

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

ADMINISTERED BY JAMS, CASE NO. 1501000594

In the Matter of the Arbitration Between:

HORSE RACING INTEGRITY WELFARE UNIT (“**HIWU**” or “**Claimant**”),
Claimant

v.

DENNIS VANMETER (“**Mr. VanMeter**” or “**Respondent**”),
Respondent.

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

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FINAL DECISION

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 in person at the Thistledown race track in North Randall, Ohio on September 12, 2023, 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 Presence Based Anti-Doping and Medical Control Program Rule 3212 violation by the trainer of a thoroughbred racehorse, based on an adverse analytical finding showing the presence of Isoxsuprine, a category SO Banned Substance on the Prohibited List and Technical Document Prohibited Substances, in the urine of Templement, a thoroughbred racehorse, on June 7, 2023.

1.2 The Horseracing Integrity & Welfare Unit (“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 initially by Allison Farrell, Esq., Senior Litigation Counsel of HIWU, who was later joined by Carlos Sayao, Esq. and Anna White, Esq., of Tyr, LLP, of Toronto, Ontario, Canada.

1.3 Mr. VanMeter is an owner and trainer of high-level trainer of thoroughbred racehorses based currently in West Virginia. Mr. VanMeter was represented in these proceedings by Alan Pincus, Esq. of the Law Office of Alan Pincus, based in Grantville, Pennsylvania.

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

II. THE FACTS

2.1 Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced at the September 12, 2023 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.

2.2 Uncontested and Stipulated Facts. On or about September 7, 2023, the Parties submitted the following uncontested and stipulated facts:

1. Trainer VanMeter is the Trainer of the Covered Horse Templement.
2. John Brown is a friend of Trainer VanMeter's who has stalls in Barn 26 at JACK Thistledown Racino ("Thistledown") in North Randall, Ohio.
3. The Receiving Barn at Thistledown is Barn 14.
4. On the morning of June 7, 2023, Trainer VanMeter sent Templement to one of John Brown's stalls in Barn 26.
5. On the afternoon of June 7, 2023, Templement competed at Thistledown. Templement finished 6th in Race #8 and earned a purse of \$650.
6. Post-Race urine and blood samples were collected from Templement on June 7, 2023. The urine sample was collected with the code U100229657 and the blood sample was collected with the code B100229657.
7. The Agency has contracted with the Ohio Department of Agriculture Analytical Toxicology Laboratory (the "ATL Lab") to analyze samples under the Horseracing Integrity and Safety Authority's Anti-Doping and Medication Control Program

(Protocol) ("ADMC Program").

8. Analytical testing on the A Sample bearing code U100229657 (urine) conducted by the ATL Lab resulted in a reported Adverse Analytical Finding ("AAF") for isoxsuprine, a Banned Substance, at an average estimated concentration of 471 ng/mL.
9. Analytical testing on the A Sample bearing code B100229657 (blood) conducted by the ATL Lab resulted in a reported Adverse Analytical Finding for phenylbutazone, a Controlled Medication.
10. John Brown was notified by the Agency on June 27, 2023 that a Covered Horse for which he was the registered Trainer returned an AAF for isoxsuprine.
11. Trainer VanMeter was notified by the Agency on July 6, 2023 that Templement's A Sample had returned AAFs for isoxsuprine and phenylbutazone.
12. The Agency imposed a Provisional Suspension on Trainer VanMeter effective July 6, 2023.
13. On July 11, 2023, Trainer VanMeter waived his right to request testing of Templement's B Samples and accepted the penalty proposed by the Agency for the phenylbutazone AAF. As a result, the hearing will not address any aspect of the phenylbutazone AAF or consequences therefrom.
14. Trainer VanMeter is not contesting the lab procedures, analyses, or results in respect of the A samples tested by the ATL Lab.
15. On July 17, 2023, Trainer VanMeter was charged by the Agency with an anti-doping rule violation under ADMC Program Rule 3212 for Presence of the Banned Substance isoxsuprine in Templement's urine sample.

Additional Facts According to HIWU

2.2 On June 7, 2023, Agency Sample Collection Personnel collected urine and blood samples, designated as Samples #U100229657 and #B100229657 from Templement Post-Race from Race 8 at Thistledown. Templement's A Sample was submitted to Ohio's Analytical Toxicology Laboratory ("ATL Lab") in Reynoldsburg, Ohio, for analysis. The ATL Lab analyzed the A Sample in accordance with the Equine Standards for Laboratories and Accreditation and reported an Adverse Analytical Finding ("AAF") because it detected isoxsuprine in Templement's urine Sample. Isoxsuprine is a category S0 Banned Substance on the ADMC Program's Prohibited List.

2.3 The ATL Lab also reported a second AAF because it detected phenylbutazone in Templement's blood Sample.⁷ Phenylbutazone is a category S7, Class C, Controlled Medication Substance on the ADMC Program's Prohibited List.

2.4 As noted above, Trainer VanMeter accepted the results of the ATL Lab's testing and admits the presence of isoxsuprine in Templement's A Sample on June 7, 2023.

Additional Facts According to Mr. VanMeter

2.5 Mr. VanMeter is a 76 year old Vietnam veteran classified as disabled. He has been made indigent as a result of his Provisional suspension. He could not afford the fees involved in having a Provisional hearing so he remains suspended with no provision for a stay under HISA rules. There is no provision for someone like Mr. VanMeter to proceed in forma pauperis under HISA rules.

2.5 HISA has classified isoxsuprine as a banned substance despite its use as a therapeutic drug in horse racing. This classification is in opposition to the Association of Racing Commissioners International ("ARCI") classification which was in place prior to HISA and which were developed in connection with the finest scientists in racing.

2.6 The receiving barn at Thistledown race track is far from the paddock. When Mr. VanMeter races horses at Thistledown he ships his horses to the stalls of his friend, John Brown, which are closer to the paddock. Because Mr. VanMeter had recently undergone open heart surgery, he arranged to have his Covered Horse Templement shipped directly to Mr. Brown's stall the morning of June 7, 2023.

2.7 John Brown has a prescription for Isoxsuprine for his pony, Bucky. When Mr. VanMeter shipped Templement to Thistledown on June 7, 2023, Mr. Brown removed the pony from its stall and put Templement into it.

2.8 Mr. VanMeter had no way of knowing about the pony and isoxsuprine. Several days after the Templement race, Mr. Brown received a positive test for isoxsuprine in one of his horses. And even later Mr. VanMeter received his positive test for Templement.

III. PROCEDURAL HISTORY

3.1 On July 6, 2023, HIWU issued its combined EAD and ECM notice to Mr. VanMeter asserting alleged Anti-Doping Rule Violations ("ADRV") relating to the AAFs ("Notice Letter").

3.2 Pursuant to Rule 3247(a) (1) a Provisional Suspension was imposed on Mr. VanMeter on July 6, 2023.

3.3 On July 11, 2023, Mr. Pincus submitted a letter to HIWU on behalf of Mr. VanMeter in which he expressly waived testing of the B sample and accepted the lab findings

with respect to the presence of isoxuprine in the A Sample. Exhibit G. Mr. Pincus' letter also raised due process concerns related to the Provisional Suspension.

3.4 On July 17, 2023, HIWU issued its charging letter to Mr. VanMeter asserting an ADRV charge for the Presence of the Banned Substance Isoxuprine in Templement's A Sample on June 7, 2023 ("Charging Letter").

3.5 On July 25, 2023, in accordance with ADMC Program Rule 7060(a) (Arbitration Procedures), HIWU initiated binding arbitration against Trainer VanMeter.

3.6 On July 28, 2023, HISA exercised its right to observe under Rule 7060(a) through its CEO and its Assistant General Counsel, Mr. Reinhardt.

3.7 On August 2, 2023, the Parties held a preliminary case management conference with the Arbitrator. Ms. Farrell appeared on behalf of Claimant and Mr. Pincus appeared on behalf of Mr. VanMeter. Mr. Reinhardt was notified of and given the opportunity to attend and observe the preliminary case management conference. Following discussion with the Parties at the preliminary case management conference, and based on the Parties' agreed major dates, the Arbitrator issued Procedural Order No. 1, on August 2, 2023 setting the schedule for the arbitration. Except as noted below, the Parties met all deadlines in preparing for the evidentiary Hearing.

3.8 On August 3, 2023, a formal notice of representation of HIWU was submitted by Carlos Sayao, Esq.

3.9 On August 3, 2023, Mr. VanMeter submitted his Pre-Hearing brief and the witness statements of Mr. Brown and Dr. Shell, the veterinarian for both Templement and Bucky.

3.10 On August 13, 2023¹, Mr. VanMeter submitted his witness statement.

3.11 On August 18, 2023, HIWU submitted its Pre-Hearing brief, a statement of the expected testimony of its witnesses Dr. Mark Papich and Kathryn Morgan, a Book of Evidence which contained the Exhibits A through H and Exhibit I, the expert report of Dr. Mark Papich, DVM, MS, Diplomate ACVCP, and supporting materials and a Book of Authorities.

3.12 On September 6, 2023², Mr. VanMeter submitted two exhibits, labeled "VanMeter isox contamination.pdf" and "VanMeter receiving barn.pdf".

3.13 On September 7, 2023³, Mr. VanMeter submitted two additional exhibits, labeled

¹ Pursuant to Rule 7170 (c) and (d), Mr. VanMeter should have filed his witness statement together with his Pre-Hearing brief and all exhibits, schedules, additional witness statements, expert reports and other evidence that he intended to rely upon at the Hearing. No objection was filed to the timeliness of the witness statement.

² No objection was filed to the timeliness of these exhibits, which pursuant to Rule 7170 (c) and (d) should have been filed with Mr. VanMeter's Pre-Hearing brief on August 3, 2023.

³ No objection was filed to the timeliness of these exhibits, which pursuant to Rule 7170 (c) and (d) should have been filed with Mr. VanMeter's Pre-Hearing brief on August 3, 2023.

“vanmeter vet records.jpg” and “Vanmeter Bucky vet record.jpg”.

3.14 On September 7, 2023, formal notice of representation of HIWU was submitted by Ms. Anna White, Esq.

3.15 On September 7, 2023 an additional zoom conference was held with the Parties to discuss Mr. VanMeter’s request that the Arbitrator exercise her discretion to order the evidentiary Hearing be held entirely virtually due to his indigency. Mr. Sayao and Ms. Farrell participated for HIWU and Mr. Pincus participated for Mr. VanMeter. HIWU objected to the request and asked that it go forward in a hybrid format, with Mr. VanMeter and the witnesses appearing in person due to concerns about Mr. VanMeter’s hearing. The Arbitrator inquired whether HIWU’s position would be different if the costs related to any travel for the hearing were not reimbursable. HIWU stated it would like to proceed in person and would not seek reimbursement for any travel related costs. In light of that representation, the Arbitrator declined to exercise her discretion to make the hearing entirely virtual. Mr. VanMeter’s counsel also sought confirmation from the Arbitrator during the zoom conference that his due process/constitutional objections to the Horseracing Integrity and Safety Authority’s (“HISA”) Anti-Doping and Medication Control Program. The Arbitrator confirmed that objections to the constitutionality of the ADMC Program are not properly before the Arbitrator and therefore will not be ruled upon during these proceedings. However, the Arbitrator notes that the multilayers of de novo review of decisions under Rule 7000, provide significant due process protections to Mr. VanMeter regarding the results of these proceedings.

3.16 On September 7, 2023 the Parties submitted an Uncontested Statement of Facts and a Proposed Schedule for the evidentiary Hearing. The Proposed Schedule indicated HIWU would not be calling Ms. Morgan⁴.

3.17 On September 12, 2023, the evidentiary Hearing proceeded at the Thistledown Track in North Randall, Ohio, commencing at 9:00 a.m. local time. Mr. Sayao, Ms. White and Ms. Farrell appeared in person and participated for HIWU. Mr. Pincus appeared by zoom and participated for Mr. VanMeter. Mr. VanMeter, Mr. Brown, and Dr. Shell appeared and testified in person. Dr. Papich, appeared and gave expert testimony in person on behalf of HIWU. Mr. Reinhardt attended and observed by zoom for HISA.

3.18 During the evidentiary hearing, all of the Parties’ documents and exhibits were admitted into evidence, including Mr. VanMeter’s four exhibits referenced above and HIWU’s exhibits A-I, for consideration by the Arbitrator.

3.19 After the Parties completed their presentations of evidence and closing arguments and confirmed that they had no additional evidence to submit for consideration by the Arbitrator in reaching a resolution of this matter, the arbitration Hearing was adjourned and concluded on September 12, 2023.. Before adjourning, the Arbitrator announced that the evidence was closed.

3.20 On September 15, 2023, HIWU submitted an additional authority through JAMS

⁴ The Parties agreed that the Arbitrator would not consider statements made in either HIWU’s Pre-Hearing Brief or its filing relating to expected witness statement regarding what Ms. Morgan might testify about.

Access.

3.21 Upon the adjournment of the Hearing, and the closing of the evidence, the Arbitrator commenced writing this Final Decision, which issued within the time required by the applicable rules.

IV. JURISDICTION

4.1 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:

...

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

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

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

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

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

“Rule 7010. Applicability.

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

Rule 7020. Delegation of Duties

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

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

“Rule 7060. Initiation by the Agency

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

4.7 In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. A Preliminary Arbitration Management Conference was held by zoom between the parties during which the schedule was agreed.

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

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

V. RELEVANT LEGAL STANDARDS

5.1 It is undisputed that under the ADMC Program, Mr. VanMeter as a trainer is a Covered and Responsible Person, and that Templement is a Covered Horse.

5.2 It is alleged that Mr. VanMeter violated ADMC Program Rule 3212(a) regarding the presence of a Prohibited Substance in a Covered Horse.

5.3 ADMC Rule 3212(a) states the following:

(a) It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore strictly liable for any Banned Substance, or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse(s). Accordingly, it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3212 Anti- Doping Rule Violation.

5.4 Rule 3212(b) of the ADMC Program states that a Rule 3212 violation may be established by any of the following:

(1) the presence of a Banned Substance or its Metabolites or Markers in the Covered Horse's A Sample where the Responsible Person waives analysis of the B Sample, and the B Sample is not analyzed;

(2) the Covered Horse's B Sample is analyzed, and the analysis of the B Sample confirms the presence of the Banned Substance, or its Metabolites or Markers found in the A Sample; or

(3) where, in exceptional circumstances, the Laboratory (on instruction from the Agency) further splits the A or B Sample into two parts in accordance with the Laboratory Standards, the analysis of the second part of the resulting split Sample confirms the presence of the same Banned Substance or its Metabolites or Markers as were found in the first part of the split Sample, or the Responsible Person waives analysis of the second part of the split Sample.

5.5 Pursuant to Rule 3121 of the ADMC Program, 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."

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 the WADC, the WADA Code Program, comments annotating the WADA Code Program and any case law interpreting or applying the WADA Code Program can be considered in adjudicating cases relating to the Protocol:

"(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 ADMC Program Rule 3040 sets out certain obligations of a trainer such as Mr. VanMeter, as both a Covered Person and a Responsible Person, in pertinent part as follows:

“Rule 3040. Core Responsibilities of Covered Persons

(a) Responsibilities of All Covered Persons

It is the personal responsibility of each Covered Person:

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

...

(b) Additional Responsibilities of Responsible Persons

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

...

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

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

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

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

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

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

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

5.8 Pursuant to ADMC Program Rule 3223, the Consequences for a first anti-doping rule violation of Rule 3212 include Ineligibility and Financial penalties, specifically a “2 years” period of Ineligibility and a “Fine of up to \$25,000 or 25% of the total purse (whichever is greater); and Payment of some or all of the adjudication costs and [HIWU]’s legal costs.”

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

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

relevant factors to be considered in reducing the period of Ineligibility based on degree of Fault.”

5.12 ADMC Program Rule 3224 permits the elimination of sanctions where there is a finding of 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...”

5.13 No Fault or Negligence is defined by Rule 1020 of the ADMC Program as follows:

“No Fault or Negligence means 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.”

5.14 ADMC Program Rule 3225 also allows for the reduction of sanctions where there is a finding of 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."

5.15 No Significant Fault or Negligence is defined in Rule 1020 of the ADMC Program as follows:

"No Significant Fault or Negligence means 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 and at the Hearing. 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.

HIWU's Contentions

6.2 In summary, HIWU asserts that Mr. VanMeter committed an anti-doping rule violation for the presence of Isoxsuprine as a Banned Substance at a level of 471 ng/mL in the Covered horse, Templement.

6.3 HIWU contends that Mr. VanMeter is strictly liable under the ADMC Program for a Presence-Based violation of the Banned Substance Isoxuprine in Templement's Sample. HIWU contends that because it is an uncontested fact that there was isoxuprine present in Templement's Sample on June 7, 2023, there is no other proof needed under Rule 3212 to find Mr. VanMeter liable for an ADRV.

6.4. HIWU further contends that Mr. VanMeter cannot establish by a balance of the probabilities that he acted with either No Fault or Negligence, or No Significant Fault or Negligence and thus is not entitled to a reduced sanction under either Rule 3224 or Rule 3225.

6.5 HIWU first argues that Mr. VanMeter is not eligible for relief under either Rule 3224 or Rule 3225 as he cannot establish how the isoxuprine entered Templement's system – a precondition to both Rule 3224 and 3225. In particular, HIWU relies on the testimony of its expert witness, Dr. Papich, and argues Mr. VanMeter cannot establish by a balance of the probabilities that the isoxuprine in Templement's system resulted from the horse being placed in a stall previously occupied by the pony "Bucky" who had a prescription for isoxuprine. HIWU asserts that Mr. VanMeter has not adequately substantiated his theory of contamination and that Dr. Papich's expert evidence demonstrates that the likelihood of contamination causing

471 ng/mL of Isoxuprine in Templement's urine was "remote."

6.6. Second, even if the Arbitrator finds Mr. VanMeter did establish the source of the isoxuprine in Templement's system was the contamination in Bucky's stall, HIWU contends that a No Fault or No Significant Fault finding is not warranted in this case because Mr. VanMeter did not exercise utmost caution in trying to ensure Templement would not be exposed to any Banned Substances. HIWU asserts that Mr. VanMeter had personal responsibility at all times to be knowledgeable and compliant with the ADMC program, including to be aware of Banned Substances, their common pathways, to be vigilant with respect to obvious sources of contamination and to act with utmost diligence to avoid contamination. In particular, HIWU argues that Mr. VanMeter's failure to ask any questions of Mr. Brown as to whether the horse whose stall Templement would be using was taking any Banned Substances precludes such a finding. HIWU points to CAS jurisprudence, including the *Mariano Puerta v. International Tennis Federation*, CAS 2006/A/1025 decision in support of its arguments.

6.7 HIWU similarly contends that, again assuming the Arbitrator finds Mr. VanMeter did establish the source of the isoxuprine in Templement's system was more likely than not contamination, to establish he acted with No Significant Fault Mr. VanMeter is required to demonstrate that he had taken at least all clear and obvious precautions which any human being would have taken in the same set of circumstances," citing the CAS decision in *Plotniy v. ITF*, CAS 2010/A/2245. HIWU argues Mr. VanMeter does not meet that standard in this case. HIWU further asserts that the No Significant Fault or Negligence analysis requires the Arbitrator to consider both objective and subjective elements, with objective elements being at the forefront, citing the decision in *HIWU v. Poole*, JAMS Case 15010000576 (August 8, 2023). HIWU argues that Mr. VanMeter took no precautions, let alone all clear and obvious ones, to avoid contamination or Templement's accidental consumption of isoxsuprine⁵.

6.8 Pursuant to Rules 3221-3223, HIWU requests the following Consequences be imposed upon Mr. VanMeter for his violation of Rule 3212(a), for the Presence of the Banned Substance Isoxsuprine in his Covered Horse Templement on June 7, 2023:

- i. Disqualification of the results of Templement obtained on June 7, 2023, namely his sixth place finish in Race 8;
- ii. Forfeiture and repayment or surrender (as applicable) of all purses and other compensation, prizes, trophies, points and rankings obtained by Templement on June 7, 2023, including the purse of \$650 (Ruel 3221);
- iii. A period of Ineligibility of 60 days from July 6, 2023 for Templement, with

⁵ HIWU's Pre-Hearing brief also advanced two other arguments precluding a finding of No Significant Fault: 1) Mr. VanMeter's deviation from Thistledown policy of requiring horses to be sent to the Receiving Barn and 2) that Mr. VanMeter's theory that the hay, feed, water or other parts of Bucky's stall were contaminated did not fall within the definition of Contaminated Produce in the ADMC Program. Because HIWU did not present any evidence from Ms. Morgan, and testimony was adduced at the Hearing that Mr. VanMeter received permission to ship Templement to Mr. Brown's stall (which was significantly closer to the paddock), the Arbitrator does not consider the alleged deviation. HIWU conceded at the Hearing that the definition of Contaminated Product also includes "other contamination" which could include contaminated hay, wood, etc. in Bucky's stall.

reinstatement of Templement being subject to a Negative Finding from a Re-Entry test being administered by HIWU (Rule 3222);

- iv. A period of Ineligibility of two (2) years for Trainer VanMeter, beginning on July 6, 2023, the date he received notice of his Provisional Suspension and ending on July 5, 2025;
- v. A fine of USD \$25,000.00 and payment of some or all of the adjudication costs; and
- vi. Any other remedies which the Arbitrator considers just and appropriate in the circumstances.

6.9 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 both the fine and the portion of the costs of adjudication allocated to Mr. VanMeter should follow the fault; in other words, given the “up to” and “portion of” language, the amount of the fine and the costs allocated should be commensurate with any corresponding level of fault finding. Also at the evidentiary Hearing, HIWU confirmed it was not seeking any portion of travel expenses in seeking a contribution toward its legal fees.

Mr. VanMeter’s Contentions

6.10 Mr. VanMeter contends that he is a 76 year old disabled Vietnam veteran who, because the receiving barn at Thistledown is far from the paddock, ships his horses to the stalls of his friend, John Brown, when he races them at Thistledown. Mr. VanMeter further argues that because of his recent open heart surgery on the morning of June 7, 2023 he shipped Templement to Mr. Brown’s stalls in Barn 26 instead of the receiving barn.

6.11 Mr. VanMeter also contends that Templement has never been prescribed isoxsuprine, he has never given Templement isoxsuprine.

6.12 Mr. VanMeter argues that the evidence shows the source of the isoxsuprine in Templement’s urine was contamination from Bucky’s stall as a result of Bucky taking prescribed isoxsuprine mixed with his feed almost daily for five years. Mr. VanMeter asserts that he learned that another one of Mr. Brown’s horses tested positive for isoxsuprine after the June 7, 2023 race⁶.

6.13. Mr. VanMeter testified that he did not know Bucky was taking isoxsuprine, and contends that he had no way of knowing Bucky was taking isoxsuprine or that Templement could ingest isoxsuprine by being in Bucky’s stall.

⁶ During the Hearing, Mr. VanMeter both argued that this positive test supported his argument that the source of the isoxsuprine was contamination from Bucky’s stall and that while Mr. Brown may have been negligent, he was not.

6.14. Mr. VanMeter argues that he bears No Fault or Negligence and therefore should not suffer the consequences of a presence based anti-doping violation for the reasons stated in section 6.11 to 6.13.

VII. ANALYSIS

Did Mr. VanMeter commit an Anti-Doping Violation

7.1 In this matter, Mr. VanMeter is charged with an Anti-Doping Violation for the presence of Isoxsuprine, a Banned Substance in Templement's Sample #U100229657 collected on June 7, 2023.

7.2 As noted at 5.5 above, the burden is on HIWU to establish that a violation of the ADMC Program Rules has occurred to the comfortable satisfaction of the Panel.

7.3 Here, the undisputed facts establish that analytical testing on the A Sample collected from Templement on June 7, 2023 bearing code U100229657 (urine) conducted by the ATL Lab resulted in a reported Adverse Analytical Finding ("AAF") for Isoxsuprine, a Banned Substance, at an average estimated concentration of 471 ng/mL. The stipulated and undisputed facts also establish that on July 11, 2023, Trainer VanMeter waived his right to request testing of Templement's B Samples.

7.4 As noted at 5.3 above, Rule 3212(a) sets out the strict liability duty of Mr. VanMeter to ensure no Banned Substances are present in the body of a Covered Horse as follows. Because it is undisputed that Templement's A Sample confirmed the presence of a Banned Substance and Mr. VanMeter waived testing of the B Sample, the Arbitrator finds HIWU has established Mr. VanMeter committed an Anti-Doping Violation pursuant to Rule 3212(b)(1).

Is Mr. VanMeter Entitled to Relief Under Either Rule 3224 or Rule 3225

7.5 Since HIWU met its burden of establishing an Anti-Doping Violation, the Arbitrator considers whether Mr. VanMeter can establish he is entitled to a reduction in sanctions under Rule 3224 or 3225.

7.6 Because HIWU has advanced the argument that Mr. Van Meter cannot satisfy his burden of establishing the source of the Isoxuprine in Templement's urine – a precondition to relief under either Rule 3224 or Rule 3225 – the Arbitrator first analyzes that issue.

Has Mr. VanMeter established the source of the isoxuprine in Templement's urine

7.7 The following evidence was adduced at the Hearing supporting Mr. VanMeter's argument that the source of the Isoxsuprine in Templement's system was contamination from Bucky's stall at Thistledown:

- Mr. VanMeter testified he owned and trained Templement for approximately 2

years before the race at issue, that he did not know what isoxuprine was, had not used isoxuprine and had never given it to Templement;

- Mr. VanMeter acknowledged it was his responsibility to make sure Templement doesn't eat what she is not supposed to, that he had the food and water removed from Bucky's stall before the race, but that Templement has a habit of "cribbing" – nibbling and chewing on the wood in stalls;
- Mr. VanMeter relies on Dr. Shell, his veterinarian, to know what can go into his horses;
- Dr. Shell credibly testified that neither he nor the other veterinarians in his practice had prescribed or given Templement isoxsuprine⁷, that he follows the HISA Rules and knows that isoxsuprine is a Banned Substance that cannot be given to Covered Horses;
- Dr. Shell confirmed that Templement is a "cribber";
- Dr. Shell explained that isoxuprine is not FDA approved but is widely used for navicular in non-Covered Horses;
- Dr. Shell also credibly testified that he and veterinarians in his practice had prescribed isoxuprine to Mr. John Brown's pony Bucky for the last five years for a condition with its feet that would make it lame without medication;
- Dr. Shell testified he provides the tubs of isoxuprine powder which is made by a local compounding company to Mr. Brown, that each tub holds a month's supply of the daily dose of 400mg (1 scoop to be mixed with the horse's food), but that a maintenance dose for Bucky would be ½ scoop (200 mg);
- Mr. Brown testified that Bucky has been taking prescribed isoxsuprine daily for approximately 5 years, that he usually gives him ½ scoop (200mg) every night mixed with his food;
- A study presented at the Proceedings of the 13th International Conference of Racing Analysts and Veterinarians, Cambridge UK titled "Environmental Contamination with Isoxuprine" by C.S. Russell and S. Maynard ("Russell and Maynard Study"), reported that when a horse who had been treated with isoxsuprine for a ten week period continued to test positive for isoxuprine for ten weeks after finishing treatment, further investigation was made of the horse's

⁷ Dr. Shell testified that Templement has not had issues with her feet. Dr. Shell also testified that he personally goes to West Virginia once a week to treat Mr. VanMeter's horses and that either he or one of the other veterinarians in his practice sees Mr. VanMeter's horses when they race at Thistledown. When asked on cross examination if another veterinarian could have prescribed Templement isoxsuprine in West Virginia, Dr. Shell testified that was extremely unlikely as the reason he travels to West Virginia weekly to see Mr. VanMeter's horses and other horses in that area is that there is a nationwide shortage of veterinarians.

immediate environment and samples taken from the paper bedding, scrapings of wood from around the manger, the window and partition wall, cobwebs in the rafters above the manger, the salt lick and the feed manger itself all tested positive for isoxuprine⁸. This study was cited in an article published in the Journal of Analytical Toxicology, Vol. 28, (January/February 2004) by J.M.Bosken et al titled “A GC-MS Method for the Determination of Isoxuprine in Biological Fluids of the Horse Utilizing Electron Impact Ionization” produced at pages 196-201 of HIWU’s Book of Exhibits, as one of the materials reviewed by Dr. Papich in forming his opinions⁹ which stated: “another scenario leading to the detection of isoxsuprine in horse urine could be from environmental contamination.”

7.8 HIWU presented the testimony of its expert Dr. Papich, a licensed veterinarian with more than 30 years of academic experience in veterinary pharmacology, whose areas of expertise include the pharmacology of medications administered to horses and pharmacokinetics. Dr. Papich, who the Arbitrator found to be qualified to provide expert testimony and unbiased, testified that based on his review of the literature and assumptions about Bucky’s treatment regime and the resulting concentration of isoxuprine metabolite in Bucky’s urine, Templement would have had to consume approximately 5 to 6 liters of Bucky’s urine in order to have the 471 ng/mL concentration of isoxuprine found in Sample A, which Dr. Papich considered extremely unlikely. Dr. Papich testified that given the pharmacokinetics and metabolization of isoxsuprine¹⁰, the administration of a customary dose of isoxsuprine 4 or 5 days before June 7, 2023 could also result in a concentration of 471 ng/mL of isoxuprine in Templement’s urine in Sample A.

7.9 However, Dr. Papich acknowledged at the Hearing that he was not asked to consider, and did not consider in reaching his opinion, whether Templement could have ingested isoxuprine powder (as opposed to isoxsuprine metabolite in Bucky’s urine) from surfaces in Bucky’s stall. When asked by the Arbitrator, Dr. Papich testified that Templement would have had to have ingested between 36mg and 44mg of isoxuprine powder from residue in the stall to have the 471 ng/mL concentration of isoxsuprine found in Sample A.

7.10 Considering the totality of the evidence, the Arbitrator finds that Mr. VanMeter established by a balance of the probabilities that the source of the isoxsuprine in Templement’s system was contamination from Bucky’s stall.

Applicability of Rule 3224

⁸ The Arbitrator notes that unlike the horse in the study, who was treated with isoxsuprine for ten weeks, the testimony of Mr. Brown and Dr. Shell established that Bucky had been given isoxuprine almost daily for a five year period.

⁹ Dr. Papich indicated at the Hearing that this was not in fact the paper he had relied upon, but instead had relied on a different paper by the same authors. He acknowledged that the authors of the study which reported the environmental contamination were credible, and testified he had no reason to dispute the findings presented.

¹⁰ Dr. Papich testified that isoxsuprine is highly metabolized in horses, and metabolites are excreted and detectable in urine at concentrations of approximately 7000 ng/mL on the first day, declining to approximately 1000 ng/mL on the third day and 500 ng/mL after the fourth day.

7.11 The Arbitrator thus next considers whether Mr. VanMeter has established that he is entitled to an elimination of the sanction under under Rule 3224 because he bears “No Fault or Negligence” or a reduction of the sanction under Rule 3225 because he bears “No Significant Fault or Negligence.”

7.12 As noted at 5.12 above, ADMC Program Rule 3224 permits the elimination 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)...

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

7.13 In pertinent part, Rule 1020 of the ADMC Program requires the following for a showing of No Fault or Negligence under Rule 3224:

“No Fault or Negligence means 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... 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.”

7.14 Mr. VanMeter, who has been training horses for more than 40 years, and currently trains nine Covered Horses, acknowledged it was his responsibility to know what his Covered Horses are permitted to be given and what they are not permitted to be given. Mr. VanMeter testified that he sent Templement to his friend John Brown’s stall in Barn 26 instead of to the receiving barn at Thistledown on June 7, 2023 because he had recently had open heart surgery and John Brown’s stall was much closer to the paddock. At the Hearing, Mr. VanMeter testified that he did not know Mr. Brown’s pony Bucky was taking isoxsuprine and did not learn that any of Mr. Brown’s horses had tested positive for isoxsuprine until after June 7, 2023. Mr. VanMeter acknowledged on cross-examination that he did not ask Mr. Brown which horse’s stall Templement would be occupying and did not ask Mr. Brown if any of Mr. Brown’s horses were taking Isoxsuprine or any other Banned Substances.

7.15 Mr. VanMeter argues he should be found to have No Fault or Negligence under Rule 3224 for the following reasons:

a) He did not know Bucky was taking isoxsuprine and had no reason to suspect or ask Mr. Brown whether Bucky was taking isoxsuprine;

b) He had no reason to suspect that the stall Templement used on June 7, 2023 was contaminated with Isoxsuprine or that Templement could be exposed to isoxuprine by using Bucky's stall.

7.16. The Arbitrator considers Mr. VanMeter's testimony established he did not know Bucky was taking isoxsuprine. The issue to be determined is whether Mr. VanMeter could reasonably have known or suspected Bucky was taking isoxsuprine and that Templement could have ingested/absorbed isoxuprine by being exposed to environmental contamination in Bucky's stall¹¹.

7.17 Pursuant to Rule 3070(d) of the ADMC Program, the Arbitrator considers case law interpreting the World Anti-Doping Code in analyzing fault and the applicability of Rule 3224. The Arbitrator is keenly aware, as HIWU correctly points out, that the concept of No Fault or Negligence has a well-established meaning in international doping case law, and as discussed in the *Gabriel da Silva Santos v. FINA* case cited by HIWU, CAS 2019/A/6482 (a case involving an athlete who tested positive for a prohibited substance that entered his system from his contact with a pillow or towel contaminated with his brother's Novaderm cream during an overnight stay at his mother's house) "the finding of No Fault or Negligence is to be reserved for the truly exceptional case."

7.18 In reaching its determination that the athlete had No Fault or Negligence, the *Gabriel da Silva Santos* Panel considered what it referred to as the leading CAS case on the subject, *ITF v. Richard Gasquet* CAS 2009/A/1926 and *WADA v. ITF and Richard Gasquet* CAS 2009/A/1930 (together "Gasquet"). The *Gasquet* case held the athlete had no fault or negligence for cocaine that entered his system when he was kissed by a stranger in a restaurant. The *Gasquet* Panel found that the athlete could not have known that the woman he met in an Italian restaurant might be inadvertently responsible for administering cocaine to him if he were to kiss her that night and that "it was impossible for the Player to know, still exercising the utmost caution, that when indeed kissing Pamela, she might inadvertently administer cocaine to him." The *Gasquet* Panel also found that even if he had known she had been consuming cocaine, the Player could not have been in a position to know that it was medically possible to be contaminated with cocaine by kissing someone who had ingested cocaine beforehand, noting that the Parties experts only concluded after some study that it was possible.

7.19 In its analysis, the *Gabriel da Silva Santos* Panel similarly found that "even exercising the utmost caution, it is unlikely Mr. Santos would have discovered that his brother was taking

¹¹ Since as HIWU argues, Mr. VanMeter did not take any particular precautions to avoid contamination, a finding that Mr. VanMeter reasonably should have suspected Bucky was taking isoxsuprine and Templement could ingest or absorb isoxsuprine from contamination in Bucky's stall would preclude a finding of No Fault or Negligence.

an over the counter treatment for a skin condition contained a prohibited substance **or that such prohibited substance could or would transfer from his brother’s topical use of it to a face towel in a bathroom or a pillow or even a piece of dress that they were sharing.**” (Emphasis added). Factors the *Gabriel da Silva Santos* Panel considered in reaching this conclusion included that the athlete had no knowledge of his brother’s use of the cream containing the prohibited substance, he had no reason to make inquiry about his family’s medical treatment¹² and it would not have been obvious to anyone that the athlete could have contacted the prohibited substance from a towel in his bathroom or a pillow shared with his brother.

7.20 HIWU’s argument that when Mr. VanMeter chose to send Templement to his friend’s stall he assumed the risk of contamination and its citation of CAS 2005/C/976&986 *FIFA & WADA* for the proposition that he cannot establish he exercised due care because there is an obligation “not to go to places where there is an increased risk of contamination (even unintentional) with prohibited substances (e.g. passive smoking of marihuana)” is not persuasive. *FIFA & WADA* goes on to say in the same paragraph 73:

“Further case law is likely to continue to identify other situations where there is increased risk of contamination, and thus constantly specify and intensify the athlete’s duty of care. The Panel underlines that the is standard is rigorous, and must be rigorous, especially in the interest of all other competitors in fair competition. However, the Panel reminds the sanctioning bodies that endeavours to defeat doping should not lead to unrealistic and impractical expectations the athletes have to come up with. Thus the Panel cannot exclude that under particular circumstances, certain examples listed in the comment to art.10.5.2 of the WADC as cases of “no significant fault or negligence” may reasonably be judged as cases of “no fault or negligence.”

7.21 In this case, although HIWU criticizes Mr. VanMeter’s failure to ask Mr. Brown if any of his horses were taking isoxsuprine or any Banned Substance, the Arbitrator considers that, as in the *Gabriel da Silva Santos* case and the *Gasquet* case, Mr. VanMeter did not have any reason to suspect Mr. Brown was giving any of his horses isoxsuprine. Even if he had known, as in the *Gabriel da Silva Santos* and *Gasquet* cases, the Arbitrator finds Mr. VanMeter would still not have had any reason to suspect that Templement could come into contact with and have ingested or absorbed isoxsuprine from contamination in Bucky’s stall, which was cleaned before Templement was put into it¹³.

¹² This factor distinguishes the *Gabriel da Silva Santos* case from the *Mariano Puerta v. ITF* case cited by HIWU, CAS 2006/A/1025 in which the athlete knew his wife was taking an odorless, colorless medication in her drinking water and thus failed to exercise utmost caution when he mistakenly drank from her glass, or the *Sara Errani v. ITF* CAS 2017/A/5302 and *National Anti-Doping Organisation Italia v. Sara Errani and ITF* CAS 2017/A/5302 (together “Errani case”) in which the athlete knew her mother, who prepared her food, was taking a cancer medication that she kept in the kitchen and spilled into the athlete’s food.

¹³ During closing arguments, the Parties offered starkly different interpretations – Mr. VanMeter arguing that the isoxsuprine was scattered all over the stall, HIWU arguing that the stall was cleaned and the feed bucket taken out (although it also criticized Mr. VanMeter’s supervision of the cleaning). The Arbitrator need not reconcile these arguments as the Russell and Maynard Study found isoxsuprine remaining in the cobwebs, wood samples

7.22 This is quite different from the other cases relied upon by HIWU. Even HIWU's expert Dr. Papich did not consider, until asked by the Arbitrator, whether Templement could have ingested isoxsuprine powder residue from the stall. Dr. Papich testified that he had not looked at the Russell Maynard Study, which reported the possibility of horses testing positive for isoxsuprine from environmental contamination (including on the walls, wood and manger in the stall), until the day before the Hearing. Significantly, Dr. Papich did not dispute what was reported in the Russell Maynard Study and testified that Templement would only need to ingest 36mg to 44 mg of isoxsuprine from surfaces in the stall to have the 471 ng/mL concentration in Sample A. In these circumstances, finding that Mr. VanMeter, a disabled 76-year-old veteran recovering from recent open heart surgery, failed to exercise utmost caution because he did not appreciate the risk of contamination and ask Mr. Brown questions would seem to hold Mr. VanMeter to the type of "unrealistic and impractical" expectation the *FIFA and WADA* advisory opinion cautioned against¹⁴.

7.23 For all of the foregoing reasons, the Arbitrator is satisfied that this is an exceptional case and, as in *Gabriel da Silva Santos* and *Gasquet*, Mr. VanMeter was not at fault and not negligent in preventing isoxsuprine from entering Templement's system. Accordingly, pursuant to Rule 3224 (a) "the otherwise applicable period of Ineligibility and other Consequences for such Covered Persons shall be eliminated (except for those set out in Rule 3221(a) and Rule 3620)." Rule 3221(a) provides for the disqualification of the Covered Horse's results and Rule 3620 provides for public disclosure of the resolution of an alleged violation.

7.24 Because the Arbitrator has determined that this is a No Fault or Negligence case, the Arbitrator need not take up various other arguments advanced by the Parties with respect to reduced fault or negligence.

VIII. AWARD

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

a. Mr. VanMeter is found to have committed an Anti-Doping Violation of Rule 3212, presence of the Banned Substance Isoxsuprine in the Covered Horse Templement, but bears No Fault or Negligence for the violation and no period of Ineligibility or other Consequences shall be imposed on him;

b. Pursuant to Rule 3224(c) the finding that Mr. VanMeter bears No Fault or Negligence for the Anti-Doping Violation does not affect the Consequences of that violation that apply to the Covered Horse; and

and other stall surfaces taken ten weeks after a course of treatment involving isoxsuprine being mixed with feed in the stall for a ten week period. In this case, the evidence showed isoxsuprine had been mixed with feed in Bucky's stall for years.


¹⁴ This is particularly true considering that the ADMC Program only went into effect May 22, 2023, just two weeks (and a day) before the violation at issue.

c. The suspension of Templement for a period of Ineligibility of 60 days, commencing on July 6, 2023, is confirmed. As the 60 day period has already run, to be reinstated Templement need only be subject to a Negative Finding from a Re-Entry test administered by HIWU (Rule 3222);

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: September 26, 2023



Laura C. Abrahamson, Arbitrator