a Banned Substance.

However, Dr. Bealmear should have sought clarification from HIWU if he was unsure of the classification of the substance. Indeed, Dr. Bealmear was on notice that compounded substances were being scrutinized by regulators as his own evidence shows that he was aware that the Horseracing Integrity and Safety Authority’s (“HISA”) ADMC Committee at one time considered banning all compounded substances under the ADMC Program. He should have found the B BLEND – PELPHERY bottles during his pre-ADMC Program purge of his veterinary vehicle and made some effort to determine the classification of this substance under the ADMC Program. Additionally, since the B BLEND – PELPHERY was expired, Dr. Bealmear should have removed it from his vehicle two years before it was found by HIWU, pursuant to his independent obligation to comply with the regulations promulgated by the Kentucky Board of Veterinary Examiners.

Based upon the evidence gathered during the search of Dr. Bealmear's veterinary vehicle, and the evidence voluntarily provided by Dr. Bealmear in response to the EAD Notice and Charge Letters, HIWU has determined that Dr. Bealmear has established No Significant Fault or Negligence under ADMC Program Rule 3225.

Under ADMC Program Rule 3214(a), Possession of a Banned Substance is prohibited in the absence of a "compelling justification" for such Possession. Following the reasoning of the panel in *UCI v. Schacl & ORV*, CAS 2008/A/1744, HIWU finds that "compelling justification" must be strictly construed and that the level of blamelessness required to meet the "compelling justification" defense is equal to that which must be shown under the "No Fault or Negligence" defense (see ADMC Program Rule 3224). Given this understanding, a finding of either "compelling justification" or "No Fault or Negligence" is limited to "exceptional circumstances." Here, no such "exceptional circumstances" exist.

Under ADMC Program Rule 3225(a), there can be a reduction of the period of Ineligibility if there is No Significant Fault or Negligence on the part of the Covered Person. If it is established that the Covered Person bears No Significant Fault or Negligence for the ADRV involving a non-Specified Substance, the period of Ineligibility can be between 3 months and 2 years, depending on the Covered Person's degree of Fault. Under ADMC Program Rule 3121(b), the standard of proof for the Covered Person is by a balance of probability (*i.e.*, a preponderance of the evidence).

Under ADMC Program Rule 1020, "No Significant Fault or Negligence" is defined as the Covered Person establishing that his or her Fault or Negligence, "when viewed in the totality of the circumstances . . . was not significant in relationship to the Anti-Doping Rule Violation." Under Program Rule 1020, "*Fault* means any breach of duty or any lack of care appropriate to a particular situation. . . 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."

In order to determine a Covered Person's degree of Fault under the ADMC Program, the Arbitral Body and the Administrative Law Judges of the Federal Trade Commission have followed the reasoning of *HIWU v. Poole*, JAMS CASE NO. 1501000576, which adopted the methodology and framework first established in *Cilic v. International Tennis Federation*, CAS 2013/A/3327, a decision of the Court of Arbitration for Sport involving the assessment of an athlete's degree of Fault under the World Anti-Doping Code.

As explained in *Cilic*, there are both objective and subjective elements of Fault that should be considered in determining Consequences for an ADRV. The objective elements determine what standard of care is expected from a reasonable person in the Covered Person's situation. The subjective element describes what is expected from that particular individual, in light of his or her personal capacities.

There are three ranges of objective fault: slight or insignificant fault; moderate fault; and significant fault. In circumstances involving the Possession of a non-Specified Banned Substance, the Arbitrator in *Poole* considered the following ranges for periods of Ineligibility:

slight or insignificant Fault— 3 to 10 months; moderate Fault—10 to 17 months; and significant Fault—17 to 24 months. The exact number of months of the Covered Person's period of Ineligibility can be decreased or increased within the ranges of Fault by taking into account mitigating and/or aggravating circumstances. As noted in *Cilic*, if the subjective elements are significant enough, they may move a Responsible Person's degree of Fault into a completely different category.

In this matter, HIWU has determined that, based on the circumstances, Dr. Bealmear has a slight degree of Fault for the violation of ADMC Program Rule 3214(a).

Dr. Bealmear's objective degree of Fault falls in the middle of the slight Fault range. Dr. Bealmear purchased the compounded substance B BLEND - PELPHERY in 2022, and knew that the ADMC Program was going to take effect on May 22, 2023. Dr. Bealmear also knew that compounded substances were being scrutinized by regulators and admitted he knew that, prior to the enactment of the ADMC Program Rules, HISA's ADMC Committee was considering banning all compounded substances. Yet, despite the fact that the B BLEND - PELPHERY was expired and despite knowing that the ADMC Program was coming into effect (and was in force for more than a year prior to HIWU's discovery of the B BLEND - PELPHERY in his vehicle), Dr. Bealmear not only failed to remove the B BLEND - PELPHERY from his veterinary vehicle, but he also failed to make any inquiry or conduct any due diligence to determine the classification of this compounded substance under the new ADMC Program.

Dr. Bealmear's subjective degree of Fault has mitigating factors that move his degree of Fault from the middle of the slight degree of Fault range to the lower end of the slight degree of Fault range: (1) Dr. Bealmear has been a licensed veterinarian in Kentucky since June 26, 1992 and has no disciplinary history; (2) he readily admitted to Possessing the B BLEND - PELPHERY and showed the investigators where it was located on his vehicle; (3) there is no evidence he ever used the B BLEND - PELPHERY on any Covered Horse after the implementation of the ADMC Program; (4) during the relevant time frame, Dr. Bealmear was experiencing a significant medical hardship; and (5) he cooperated with HIWU and voluntarily provided complete veterinary medical records, pharmacy records, statements, and participated in an interview with HIWU in an effort to explain his reason for possessing the Banned Substance.

Dr. Bealmear signed an Admission and Acceptance of Consequences with respect to the Possession ADRV in which he accepted the four (4) month period of Ineligibility. ADMC Program Rule 3223 requires the imposition of a fine when a violation of ADMC Program Rule 3214(a) has been established. Given the above-cited facts and circumstances, a fine of \$4,165.00 is appropriate in this case, and Dr. Bealmear has also accepted this financial penalty.

THE HORSERACING INTEGRITY & WELFARE UNIT
April 24, 2025