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March 8, 2024

OFFICE OF THE SECRETARY

Federal Trade Commission

Constitution Center

400 Seventh Street, SW, Suite 5610

Washington, DC 20024

Attn: Docket No. 9415

OFFICE OF THE SECRETARY

Federal Trade Commission

600 Pennsylvania Avenue, NW

Suite CC-5610

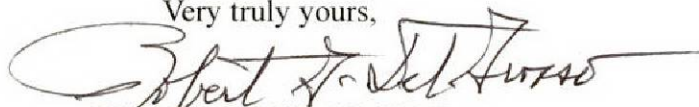
Washington, DC 20580

Re: In the Matter of Luis Jorge Perez, Appellant  
Docket No. 9420  
Application for Review by the Commission

Sirs:

I submit the enclosed on behalf of my client, Luis Jorge Perez, as an appeal and application for review by the Commission of the decision of the Hon. D. Michael Chappell, Chief Administrative Law Judge. I have mailed rather than electronically filing via the Administrative E-Filing System due to glitches therein that have prevented my e-filing therein. Please note that I have e-filed copies to Judge Chappell and the other necessary parties; their e-filing addresses have accepted my submission.

Very truly yours,



ROBERT G. DEL GROSSO

CSD

Enc

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
MATTER: Docket No. 9420

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

IN THE MATTER OF  
LUIS JORGE PEREZ, APPELLANT

NOTICE OF APPEAL AND APPLICATION FOR REVIEW

Pursuant to 16 CFR 1.147, aggrieved Appellant, Luis Jorge Perez, ("Appellant Perez"), gives notice that he appeals and requests a review by the Commission of the Administrative Law Judge Decision On Application For Review, by D. Michael Chappell, Chief Administrative Law Judge, dated February 7, 2024 but received by email to appellant's counsel February 8, 2024, and by Federal Express to appellant's counsel from the FTC on February 13, 2024. This request for review by the Commission includes the final civil sanctions of the Horseracing Integrity and Safety Authority ("HISA") in JAMS Case No 1501000589 and the October 10, 2023 Notice of Final Sanctions imposed pursuant to Horse Racing and Integrity Unit ("HIWU") of the HISA in HIWU Case No. EAD2022-3 which imposed civil sanctions consisting in the aggregate of a fourteen (14) month suspension, a fine of \$5,000.00. Copies of the decision and final civil sanctions are annexed hereto as Exhibits "A" and "B".

Appellant requests this review for the following reasons:

1. HISA and HIWU do not have jurisdiction over non-race horses even if said non-race horses are stabled on racetracks. Appellant provided veterinary services for both, race horses

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and non-race horses, at several race tracks and could legitimately possess a medication, banned for race horses but not for non-race horses, for use upon non-race horses.

- a. Judge Chappell failed to answer, much less address this issue, and accepted HISA'S argument that appellant's claim that the banned medication was necessary for his non-covered horse practice was only theoretical.
- b. Judge Cappell's decision, in effect, interfered with appellant's, and other similarly situated veterinarians', ability to carry on their practice involving non-covered horses on a racetrack. Those veterinarians and the appellant have no obligation to inform HISA as to what medications they possess for their practice involving non-covered horses.
- c. Judge Chappell's decision acknowledged that no evidence existed that appellant had used the banned medication on covered race horses.

2. Rule 3214 (a) of the ADMC Program fails to provide the necessary due process protections with respect to the issue of this case, i.e., a veterinarian's possession of a medication banned for race horses but not for non-race horses, which the Appellant could provide for non-race horses on a racetrack.

- a. To date, neither HISA nor HIWU have promulgated any written procedure(s) or regulations(s) regarding prescribing and dispensing of a banned substance for a non-covered horse at a racetrack. No prohibition of said practice has been issued.

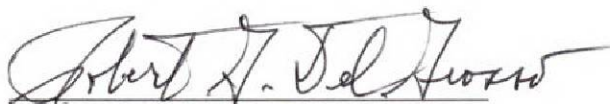
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b. The issue remains, "How does a veterinarian administer to a non-covered horse without carrying the medication, even if a medication banned for a covered horse, and the administration thereof is/will be on a racetrack?"

3. HISA's regulatory scheme with respect to a designated banned substance, as applicable to this case, is vague as well as being arbitrary and capricious. The constitutionality of HISA's enabling statute, the Horseracing Integrity and Safety Act (15 U.S.C. § 3051, et seq.) is in serious question. The Fifth Circuit Court of Appeals held in *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F. 4<sup>th</sup> 869 (5<sup>th</sup> Cir. 2022) that the statute "is facially unconstitutional". Thus, Appellant reserves the right to challenge the decision and sanctions as arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law on the same grounds of facial unconstitutionality.

Dated: Mineola, New York  
March 8, 2024

Respectfully submitted,



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CERTIFICATION OF SERVICE

Pursuant to 16 CPR § 1.146(a) and 16 CFR § 4.4(b), a copy of the foregoing is being served the 8<sup>th</sup> day of March, 2024 via First Class mail and/or electronic mail upon the following:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Suite CC-5610  
Washington, DC 20580

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
600 Pennsylvania Avenue, NW  
Washington, DC, 20580  
[oyalj@ftc.gov](mailto:oyalj@ftc.gov) and [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

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ROBERT G. DEL GROSSO, ESQ.  
Attorney for Appellant

# EXHIBIT "A"

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**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of )

Luis Jorge Perez, )

Appellant. )

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Docket No. 9420

**ADMINISTRATIVE LAW JUDGE DECISION ON APPLICATION FOR REVIEW**

Pursuant to 15 U.S.C. § 3058(b) and 16 C.F.R. § 1.146(a), Luis Jorge Perez (“Perez” or “Appellant”) appeals the final civil sanctions imposed against him by the Horseracing Integrity and Safety Authority, Inc. (“the Authority”) based on a finding by an arbitrator that Appellant violated section 3214(a) of the Anti-Doping and Medication Control Program (“ADMC” or the “ADMC Program”). As set forth below, Appellant’s liability under section 3214(a) and the imposed final civil sanctions are AFFIRMED.

**I. BACKGROUND**

**A. The ADMC Program**

The Horseracing Integrity and Safety Act (“HISA”), 15 U.S.C. §§ 3051-3060, empowered the Authority to develop and enforce rules and sanctions on a variety of subjects, including anti-doping and medication for horses, subject to oversight by the Federal Trade Commission (“FTC”). 15 U.S.C. §§ 3053, 3055, 3057. Implementing regulations, effective May 22, 2023, established the specific rules of the ADMC Program, including persons and animals covered by the ADMC Program, banned substances, and sanctions for violations. *See generally* 88 Fed. Reg. 5070-5201 (Jan. 26, 2023) (FTC Notice of HISA Proposed Rule and Request for Comment); Order Approving the ADMC Rule Proposed by the Authority (Mar. 27, 2023) (available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf)); 88 Fed. Reg. 27894 (May 3, 2023) (FTC Notice of Final Rule,

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effective May 22, 2023) (available at <https://hisaus.org/regulations?modal-shown=true#equine-anti-doping-and-controlled-medication-protocol-rules>) (hereafter, “ADMC Rules”). Rules for FTC oversight of the Authority, including the Authority’s imposition of civil sanctions, are set forth in 16 C.F.R. § 1.145 *et. seq.*; *see* 87 Fed. Reg. 60077 (Oct. 4, 2022) (Final Rule) (hereafter, “FTC Rules”).

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

### **B. Procedural History**

On June 13, 2023, HIWU issued Appellant an Equine Anti-Doping Notice of Alleged Anti-Doping Rule Violation based upon Appellant’s alleged possession of a banned substance (“Notice Letter”). The Notice Letter imposed a provisional suspension effective as of June 14, 2023. On June 17, 2023, Appellant submitted a written response to the Notice Letter. On June 26, 2023, HIWU charged Appellant with violating the ADMC Program by possessing levothyroxine, a banned substance known as “Thyro-L.” On October 9, 2023, after an evidentiary hearing held on September 18, 2023, the arbitrator appointed to adjudicate the charge against Appellant (the “Arbitrator”) issued a final decision finding that Perez violated ADMC Rule 3214(a) by possessing Thyro-L (the “Decision”). The Decision determined that the appropriate sanctions for the violation should be a 14-month period of ineligibility<sup>1</sup> and a \$5,000 fine. On October 10, 2023, HIWU sent Perez a Notice of Final Civil Sanctions under the ADMC Program, imposing the sanctions recommended by the Arbitrator, and on October 11, 2023, pursuant to FTC Rule 1.145, the Authority filed a Civil Sanction Notice with the FTC (hereafter, the “Sanctions”).

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<sup>1</sup> Ineligibility means the “Covered Person is barred for a specified period of time from participating in specified activities,” “involving Covered Horses, or in any other activity . . . taking place at a Racetrack or Training Facility . . . .” ADMC Rules 1020, 3229(a)(2).



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On November 9, 2023, Appellant filed a notice of appeal and application for review (“Application for Review”) requesting an evidentiary hearing to contest the facts found by the Arbitrator. Appellant asserted that the Sanctions imposed upon him were arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law.<sup>2</sup> On December 11, 2023, Appellant withdrew his request for an evidentiary hearing to contest facts.<sup>3</sup>

On December 14, 2023, an order was issued directing each party to submit briefing limited to the legal issues raised by Appellant in connection with the civil sanctions.

On January 9, 2024, pursuant to the December 14, 2023 order, the parties each filed proposed conclusions of law, a proposed order, and supporting legal briefs. On January 19 and January 20, 2024, the Authority and Appellant, respectively, filed responses to each other’s January 9, 2024 filings.

### **C. Summary of Applicable Law**

ADMC Rule 3214(a) provides that:

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.

As a veterinarian who treats racehorses, Appellant is a “Covered Person,” and Thyro-L is a “banned substance” under the ADMC Program. ADMC Rule 1020; ADMC Rule 3020(a)(3); ADMC Rule 4310 (Prohibited Substances List). As sanctions for a first 3214(a) possession offense, ADMC Rule 3223(b) provides for a two-year period of ineligibility, a fine of “up to”

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<sup>2</sup> Appellant’s Application for Review included a request to stay the Sanctions pending the disposition of this appeal, pursuant to 16 C.F.R. § 1.148, which the Authority opposed. FTC Rule 1.148(c) requires that an application for a stay address the factors outlined in FTC Rule 1.148(d), which are: (1) The likelihood of the applicant’s success on review; (2) Whether the applicant will suffer irreparable harm if a stay is not granted; (3) The degree of injury to other parties or third parties if a stay is granted; and (4) Whether the stay is in the public interest. 16 C.F.R. § 1.148(d). By order dated November 28, 2023, Appellant’s stay request was denied for failure to address all of the foregoing factors.

<sup>3</sup> The Authority’s response to the Application for Review, filed November 17, 2023, had asserted, among other things, that Appellant failed to identify any facts that he seeks to contest and urged that Appellant’s request for an evidentiary hearing be denied. On November 30, 2023, based on the Application for Review and the Authority’s response, the Administrative Law Judge issued an order directing Appellant to specifically identify the material facts he was contesting. In response to that order, Appellant withdrew his request for an evidentiary hearing.

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\$25,000, and payment of “some or all of the adjudication costs and [HIWU’s] legal costs.” ADMC Rules 3224 and 3225 authorize consideration of factors that mitigate the degree of fault, where the Covered Person establishes that he or she bears no fault or negligence, or no significant fault or negligence, for the anti-doping rule violation in question.

Based on issues presented in the Application for Review, this appeal requires a determination of whether Appellant violated ADMC Rule 3214(a) and whether the Sanctions imposed by the Authority are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 15 U.S.C. § 3058(b)(2)(A)(i)-(iii); 16 C.F.R. § 1.146(b)(1)-(3). The Administrative Law Judge makes these determinations *de novo*. 5 U.S.C. § 3058(b)(1); 16 C.F.R. § 1.146(b)(1)-(3). Thus, the Administrative Law Judge must review the record and sanctions “anew,” as though the issue had not been heard before, and no decision had previously been rendered. *See Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006) (describing *de novo* review by appellate court of district court dismissal of complaint under Federal Rule of Civil Procedure 12(b)(6)). *De novo* review requires an independent examination of the record. *See Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002) (describing scope of *de novo* review of agency’s interpretations of statute). With *de novo* review, there is no deference owed to the determinations made below. *See Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011) (holding that, on *de novo* review by an appellate court, there is no deference to district court).

“[T]o pass muster under the arbitrary and capricious standard,” a court must only find a “rational connection between facts and judgment.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 56 (1983). “To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Judicial review under the arbitrary and capricious standard looks to ensure that “the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). Similarly, to find an abuse of discretion, the record must reveal a clear error of judgment. *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 422 F.3d 782, 798 (9th Cir. 2005). An abuse of discretion is defined as “a plain error, discretion exercised to an end

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not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.” *Id.* Finally, whether the Sanctions are in accordance with the law is determined with reference to the substantive law of HISA and the implementing regulations, summarized above.

After conducting the required review, the Administrative Law Judge “(ii) may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority; and (iii) may make any finding or conclusion that, in the judgment of the administrative law judge, is proper and based on the record.” 15 U.S.C. § 3058(b)(3)(A)(ii), (iii).

## II. PROCEEDINGS BELOW

### A. Summary of Material Facts

Based on the arbitration record and the briefs of the parties, the material facts are summarized as follows. Appellant is a Covered Person who provides veterinary services to both racehorses, that are covered by HISA, and other horses that are not covered by HISA. Decision ¶¶ 1.5, 2.29(1), 4.3. On June 9, 2023, after the May 22, 2023 implementation of the ADMC Program, investigators from the New York Racing Association and HIWU found two one-pound tubs of Thyro-L inside Appellant’s trailer. Decision ¶¶ 2.29 (3)-(4), 7.2. Appellant had purchased the Thyro-L prior to it becoming a banned substance under the ADMC Program. Decision ¶ 7.3.

Based on training provided by HIWU prior to the effective date of the ADMC Program, Appellant knew that Thyro-L would become a banned substance upon implementation of the ADMC Program on May 22, 2023. Decision ¶¶ 2.29(2), 7.8. On March 24, 2023, HIWU’s Chief of Science, Dr. Mary Scollay, conducted a seminar on the ADMC Program, its rules and regulations, and the expectations for Covered Persons. Decision ¶ 2.29(2). It was stipulated below that during her presentation, Dr. Scollay made the following comments:

. . . [I]f the veterinarians are practicing also on a population of [N]on-Covered horses, they’re taking care of quarter horses or they’ve got a country practice part-time 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 bisphosphonates on a Non-Covered horse, we can’t ban them from possessing them . . . [W]e 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

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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 . . . [T]he regulation addresses if there is a justification for them to be in Possession of a Banned Substance and certainly a practice that incorporates Non-Covered horses.

Decision ¶ 2.29(2). There was no evidence presented at the Arbitration hearing that the Thyro-L product was used by Appellant on any horse after the implementation of the ADMC Program.

Decision ¶ 7.27.

In his June 17, 2023 response to HIWU's Notice Letter, Appellant asserted that he accepted responsibility for possessing the substance and that his offense was not intentional, but rather was due to having forgotten that the Thyro-L was in his trailer. Decision ¶ 2.29(7); *see also* June 17, 2023 response ("The truth is I completely forgot it was there as it had not been touched in almost 6 months.").

#### **B. Arbitrator's Decision**

In determining Appellant's liability for possession under ADMC Rule 3214(a), the Arbitrator noted that ADMC Rule 3214(a) unequivocally provides that possession of a banned substance is an anti-doping rule violation "unless there is *compelling* justification for such possession." Decision ¶ 7.13 (emphasis in original). The Arbitrator noted that neither Dr. Scollay nor anyone at HIWU cautioned veterinarians that ADMC Rule 3214(a) required a "compelling justification" to avoid liability, or what a compelling justification meant for the possession of banned substances by covered veterinarians whose practice included non-covered horses. Decision ¶ 7.14. However, the Arbitrator determined that Appellant's asserted justification for possessing the substance – that his practice included non-covered as well as covered horses – was a "theoretical justification raised by his counsel, after the fact" because Appellant did not submit evidence that he was administering, or intending to administer, the substance to non-covered horses, and because Appellant had initially attributed his possession to mere oversight. Decision ¶ 7.15.

Having determined that Appellant violated ADMC Rule 3214(a) by possessing Thyro-L, the Arbitrator proceeded to consider whether the maximum 24-month period of ineligibility

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provided under ADMC Rule 3223(b) should be eliminated or reduced due to “No Fault or Negligence” or “No Significant Fault or Negligence” pursuant to ADMC Rules 3224 and 3225. Decision ¶ 7.19. In light of Appellant’s admission that he did not clean out his trailer following the HIWU seminar, the Arbitrator found sufficient negligence was established to preclude a finding of “no fault or negligence” under ADMC Rule 3224. Decision ¶ 7.22.

In determining the sanctions for Appellant’s unlawful possession of Thyro-L, the Arbitrator considered several mitigating factors, including: Appellant having originally obtained Thyro-L before it became a banned substance; the absence of evidence that Appellant intended to use Thyro-L on covered horses or that he had done so; the ADMC Program was new and no veterinarians had experience under it; only one education session had been provided at Belmont Park as of June 9, 2023; and how a reasonable person may have interpreted Dr. Scollay’s March 2023 comments regarding ADMC Rule 3214. Decision ¶¶ 7.26-7.29.

The Arbitrator broke down the twenty-one months of possible periods of ineligibility into three seven-month ranges, beginning with the minimum ineligibility period of 3 months,<sup>4</sup> as follows: slight or insignificant (3-10 months); moderate (10-17 months); and significant: (17-24 months). Decision ¶ 7.25. The Arbitrator found that Appellant’s level of objective fault fell in the moderate category because: Appellant was aware Thyro-L would become a banned substance before the ADMC Program went into effect; Appellant failed to clean out his trailer as HIWU recommended; and Appellant’s controlled substances were not properly stored and his trailer was disorganized, unsafe, and unsanitary. Decision ¶¶ 7.26-7.29. However, in determining sanctions, the Arbitrator applied a lower level of subjective fault and reduced the maximum allowable 24-month period of ineligibility under ADMC Rule 3223 to 14 months, given the mitigating factors discussed above. Decision ¶ 7.29. In addition, the Arbitrator reduced the fine under ADMC Rule 3223 from the allowed maximum of \$25,000 to \$5,000, “considering the inexperience of Dr. Perez with the ADMC Program, the limited training he received, the Agency’s lack of clarity, and the absence of any impermissible use of the substance in question or any violation other than

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<sup>4</sup> ADMC Rule 3225 provides that even “[w]here the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, then (unless Rule 3225(b) or 3225(c) applies) the period of Ineligibility shall be fixed between 3 months and 2 years, depending on the Covered Person’s degree of Fault.”

the Possession itself.” Decision ¶ 7.32. Furthermore, the Arbitrator in her discretion declined to require Appellant to contribute to the adjudication costs, as requested by the Authority. Decision ¶ 7.33.

### III. ANALYSIS

#### A. Contentions on Appeal

Appellant argues that he should not be sanctioned for possessing a banned substance under ADMC Rule 3214 because he is a veterinarian who treats both covered and non-covered horses. Appellant frames his claims as jurisdictional and “due process” ones. Specifically, Appellant argues that the Authority lacks jurisdiction over non-covered horses; therefore, Appellant cannot be held liable for possessing a banned substance because his practice includes non-covered horses. In support of his due process claim, Appellant contends that ADMC Rule 3214(a) is vague, arbitrary and capricious because covered veterinarians who also treat non-covered horses could not know whether possession of a banned substance was permitted or not, and that the Authority and HIWU did not properly inform covered veterinarians that providing a “compelling justification” would be required to avoid liability, nor how the “compelling justification” evidentiary standard would be interpreted. Accordingly, Appellant argues that the finding of liability and imposed sanctions should be reversed.

The Authority responds that a covered veterinarian who also treats non-covered horses is not automatically exempt from ADMC Rule 3214, but rather must establish a “compelling justification” to avoid liability. The Authority argues that while the administration of a banned substance to a non-covered horse *may* satisfy the “compelling justification” evidentiary standard, to meet this evidentiary standard the Appellant must put forth specific evidence that the banned substance was used for or intended to be used for non-covered horses, which Perez did not. The Authority alleges that Appellant has only put forth a “theoretical justification” for possessing Thyro-L, and that the mere statement that a covered veterinarian also treats non-covered horses is insufficient to prove “compelling justification” for possession. Moreover, the Authority argues that allowing covered veterinarians who also treat non-covered horses to be exempt from ADMC Rule 3214 through bald assertions would create a blanket exception for covered veterinarians who also treat non-covered horses that would undermine the integrity of the ADMC Program.

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Accordingly, the Authority urges that the finding of liability and the imposed sanctions be affirmed.

## **B. Discussion**

### **1. Liability under ADMC Rule 3214**

As an initial matter, it is undisputed that Appellant is a Covered Person treating racehorses; accordingly, the Authority and HIWU have jurisdiction over Appellant and he is subject to ADMC Rule 3214. With regard to Appellant's "due process" claims, ADMC Rule 3214 clearly lays out an exception to liability for possession of banned substance where such possession has a "compelling justification." This is an evidentiary standard. Appellant has failed to support his assertion that due process requires ADMC Rule 3214 to identify factual scenarios that may meet the standard. The fact that during the educational seminar HIWU's Chief of Science did not explicitly mention the "compelling justification" standard or describe in detail how this standard would be interpreted similarly does not support a finding of a due process violation. Moreover, the mechanisms for enforcing ADMC Rule 3214 provide ample opportunities to defend against the charge of unlawful possession; first before a neutral arbitrator and now through the present appeal. For this reason as well, Appellant has failed to demonstrate he has been deprived of due process.

To the extent that Appellant's jurisdiction and/or due process claims can be construed as asserting that a covered veterinarian can establish a "compelling justification" for possession solely by demonstrating that the veterinarian's practice includes non-covered horses, without any further evidentiary inquiry, this contention is rejected. Appellant's proposal to create a blanket exemption to ADMC Rule 3214 for covered veterinarians by virtue of their treating non-covered horses contradicts the "compelling justification" evidentiary standard requirement, which by nature of the inclusion of the word "compelling," suggests the need to put forth evidence beyond an unsupported, theoretical allegation, and to analyze such evidence on a case-by-case basis. Appellant's statement that his veterinary practice includes non-covered horses, is thus not by itself a compelling justification for the possession. Accordingly, a *de novo* review of the record supports a finding of liability under ADMC Rule 3214.

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## 2. Sanctions for violating ADMC Rule 3214

Although the Arbitrator found that Appellant's level of objective fault fell in the moderate category because of Appellant's awareness Thyro-L would become a banned substance and Appellant's failure to clean out his trailer as HIWU recommended, the Arbitrator applied a lower level of subjective fault and reduced both the maximum allowable period of ineligibility and fine under ADMC Rule 3223 to 14 months and \$5,000, respectively. In making this determination, the Arbitrator considered various mitigating factors discussed above, including that Appellant initially obtained Thyro-L before it became banned; the lack of evidence that Appellant intended to or did use Thyro-L on covered horses after the ADMC Program went into effect; that the ADMC Program was new and only one education session had been provided at Belmont Park as of June 9, 2023; and that Dr. Scollay's March 2023 comments regarding ADMC Rule 3214 may have been misinterpreted. Decision ¶ 7.29. In summary, Appellant has failed to demonstrate that the Arbitrator's sanctions determination was arbitrary, capricious, an abuse of discretion, or not in accordance with applicable law. Rather, the Arbitrator appropriately applied the ADMC rules; the Decision does not reveal any "plain error," *Nat'l Wildlife Fed'n*, 422 F.3d at 798; and the Arbitrator "acted within a zone of reasonableness . . . , reasonably considered the relevant issues and reasonably explained the decision." *Prometheus Radio Project*, 141 S. Ct. at 1158.

Furthermore, an independent, *de novo* review of the record supports the Sanctions imposed by the Authority as in accordance with ADMC Rules, reasonable, and rationally related to Appellant's degree of fault. Appellant's degree of objective fault in possessing the Thyro-L after implementation of the ADMC Program was at the very least moderate. Despite having been aware through training that Thyro-L would be banned for racehorses upon implementation of the ADMC Program and having received recommendations concerning his responsibilities as a Covered Person under the ADMC Program, Appellant did not take any steps to ensure that the Thyro-L was disposed of after the ban went into effect. Further, Appellant's failure to act was not due to his belief that he lawfully possessed the Thyro-L, but rather because he forgot he had it.



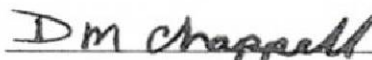
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Notwithstanding the foregoing, the lack of wrongful intent on Appellant's part supports a reduction in the maximum allowable period of ineligibility and fine, as demonstrated by the facts that Appellant initially acquired the Thyro-L when it was lawful to do so; the ADMC Program imposed new rules as to which there was limited training; and the lack of evidence that Appellant used the Thyro-L on a covered horse after the ban went into effect. The reduced sanctions imposed by the Authority fairly and reasonably reflect the application of the mitigating facts in the record.

**IV. CONCLUSION**

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

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: February 7, 2024

# EXHIBIT "B"



**NOTICE OF FINAL CIVIL SANCTIONS UNDER THE ADMC PROGRAM**

October 10, 2023

**SENT VIA EMAIL** [drperezequinevet@gmail.com](mailto:drperezequinevet@gmail.com)

Dr. Luis Jorge Perez, DVM  
12 Euston Road South  
West Hempstead, NY 11552  
(334) 421-0124

**Re: EAD2023-3/EAD Charge of Possession of a Banned Substance – Rule 3214(a)**

This serves as notice to you, Luis Jorge Perez, that the Horseracing Integrity & Welfare Unit (HIWU) is imposing the following Consequences against you under the Anti-Doping and Medication Control (ADMC) Program in accordance with the enclosed final decision of the Arbitral Body and pursuant to 15 U.S.C. 3057(d):

1. A period of Ineligibility of fourteen (14) months for you, commencing on June 14, 2023, the effective date of your Provisional Suspension, and ending on August 13, 2024 (ADMC Rule 3223);
2. A fine of \$5,000 to be paid before the expiration of the period of Ineligibility (ADMC Rule 3223); and
3. Public Disclosure in accordance with ADCM Program Rule 3620.

This matter involves the Possession of the Banned Substance, Levothyroxine (Thyro-L), at Belmont Park in Elmont, New York on June 9, 2023.

Review of the Final Decision and its accompanying Consequences by a federal Administrative Law Judge is available under 15 U.S.C. 3058. Pursuant to 15 U.S.C. 3058(b)(1), such review must be requested within thirty (30) days of October 10, 2023 (i.e., November 9, 2023). You will also receive a copy of the notice to the Federal Trade Commission of these civil sanctions. A stay of the Consequences set forth above will only be imposed if such a stay is requested from, and approved by, the applicable Administrative Law Judge.

The Consequences set forth above are effective immediately, and any fines imposed must be paid through the HISA Portal by the dates set forth above. The instructions for payment through the HISA Portal are enclosed.



Please also be advised that a copy of this Notice or a summary thereof will be published on HIWU's website.

Horseracing Integrity & Welfare Unit

A handwritten signature in black ink, appearing to read "MPujals". The signature is written in a cursive, flowing style.

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Michelle Pujals, HIWU General Counsel

Encls.: Decision of Arbitral Body  
Instructions for HISA Portal

cc (w/ encls.): Robert Del Grosso, Esq., Counsel for Dr. Perez  
HISA

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