

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
FITNESS FOR LICENSURE

DONALD LOCKWOOD
Appellant

Case No. SAC 13-0017

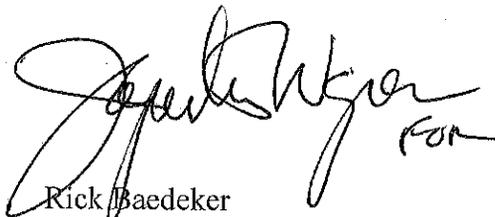
DECISION AFTER REMAND

The attached Proposed Decision After Remand is hereby adopted by the California Horse Racing Board as its Decision After Remand in the above-entitled matter.

The Decision shall become effective on November 20, 2014.

IT IS SO ORDERED ON November 19, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

A handwritten signature in black ink, appearing to read "Rick Baedeker" with a stylized flourish at the end.

Rick Baedeker
Executive Director

1
2 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
3 **OF THE STATE OF CALIFORNIA**

4 CALIFORNIA HORSE RACING BOARD) Docket No.: 11GG216
5 Complainant,)
6 vs.) Hearing Date: December 1, 2014
7) Time:
8 DONALD LOCKWOOD)
9 Appellant.)
10)
11)
12)
13)
14)
15)

16
17 **PROPOSED RE-DECISION ON REMAND**

18 **REMAND REQUIREMENT**

19 This case has been remanded by Los Angeles County Superior Court Judge Joanne B.
20 O'Donnell, Department 86, for the Board to expand on the legal and analytical basis for the
21 rehabilitation criteria that was applied to Petitioner. Judge O'Donnell opined in the Writ of
22 Mandamus filed by Mr. Lockwood, that, "... When the absence of expressed criteria that should be
23 promulgated as required by Business and Professions Code Section 482, the Court requires a more
24 careful, specific, and deliberate discussion of the source of criteria the Hearing Officer relied on to
25 determine whether there has been an abuse of discretion. She further held that the Board must
26 reconsider whether the denial of Licensure to Petitioner Lockwood was justified based on the
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28

Law Office of Richard P. Margarita
P.O. Box 1257, Sloughhouse, CA 95683
(916) 972-0365
Richardmargarita@sbcglobal.net

1 Petitioner's extensive criminal history. Therefore, the Hearing Officer must determine whether the
2 denial of Petitioner's license application was appropriate in light of the apparent invalidity of CHRB
3 Directive 01-09.

4
5 The matter was initially heard on October 15, 2013 by Richard P. Margarita, a Hearing
6 Officer designated under California Horse Racing Board (CHRB) rule 1414 (Appointment of
7 Referee) at the California Horse Racing Board, 1010 Hurley Way, Suite 300, Sacramento,
8 California.

9
10 The Appellant, Donald Lockwood, was present and represented by Carlo Fisco, his attorney.

11
12 The California Horse Racing Board (hereinafter referred to as CHRB), Complainant, was
13 represented by California Deputy Attorney General Kristin M. Daily.

14
15 Also present at the hearing were Appellant's witness, Mr. Greg Fabbri. Additionally,
16 California Horse Racing Board Deputy Chief of Enforcement Dan Dailey testified for the
17 Complaint. The proceedings were recorded by court Reporter was Wendy Frazier, CSR License
18 number 8035.

19
20 This Re-Proposed decision incorporates herein by reference, the January 8, 2014 decision by
21 this Hearing Officer, and the Exhibits set forth in that decision, absent Complainant's Exhibit 8.
22 This Re-Proposed Decision on Remand also includes this Hearing Officer's additional exhibits,
23 Exhibit 3 through Exhibit 7, inclusive, which were not part of the original proposed decision. This
24 decision specifically excludes as the basis for a proposed Re-Decision by the Hearing Officer, any
25 reference to, as well as the facts and circumstances contained in the Administrative Record, the
26 transcript of the October 15, 2013 hearing for Mr. Lockwood, any and all direct and indirect
27 evidence and references which relate or pertains to CHRB Directive 01 - 09, and the statements
28

1 contained within that directive.

2
3 **PROCEDURAL BACKGROUND**
4

5 The issue presented at this fitness hearing, conducted pursuant to California Business and
6 Professions Code Section 19440 and California Code of Regulations, Title 2, section 1481 (b)(11),
7 regarded the fitness of Appellant, Donald Lockwood, to hold a horse transporter license with the
8 California Horse Racing Board (CHRB).

9
10 On August 19, 2013, counsel for Appellant, Carlo Fisco, faxed a letter to the Hearing officer
11 attempting to confirm a hearing date of September 30, 2013, with a copy to Deputy Attorney
12 General Daily (Attached). On September 4, 2013, Mr. Fisco faxed a letter to Ms. Daily requesting
13 that the hearing date for Mr. Lockwood be October 15, 2013 (Attached), which was received by the
14 Hearing Officer on or about September 4, 2013 from Sharyn Jolly, California Horse Racing Board.

15
16 Appellant requested a formal fitness for licensure hearing. Both parties were noticed and the
17 hearing was scheduled for October 15, 2013 at 10:00 a.m. On that day, the hearing was called to
18 order at approximately 10:10 a.m. in accordance with the notice provided to all parties. The CHRB
19 submitted oral testimony through CHRB Supervisory Special Investigator Dan Dailey, as well as
20 documentary evidence relevant to this case. Appellant submitted both oral testimony, including his
21 own testimony, the testimony of his witness, Mr. Greg Fabbri, and documentary evidence. The
22 record was closed, pending submission of written briefs by the parties, and the matter deemed
23 submitted on October 15, 2013.

24
25 **REMAND PROCEDURAL HISTORY**

26 On February 21, 2014, the California Horse Racing Board made the Hearing Officer's
27 (Richard P. Margarita) proposed decision final and effective on February 24, 2014. This was
28

1 ordered on February 21, 2014 by Chuck Winner, Chairman of the California Horse Racing Board,
2 case number SAC-13-0017, in the matter of Fitness for Licensure v. Donald Lockwood, Appellant.
3

4 On or about March 13, 2014, Petitioner Lockwood, by and through his attorney, Carlo Fisco,
5 filed the supplemental addendum to the Petition to the Office of Administrative Law regarding an
6 Underground Regulation. In this supplemental addendum to the Petition regarding the Underground
7 Regulation, Petitioner Lockwood alleged that as a matter of law, use of CHRB Directive 01-09 was
8 illegal under Government Code Section 11425.50(e) with regards to proceedings under the
9 Administrative Procedure Act (APA).
10

11
12 On or about April 30, 2014, the California Horse Racing Board issued a suspension of
13 actions regarding Underground Regulations, which pertained to a January 6, 2009 California Horse
14 Racing Board Directive, number 01-09, License Refusals and Denials, to the California Horse
15 Racing Board Investigative and Licensing Staff.
16

17 On April 30, 2014, Rick Badeker, the Executive Director of the California Horse Racing
18 Board, sent this suspension notice to the California Office Administrative Law, stating that the
19 California Horse Racing Board would not issue, use, enforce, or attempt to enforce the alleged
20 Underground Regulation (CHRB Directive 01-09).
21

22
23 On or about June 17, 2014, Petitioner Lockwood filed an Ex-Parte Application for Stay of
24 CHRB Decision on February 21, 2014 or in the alternative, Temporary Restraining Order and Order
25 to Show Cause Re: Preliminary Injunctions; Memorandum of Points and Authorities in Supporting
26 Declarations of Carlo Fisco, Esq., and Donald Lockwood, pursuant to California Code of Civil
27 Procedure Sections 1094.5(g), 526, and 527. This was filed in Department 86 of the Los Angeles
28

1 County Superior Court, Central District, case number BS147701, before the Honorable Los Angeles
2 Superior Court Judge Joanne O'Donnell.

3 Socially or

4 On or about June 18, 2014, the California Horse Racing Board, by and through Deputy
5 Attorney General Kristin M. Daily, filed an opposition Ex-Parte Application for Stay of the CHRB
6 Decision denying Petitioner's transporter license in Los Angeles County Superior Court, case
7 number BS147701, in Department 86, before the Honorable Joanne B. O'Donnell.
8

9
10 On June 19, 2014, Deputy Attorney General Daily filed a Supplemental Opposition to the
11 Ex-Parte Application for a Stay of the CHRB Decision denying Petitioner's transporter license in
12 Los Angeles County Superior Court, docket number BS147701.

13
14 On or about September 25, 2014, Petitioner, by and through his attorney, Carlo Fisco, filed a
15 Petitioner's Reply Brief to Opposition to the Motion for Judgment on Petition for Writ of
16 Administrative Mandamus in Los Angeles County Superior Court, docket number BS147701,
17 before the Honorable Los Angeles County Superior Court Judge Joanne O'Donnell in Department
18 86, for a hearing scheduled for October 15, 2014.
19

20
21 In mid-late October 2014, this case was remanded by the Honorable Los Angeles County
22 Superior Court Judge Joanne O'Donnell in Department 86, for a supplemental re-proposed decision
23 addressing the source of criteria to determine Petitioner's rehabilitation or lack of rehabilitation and
24 whether the denial of the Petitioner's license application was appropriate in light of the invalidity of
25 CHRB Directive 01-09.
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1 On or about November 4, 2014, this Hearing Officer sent a brief letter to both Petitioner's
2 attorney, Carlo Fisco, and Respondent's attorney, California Deputy Attorney General Kristin M.
3 Daily, allowing counsel for both parties the opportunity to submit supplemental briefs to this
4 Hearing Officer. There was no mandate that such briefs be filed by either party. The filing date was
5 scheduled for 5:00 p.m. on November 11, 2014, via facsimile (Exhibit 3).
6

7
8 On November 5, 2014, this Hearing Officer received an objection to the briefing after
9 remand from Petitioner's attorney, Carlo Fisco (Exhibit 4).
10

11 During the afternoon of November 5, 2014, this Hearing Officer issued a letter to both
12 Petitioner's attorney, Mr. Carlo Fisco, and Respondent's attorney, Ms. Kristin M. Daily, California
13 Deputy Attorney General, regarding Mr. Fisco's November 5, 2014 demand to rescind the request
14 for the ability to file supplemental briefs on the matter. In this letter, Mr. Fisco's demand to the
15 Hearing Officer was rejected. As stated in the November 5, 2014 letter by the Hearing Officer, it
16 stated specifically, "The parties may choose to file additional briefs, if they so desire." They were
17 due to the Hearing Officer at 5:00 p.m. on Tuesday, November 11, 2014 via facsimile. Once they
18 were received, the Hearing Officer would exchange the briefs with the parties (Exhibit 5).
19

20
21 On November 10, 2014, Respondent, by and through their attorney, California Deputy
22 Attorney General Kristin Daily, filed a Brief Upon Remand with this Hearing Officer (Exhibit 6).
23

24 At approximately 12:41 p.m. on November 10, 2014, Petitioner, by and through his attorney,
25 Carlo Fisco, filed their Brief on Remand with this Hearing Officer (Exhibit 7).
26

27 On November 11, 2014, this Hearing Officer emailed each parties' briefs to both parties.
28

1 **LIST OF EXHIBITS**

2

3 **CALIFORNIA HORSE RACING BOARD EXHIBITS:**

4 CHR B Exhibit # 1: Report of Investigation.

5 CHR B Exhibit # 2: Complaint, Case No. 11GG216

6 CHR B Exhibit # 3: Official Ruling, Ruling No. 43

7 CHR B Exhibit # 4: Application for License

8 CHR B Exhibit # 5: Sacramento Sheriff's Department, Report No. SSD 2013-0125425

9 CHR B Exhibit # 6: Findings of Fact

10 CHR B Exhibit # 7: Notice of Refusal of License

11 CHR B Exhibit # 8: CHR B Executive Directive 01-09 (Removed pursuant to Remand)

12 CHR B Exhibit # 9: LA County Booking and Property Record

13 CHR B Exhibit # 10: Application to set aside Judgment

14 CHR B Exhibit # 11: Licensee/Rulings Inquiry

15 CHR B Exhibit # 12: Fax from Carlo Fisco to DAG Kristin Daily dated July 22, 2013

16

17 **The following Exhibits were submitted by Complainant as Attachments to her closing brief:**

18 CHR B Exhibit # 13: Fax from Carlo Fisco to DAG Kristin Daily dated July 23, 201

19 CHR B Exhibit # 14: Letter from DAG Kristin Daily to Carlo Fisco dated July 24, 2013

20 CHR B Exhibit # 15: Fax from Carlo Fisco to DAG Kristin Daily dated August 2, 2103

21 CHR B Exhibit # 16: Letter from DAG Kristin Daily to Carlo Fisco dated August 6, 2013

22 CHR B Exhibit # 17: Fax from Carlo Fisco to DAG Kristin Daily dated August 7, 2103

23 CHR B Exhibit # 18: Letter from DAG Kristin Daily to Carlo Fisco dated August 9, 2013

24 CHR B Exhibit # 19: Letter from DAG Kristin Daily to Carlo Fisco dated August 12, 2013

25 CHR B Exhibit # 20: Fax from Carlo Fisco to DAG Kristin Daily dated August 19, 2103 and Letter
26 from Carlo Fisco to Hearing Officer Richard P. Margarita and copy to DAG
27 Kristin Daily dated August 19, 2103

1 CHRB Exhibit # 21: Fax from Carlo Fisco to DAG Kristin Daily dated August 29, 2103

2 CHRB Exhibit # 22: Letter from DAG Kristin Daily to Carlo Fisco dated September 6, 2013

3
4 **APPELLANT'S EXHIBITS:**

5 Appellant Exhibit A: Notice of Refusal of License

6 Appellant Exhibit B: Criminal History Information

7 Appellant Exhibit C: Application for Renewal or Replacement License

8 Appellant Exhibit D: Request Information Provided, Request ID:
9 8185001

10 Appellant Exhibit E: Final Judgment, Sentence of Imprisonment

11 Appellant Exhibit F: Letter dated June 20, 2013, Re: 290 Registration Requirements

12 Appellant Exhibit G: California Penal Code Section 290.002

13 Appellant Exhibit H: Letter to Sharyn Jolly from Carlo Fisco dated June 6, 2013

14 Appellant Exhibit I: Letter to Donald Lockwood from Sharyn Jolly dated June 12, 2013

15 Appellant Exhibit J: Notice of Hearing

16 Appellant Exhibit K: Recommendation from William Lux

17 Appellant Exhibit L: Declaration of Jill Hallin

18 Appellant Exhibit M: Recommendation from Ms. Najma Mashadi

19 Appellant Exhibit N: Declaration of Carl Grether

20 Appellant Exhibit O: Letter to Authorized Parties from Richard Clark, MFT, dated September 19,
21 2013

22 Appellant Exhibit P: Recommendation from Mike Chambers

23 Appellant Exhibit Q: Progress Report/Domestic Violence/Batterer's Program

24 Appellant Exhibit R: Sex/Kidnapping Offender, Relieved of Duty to Register

1 **The following Exhibits were submitted by Appellant's Counsel as Attachments to his closing**
2 **brief:**

3 Appellant Exhibit S: Email from CFisco to Sharyn Jolly, CHRB, dated August 27, 2013

4 Appellant Exhibit T: Fax by Carlo Fisco to DAG Kristin Daily dated October 2, 2013

5
6 **HEARING OFFICER'S EXHIBITS:**

7 Hearing Officer Exhibit 1: Fax from Carlo Fisco to DAG Kristin Daily and Hearing Officer
8 Richard P. Margarita, dated August 19, 2013.

9 Hearing Officer Exhibit 2: Email from CHRB employee Sharyn Jolly to Hearing Officer Richard
10 P. Margarita, dated September 5, 2013 and fax from Carlo Fisco to
11 DAG Kristin Daily, dated September 4, 2013.

12 Hearing Officer Exhibit 3: November 4, 2014 letter from Hearing Officer Margarita to
13 Carlo Fisco, attorney for Respondent Lockwood and California
14 Deputy Attorney General Kristin M. Daily, attorney for Petitioner,
15 allowing counsel for both parties the opportunity to submit
16 supplemental briefs to this Hearing Officer.

17 Hearing Officer Exhibit 4: November 5, 2014 letter form Carlo Fisco to Richard P. Margarita,
18 Hearing Officer.

19 Hearing Officer Exhibit 5: November 5, 2014 letter from Margarita to Carlo Fisco, attorney for
20 Respondent Lockwood and California Deputy Attorney General
21 Kristin M. Daily, attorney for Petitioner.

22 Hearing Officer Exhibit 6: Brief Upon Remand filed on November 10, 2014 by Respondent, by
23 and through their attorney, California Deputy Attorney General
24 Kristin Daily.

25 Hearing Officer Exhibit 7: Brief on Remand filed on November 10, 2014 by Petitioner, by and
26 through his attorney, Carlo Fisco.

27 **FACTUAL FINDINGS**

28 **I.**

Appellant Donald Lockwood is a horse transporter.

II.

Appellant's California Horse Racing Board Horse Transporter license number is 292776.

1 III.

2 In 1975, Appellant was arrested in Kent, Washington for possession of amphetamines and
3 possession of marijuana.

4
5 IV.

6 In 1980, Appellant was arrested in Yakima, Washington for simple assault.

7
8 V.

9 In 1983, Appellant was arrested in Yakima, Washington for simple assault and two counts of
10 first degree criminal trespass.

11 VI.

12 In 1984, Appellant was arrested in Yakima, Washington for taking a motor vehicle without
13 the permission of the owner.

14 VII.

15 On or about August 28, 1992, Appellant was convicted of sexual assault in the first degree,
16 and two counts of burglary in the second degree, and sentenced to eight years in the Kentucky State
17 Prison system. He served five years and eight months in the Kentucky State Prison system.

18
19 VIII.

20 In 1998, Appellant was arrested in Tukwila, Washington for violation of a Protection Order
21 and violation of a No Contact Order.

22
23 IX.

24 In 1998, Appellant was arrested in Tukwila, Washington for violation of a Protection Order.

25
26 X.

27 In 2000, Appellant was arrested in Seattle, Washington for violation of third degree assault.

1
2 XI.

3 On or about July 21, 2010, Appellant was initially arrested for violation of California Penal
4 Code Section 273.5, as a felony, for inflicting corporal punishment on a spouse or co-habitant.
5 Appellant was booked into the Los Angeles County Sheriff's Department Jail, and bail was set at
6 \$50,000. (Exhibit 9). The victim was Appellant's girlfriend. Due in part to the fact that the Victim
7 did not desire prosecution of Appellant the Los Angeles County District Attorney's Office declined
8 to file charges against Appellant. Due to the fact that no charges were filed against the Appellant, he
9 received a letter from the City of Arcadia Police Department dated August 11, 2010. This letter
10 stated that, "Pursuant to California Penal Code Section 849.5, in any case in which a person is
11 arrested and released and no accusatory pleading is filed charging him/her with an offense, any
12 record of arrest of the person shall include a record of release. Thereafter the arrest shall not be
13 deemed an arrest but a detention only."
14

15 XII.

16 In 2011, Appellant was arrested in Scottsdale, Arizona for violation of third degree assault.
17 On or about September 19, 2012, Appellant had successfully completed twenty six Domestic
18 Violence/Batterer's Program sessions in the through Court Ordered Classes, 27116 Rio Prado Drive,
19 Valencia, California, for the City of Scottsdale, Arizona conviction.
20

21 XIII.

22 On or about January 5, 2012, Appellant was notified of a Complaint filed against him by the
23 California Horse Racing Board for violation of CHRB Rule 1489(a)(b)(f)(g)(h) (Grounds for Denial
24 or Refusal of License), CHRB Rule 1900 (Grounds for Suspension or Revocation) and CHRB Rule
25 1902 (Conduct Detrimental to Horse Racing). The Appellant was noticed to appear at Golden Gate
26 Fields before the Board of Stewards on March 1, 2012 at 10:00 a.m. for a hearing on the Complaint.
27
28

1 XIV.

2 On or about March 1, 2012, Appellant failed to appear at the California Horse Racing
3 Board's Board of Stewards's hearing at Golden Gate Fields. As a result of his failure to appear and
4 respond to the charges set forth in the Complaint, his California Horse Transporter license was
5 suspended on or about March 2, 2012.

6
7 APPLICABLE LAWS AND REGULATIONS

8
9 4 C.C.R. Section 1484 (Evidence of Unfitness for License), states:

10 If any applicant for a license or any licensee is under suspension, set down, ruled
11 off, excluded from the inclosure, or otherwise barred from any racing occupation
12 or activity requiring a license, it is prima facie evidence that he or she is unfit to be
13 granted a license or unfit to hold a license or participate in racing in this State as a
14 licensee during the term of any suspension or exclusion from racing imposed by
15 any competent racing jurisdiction.

16
17
18 4 C.C.R. Section 1489 (Grounds for Denial or Refusal License) states:

19 The Board, in addition to any other valid reason, may refuse to issue a license or
20 deny a license to any person:

21
22 (a) Who has been convicted of a crime punishable by imprisonment in a California
23 state prison or a federal prison, or who has been convicted of a crime involving moral
24 turpitude.

25
26 (b) Who has been convicted of a crime in another jurisdiction which if committed in
27 this state would be a felony.

1
2 (c) Who has made any material misrepresentation or false statement to the Board or
3 its agents in his or her application for license or otherwise, or who fails to answer any
4 material question on an application for a license.
5

6 (d) Who is unqualified to engage in the activities for which a license is required.
7

8
9 (e) Who fails to disclose the true ownership or interest in any or all horses as required
10 by any application.
11

12 (f) Who is subject to exclusion or ejection from the racing inclosure or is within the
13 classes of persons prohibited from participating in pari-mutuel wagering.
14

15 (g) Who has committed an act involving moral turpitude, or intemperate acts which
16 have exposed others to danger, or acts in connection with horse racing and/or a
17 legalized gaming business which were fraudulent or in violation of a trust or duty.
18

19
20 (h) Who has unlawfully engaged in or who has been convicted of possession, use or
21 sale of any narcotic, dangerous drug, or marijuana.
22

23 (i) Who is not permitted by any law to engage in the occupation for which the license
24 is sought.
25

26 (j) Who has violated, or who aids, abets or conspires with any person to violate any
27 provision of the rules or the Horse Racing Law.
28

1
2 California Business and Professions Code Section 475, entitled, "Denial of licenses;
3 grounds," states:

4 (a) Notwithstanding any other provisions of this code, the provisions of this division
5 shall govern the denial of licenses on the grounds of:
6

7
8 (1) Knowingly making a false statement of material fact, or knowingly omitting to
9 state a material fact, in an application for a license.

10
11 (2) Conviction of a crime.

12
13 (3) Commission of any act involving dishonesty, fraud or deceit with the intent to
14 substantially benefit himself or another, or substantially injure another.

15
16 (4) Commission of any act which, if done by a licentiate of the business or profession
17 in question, would be grounds for suspension or revocation of license.
18

19
20 (b) Notwithstanding any other provisions of this code, the provisions of this division
21 shall govern the suspension and revocation of licenses on grounds specified in
22 paragraphs (1) and (2) of subdivision (a).

23
24 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of
25 good moral character or any similar ground relating to an applicant's character,
26 reputation, personality, or habits.
27
28

1 California Business and Professions Code Section 480, entitled, "Acts Disqualifying
2 Applicant," states:

3 (a) A board may deny a license regulated by this code on the grounds that the
4 applicant has one of the following:

5
6 (1) Been convicted of a crime. A conviction within the meaning of this section means
7 a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
8 action that a board is permitted to take following the establishment of a conviction
9 may be taken when the time for appeal has elapsed, or the judgment of conviction
10 has been affirmed on appeal, or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13
14
15 (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
16 benefit himself or herself or another, or substantially injure another.

17
18 (3)(A) Done any act that if done by a licentiate of the business or profession in
19 question, would be grounds for suspension or revocation of license.

20
21 (B) The board may deny a license pursuant to this subdivision only if the crime or act
22 is substantially related to the qualifications, functions, or duties of the business or
23 profession for which application is made.

24
25
26 (b) Notwithstanding any other provision of this code, no person shall be denied a
27 license solely on the basis that he or she has been convicted of a felony if he or she
28

1 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
2 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has
3 been convicted of a misdemeanor if he or she has met all applicable requirements of
4 the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
5 person when considering the denial of a license under subdivision (a) of Section 482.

6 (c) A board may deny a license regulated by this code on the ground that the
7 applicant knowingly made a false statement of fact required to be revealed in the
8 application for the license.

9
10 California Business and Professions Code Section 487, entitled, "Hearing," states:

11
12 If a hearing is requested by the applicant, the board shall conduct such hearing within
13 90 days from the date the hearing is requested unless the applicant shall request or
14 agree in writing to a postponement or continuance of the hearing. Notwithstanding
15 the above, the Office of Administrative Hearings may order, or on a showing of good
16 cause, grant a request for, up to 45 additional days within which to conduct a hearing,
17 except in cases involving alleged examination or licensing fraud, in which cases the
18 period may be up to 180 days. In no case shall more than two such orders be made or
19 requests be granted.

20
21
22 California Business and Professions Code Section 490, entitled, "Conviction of crime;
23 authority to discipline; relationship of crime to licensed activity; application of section," states:

24
25 (a) In addition to any other action that a board is permitted to take against a licensee,
26 a board may suspend or revoke a license on the ground that the licensee has been
27

1 convicted of a crime, if the crime is substantially related to the qualifications,
2 functions, or duties of the business or profession for which the license was issued.

3
4 (b) Notwithstanding any other provision of law, a board may exercise any authority
5 to discipline a licensee for conviction of a crime that is independent of the authority
6 granted under subdivision (a) only if the crime is substantially related to the
7 qualifications, functions, or duties of the business or profession for which the
8 licensee's license was issued.

9
10
11 (c) A conviction within the meaning of this section means a plea or verdict of guilty
12 or a conviction following a plea of nolo contendere. An action that a board is
13 permitted to take following the establishment of a conviction may be taken when the
14 time for appeal has elapsed, or the judgment of conviction has been affirmed on
15 appeal, or when an order granting probation is made suspending the imposition of
16 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

17
18 (d) The Legislature hereby finds and declares that the application of this section has
19 been made unclear by the holding in Petropoulos v. Department of Real Estate
20 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
21 number of statutes and regulations in question, resulting in potential harm to the
22 consumers of California from licensees who have been convicted of crimes.
23 Therefore, the Legislature finds and declares that this section establishes an
24 independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Chapter 33 of the Statutes of 2008 do not
26 constitute a change to, but rather are declaratory of, existing law.
27
28

1
2 Government Code Section 11503, entitled, "Revocation, suspension, limitation, or
3 condition of a right, authority, license or privilege; accusation or District Statement of
4 Reduction in Force; contents; verification; hearing," states:

5
6 (a) A hearing to determine whether a right, authority, license, or privilege should be
7 revoked, suspended, limited, or conditioned shall be initiated by filing an accusation
8 or District Statement of Reduction in Force. The accusation or District Statement of
9 Reduction in Force shall be a written statement of charges that shall set forth in
10 ordinary and concise language the acts or omissions with which the respondent is
11 charged, to the end that the respondent will be able to prepare his or her defense. It
12 shall specify the statutes and rules that the respondent is alleged to have violated, but
13 shall not consist merely of charges phrased in the language of those statutes and
14 rules. The accusation or District Statement of Reduction in Force shall be verified
15 unless made by a public officer acting in his or her official capacity or by an
16 employee of the agency before which the proceeding is to be held. The verification
17 may be on information and belief.
18

19
20 Government Code Section 11504, entitled, "Grant, issuance, or renewal of right, authority,
21 license, or privilege; statement of issues; contents; verification; service," states:

22
23 A hearing to determine whether a right, authority, license, or privilege should be
24 granted, issued, or renewed shall be initiated by filing a statement of issues. The
25 statement of issues shall be a written statement specifying the statutes and rules with
26 which the respondent must show compliance by producing proof at the hearing and,
27 in addition, any particular matters that have come to the attention of the initiating
28

1 party and that would authorize a denial of the agency action sought. The statement of
2 issues shall be verified unless made by a public officer acting in his or her official
3 capacity or by an employee of the agency before which the proceeding is to be held.
4 The verification may be on information and belief. The statement of issues shall be
5 served in the same manner as an accusation, except that, if the hearing is held at the
6 request of the respondent, Sections 11505 and 11506 shall not apply and the
7 statement of issues together with the notice of hearing shall be delivered or mailed to
8 the parties as provided in Section 11509. Unless a statement to respondent is served
9 pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and
10 the name and address of the person to whom requests permitted by Section
11 11505 may be made, shall be served with the statement of issues.
12

13
14 Government Code Section 11507, entitled, "Amended or supplemental
15 accusation or District Statement of Reduction in Force before submission of case," states:

16 At any time before the matter is submitted for decision, the agency may file or permit
17 the filing of, an amended or supplemental accusation or District Statement of
18 Reduction in Force. All parties shall be notified of the filing. If the amended or
19 supplemental accusation or District Statement of Reduction in Force presents new
20 charges the agency shall afford the respondent a reasonable opportunity to prepare
21 his or her defense thereto, but he or she shall not be entitled to file a further pleading
22 unless the agency in its discretion so orders. Any new charges shall be deemed
23 controverted, and any objections to the amended or supplemental accusation or
24 District Statement of Reduction in Force may be made orally and shall be noted in
25 the record.
26
27
28

1 Government Code Section 11513, entitled, "Evidence; examination of witnesses,"
2 states:

3 (a) Oral evidence shall be taken only on oath or affirmation.
4

5 (b) Each party shall have these rights: to call and examine witnesses, to introduce
6 exhibits; to cross-examine opposing witnesses on any matter relevant to the issues
7 even though that matter was not covered in the direct examination; to impeach any
8 witness regardless of which party first called him or her to testify; and to rebut the
9 evidence against him or her. If respondent does not testify in his or her own behalf he
10 or she may be called and examined as if under cross-examination.
11

12 (c) The hearing need not be conducted according to technical rules relating to
13 evidence and witnesses, except as hereinafter provided. Any relevant evidence shall
14 be admitted if it is the sort of evidence on which responsible persons are accustomed
15 to rely in the conduct of serious affairs, regardless of the existence of any common
16 law or statutory rule which might make improper the admission of the evidence over
17 objection in civil actions.
18

19 (d) Hearsay evidence may be used for the purpose of supplementing or explaining
20 other evidence but over timely objection shall not be sufficient in itself to support a
21 finding unless it would be admissible over objection in civil actions. An objection is
22 timely if made before submission of the case or on reconsideration.
23

24 (e) The rules of privilege shall be effective to the extent that they are otherwise
25 required by statute to be recognized at the hearing.
26
27
28

1
2 (f) The presiding officer has discretion to exclude evidence if its probative value is
3 substantially outweighed by the probability that its admission will necessitate undue
4 consumption of time.
5

6 **DISCUSSION OF ISSUES**

7
8 **I. APPLICABLE BURDEN OF PROOF**

9 The California Horse Racing Board (CHRB) has the burden of proof and must
10 establish the propriety of the Appellant's licensure denial by a preponderance of evidence
11 standard.¹
12

13 The issue before this Board is whether Appellant Donald Lockwood is fit for
14 licensure as a Horse Transporter in the State of California based on numerous factors,
15 including, but not limited to, the fact that he has a prior sexual assault conviction in the
16 State of Kentucky, and engaged in multiple acts involving crimes of moral turpitude.
17 Furthermore, the additional issue is whether the Appellant has been rehabilitated, thereby
18 justifying the issuance of a license as a Horse Transporter from the California Horse
19 Racing Board.
20

21 **II. JURISDICTION**

22 Counsel for Appellant asserted in the October 15, 2013 hearing and his closing brief
23 that pursuant to Business and Professions Code Section 487, the October 15, 2013 hearing
24 date set by the CHRB breached the statutory mandate of Business and Professions Code
25 section 487. Counsel for Appellant claims that Appellant requested a hearing on June 6,
26

27 ¹ Reference is made to Evidence Code Section 115 and Lake v. Reed (1997) 16 Cal. 4th 448, 455.
28

1 2013 (Exhibit H). Pursuant to Business and Professions Code Section 487, ninety days
2 from June 6, 2013 would be September 4, 2013.

3
4 On July 22, 2013, Mr. Fisco sent a fax to Ms. Daily, requesting discovery and a
5 status of a hearing date and hearing officer appointment. He did not provide any
6 availability dates to Ms. Daily (Exhibit 12). This communication was forty six (46) days
7 after Appellant's June 6, 2013 request for a hearing.

8
9 On July 23, 2013, Mr. Fisco, Appellant's counsel, advised Ms. Daily, via fax, that
10 his client, Appellant, was unavailable for a hearing between September 6, - 25, 2013. Mr.
11 Fisco then stated in part in his fax, "...I must ask that CHRB immediately appoint the
12 Hearing Officer, if it has not already been done. In that way, we can discuss the matter with
13 him so we might set aside a single day in August to conduct this hearing..." (Exhibit 13).
14 This communication was forty seven (47) days after Appellant's June 6, 2013 request for a
15 hearing.

16
17 On August 7, 2013, Mr. Fisco, on behalf of Appellant, sent a letter to Ms. Daily, via
18 fax, asking for availability of hearing dates in the months of August, September, and
19 October, 2013 (Exhibit 17). This request was made by Mr. Fisco sixty one (61) days from
20 the date of the initial request for a hearing.

21
22 On August 19, 2013, Mr. Fisco sent a fax to Deputy Attorney General Kristin Daily
23 and this Hearing Officer which in part stated, "Please be advised that my client would like
24 to proceed to hearing on September 30, 2013." (Hearing Officer's Exhibit 1)(Attached).
25 The September 30, 2013 date sought by Mr. Fisco would have been 116 days from the date
26 of Appellant's request for a hearing. Appellant, by and through his counsel, agreed in
27 writing to a continuance past the ninety (90) day period set forth in Business and
28

1 Professions Code section 487, seventy three (73) days from Appellant's June 6, 2013
2 request for a hearing. The Complainant's brief contains Exhibits 12 – 22. Most of these
3 Exhibits pertain to setting a hearing date, and for the Appellant to receive discovery. In
4 some of these Exhibits, Ms. Daily explained to Mr. Fisco that she would not be available to
5 conduct the Appellant's hearing until August 27 – 29, 2013, and contrary to Mr. Fisco's
6 suggestion, would not conduct a hearing for Appellant on a Saturday or Sunday.

7
8 On August 27, 2013, Ms. Sharyn Jolly, CHRB, wrote an email to Mr. Fisco,
9 advising him that a proposed hearing date of September 30, 2013 (which referenced Mr.
10 Fisco's August 19, 2013 letter to this Hearing Officer proposing a hearing date of
11 September 30, 2013) was now not available (as of August 27, 2013) because the September
12 30, 2013 was available for Mr. Margarita (this Hearing Officer) back at the beginning of
13 August, but became unavailable. (Exhibit S). Mr. Fisco replied on August 27, 2013 that
14 Ms. Jolly's representation was inaccurate. He stated in part, "...As of August 12, 2013
15 (which is the date Ms. Daily wrote to me to offer Sept. 30th date), that date was still
16 available. I responded on August 19th. There was never any mention before August 19th
17 that the Sept 30th date had become unavailable. Accordingly, I want to continue my
18 objection to this never ending delay and ask that the CHRB appoint another hearing officer
19 to the matter if Mr. Margarita and Ms. Daily cannot proceed as scheduled. My
20 understanding is that Mr. Smith is available. Thank you. (Exhibit S).

21
22 On September 4, 2013, Mr. Fisco sent a fax to Deputy Attorney General Kristin
23 Daily that stated in part the following:

24 Ms. Daily, Please set the hearing for October 15, 2013. None of the dates you
25 listed in your letter of August 12, 2013 were available. I found that a bit
26 puzzling. I have not been in contact with the Hearing Officer although
27 perhaps a status conference somewhere down the road may be helpful. If you
28

1 haven't already, please send me whatever documents you intend to introduce.
2 You previously told me that your only witness for your case-in-chief would
3 be Dan Dailey. If that has changed, please let me know. Thank you."
4

5 On September 5, 2013, this Hearing Officer received from CHRB employee
6 Sharyn Jolly, an email communication with the attached fax from Mr. Fisco to Ms.
7 Daily, and an email message from Ms. Jolly seeking to confirm an October 15, 2013
8 hearing date. (Hearing Officer's Exhibit 2)(Attached). On the 90th day from the date
9 of Appellant's initial request for a hearing, Appellant, by and through his counsel,
10 Mr. Fisco, specifically wrote to Ms. Daily seeking a October 15, 2013 hearing date.
11 That hearing date was in fact completed on October 15, 2013.
12

13 Appellant, by and through his counsel, Mr. Fisco, waived any time and
14 jurisdictional issues. The hearing was conducted in a timely manner by Mr. Fisco's
15 own requests, and agreements in writing. Furthermore, pursuant to Business and
16 Professions Code section 487, the Hearing Officer has the authority to order a
17 hearing forty five (45) days past the ninety day period. An additional forty five (45)
18 days from September 4, 2013 would be October 19, 2013. The hearing was heard
19 forty one (41) days from September 4, 2013, which is within the authority vested in
20 the Hearing Officer. Therefore, Appellant's hearing was timely and there is no
21 jurisdictional defect.
22

23 III. NOTICE OF REFUSAL OF LICENSE – AMENDMENT OF CHARGES

24

25 Counsel for Appellant asserts in his initial closing brief that in the Notice of Refusal
26 (Exhibit A), the only block/box that is checked relative to charges against the Appellant is
27 the one that states, "You have been convicted of a crime punishable by imprisonment in the
28

1 State or federal prison, or have been convicted of a crime involving moral turpitude.”
2 Counsel argues that any reference to additional charges, such as the other acts, conduct,
3 and crimes involving moral turpitude, should be precluded, because that particular
4 block/box was not marked by Supervisor Dan Dailey or a subordinate (Exhibit A).
5 Counsel further alleges that pursuant to Government Code Section 11504, Complainant is
6 precluded from including Appellant’s other acts, conduct, and crimes involving moral
7 turpitude, as they are prejudicial to Appellant. Pursuant to Government Code Section
8 11507, Complainant had the right to amend or supplement the accusations prior to the time
9 that the matter was submitted for decision. There was no surprise or due process denial to
10 Appellant when Complainant included as part of their case-in-chief acts, conduct, crimes,
11 and convictions by Appellant, not just his convictions of crimes involving moral turpitude
12 or crimes in which he was imprisoned in the State prison (Kentucky). These acts, conduct,
13 crimes, and convictions involving moral turpitude had all been previously revealed to
14 Complainant by Appellant in his Application for License dated June 5, 2013 (Exhibit 4).
15 Additionally, his own counsel elicited through Appellant’s own testimony such acts,
16 conduct, crimes, and convictions involving moral turpitude, as well as their submitted
17 Exhibits (Exhibits B, C, D, E, F, G, K, L, M, N, O, Q, and R).

18
19 Under Government Code Section 11516, the Complainant could have amended the
20 charges and allegations after submission of the case for decision. That was not the case, as
21 the amendment of the charges occurred during the actual hearing, and Appellant had more
22 than sufficient notice of such allegations, as he included them in his June 5, 2013 license
23 application (Exhibit 4) to the CHRB.

24
25 Therefore, the Appellant’s acts, conduct, crimes, and convictions involving moral
26 turpitude were admissible in the October 15, 2013 hearing.

1 **IV.OBJECTION TO ADMISSIBILITY OF EXHIBITS CONSTITUTING**
2 **HEARSAY BY BOTH COMPLAINANT AND APPELLANT**

3 Both Counsel have asserted in their briefs their opposition to certain Exhibits
4 submitted by the opposing party. Pursuant to Government Code section 11513 (d),
5 hearsay evidence may be used for the purpose of supplementing or explaining other evidence
6 but over timely objection shall not be sufficient in itself to support a finding unless it would
7 be admissible over objection in civil actions. An objection is timely if made before
8 submission of the case or on reconsideration. Under Government Code Section 11513 (c),
9 the hearing need not be conducted according to technical rules relating to evidence and
10 witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the
11 sort of evidence on which responsible persons are accustomed to rely in the conduct of
12 serious affairs, regardless of the existence of any common law or statutory rule which might
13 make improper the admission of the evidence over objection in civil actions. Under
14 Government Code section 11513 (f), the presiding officer has discretion to exclude evidence
15 if its probative value is substantially outweighed by the probability that its admission will
16 necessitate undue consumption of time.
17

18
19 The Exhibits by both parties, although hearsay, are hereby admitted. They were all
20 probative of material facts and clearly used for the purpose of supplementing or explaining
21 other testimonial evidence. Therefore, the objections by both parties as to the admissibility
22 of their respective exhibits is denied, and all submitted exhibits both at the October 15, 2013
23 hearing and through their closing briefs have been admitted accordingly.
24

25 **V. RECIPROCITY IS INAPPLICABLE TO APPELLANT**

26
27 Counsel for Appellant asserts in his closing brief that reciprocity is inapplicable to
28 this Appellant relative to the prior State of Washington Horse Racing Commission ruling

1 on or about October 29, 1997. Counsel is correct. That ruling in 1997 by the State of
2 Washington against Appellant is inapplicable as to reciprocity. But, the underlying conduct
3 committed by Appellant in the States of Washington, Kentucky, Arizona, and California
4 from 1975 through 2011 is relevant and admissible against Appellant in the overall
5 findings and conclusions for this hearing.
6

7
8 **VI. APPELLANT'S CONDUCT SINCE 1975 REFLECTS MULTIPLE ACTS,**
9 **CRIMES, AND CONVICTIONS INVOLVING MORAL TURPITUDE,**
10 **EVIDENCING HIS LACK OF REHABILITATION AND THE BOARD'S**
11 **JUSTIFICATION IN DENYING APPELLANT LOCKWOOD A HORSE**
12 **TRANSPORTER'S LICENSE**

13 In Donley v. Davi (2009) Court of Appeal, Third District, 180 Cal. App 4th 447, then
14 Appellate Court Judge Tani Cantil-Sakauye wrote in her opinion that, "... We conclude section
15 273.5 (Penal Code) is a crime of moral turpitude as a matter of law..."

16 The Third District further opined in Davi that:

17
18 "... Business and Professions Code section 480, subdivision (b), provides in relevant
19 part, that: "Notwithstanding any other provision of this code, no person shall be
20 denied a license solely on the basis ... that he or she has been convicted of a
21 misdemeanor if he or she has met *all* applicable requirements of the criteria of
22 rehabilitation developed by the board to evaluate the rehabilitation of a person when
23 considering the denial of a license[.]" (Italics added, see Bus. & Prof.Code, § 482
24 [requiring licensing boards to develop such criteria].)

25 The DRE has stated 14 criteria that it will use for the purpose of evaluating the
26 rehabilitation of an applicant for a license who has committed a crime. (Cal.Code
27 Regs., tit. 10, § 2911 (hereafter section 2911).) Donley submitted both documentary
28

1 and testimonial evidence at the hearing addressing each of the criteria. The
2 Commissioner's decision recognized Donley's evidence established he had satisfied
3 most of them. However, the Commissioner concluded Donley was only partially
4 rehabilitated. Donley claims on appeal that the administrative record conclusively
5 shows he satisfied all of the criteria for rehabilitation.

6 We conclude substantial evidence supports the Commissioner's findings and implicit
7 conclusion that Donley did not show the requisite "change in attitude from that which
8 existed at the time of the conduct in question[.]" (§ 2911, subd. (n).) ... Therefore, we
9 do not address whether the Commissioner also correctly interpreted and determined
10 that insufficient time had passed since the time of Donley's convictions. (§ 2911,
11 subd. (a).) Donley has not shown he has met "all" the criteria necessary for a
12 conclusion that he is rehabilitated. (Bus. & Prof.Code, § 480, subd. (b).)

13 Section 2911 provides, in relevant part, as follows: "The following criteria have been
14 developed by the department pursuant to Section 482(a) of the Business and
15 Professions Code for the purpose of evaluating the rehabilitation of an applicant for
16 issuance ... of a license in considering whether or not to deny the issuance ... on
17 account of a crime or act committed by the applicant: [¶] ... [¶] (n) Change in attitude
18 from that which existed at the time of the conduct in question as evidenced by any or
19 all of the following: [¶] (1) Testimony of applicant. [¶] (2) Evidence from family
20 members, friends or other persons familiar with applicant's previous conduct and
21 with his subsequent attitudes and behavioral patterns."

22 The Commissioner made the following relevant factual findings:

23
24
25
26 There were considerable omissions and inconsistencies between what [Donley] told
27 the police about the incident leading to his convictions, what he disclosed to the
28

1 Department in his Confidential Report of Interview/Conviction Details, and in his
2 testimony. Counsel dismissed these as inconsequential and, in part, the product of
3 counsel's completing the Conviction Details portion of the disclosure for [Donley].
4 The inconsistencies and omissions are not inconsequential. None of the omissions
5 and inconsistencies was individually significant, but the overall impression is that
6 [Donley] has not yet fully acknowledged the full nature and extent of his actions.”
7 There is a hearsay letter in evidence from Ms. Riddle in support of [Donley's]
8 application. Ms. Riddle did not testify.... She commented in her letter that ‘neither of
9 us were at fault[.]’ ... That comment seriously harmed any credibility this letter may
10 have had.”
11

12
13 [Donley] is partially rehabilitated. [Donley] has made every apparent effort to
14 distance himself from the circumstances that resulted in the incident, and has made
15 efforts to gain insight that will help prevent a recurrence. These efforts are worthy of
16 recognition. However, the incident is relatively recent and he has just finished
17 probation. As set forth above, there are significant indications in this record that
18 [Donley] has not yet fully accepted the full import of his actions and the potential for
19 harm his behavior risked.”
20

21 The Commissioner concluded there was “not sufficient evidence of rehabilitation
22 present in this record to warrant issuance of an unrestricted license.”

23 In order for an applicant to be rehabilitated, section 2911, subdivision (n), calls for a
24 “[c]hange in attitude from that which existed at the time of the conduct in
25 question[.]” Evidence of such change may be drawn from, as relevant here, the
26 testimony of the applicant and evidence from family members, friends, or other
27 persons familiar with the applicant's previous conduct and his subsequent attitudes
28

1 and behaviors. (§ 2911, subd. (n)(1) & (2).) The Commissioner found omissions and
2 inconsistencies between Donley's statement to officers at the time and his testimony
3 before the ALJ, as well as what he disclosed in his Confidential Report of
4 Interview/Conviction Details (Form 515D), that overall reflected Donley had not yet
5 fully understood and accepted responsibility for his actions. Essentially, the
6 Commissioner found there was not a sufficient "change of attitude."
7

8
9 To begin with, we consider the Commissioner's reliance on Form 515D as part of the
10 evidence regarding Donley's change of attitude. Donley objected to the use of the
11 summary of his offense contained in Form 515D at the administrative hearing on the
12 basis that it did not qualify as a judicial admission because it was prepared by his
13 counsel and not signed by him. Donley expands on this objection on appeal, claiming
14 Form 515D "was hearsay and lacked authenticity and foundation since it was
15 prepared by counsel not Donley, was unsigned, and Donley was present to testify."
16 (Capitalization changed.) However, while Donley discusses at some length in this
17 section of his brief his related hearsay objection to the sheriff's department report, he
18 does not provide any analysis or authorities supporting his claim with respect to
19 Form 515D. Such failure forfeits his contention. (*Atchley v. City of Fresno* (1984)
20 151 Cal.App.3d 635, 647, 199 Cal.Rptr. 72.)
21

22
23 In any event, the claim is meritless. Donley testified before the ALJ that he received
24 and read Form 515D as prepared by his counsel before he signed the related Form
25 515. According to Donley, what his counsel put in the summary of the details of the
26 crime portion of Form 515D was accurate. Donley's testimony thus provided both the
27 authentication and foundation for the admission of the form. Moreover, given
28

1 Donley's testimony, the summary of his offense was admissible hearsay under the
2 exception for adoptive admissions. (Evid.Code, § 1221.)
3

4 Nevertheless, there is a question whether the Commissioner erred in using Form
5 515D in the portion of his decision regarding Donley's rehabilitation because section
6 2911, subdivision (n)(1) directs the Commissioner to consider the applicant's change
7 of attitude as reflected by his "testimony." We need not explore whether Form 515D
8 qualifies as Donley's "testimony" because, even without consideration of Form
9 515D, the inconsistencies between Donley's statement to the officers at the scene and
10 his testimony before the ALJ support the Commissioner's conclusion that he had not
11 really understood and accepted his fault in the offense, i.e., that he did not have an
12 adequate change in attitude..."
13

14
15 Business and Professions Code Section 482, which is entitled, "Evaluation of rehabilitation;
16 criteria," states:

17 Each board under the provisions of this code shall develop criteria to evaluate the
18 rehabilitation of a person when:

- 19
20 (a) Considering the denial of a license by the board under Section 480; or
21
22 (b) Considering suspension or revocation of a license under Section 490.

23 Each board shall take into account all competent evidence of rehabilitation furnished
24 by the applicant or licensee.
25

26 10 C.C.R Section 2911, which is entitled, "Criteria of Rehabilitation (Denial)" states:
27
28

1 The following criteria have been developed by the Bureau pursuant to Section 482(a)
2 of the Business and Professions Code for the purpose of evaluating the rehabilitation
3 of an applicant for issuance or for reinstatement of a license in considering whether
4 or not to deny the issuance or reinstatement on account of a crime or act committed
5 by the applicant:

6 (a) The passage of not less than two years since the most recent criminal conviction
7 or act of the applicant that is a basis to deny the Bureau action sought. (A longer
8 period will be required if there is a history of acts or conduct substantially related to
9 the qualifications, functions or duties of a licensee of the Bureau.)

10 (b) Restitution to any person who has suffered monetary losses through “substantially
11 related” acts or omissions of the applicant.

12 (c) Expungement of criminal convictions resulting from immoral or antisocial acts.

13 (d) Expungement or discontinuance of a requirement of registration pursuant to the
14 provisions of Section 290 of the Penal Code.

15 (e) Successful completion or early discharge from probation or parole.

16 (f) Abstinence from the use of controlled substances or alcohol for not less than two
17 years if the conduct which is the basis to deny the Bureau action sought is
18 attributable in part to the use of controlled substances or alcohol.

19 (g) Payment of the fine or other monetary penalty imposed in connection with a
20 criminal conviction or quasi-criminal judgment.

21 (h) Stability of family life and fulfillment of parental and familial responsibilities
22 subsequent to the conviction or conduct that is the basis for denial of the Bureau
23 action sought.

24 (i) Completion of, or sustained enrollment in, formal education or vocational training
25 courses for economic self-improvement.

1 (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or
2 monetary obligations to others.

3 (k) Correction of business practices resulting in injury to others or with the potential
4 to cause such injury.

5 (l) Significant or conscientious involvement in community, church or privately-
6 sponsored programs designed to provide social benefits or to ameliorate social
7 problems.

8 (m) New and different social and business relationships from those which existed at
9 the time of the conduct that is the basis for denial of the departmental action sought.

10 (n) Change in attitude from that which existed at the time of the conduct in question
11 as evidenced by any or all of the following:

12 (1) Testimony of applicant.

13 (2) Evidence from family members, friends or other persons familiar with applicant's
14 previous conduct and with his subsequent attitudes and behavioral patterns.

15 (3) Evidence from probation or parole officers or law enforcement officials
16 competent to testify as to applicant's social adjustments.

17 (4) Evidence from psychiatrists or other persons competent to testify with regard to
18 neuropsychiatric or emotional disturbances.

19 (5) Absence of subsequent felony or misdemeanor convictions that are reflective of
20 an inability to conform to societal rules when considered in light of the conduct in
21 question.

22 (o) Each of the above criteria notwithstanding, no mortgage loan originator license
23 endorsement shall be issued to an applicant for such license endorsement where the
24 applicant has been convicted of any felony within seven (7) years from the date of his
25
26
27
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1 or her application for a license endorsement. This ban is not subject to mitigation or
2 rehabilitation.

3 (p) Each of the above criteria notwithstanding, no mortgage loan originator license
4 endorsement shall be issued to an applicant for such license endorsement where the
5 applicant has ever been convicted of a felony where such felony involved an act of
6 fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to
7 mitigation or rehabilitation.
8

9 It is clear that the California Horse Racing Board has not adopted criteria to evaluate the
10 rehabilitation of a person. Despite that, licensing actions taken by the California Horse Racing
11 Board pursuant to Business and Professions Code Section 480, including sections 480 (a)(1) and
12 (a)(3)(B) are not rendered invalid because of the lack of the CHRB to promulgate such criteria.
13

14 In Galbiso v. Orosi Public Utility District (2010) 182 Cal. App 4th 652, the Fifth District
15 Court of Appeal addressed mandatory versus directory distinctions of a statute. The Court opined in
16 part that:

17 “...As a preliminary matter, it is necessary to provide a greater elaboration of the
18 mandatory-directory distinction, which must not be confused with the distinction
19 between mandatory and permissive provisions in a statute. The two dichotomies are
20 not the same, as our Supreme Court explained at length in the case of People v.
21 McGee (1977) 19 Cal.3d 948, 958, 140 Cal.Rptr. 657, 568 P.2d 382, as follows: “In
22 determining the proper effect to be given this statutory language, we undertake at the
23 outset to clarify some confusion in terminology that has frequently inhibited analysis
24 of similar questions of statutory interpretation in the past. Traditionally, the question
25 of whether a public official's failure to comply with a statutory procedure should
26 have the effect of invalidating a subsequent governmental action has been
27
28

1 characterized as a question of whether the statute should be accorded 'mandatory' or
2 'directory' effect. If the failure is determined to have an invalidating effect, the
3 statute is said to be mandatory; if the failure is determined not to invalidate
4 subsequent action, the statute is said to be directory. As we explain below, in
5 evaluating whether a provision is to be accorded mandatory or directory effect, courts
6 look to the purpose of the procedural requirement to determine whether invalidation
7 is necessary to promote the statutory design.”

8
9
10 “Although the parties to this action have utilized the mandatory-directory
11 terminology in their briefs, both parties, sharing the confusion exhibited in some past
12 judicial decisions, have improperly equated the mandatory-directory duality with the
13 linguistically similar, but analytically distinct, 'mandatory-permissive' dichotomy.
14 As we explained recently in *Morris v. County of Marin* (1977) 18 Cal.3d 901, 908,
15 136 Cal.Rptr. 251, 559 P.2d 606, in the latter context “the term “mandatory” refers to
16 an obligatory [procedure] which a governmental entity is required to [follow] as
17 opposed to a permissive [procedure] which a governmental entity may [follow] or
18 not as it chooses. By contrast, the “directory” or “mandatory” designation does not
19 refer to whether a particular statutory requirement is “permissive” or “obligatory,”
20 but instead simply denotes whether the failure to comply with a particular procedural
21 step will or will not have the effect of invalidating the governmental action to which
22 the procedural requirement relates. Although the mandatory-directory and obligatory-
23 permissive dichotomies are thus analytically distinct, in some instances there is an
24 obvious relationship between the two. If, for example, a statute simply embodies a
25 permissive procedure with which a governmental entity may or may not comply as it
26 chooses, the entity's failure to comply will generally not invalidate the entity's
27
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1 subsequent action. The converse of this proposition is not always true, however, for
2 as we observed in *Morris*, “[m]any statutory provisions which are “mandatory” in the
3 obligatory sense are accorded only “directory” effect.’ [Citation.]” (*People v. McGee*,
4 *supra*, 19 Cal.3d at pp. 958–959, 140 Cal.Rptr. 657, 568 P.2d 382; see also *Woods v.*
5 *Department of Motor Vehicles* (1989) 211 Cal.App.3d 1263, 1266–1267, 259
6 Cal.Rptr. 885.)

7
8
9 In addressing the issue of whether the time requirement set forth in section 10405 is
10 directory, we follow established rules of statutory construction. “ ‘In order to
11 determine whether a particular statutory provision ... is mandatory or directory, the
12 court, as in all cases of statutory construction and interpretation, must ascertain the
13 legislative intent. In the absence of express language, the intent must be gathered
14 from the terms of the statute construed as a whole, from the nature and character of
15 the act to be done, and from the consequences which would follow the doing or
16 failure to do the particular act at the required time. [Citation.] When the object is to
17 subserve some public purpose, the provision may be held directory or mandatory as
18 will best accomplish that purpose [citation]....’ ” (*Morris v. County of Marin* (1977)
19 18 Cal.3d 901, 910, 136 Cal.Rptr. 251, 559 P.2d 606, fn. omitted.)...”

20
21
22 In Fort Emory Cove Boatowners Association v. Cowett, (1990) Fourth District Court of
23 Appeal, Division One, 221 Cal. App 3d. 508, the Fourth District opined in part that:
24 “...Use of the word “shall” in a statute is not necessarily mandatory, but instead may be construed
25 as directory or permissive...”

26
27 The statutory scheme within Business and Professions Code Section 482 provides no
28

1 penalty or consequence for the noncompliance with an agency to adopt specific criteria.
2 Therefore, the use of the word "shall" in Business and Professions Code Section 482 is
3 directory and not mandatory.
4

5 In People v. Blocker, (2010) 190 Cal. App. 4th 438, the First District Court of Appeal,
6 Division Two, opined in part that:

7 Because "rehabilitation logically assumes guilt" (*State in Interest of A.L.*
8 (App.Div.1994) 271 N.J.Super. 192, 638 A.2d 814, 823), numerous state and federal
9 jurisdictions accept that "a court may properly consider a defendant's refusal to
10 acknowledge guilt when evaluating the defendant's rehabilitation potential because
11 acknowledgement of guilt is a critical first step towards rehabilitation." (*State v.*
12 *Kellis* (App.2010) 148 Idaho 812, 229 P.3d 1174, 1177; accord, *McComb v. State*
13 (2004) 32 Kan.App.2d 1037, 94 P.3d 715, 722 ["[t]he admission of guilt is a
14 necessary step towards rehabilitation"]; *State v. Greer* (La.App.1990) 572 So.2d
15 1166, 1171; *State v. Warren* (1998) 125 Ohio App.3d 298, 708 N.E.2d 288, 295;
16 *State v. Tiernan* (R.I.1994) 645 A.2d 482, 486; *State ex rel. Warren v. Schwarz*
17 (1998) 219 Wis.2d 615, 579 N.W.2d 698, 715 ["admission of guilt [is] a necessary
18 'first step towards rehabilitation' of sex offenders"]; *Drinkwater v. State* (1976) 73
19 Wis.2d 674, 245 N.W.2d 664, 668 ["recognition of guilt is the first step toward
20 rehabilitation"]; *United States v. Derrick* (6th Cir.1975) 519 F.2d 1, 4; ... A natural
21 corollary is that "A refusal to admit guilt may be relevant to the question of
22 rehabilitation." (*In re Personal Restraint of Dyer* (2008) 164 Wash.2d 274, 189 P.3d
23 759, 773; accord, *People v. Ripley* (1997) 291 Ill.App.3d 565, 226 Ill.Dec. 259, 685
24 N.E.2d 362, 366-367; *State v. Bragg* (Iowa App.1986) 388 N.W.2d 187, 192; *State*
25 *v. Clegg* (S.D.2001) 635 N.W.2d 578, 581; see *State v. Amidon* (2008) 185 Vt. 1, 967
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1 A.2d 1126, 1137 [“a defendant may ... [seek] to demonstrate his amenability to swift
2 rehabilitation by owning up to guilt and by taking responsibility for his actions”];
3 *State v. Wood* (Mo.Ct.App.1984) 668 S.W.2d 172, 175 [“defendant's refusal to admit
4 her guilt bodes ill for her rehabilitation”].)

5
6 In the California Supreme Court of In re Lawrence (2008) 44 Cal. 4th 1181, the Supreme
7 Court discussed the suitability of an incarcerated convict, seeking parole from prison by the
8 California Parole Board, and her suitability for parole and her rehabilitation. The California
9 Supreme Court, stated in part:

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11
12 “...As we recognized in *Rosenkrantz, supra*, 29 Cal.4th 616, 128 Cal.Rptr.2d 104, 59
13 P.3d 174, when evaluating whether an inmate continues to pose a threat to public
14 safety, both the Board and the Governor must consider all relevant statutory factors,
15 including those that relate to post-conviction conduct and rehabilitation. (*Id.*, at p.
16 655, 128 Cal.Rptr.2d 104, 59 P.3d 174 [noting that the Board “ ‘cannot, consistently
17 with its obligation, ignore postconviction factors unless directed to do so by the
18 Legislature,’ ” and that “ [a]lthough a prisoner is not entitled to have his term fixed
19 at less than maximum or to receive parole, he is entitled to have his application for
20 these benefits “duly considered” based upon an individualized consideration of all
21 relevant factors’ ”].) Indeed, in directing the Board to consider the statutory factors
22 relevant to suitability, many of which relate to postconviction conduct and
23 rehabilitation, the Legislature explicitly recognized that the inmate's threat to public
24 safety could be minimized over time by changes in attitude, acceptance of
25 responsibility, and a commitment to living within the strictures of the law...

1 Finally, petitioner was free of “serious misconduct” during her more than two
2 decades of incarceration, and exhibited exemplary efforts toward rehabilitative
3 programming.

4
5 She participated in many years of rehabilitative programming specifically tailored to
6 address the circumstances that led to her commission of the crime, including anger
7 management programs as well as extensive psychological counseling, leading to
8 substantial insight on her part into both the behavior that led to the murder and her
9 own responsibility for the crime. Petitioner repeatedly expressed remorse for the
10 crime, and had been adjudged by numerous psychologists and by the Board as not
11 representing any danger to public safety if released from prison.
12

13
14 In light of petitioner's extraordinary rehabilitative efforts specifically tailored to
15 address the circumstances that led to her criminality, her insight into her past
16 criminal behavior, her expressions of remorse, her realistic parole plans, the support
17 of her family, and numerous institutional reports justifying parole, as well as the
18 favorable discretionary decisions of the Board at successive hearings—decisions
19 reversed by the Governor based solely upon the immutable circumstances of the
20 offense—we conclude that the unchanging factor of the gravity of petitioner's
21 commitment offense had no predictive value regarding her *current* threat to public
22 safety, and thus provides no support for the Governor's conclusion that petitioner is
23 unsuitable for parole at the present time...”
24

25
26 To demonstrate his rehabilitation, Appellant submitted Exhibits K through P, inclusively.
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1 Exhibit K is a letter from Mr. Bill Lux, a retired Police Officer from the Banning Police
2 Department. Mr. Lux stated that he worked at Hollywood Park Racetrack in the City of Inglewood,
3 California as a Security Agent/Investigator since 1992. He stated that he met Appellant in 2011. He
4 opined that Appellant advised him of his incarceration in Kentucky for felony sexual assault, and
5 Mr. Lockwood demonstrated his remorsefulness and did not deflect responsibility to his victim.
6 Despite this claim by Mr. Lux, there is a complete lack of discussion and detail in Mr. Lux' letter as
7 to Appellant's other convictions for crimes and acts involving moral turpitude, including his arrest
8 and conviction in Arizona and felonious assault on his girlfriend in Arcadia in 2010, as well as other
9 prior acts, conduct, and crimes involving moral turpitude. In essence, the omissions by Mr. Lux' in
10 his letter are either the result of Appellant not providing Mr. Lux his full and complete history of
11 assaultive and aggressive behavior towards others, or a purposeful decision by Mr. Lux and/or
12 Appellant to omit a discussion of such conduct by the Appellant. Either way, Mr. Lux' letter does
13 not in any way demonstrate rehabilitation by the Appellant. In Exhibit L, a good character letter by
14 Ms. Jill Hallin, she stated that she knew Appellant since approximately 1974. She referenced
15 Appellant's Kentucky and Arizona convictions, but opined that he had met all the court ordered
16 mandates, and therefore, should not continue to be punished. Despite these claims by Ms. Hallin,
17 there is a complete lack of discussion and detail in Ms. Hallin's letter as to Appellant's other
18 convictions for crimes and acts involving moral turpitude, including his arrest/detention for
19 engaging in felonious assaultive conduct on his girlfriend in Arcadia in 2010, as well as other prior
20 acts, conduct, and crimes involving moral turpitude. In essence, these omissions by Ms. Hallin in
21 her letter are either the result of Appellant not providing Ms. Hallin his full and complete history of
22 assaultive and aggressive behavior towards others, or a purposeful decision by Ms. Hallin and/or
23 Appellant to omit a discussion of such conduct by the Appellant. Either way, Ms. Hallin's letter
24 does not in any way demonstrate rehabilitation by the Appellant.
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1 Except for the mere self-serving statements by Appellant at the Board hearing, there is little
2 evidence that he has been rehabilitated. The record is replete with acts, conduct, crimes, and
3 convictions reflecting the ongoing and systemic pattern of Appellant's complete lack of
4 rehabilitation. Rather, Appellant seems to place blame on everyone except himself, including his
5 girlfriend and the victim of the 1991 tire iron incident. This lack of remorse reflects Appellant's
6 overall lack of rehabilitation. Although Complainant has objected to the admission of Appellant's
7 submitted letters of good character, they were admitted and given the appropriate weight that they
8 are due. The letters, Appellant's Exhibits K through P, inclusively, taken as a whole, are not
9 persuasive as to any measurable degree of rehabilitation by Appellant. Although there is reference to
10 the fact that Appellant was a conscientious worker, they did not address any facet of rehabilitation in
11 a persuasive manner.
12

13
14 Although Appellant's counsel argued, as part of his alleged rehabilitation, that Appellant has
15 shown a very positive basis allowing him to have a license, these mere assertions are contradicted
16 by Appellant's complete lack of credibility during the October 15, 2013 hearing. For example,
17 during the hearing, Appellant was frequently evasive in his responses on cross examination. His
18 lack of honesty and truthfulness reflects his lack of rehabilitation. Although Appellant's counsel
19 argues that Appellant is drug free, he clearly acknowledged that he associates with a
20 methamphetamine using girlfriend, who he asserted was in fact a methamphetamine addict
21 (RT 139: 3-5). His choice of associates and their engagement in criminality, including the use of
22 drugs and assaultive behavior, again demonstrates his lack of rehabilitation, and underscores the
23 relationship between his continued criminal conduct that is substantially related to his qualifications,
24 fitness, functions and duties as a horse transporter. (RT 120:1 - 25).
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27 Unlike Lawrence, who demonstrated long term rehabilitative efforts and good
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1 conduct, as well as being free of "serious misconduct" during her more than two decades of
2 incarceration, and exhibited exemplary efforts toward rehabilitative programming, Appellant
3 Lockwood has demonstrated a lack of remorse and his own responsibility for his prior
4 crimes and acts involving moral turpitude; all of which reflect a lack of rehabilitation, and
5 therefore, corresponding justification for the CHRB to deny Appellant licensure as a horse
6 transporter.

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8
9 Furthermore, pursuant to California Business and Professions Code section 480, the Board
10 properly denied Appellant his license, as his acts and crimes were and are substantially related to the
11 qualifications, functions, or duties of the business or profession for which application is made.

12
13 Appellant brought his methamphetamine using girl friend to the Santa Anita racetrack on or
14 about July 21, 2010. She is the same person that he referred to in his Board testimony as having a
15 methamphetamine problem that needed an intervention. Despite casting her as a methamphetamine
16 addict (RT 139: 3-5), he allowed her into his truck in Arizona to transport horses. There is no
17 evidence that she forced herself into the truck with Appellant and spent the next twenty plus days
18 with her to California against his own free will and volition. Instead, he brought this
19 methamphetamine drug addict girlfriend onto the grounds of the Santa Anita Racetrack at 1:00 a.m.
20 to load his truck full of horses (seven horses) and take them to the Del Mar racetrack. (RT120:7-
21 25). Appellant is integrally involved in the horse racing business by transporting these horses to
22 various race tracks throughout the United States and within California. The horses are the crux of
23 horse racing gambling, a multi-million dollar per year gaming industry, and the most valuable and
24 important piece of property at these horse racing tracks, each horse often times worth hundreds of
25 thousands of dollars. At the time Appellant was loading these horses onto a truck at 1:00 a.m. on
26 July 21, 2010, he became involved in assaultive conduct (crime involving moral turpitude) with this
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1 same methamphetamine addict girlfriend, and choked her, and then struck her seven (7) to eight (8)
2 times on her hands, arms and back, with bruising in those areas on her. At the time of the July 21,
3 2010 incident, Appellant's girlfriend had a Restraining Order from the State of Arizona against
4 Appellant. Appellant's acts and crimes involving moral turpitude against his girlfriend on or about
5 July 21, 2010 were and are substantially related to his fitness, qualifications, functions, or duties of
6 transporting horses, for which his application was made and subsequently denied by the California
7 Horse Racing Board. By the very nature of horse racing, a gambling event, integrity is of utmost
8 importance. Individuals that have engaged in acts, conduct, crimes, and convictions involving moral
9 turpitude, which is a readiness to do evil (People v. Castro, supra), calls into question their own
10 integrity. Those individuals that lack such requisite integrity, should not be allowed to be in a
11 position or area where they have access to the animals/horses, which is integral to the integrity of
12 horse race gambling. Appellant, based on the overwhelming evidence presented at the October 15,
13 2013 hearing, including his own testimony, is such a person that lacks integrity, and should not be
14 allowed access to barns, stables, and horses, due to his lack of integrity, truthfulness, and honesty.
15
16

17 At the hearing, the CHRB presented voluminous evidence of Appellant's prior arrests and
18 convictions of crimes and conduct of Appellant involving moral turpitude (People v. Castro (1985) 38 Cal. 3d
19 301, 314). Much of that evidence was supported in the record by either Appellant's own admissions during his
20 testimony, and or the evidence submitted on his behalf by his counsel. Appellant admitted during his testimony
21 that he had three felony convictions, a 1982 conviction for assault, his 1992 Kentucky convictions for sexual
22 assault and two counts of burglary, and a 2002 felony conviction. (RT: pp. 117-118).
23

24 For example, Complainant's Exhibits 1, 2, 3, 4, 5, 6, 7, 9, and 10 all reflect Appellant's conduct involving
25 acts, crimes, and or convictions involving moral turpitude. This is further substantiated in Appellant's Exhibits B,
26 C, D, E, and L, as well as his own testimony during the October 15, 2013 hearing.
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1 These acts, crimes, and convictions by Appellant span an approximate thirty year time frame. Starting in
2 1984, Appellant was arrested in Yakima, Washington for taking a motor vehicle without the
3 permission of the owner, which is a crime involving moral turpitude. On or about August 28, 1992,
4 Appellant was convicted of sexual assault in the first degree, and two counts of burglary in the
5 second degree, and sentenced to eight years in the Kentucky State Prison system. He served five
6 years and eight months in the Kentucky State Prison system. These too were crimes involving moral
7 turpitude.

8
9 On or about July 21, 2010, Appellant was arrested for violation of California Penal Code
10 Section 273.5, as a felony, for inflicting corporal punishment on a spouse or co-habitant, another
11 crime involving moral turpitude.

12
13 In 2011, Appellant was arrested in Scottsdale, Arizona for violation of third degree assault,
14 and subsequently convicted, requiring him to participate in a twenty six (26) session Domestic
15 Violence/Batterer's Program, ordered by the Court. The victim was Appellant's girlfriend. This was
16 another, in a string of acts and crimes, that involved moral turpitude.

17
18 The Appellant's testimony, during cross examination by Deputy Attorney General Daily was
19 such that he wholly lacked credibility. He was evasive, and at times non-responsive to the posed
20 questions in his often fractured responses.

21
22 For example, Appellant claimed in his cross-examination by DAG Daily during the October
23 15, 2013 hearing that he did not know if the person he struck with a tire iron in the State of
24 Washington was injured or not. (RT: pp. 136 – 137: 15-1). The appellant also stated that the police
25 held him blameless (RT: pp. 136:19-21). Yet, the Horse Racing Commission in the State of
26 Washington on or about October 29, 1997, refused to issue a license to Appellant Lockwood. In the
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1 decision by the State of Washington Horse Racing Commission, there is a reference to Appellant's
2 August 8, 1991 involvement in an altercation at Longacre's racetrack in which he struck another
3 licensee with a tire iron. The State of Washington ruling stated that as a result of that altercation, his
4 (Appellant's) license was suspended for the balance of the Longacre's meeting. Additionally, the
5 ruling set forth that in April 1992, following an incident involving another licensee, Mr. Lockwood
6 (Appellant) was permanently ejected from the grounds of Longacre's Park by the management. The
7 decision further relates that on August 28, 1992, Appellant Lockwood pled guilty to charges of
8 sexual abuse in the first degree, burglary in the second degree, and assault in the fourth degree in the
9 state of Kentucky. The decision further related that Appellant Lockwood, "has a history of
10 aggressive behavior criminal conduct. He is not a suitable person for licensing by the commission...
11 The Board of Stewards was correct in denying Mr. Lockwood's license application..." (Petition's
12 Exhibit 6). Appellant's claim that he was held blameless by the police in the tire iron incident case,
13 denying any culpability by himself; his rejection of culpability in the 2013 from an incident in 1991
14 reflects a lack of rehabilitation. Throughout the course of Appellant's testimony on cross
15 examination, a constant thread of his testimony was that he is always the "victim" rather than the
16 "perpetrator" of any such conduct and acts involving moral turpitude. This does not evidence
17 someone who has been rehabilitated.
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20
21 During appellant's direct examination, he testified that he was, "...dating a lady from
22 Arizona. And I had discovered that she was on methamphetamine. And I had contacted her folks,
23 and they wanted to do an intervention. But they all wanted to do it in one day. And I said, "you can't
24 get somebody off methamphetamine in one day. So she got on the truck with me, and was probably
25 20 days on the truck clean and sober. We were together all the time. And we got to L. A. And she -
26 - into Santa Anita at the racetrack. And it was like 1:00 in the morning we were supposed to load
27 for Delmar, and she was throwing the tizzy fit about taking her to a doctor. And I said, "I have got
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1 things to do. And we can take you to the doctor in the morning.” And I knew she was just placating
2 me. So I wasn’t paying really a whole lot of attention to it. I was loading the truck for at least an
3 hour and a half, and – – meaning putting gear from the barn on the truck. And we loaded seven
4 horses on the truck. And about that time a police officer walked around the corner and asked where
5 Don was, “who is Don?” “Here I am.” “So why don’t you tell us about the fight you had with your
6 girlfriend.” And I go, “there wasn’t any fight.” So they read me my rights. Want to me to make a
7 statement. And I said, “no,” and they took me into custody. Later on I bailed out, went to court...
8 and they said, “what are you here for?” I gave them my name. They said, “go downstairs. Go
9 downstairs.” They said they are not going to pursue this. Later on I got a letter that said, this is not
10 an arrest, it’s not a conviction, it’s a detention. That’s all we’re going to have. I don’t know if we
11 got a copy of the letter here today or not....” (RT 120 – 121:7 – 12) Appellant then stated that there
12 was no assaultive behavior by him. (RT 121:13 – 14). In further direct examination, Appellant
13 testified that he suffered a misdemeanor conviction in 2011. He stated that the same individual
14 (girlfriend – methamphetamine addict) was having a “tizzy fit”, and driving erratically. He was in
15 the car in the passenger seat at the time in Arizona. Petitioner then related that because he had
16 problems with his truck coming back from Kentucky, he missed his court case, and has his attorney
17 entered a plea which resulted in him being placed on probation and do a program. The case was
18 subsequently dismissed and he was released from the liabilities of the conviction. (RT 122 – 124:2 –
19 22). Again, Appellant places the blame on his girlfriend and not himself in that she had a, “tizzy fit.”
20 This is the same female/girlfriend that Appellant described as being a methamphetamine addict (RT
21 139: 3-5). Appellant cannot have it both ways. He cannot claim that he is rehabilitated on one hand
22 and then claim he is the “victim” of false allegations of assaultive conduct on the same girlfriend on
23 the other hand. Yet, the facts from the July 21, 2010 Los Angeles County Sheriff’s Department
24 police report arrest in Arcadia, California reflect that his girlfriend was injured and had bruises on
25 her body, contrary to Appellant’s claim that there was no bruising whatsoever.
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1
2 Furthermore, the Los Angeles County District Attorney Charge Evaluation Worksheet
3 (Exhibit 9) for the July 21, 2010 arrest specifically relates that Appellant choked his girlfriend, and
4 then struck her seven (7) to eight (8) times on her hands, arms and back, and there was bruising in
5 those areas of the Appellant's girlfriend. Appellant's girlfriend had a Restraining Order from the
6 State of Arizona against Appellant at the time of the incident, but she nonetheless disobeyed it and
7 travelled to California with Appellant. Appellant's girlfriend was not desirous of prosecution of the
8 Appellant. This evaluation worksheet also notes that Appellant told law enforcement officers that
9 his girlfriend hit and punched him several times. It was noted that Appellant had bruising on his
10 right arm, redness on the left side of his back, and redness on his forehead. During Appellant's
11 cross examination testimony on this matter, Appellant testified that he did not have bruising from
12 the incident. When asked if his girlfriend had bruising, he stated that he did not know. Appellant
13 testified that his girlfriend was, "having a tizzy fit." (RT: pp. 120), again minimizing his own
14 conduct, and shifting culpability and responsibility away from himself. Appellant's responses
15 during this line of questioning were evasive, non-responsive, and overall, demonstrated a lack of
16 candor and credibility to the Hearing Officer (Reporter's Transcript, Pages 137 and 139. (RT pp.
17 137-139).

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20 Therefore, the failure of the CHRB to enact specific criteria to evidence
21 "rehabilitation" of a licensee in and of itself does not invalidate the Board's denial of
22 Appellant Lockwood's license. Business and Professions Code Section 482 is directory and
23 not mandatory, and the factors contained herein of Appellant Lockwood's lack of
24 rehabilitation justify the CHRB's denial of his license.
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27 Appellant Lockwood, like Donley has not demonstrated an adequate change in
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1 attitude and has not really understood and accepted his fault in the offenses, including, but
2 not limited to, his July 2010 conduct in Los Angeles County. There is a substantial lack of
3 sufficient evidence of rehabilitation by Appellant Lockwood present in this record. He casts
4 blame on others, minimizes at best, his own criminality and acts involving moral turpitude,
5 and clearly lacks any adequate change in his attitude. Additionally, Appellant Lockwood has
6 not yet fully accepted the full import of his actions and the potential for harm his behavior
7 risked, very similar to the facts articulated in the Donley case. Appellant Lockwood has
8 engaged in a long term pattern of assaultive conduct, replete with anger and illegal conduct,
9 since at least 1981 (Complainant's Exhibit 4). Additionally, Appellant Lockwood continues
10 to deny his guilt in the various offenses, crimes, and acts involving moral turpitude, which
11 like Blocker, indicate a lack of rehabilitation. Any potential factors of rehabilitation by
12 Appellant Lockwood fall short of truly understanding his fault in the offenses, and he has an
13 overall lack of adequate change in his attitude, which was further adduced at the October 15,
14 2014 Board hearing, where his lack of credibility, lack of honesty, lack of truthfulness, and
15 lack of acknowledgment of his unacceptable, illegal conduct and conduct involving moral
16 turpitude further underscored his lack of rehabilitation by this Hearing Officer.
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20 Therefore, Appellant Lockwood has not rehabilitated himself, and his denial of licensure by
21 the CHRB was appropriate, based on all of the facts and circumstances contained herein, including
22 the fact that his numerous and repeated acts and crimes involving moral turpitude are substantially
23 related to the qualifications, fitness, functions and duties of a horse transporter, as previously
24 articulated herein.
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Law Office of Richard P. Margarita
P.O. Box 1257, Sloughhouse, CA 95683
(916) 972-0365
Richardmargarita@sbcglobal.net

1 **VII. THE BOARD'S DENIAL OF APPELLANT LOCKWOOD'S LICENSE**
2 **APPLICATION WAS APPROPRIATE IN LIGHT OF ALL THE**
3 **FACTS AND CIRCUMSTANCES, DESPITE THE APPARENT**
4 **INVALIDITY OF CHRB DIRECTIVE 10-09**

5 At the hearing, the CHRB presented voluminous evidence of Appellant's prior arrests
6 and convictions of crimes and conduct of Appellant involving moral turpitude (People v. Castro (1985)
7 38 Cal. 3d 301, 314). Much of that evidence was supported in the record by either Appellant's own
8 admissions during his testimony, and or the evidence submitted on his behalf by his counsel. Appellant
9 admitted during his testimony that he had three felony convictions, a 1982 conviction for assault, his 1992
10 Kentucky convictions for sexual assault and two counts of burglary, and a 2002 felony conviction. (RT:
11 pp. 117-118).

12 For example, Complainant's Exhibits 1, 2, 3, 4, 5, 6, 7, 9, and 10 all reflect Appellant's conduct involving
13 acts, crimes, and or convictions involving moral turpitude. This is further substantiated in Appellant's Exhibits B,
14 C, D, E, and L, as well as his own testimony during the October 15, 2013 hearing.

15 These acts, crimes, and convictions by Appellant span an approximate thirty year time frame. Starting in
16 1984, Appellant was arrested in Yakima, Washington for taking a motor vehicle without the
17 permission of the owner, which is a crime involving moral turpitude. On or about August 28, 1992,
18 Appellant was convicted of sexual assault in the first degree, and two counts of burglary in the
19 second degree, and sentenced to eight years in the Kentucky State Prison system. He served five
20 years and eight months in the Kentucky State Prison system. These too were crimes involving moral
21 turpitude.

22 On or about July 21, 2010, Appellant was arrested for violation of California Penal Code
23 Section 273.5, as a felony, for inflicting corporal punishment on a spouse or co-habitant, another
24 crime involving moral turpitude.
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1 In 2011, Appellant was arrested in Scottsdale, Arizona for violation of third degree assault,
2 and subsequently convicted, requiring him to participate in a twenty six (26) session Domestic
3 Violence/Batterer's Program, ordered by the Court. The victim was Appellant's girlfriend. This was
4 another, in a string of acts and crimes that involved moral turpitude.

5
6 The Appellant's testimony, during cross examination by Deputy Attorney General Daily was
7 such that he wholly lacked credibility.

8
9 For example, Appellant claimed in his cross-examination by DAG Daily during the October
10 15, 2013 hearing that he did not know if the person he struck with a tire iron in the State of
11 Washington was injured or not. (RT: 136 – 137: 15-1). The appellant also stated that the police held
12 him blameless (RT: 136:19-21). Yet, the Horse Racing Commission in the State of Washington on
13 or about October 29, 1997, refused to issue a license to Appellant Lockwood. In the decision by the
14 State of Washington Horse Racing Commission, there is a reference to Appellant's August 8, 1991
15 involvement in an altercation at Longacre's racetrack in which he struck another licensee with a tire
16 iron. The State of Washington ruling stated that as a result of that altercation, his (Appellant's)
17 license was suspended for the balance of the Longacre's meeting. Additionally, the ruling set forth
18 that in April 1992, following an incident involving another licensee, Mr. Lockwood (Appellant) was
19 permanently ejected from the grounds of Longacre's Park by the management. The decision further
20 relates that on August 28, 1992, Appellant Lockwood pled guilty to felony charges of sexual abuse
21 in the first degree, burglary in the second degree, and assault in the fourth degree in the state of
22 Kentucky. The decision further related that Appellant Lockwood, "has a history of aggressive
23 behavior criminal conduct. He is not a suitable person for licensing by the commission... The Board
24 of Stewards was correct in denying Mr. Lockwood's license application..." (Petition's Exhibit 6).
25 Appellant's claim that he was held blameless by the police in the tire iron incident case denying any
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1 culpability by himself; his rejection of culpability in 2013 from an incident in 1991, reflects a lack
2 of rehabilitation. Throughout the course of Appellant's testimony on cross examination, a constant
3 thread of his testimony was that he was always the "victim" rather than the "perpetrator" of any
4 conduct and acts involving moral turpitude. This does not evidence someone who has been
5 rehabilitated; his refusal to admit guilt and culpability in and of itself, reflects a lack of
6 rehabilitation (Blocker, *infra*).

7
8
9 During appellant's direct examination, he testified that he was, "...dating a lady from
10 Arizona. And I had discovered that she was on methamphetamine. And I had contacted her folks,
11 and they wanted to do an intervention. But they all wanted to do it in one day. And I said, "you can't
12 get somebody off methamphetamine in one day. So she got on the truck with me, and was probably
13 20 days on the truck clean and sober. We were together all the time. And we got to L. A. And she –
14 – into Santa Anita at the racetrack. And it was like 1:00 in the morning we were supposed to load
15 for Delmar, and she was throwing the tizzy fit about taking her to a doctor. And I said, "I have got
16 things to do. And we can take you to the doctor in the morning." And I knew she was just placating
17 me. So I wasn't paying really a whole lot of attention to it. I was loading the truck for at least an
18 hour and a half, and -- meaning putting gear from the barn on the truck. And we loaded seven
19 horses on the truck. And about that time a police officer walked around the corner and asked where
20 Don was, "who is Don?" "Here I am." "So why don't you tell us about the fight you had with your
21 girlfriend." And I go, "there wasn't any fight." So they read me my rights. Want to me to make a
22 statement. And I said, "no," and they took me into custody. Later on I bailed out, went to
23 court...and they said, "what are you here for?" I gave them my name. They said, "go downstairs. Go
24 downstairs." They said they are not going to pursue this. Later on I got a letter that said, this is not
25 an arrest, it's not a conviction, it's attention. That's all we're going to have. I don't know if we got a
26 copy of the letter here today or not...." (RT 120 – 121:7 – 12) Appellant then stated that there was
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1 no assaultive behavior by him. (RT 121:13 – 14). In further direct examination, Appellant testified
2 that he suffered a misdemeanor conviction in 2011. He stated that the same individual (girlfriend
3 who was a methamphetamine addict) was having a tizzy fit, and driving erratically. He was in the
4 car in the passenger seat at the time in Arizona. Petitioner then related that because he had problems
5 with his truck coming back from Kentucky, he missed his court case, and has his attorney entered a
6 plea which resulted in him being placed on probation and a program. The case was subsequently
7 dismissed and he was released from the liabilities of the conviction. (RT 122 – 124:2 – 22). Again,
8 Appellant places the blame on his female girlfriend and not himself in that she had a, “tizzy fit.”
9 This is the same female/girlfriend that Appellant described as having a problem with
10 methamphetamine, and a methamphetamine addict (RT:139: 3-5) and should be subjected to an
11 intervention. Appellant cannot have it both ways. He cannot claim that he is rehabilitated on one
12 hand and then assert the claim that he is “the victim” of allegations of assaultive conduct by him on
13 the same girlfriend on the other hand. Yet, the facts from the July 21, 2010 Los Angeles County
14 Sheriff’s Department police report arrest in Arcadia, California, reflect that his girlfriend was
15 injured and had bruises, contrary to Appellant’s denial during the hearing that there was no bruising
16 whatsoever (RT 137:10-17).
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19
20 Furthermore, the Los Angeles County District Attorney Charge Evaluation Worksheet
21 (Exhibit 9) for the July 21, 2010 arrest specifically relates that Appellant choked his girlfriend, and
22 then struck her seven (7) to eight (8) times on her hands, arms and back, and there was bruising in
23 those areas of the Appellant’s girlfriend. Appellant’s girlfriend had a Restraining Order from the
24 State of Arizona against Appellant at the time of the incident, but she nonetheless disobeyed it and
25 travelled to California with Appellant. Appellant’s girlfriend was not desirous of prosecution of the
26 Appellant. This evaluation worksheet also notes that Appellant told law enforcement officers that
27 his girlfriend hit and punched him several times. It was noted that Appellant had bruising on his
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2 cross examination testimony on this matter, Appellant testified that he did not have bruising from
3 the incident. When asked if his girlfriend had bruising, he stated that he did not know. Appellant
4 testified that his girlfriend was, "having a tizzy fit." (RT: pp. 120), again minimizing his own
5 conduct, and shifting culpability and responsibility away from himself. Appellant's responses
6 during this line of questioning were evasive, non-responsive, and overall, demonstrated a lack of
7 candor and credibility to the Hearing Officer (Reporter's Transcript, Pages 137 and 139. (RT pp.
8 137-139).

10
11 Specifically, Appellant has demonstrated a propensity to engage aggressive behavior, and
12 acts of violence on others, including his girlfriend(s). These acts are not isolated or deminimis in
13 nature; rather, they are substantial and significant acts involving moral turpitude. The acts and
14 crimes of Appellant are substantially related to his business and profession. For example, on or
15 about August 8, 1991, Appellant was involved in an altercation at Longacre's Race Track in the
16 State of Washington where he struck another licensee with a tire iron. As a result of this conduct, his
17 license was suspended for the balance of the Longacre's meeting. This conduct also involved a
18 crime involving moral turpitude. During Appellant's testimony, he admitted that he was found by
19 the Washington State Horse Racing Authority to have hit another licensee with a tire iron (RT: pp.
20 136). Appellant, when questioned if his conduct paralyzed the victim, responded, "No." He then
21 denied any knowledge whether that victim was injured from his violent conduct (RT: pp. 136 -
22 137), but quickly asserted that he was "held blameless." (RT: pp 136). Again, this Hearing Officer
23 finds Appellant's response as lacking candor and credibility. Another example of the acts and
24 crimes of Appellant being substantially related to his business and profession, Appellant was
25 arrested in the City of Arcadia on or about July 21, 2010 with his girlfriend, a methamphetamine
26 user.
27
28

1
2 Appellant brought his methamphetamine using girl friend to the Santa Anita racetrack on or
3 about July 21, 2010. She is the same person that he referred to in his Board testimony as having a
4 methamphetamine problem that needed an intervention. Despite casting her as a methamphetamine
5 addict (RT 139: 3-5), he allowed her into his truck to transport horses. There is no evidence that she
6 forced herself into the truck with Appellant and spent the next twenty plus days with her to
7 California against his own free will and volition. Instead, he brought this methamphetamine drug
8 user onto the grounds of the Santa Anita Racetrack at 1:00 a.m. to load his truck full of horses
9 (seven horses) to take them to the Del Mar racetrack. (RT120:7-25). Appellant is integrally
10 involved in the horse racing business by transporting these horses to various race tracks throughout
11 the United States and within California. The horses are the crux of horse racing gambling, and the
12 most valuable and important piece of property at these horse racing tracks, often times each horse
13 was worth hundreds of thousands of dollars. At the time Appellant was loading these horses onto a
14 truck at 1:00 a.m. on July 21, 2010, he becomes involved in assaultive conduct (crime involving
15 moral turpitude) with this same methamphetamine using girlfriend, and choked her, and then struck
16 her seven (7) to eight (8) times on her hands, arms and back, with bruising in those areas on her. At
17 the time of the July 21, 2010 incident, Appellant's girlfriend had a Restraining Order from the State
18 of Arizona against Appellant. Appellant was arrested that night by the Los Angeles County Sheriff's
19 Department for a felony violation of 273.5 of the California Penal Code. Appellant acts and crimes
20 involving moral turpitude against his girlfriend on or about July 21, 2010 were and are substantially
21 related to his fitness, qualifications, functions, or duties of transporting horses, for which his
22 application was made and subsequently denied by the California Horse Racing Board. By the very
23 nature of horse racing, a gambling event, integrity is of utmost importance. Individuals that have
24 engaged in acts, conduct, crimes, and convictions involving moral turpitude, which is a readiness to
25 do evil (People v. Castro, supra), calls into question their own integrity. Those individuals that lack
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1 such requisite integrity, should not be allowed to be in a position or area where they have access to
2 the animals/horses, which is integral to the integrity of horse race gambling, a multi-million dollar
3 per year gaming industry. Appellant, based on the overwhelming evidence presented at the October
4 15, 2013 hearing, including his own testimony, Appellant is such a person that lacks integrity, and
5 should not be allowed access to barns, stables, and horses, due to this lack of integrity, truthfulness,
6 and honesty.

7
8
9 Clearly this type of assaultive behavior is intimately related to the business and profession of
10 a horse transporter. Appellant is a person that engages in acts, conduct, and crimes involving moral turpitude,
11 with an intent to do evil and harm to others, as evidenced by his lengthy list of arrests and convictions. The denial
12 of a Horse Transporter's license to Appellant is in part to protect the public from a violent, unsavory
13 individual, like Appellant who attend horse races in California horse racing venues.

14
15 Furthermore, pursuant to California Business and Professions Code section 480, the Board
16 properly denied Appellant his license, as his acts and crimes were and are substantially related to the
17 qualifications, functions, or duties of the business or profession for which application is made, as
18 further described herein.

19
20
21 Based on the aforementioned facts and circumstances, the Board's denial of a Horse Transporter's license
22 for Appellant is more than justified. Therefore, the denial of Appellant's license as a Horse Transporter should be
23 affirmed.

24
25 Therefore, it is the opinion of this hearing Officer that the Board has properly and
26 legitimately revoked and denied Appellant's license as a Horse Transporter, and that Appellant, at
27 this time, has failed to demonstrate that he has in fact rehabilitated himself.

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CONCLUSION/PROPOSED DECISION

For the foregoing reasons, and overwhelming evidence presented against Appellant Lockwood, it is this Hearing Officer's proposed ruling that Appellant Lockwood is unfit to possess any California Horse Racing Board licenses, including that as a Horse Transporter, and, the revocation and denial of Appellant Lockwood's Horse Transporter license be affirmed.

DATED: 11/17/14


RICHARD P. MARGARITA, ESQ.
Hearing Officer

Law Office of Richard P. Margarita
P.O. Box 1257, Sloughhouse, CA 95663
(916) 972-0365
Richardmargarita@sbcglobal.net

HEARING OFFICER EXHIBIT 3

LAW OFFICE
OF
RICHARD P. MARGARITA

P.O. Box 1267, Rancho Murieta, California 95683

◆ Phone (916) 972-0365 ◆ Fax (888) 346-7927 ◆ Email: richardmargarita@sbcglobal.net

November 4, 2014

Mr. Carlo Fisco
3000 S. Robertson Blvd, Suite 215
Los Angeles, California 90034-3156
(310) 202-0950 (Telephone and Fax)

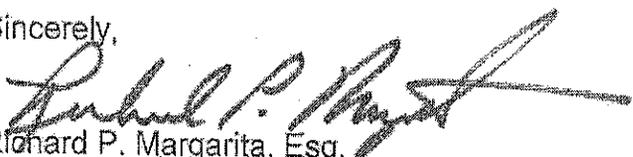
Ms. Kristin Daily, Deputy Attorney General
1300 California Attorney General's Office
1300 I Street, Suite 1100
Sacramento, California 95814-2919
(916) 324-5567
(916) 445-6989 (Fax)

Re: California Horse Racing Board v. Donald Lockwood – Proposed Decision After Remand

Dear Mr. Fisco and Ms. Daily:

I am going to allow both parties to file any additional Briefs, including any applicable Points and Authorities which will be due to me at 5:00 p.m. on Tuesday, November 11, 2014. Both parties, shall fax their briefs directly to me at (888) 346-7927. Once both are received in a timely manner, I will effect an exchange of the motions with the other party.

Sincerely,


Richard P. Margarita, Esq.

Cc: Ms. Sharyn Jolly, CHRB

HEARING OFFICER EXHIBIT 4

LAW OFFICE OF CARLO FISCO
ATTORNEYS AT LAW

Carlo Fisco, Esq.

Leslie Lyons, Esq.

November 5, 2014

VIA FAX ONLY
(888)346-7927

Richard P. Margarita
P.O. Box 19153
Sacramento, CA 95819

Re: *Donald Lockwood v. CHRB*
Objection to Briefing After Remand

Dear Mr. Margarita:

Please accept this correspondence as a formal written objection to your request for further briefing from the parties after the trial court's remand in this matter. As set forth below, such a request is contrary to the very direct and specific orders issued by Judge O'Donnell after the hearing on the writ petition. As such, your call for further briefing must be rescinded immediately.

Judge O'Donnell ruled that the remand was for clarification with instructions to: "supplement respondent Board's findings, specifying the source of the criteria used to determine rehabilitation as discussed by the Hearing Officer at pages 38 through 40 of the proposed decision; and reconsider whether the denial of petitioner's license application is appropriate in light of the apparent invalidity of CHRB Directive 01-09." [Tentative Decision, p. 2]. Judge O'Donnell ruled that "Petitioner correctly observes that the Hearing Officer's explanation for his finding that petitioner had not demonstrated rehabilitation is lacking... The Hearing Officer's consideration of rehabilitation does not acknowledge this lack of official guidance." [Tentative Decision, p. 5] Judge O'Donnell later adds, "...the Court requires a more careful, specific and deliberative discussion of the source of the criteria the Hearing Officer relies on... Therefore, the matter is remanded to the Board to expand on the legal and analytical basis for the rehabilitation criteria it applied to petitioner." [Tentative Decision, p. 6] [Emphasis added]

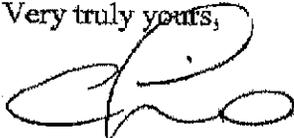
There was no order for additional argument or briefing. In fact, during the hearing Ms. Daily offered to "separately brief" the issue of mandatory criteria for rehabilitation, but the Court did not grant the request. [Hearing Transcript, at 10:15-20] Instead, the remand order was directed specifically at you to offer the legal basis upon which you made your decision. Moreover, Judge O'Donnell agreed with petitioner that the proper standard of review is the independent judgment standard "because all his contentions raise questions of law..." Accordingly, further argument, narrative or opinion from either party will not serve to meet Judge O'Donnell's specific demands regarding these questions of law.

Richard Margarita
November 5, 2014
Page two

Here, Judge O'Donnell granted petitioner's motion to augment the administrative record to include the OAL documents in which the CHRB voluntarily nullified the Directive. As applied to this case, the only new material which you could consider on remand is the CHRB nullification of the Directive after a claim that it was in violation of Government Code 11340.5. Your compliance with Judge O'Donnell's order must come from the administrative record as it stands today. Again, there is no order for further briefing or argument. You are ordered only to provide a legal and analytical basis on the two points raised by the Judge. The court limited your discretion on remand. Any refusal to abide by the Court's order upsets the careful balance of the separation of powers as would if a court were improperly to invade an administrative agency's discretion. When, as here, a court remands a case to an administrative agency with directions to follow a specific legal test, we must presume that the administrators will faithfully follow those instructions. In short, the Board, like other litigants and other administrative agencies, is not entitled to the proverbial second bite of the apple. You, and only you, must state definitely the legal basis upon which you based the decision to deny petitioner a license, keeping in mind the Court's two points of clarification. Calling for further briefing when the court order specifically seeks legal analysis does nothing more than to perpetrate the danger of a sham proceeding in which the agency simply concocts a post hoc rationalization for the decision it has already made.

Judge O'Donnell was cognizant of the danger of a second bite of the apple when she said, "But I hear your argument that the Court is giving respondent a second bite at the apple...I'm just asking the Hearing Officer to make it clear what the Hearing Officer has done." [Hearing Transcript at 6:20-25 and 7:9-13.][Emphasis added]

Very truly yours,



CARLO FISCO

CF/sh

cc: Client
Kristin Daily, DAG
CHRB

1 someone or, in this case, we rule against you. I have
2 cited Perry V. Fox, Brent V. Fox, Donaldson, Singh V. Davi,
3 which is much on point in this case where no criteria, no
4 discretion, you must -- you must grant the petition.

5 However, in light of the Court's ruling, the
6 remand -- because the remand -- practically speaking, the
7 remand, the Court says "legal and analytical basis." Well,
8 the remand affords the California Horse Racing Board and
9 the Hearing Officer a chance to come up with something.
10 And that, obviously, clearly not only was not done by the
11 Hearing Officer, but was not addressed in response to this
12 petition.

13 So, I mean, there is a basis to have the
14 petition issued, granted, today; however, given the
15 tentative, it needs to be expanded to include those legal
16 issues or because the language -- on the one hand, the
17 Court says, "This is an independent review to inquire on
18 errors of law," and the Court emphasizes the mandatory
19 language and yet doesn't go far enough on the remand.

20 THE COURT: Well, I'll hear from counsel, but I
21 hear your argument that the Court is giving the respondent
22 a second bite at the apple. The remand -- well, the whole
23 purpose of the remand is to make sure that the reasoning of
24 the Hearing Officer or the Board is properly before this
25 Court.

26 There is nothing in this tentative ruling
27 that says you can't argue the merits of any argument you
28 made, whether it's being remanded or not remanded. The

1 Court didn't address the merits of those arguments because
2 it felt it necessary to remand to the agency.

3 So with respect to your question about those
4 issues that are being remanded or not being remanded. For
5 example, the Court says in its tentative that the Hearing
6 Officer adequately explains his determination of
7 petitioner's conduct were substantially related to his
8 occupation as a horse transporter.

9 Nothing stops you on the return from arguing
10 that that's wrong. You know, I'm just asking the Hearing
11 Officer to make it clear what the Hearing Officer has done.
12 This is very much of a midterm type of a finding that the
13 Court is making.

14 MR. FISCO: Well, the Court specifically limited,
15 it seemed like, the remand to the question of
16 rehabilitation --

17 THE COURT: Well, the remand is, but when the
18 case comes back before the Court after the remand, all bets
19 are off. Whatever you argue in your papers supporting the
20 petition you continue to argue. I just want the Hearing
21 Officer to make it clear what the Hearing Officer was
22 doing. Once I know what the Hearing Officer was doing, I
23 can really address the merits of the petition.

24 MR. FISCO: Is the Court saying -- I understand
25 the Court is asking the Hearing Officer to tell you what he
26 was doing as it pertains to criteria of rehabilitation.

27 THE COURT: Yes.

28 MR. FISCO: Is the Court also asking him to tell

1 relationship with this methamphetamine-using girlfriend who
2 was with him when he was loading these horses.

3 I think counsel tries to make the statement,
4 oh, he's just barely involved in horse racing. No. These
5 horses, they are the crux of horse racing. That is the
6 most valuable piece of property there. They can be worth
7 hundreds of thousands of dollars. He is loading seven of
8 them in a truck while getting in a fight with his drug
9 abusing girlfriend.

10 That criminal activity is substantially
11 related, couldn't be more related to the fitness for his
12 licensure for this job. So I think the Hearing Officer
13 does adequately address those criteria for rehabilitation,
14 and the petition could be denied on that basis.

15 With regard to the 482, Section 4(h)(2)
16 requiring saying that there shall be these criteria adopted
17 by the Board, we could separately brief this, but there is
18 a whole, you know, case law outlining the difference
19 between directory and mandatory actions from the
20 legislature. Just because they direct something, if it's
21 not done, doesn't mean that the decision made was invalid.
22 And we can separately cite that. These aren't mandatory
23 criteria. They are directory.

24 I am not sure what else -- with regard to
25 the standard of review, the Court notes that it is
26 independent review for the legal question. I would agree
27 with that. But with regard to the remand for -- on the
28 second criteria, whether the license application is

HEARING OFFICER EXHIBIT 5

LAW OFFICE
OF
RICHARD P. MARGARITA

P.O. Box 1267, Rancho Murieta, California 95683

♦ Phone (916) 972-0365 ♦ Fax (888) 346-7927 ♦ Email: richardmargarita@sbcglobal.net

November 5, 2014

Mr. Carlo Fisco
3000 S. Robertson Blvd, Suite 215
Los Angeles, California 90034-3156
(310) 202-0950 (Telephone and Fax)

Ms. Kristin Daily, Deputy Attorney General
1300 California Attorney General's Office
1300 I Street, Suite 1100
Sacramento, California 95814-2919
(916) 324-5567
(916) 445-6989 (Fax)

Re: Re: Mr. Carlo Fisco's November 5, 2014 Letter and Demand re: Additional Briefing -
California Horse Racing Board v. Donald Lockwood – Proposed Decision After Remand

Dear Mr. Fisco and Ms. Daily:

Reference is made to Mr. Carlo Fisco's November 5, 2014 letter, which I received by fax this
afternoon at 1:46 p.m.

Mr. Fisco's demand to this Hearing Officer has been rejected.

My November 4, 2014 letter continues to remain in full force and effect. The parties may
choose to file additional briefs, if they so desire.

Once again, to be abundantly clear, I am going to allow both parties to file any additional
Briefs, including any applicable Points and Authorities which will be due to me at 5:00 p.m. on
Tuesday, November 11, 2014. Both parties, shall fax their briefs directly to me at (888) 346-
7927. Once both are received in a timely manner, I will effect an exchange of the motions with
the other party.

Sincerely,


Richard P. Margarita, Esq.

Cc: Ms. Sharyn Jolly, CHRB

HEARING OFFICER EXHIBIT 6

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

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DATE: November ¹⁶ 2014

TIME: ⁸ 10:35 AM

NO. OF PAGES: 8

(Including Fax Cover Sheet)

TO:

NAME: Hearing Officer Richard Margarita

OFFICE: _____

LOCATION: _____

FAX NO.: (888) 346-7927

PHONE NO.: (916) 962-0365

FROM:

NAME: Kristin M. Daily, Deputy Attorney General

OFFICE: Employment and Administrative Mandate

LOCATION: Sacramento

FAX NO.: (916) 324-5567

PHONE NO.: (916) 445-6989

MESSAGE/INSTRUCTIONS

Re: Donald Lockwood v. California Horse Racing Board

Pursuant to your November 4, 2014 letter to counsel, please accept this Brief Upon Remand. It is my understanding that once you have received briefs from both parties, you will effect an exchange of the briefs.

1 KAMALA D. HARRIS
 Attorney General of California
 2 SUSAN E. SLAGER
 Supervising Deputy Attorney General
 3 KRISTIN M. DAILY
 Deputy Attorney General
 4 State Bar No. 186103
 1300 I Street, Suite 125
 5 P.O. Box 944255
 Sacramento, CA 94244-2550
 6 Telephone: (916) 445-6989
 Fax: (916) 324-5567
 7 *Attorneys for Respondent*
California Horse Racing Board
 8

BEFORE THE CALIFORNIA HORSE RACING BOARD

DONALD LOCKWOOD,

SAC 13-0017

Petitioner,

Sup. Ct. Case No. BS147701

v.

BRIEF UPON REMAND

CALIFORNIA HORSE RACING BOARD,

Respondent.

INTRODUCTION

20 Respondent California Horse Racing Board ("CHRB") hereby submits the following brief
 21 upon remand of the decision to deny petitioner's transporter license for further decision regarding
 22 the criteria to determine lack of rehabilitation by petitioner, and whether the CHRB would have
 23 denied petitioner's license in the absence of CHRB Directive 01-09. The CHRB can deny
 24 petitioner's license in the absence of established criteria to determine rehabilitation under
 25 Business and Professions Code section 482, but must state the criteria to determine rehabilitation,
 26 and must state what evidence in the record shows that petitioner has not met those criteria. The
 27 CHRB can also deny the license despite the non-application of CHRB Directive 01-09, as the
 28

1 evidence of petitioner's criminal record, the connection of his conduct with his license, and the
2 lack of rehabilitation fully support license denial.

3 ARGUMENT

4 I. THE FAILURE TO HAVE ESTABLISHED CRITERIA UNDER B&P CODE 482 DOES NOT 5 PRECLUDE LICENSE DENIAL.

6 This matter has been remanded to the CHRB for a determination and decision that specifies
7 the criteria used to establish petitioner's lack of rehabilitation. While such criteria are required
8 pursuant to Business & Professions Code section 482, the failure to enact formal criteria under a
9 rulemaking process does not preclude the CHRB from denying petitioner's license.

10 Business and Professions Code section 482 states that "Each board under the provisions of
11 this code shall develop criteria to evaluate the rehabilitation of a person when: (a) Considering
12 the denial of a license by the board under Section 480; or (b) Considering suspension or
13 revocation of a license under Section 490. The CHRB has not officially developed such criteria.
14 But that does not mean that licensing actions taken by the CHRB pursuant to those sections are
15 not valid. The fact that the statute uses the word "shall" does not invalidate licensing decisions.

16 Case law is replete with analysis of whether particular provisions are "mandatory" or
17 "directory":

18 The "mandatory-directory" distinction is different from the distinction between
19 mandatory and permissive statutory provisions. (*Galbiso v. Orosi Public Utility Dist.*
20 (2010) 182 Cal.App.4th 652, 664, 107 Cal.Rptr.3d 36.) In the context of the
21 dichotomy between mandatory and permissive statutory provisions, "the term
22 "mandatory" refers to an obligatory [procedure] which a governmental entity is
23 required to [follow] as opposed to a permissive [procedure] which a governmental
24 entity may [follow] or not as it chooses. By contrast, the "directory" or "mandatory"
25 designation does not refer to whether a particular statutory requirement is
26 "permissive" or "obligatory," but instead simply denotes whether the failure to
27 comply with a particular procedural step will or will not have the effect of
28 invalidating the governmental action to which the procedural requirement relates." (*People v. McGee* (1977) 19 Cal.3d 948, 958-959, 140 Cal.Rptr. 657, 568 P.2d 382.)
" "[Many] statutory provisions which are "mandatory" in the obligatory sense are
accorded only "directory" effect." (*Id.* at p. 959, 140 Cal.Rptr. 657, 568 P.2d 382.)

If a failure to comply with a statutory requirement "is determined to have an
invalidating effect, the statute is said to be mandatory; if the failure is determined not
to invalidate subsequent action, the statute is said to be directory [I]n evaluating
whether a provision is to be accorded mandatory or directory effect, courts look to the
purpose of the procedural requirement to determine whether invalidation is necessary
to promote the statutory design." (*People v. McGee, supra*, 19 Cal.3d at p. 958, 140

1 Cal.Rptr. 657, 568 P.2d 382.) “If the procedure is essential to promote the statutory
2 design, it is “mandatory” and noncompliance has an invalidating effect. If not, it is
3 directory.” (City of Santa Monica v. Gonzalez (2008) 43 Cal.4th 905, 924, 76
4 Cal.Rptr.3d 483, 182 P.3d 1027.) “[A] finding that the procedure is mandatory
5 generally follows where the protection of individuals is involved; however, where the
6 object or purpose is merely to secure the orderly conduct of business, a finding that
7 the procedure is directory is the usual result.” (Thomas v. Shewry (2009) 170
8 Cal.App.4th 1480, 1487, 89 Cal.Rptr.3d 105.) “When the object is to subserve some
9 public purpose, the provision may be held directory or mandatory as will best
10 accomplish that purpose....” (People v. McGee, at p. 962, 140 Cal.Rptr. 657, 568 P.2d
11 382, italics omitted.)

12 The word “shall” in a statute does not necessarily denote a mandatory requirement; it
13 may be construed as directory or permissive. (Fort Emory Cove Boatowners Assn. v.
14 Cowett (1990) 221 Cal.App.3d 508, 532, 270 Cal.Rptr. 527.) “Whether a statute is
15 mandatory or directory depends on the legislative intent as ascertained from a
16 consideration of the entire act.” (Ibid.; People v. Lara (2010) 48 Cal.4th 216, 227,
17 106 Cal.Rptr.3d 208, 226 P.3d 322.) “When a statute does not provide any
18 consequence for noncompliance, the language should be considered directory rather
19 than mandatory.” (In re C.T. (2002) 100 Cal.App.4th 101, 111, 121 Cal.Rptr.2d 897;
20 People v. Lara, at p. 227, 106 Cal.Rptr.3d 208, 226 P.3d 322 [The Legislature’s
21 failure to include a penalty or consequence for noncompliance with a statutory
22 procedure indicates a directory rather than mandatory requirement.]) Further, in the
23 absence of prejudice, lack of strict compliance with a statute does not render
24 subsequent proceedings void. (In re Katelynn Y. (2012) 209 Cal.App.4th 871, 880,
25 147 Cal.Rptr.3d 423; Crane v. Board of Supervisors (1936) 17 Cal.App.2d 360, 368,
26 62 P.2d 189 [statutory requirement is directory when noncompliance results in no
27 injury or prejudice to the substantial rights of interested persons].)

28 (Coastside Fishing Club v. California Fish and Game Commission (2013) 215 Cal.App.4th 397,
424-425.)

Here, section 482 is directory, not mandatory. First, the purpose of section 482 is to have a
set of standards by which to determine rehabilitation. (Donley v. Davi (2009) 180 Cal.App.4th
447,466-467.) Invalidation of the license denial is not necessary to fulfill the purpose, so long as
the criteria used are set forth in the decision. More importantly, the statutory scheme provides no
penalty or consequence for noncompliance, indicating the language is directory, not mandatory.

The CHRБ has a constitutional mandate to regulate horse racing and license the individuals
involved. (Fendrich v. Van de Kamp (1986) 182 Cal.App.3d 246, 263.) The Superior Court
recognized this when it remanded the matter to the CHRБ despite the lack of formal criteria
pursuant to section 482. Therefore, the failure to enact formal criteria pursuant to section 482
does not mean that the CHRБ cannot perform its constitutional duty to license individuals
involved in horse racing and the gambling thereon.

1 **II. THE CRITERIA USED TO DETERMINE LACK OF REHABILITATION WERE IMPLICIT**
2 **IN THE DECISION AND JUST NEED TO BE SPECIFIED.**

3 The decision by the CHRB addressed petitioner's lack of rehabilitation and the evidence
4 that supported his lack of rehabilitation, and implicit in that discussion were the criteria used to
5 determine that lack. (AR 38-39.) The decision first sets forth how petitioner's letters of
6 recommendation do not show his rehabilitation because they did not address petitioner's recent
7 criminal conduct. Either petitioner was not fully honest with the letter writers, or they chose to
8 omit those facts from their letters. In either case, the failure shows a lack of rehabilitation by
9 petitioner because he is failing to accept responsibility for his criminal conduct by sharing it with
10 those from whom he seeks letters of recommendation. Failure to acknowledge fault is an
11 indication of failure to be rehabilitated. (*See Department of Parks & Recreation v. State*
12 *Personnel Bd.* (1991) 233 Cal.App.3d 813, 828-829.)

13 The decision next states that there is little evidence of rehabilitation citing petitioner's
14 "systematic pattern" of acts, conduct, crimes and convictions. Petitioner's acts are too close in
15 time to the license denial for him to have established rehabilitation. The judgment setting aside
16 petitioner's Arizona assault conviction after his completion of domestic violence classes was
17 issued less than one year before the administrative hearing on petitioner's license denial. (AR
18 174.) Lack of passage of time is a valid criteria from which to judge rehabilitation. (*Donley v.*
19 *Davi* (2009) 180 Cal.App.4th 447, 466.)

20 The decision also states that petitioner's lack of remorse indicates his failure to be
21 rehabilitated, and cites to petitioner's testimony at the hearing which placed blame upon the
22 victims of his assaults. (*See Singh v. Davi* (2012) 211 Cal.App.4th 141, 151 [citing the exhibition
23 of remorse in connection with rehabilitation].)

24 The decision also cites to petitioner's lack of credibility at the hearing. Great weight is to
25 be given a determination of lack of credibility in an administrative hearing. (*Blair v. State Bar*
26 (1989) 49 Cal.3d 762, 775.) Finally, the decision states that petitioner acknowledged that he
27 associates with a methamphetamine using girlfriend, and "[h]is choice of associates again
28 demonstrates his lack of rehabilitation."

1 The Real Estate Commission has determined the following criteria to be relevant for a
2 determination of rehabilitation of a licensee:

3 (a) The passage of not less than two years since the most recent criminal conviction
4 or act of the applicant that is a basis to deny the Bureau action sought. (A longer
5 period will be required if there is a history of acts or conduct substantially related to
6 the qualifications, functions or duties of a licensee of the Bureau.)

7 (b) Restitution to any person who has suffered monetary losses through "substantially
8 related" acts or omissions of the applicant.

9 (c) Expungement of criminal convictions resulting from immoral or antisocial acts.

10 (d) Expungement or discontinuance of a requirement of registration pursuant to the
11 provisions of Section 290 of the Penal Code.

12 (e) Successful completion or early discharge from probation or parole.

13 (f) Abstinence from the use of controlled substances or alcohol for not less than two
14 years if the conduct which is the basis to deny the Bureau action sought is attributable
15 in part to the use of controlled substances or alcohol.

16 (g) Payment of the fine or other monetary penalty imposed in connection with a
17 criminal conviction or quasi-criminal judgment.

18 (h) Stability of family life and fulfillment of parental and familial responsibilities
19 subsequent to the conviction or conduct that is the basis for denial of the Bureau
20 action sought.

21 (i) Completion of, or sustained enrollment in, formal education or vocational training
22 courses for economic self-improvement.

23 (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or
24 monetary obligations to others.

25 (k) Correction of business practices resulting in injury to others or with the potential
26 to cause such injury.

27 (l) Significant or conscientious involvement in community, church or privately-
28 sponsored programs designed to provide social benefits or to ameliorate social
problems.

(m) New and different social and business relationships from those which existed at
the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question
as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's
previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials

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competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

(o) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has been convicted of any felony within seven (7) years from the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation.

(p) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.

(10 Cal. Code Regs. § 2911.) Given the general nature of such criteria, the CHRB could point to these criteria to fill the "analytical" gap referenced by the Superior Court. Much of the evidence of petitioner's lack of rehabilitation would fall into one of these categories, but needs to be specified in the decision. For example, although more than two years has passed since petitioner's most recent criminal conviction, his record justifies requiring the passage of more time. Less than a year had passed from the set aside of the conviction and the administrative hearing on the license denial, and petitioner's criminal record has not been expunged. While there is no evidence that petitioner has engaged in substance abuse, he admits to associating with a methamphetamine using girlfriend, the same person implicated in his 2010 detention at the Santa Anita racetrack. There was no evidence presented of stability of family life, or vocational training or self-improvement, and there was evidence presented that his attitude has not changed. Petitioner's testimony was deemed not credible, and the letters of recommendation were incomplete in their recognition of petitioner's criminal history. There is substantial evidence of lack of rehabilitation; the decision just needs to specify the criteria not met by petitioner that show the lack of rehabilitation.

///

1 **III. THE EVIDENCE SUPPORTS LICENSE DENIAL WITHOUT REFERENCE TO CHRB**
2 **DIRECTIVE 01-09,**

3 The decision by the hearing officer in this matter was clear that there were two separate
4 bases for denial of the license, petitioner's criminal record and lack of rehabilitation, and the fact
5 that he had to register as a sex offender and was thus not qualified under CHRB Directive 01-09.
6 Given that the CHRB is not enforcing the CHRB Directive, the decision on remand needs to
7 specify that the petitioner's criminal record, which is connected to his fitness for licensure, and
8 lack of rehabilitation justify license denial in and of themselves.

9
10 **CONCLUSION**

11 For the above stated reasons, respondent respectfully requests that the decision denying
12 licensure be reissued to address the criteria for lack of rehabilitation and that license denial is
13 justified even in the absence of CHRB Directive 01-09.

14
15 Dated: November 10, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
SUSAN E. SLAGER
Supervising Deputy Attorney General



KRISTIN M. DAILY
Deputy Attorney General
Attorneys for Respondent
California Horse Racing Board

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HEARING OFFICER EXHIBIT 7

DONALD LOCKWOOD v. CALIFORNIA HORSE RACING BOARD

LASC CASE NO. BS147701

PETITIONER'S BRIEF ON REMAND

OBJECTION:

Petitioner renews his objection to the Hearing Officer's directive to receive further briefing from the parties subsequent to the remand from the trial court. Petitioner's original request for rescission of the briefing order was rejected, without any reference to legal authority, by the Hearing Officer on November 5, 2014. Because the briefing order does not follow the trial court's order for clarification and it creates a sham proceeding by allowing the Hearing Officer and respondent agency to concoct a *post hoc* rationalization for its prior decision, petitioner hereby objects and asks that the remand briefs be stricken without consideration.

TRIAL COURT'S ORDER:

The trial court remanded the proceedings to the Board with instructions to: (1) specify the source of the criteria used by the Hearing Officer to determine rehabilitation; and (2) reconsider whether the denial of petitioner's license is still appropriate in light of the apparent invalidity of CHRB Directive 01-09.

CRITERIA FOR REHABILITATION:

The remand order is quite clear on the issue of criteria of rehabilitation. It instructs the Hearing Officer to identify the criteria he used in making his decision on petitioner's rehabilitation. The trial court did not ask the parties to brief the applicability, existence, propriety or requirement of criteria. (That is reserved for the return hearing before the trial court.) The trial court's instructions require the Hearing Officer to provide the court with information and to reconsider his decision under the prevailing circumstances. The court order neither solicits argument nor answers to questions of law. It orders the Hearing Officer to specifically identify the source of the criteria used to determine the issue of rehabilitation. The court stated, "I want to know what the Hearing Officer was doing." Consequently, since the order of the court is clearly directed to the Hearing Officer, it requires, in turn, only a simple answer from the Hearing Officer rather than a matter subject to briefing.

And because no formally promulgated criteria exist or ever existed, as required by B&P Code section 482, what the Hearing Officer was doing was offering his own random, subjective opinion as to why petitioner should be denied a license. This type of untested and illegal discretion is unequivocally prohibited under California statutes and its decisional law.

That there are not and never were any criteria is beyond dispute. Business and Professions Code section 482 requires the establishment of formally promulgated criteria to determine rehabilitation. We know that CHRFB, or the Hearing Officer it hired, do not and did not have any such criteria because of, among other reasons, Business and Professions Code section 486. Section 486 requires the Board to serve a copy of its criteria on the licensee at the time of denial. Here, Senior Investigator Dan Dailey testified that he gave no other documents to Lockwood besides the notice of refusal. He had no criteria to give.

CHRFB, the DAG representing it and the Hearing Officer it hired, had numerous chances to address the issue of criteria and never did so. At the time of the denial, no criteria were utilized, served or mentioned. During the fitness hearing, CHRFB never introduced any evidence of criteria. The proposed decision of the Hearing Officer never mentions any formally adopted and published criteria. He never stated that he was given the criteria by CHRFB. He never responded to petitioner's argument that no formal criteria existed or were utilized. The DAG never addressed the issue of Sections 482 and 486 at the time of the fitness hearing. Again, in the briefs for the trial court, petitioner raised the issue without response or opposition from the CHRFB. Judge O'Donnell could not help but notice the obvious absence of opposition with regards to the issue of criteria. It is beyond dispute that CHRFB and its agents never responded or opposed the issue of criteria because it has never formally promulgated such criteria.

So, regardless of whatever sheen or veneer the Hearing Officer or DAG attempt to put on it, we are left with the random, speculative, highly subjective opinion of the Hearing Officer on the issue of criteria of rehabilitation. This from a Hearing Officer with, based on information and belief, no prior personal experience with the horse racing industry. He has never been licensed by the CHRFB. Prior to his recent appointment as a Hearing Officer paid on a case-by-case basis, he had no prior experience as either an Administrative Law Judge or a litigator before the CHRFB. His narrative in his Proposed Decision about what is best for the horse racing industry is, unfortunately, based neither on any practical experience with the industry nor, more importantly, any legal authority. The proposed decision is shockingly void of any legal reference save for one citation to People v. Castro which has nothing to do with the present case.

Thus, when asked by the trial court to identify the criteria of rehabilitation used by the Hearing Officer, no other response is available to CHRFB other than the entirely personal opinion of the Hearing Officer it hired.

As such, this case shares a remarkable similarity with Singh v. Davi (2012) 211 Cal.App.4th 141. In Singh, a real estate applicant was denied a license because of a prior criminal conviction for a theft related offense. The Hearing Officer denied the licensed because of the nature of the crime and his previous job as a police officer. On appeal, the Court of Appeal found for petitioner on the basis that "nature of the crime" was not one of the formally adopted criteria utilized by the Department of Real Estate. Like every other state agency except the CHRFB, the Department of Real Estate has a specific regulation setting forth its criteria for

rehabilitation. [10 CCR §2911] The Court of Appeal found that where the agency attempted to utilize a criterion which was not part of the properly promulgated criteria, it ran afoul of Business and Professions Code section 482. So, too, here, except for the fact that CHRFB, in the first place, has no criteria.

California law requires that the CHRFB establish conduct it will consider as demonstrating rehabilitation. The trial court noted (1) the CHRFB's mandatory duty to establish such criteria; and (2) the absence of such criteria in the Hearing Officer's proposed decision. In the absence of such Section 482 criteria, the trial court requires a more careful, specific, and deliberative discussion of the legal source of the criteria upon which the Hearing Officer relied. Based upon the Hearing Officer's response, the Court will then reach a determination of whether there has been an abuse of discretion.

RECONSIDERATION IN LIGHT OF APPARENT INVALIDITY OF DIRECTIVE:

The trial court asks the Hearing Officer, not the parties, if the penalty is still appropriate in light of the fact that CHRFB Directive 01-09 is an underground regulation which violated Government Code section 11340.5. The simple answer is that the penalty is not appropriate.

This disciplinary hearing was engendered by the Directive and the 1992 Kentucky conviction which CHRFB believed came under the purview of the Directive. Senior Investigator Dan Dailey testified to as much during the fitness hearing when he said that the denial of the license was based on the Directive and Kentucky conviction. Without the Directive, this case would never have seen the light of day. Moreover, the Hearing Officer mistakenly gave undue weight to the effect of the Directive by proclaiming that petitioner "should not even be allowed to apply for a license" let alone get to a fitness hearing. The prejudicial effect of the Directive was unmistakably evident throughout the fitness hearing and the proposed decision.

Without the Directive, CHRFB is left with minor incidents, which as a matter of law, are each inadmissible in this administrative case. As set forth in petitioner's closing brief as well as his briefs in the trial court, the Arcadia and Arizona incidents are inadmissible as per the Business and Professions Code (§475, et seq.), the Horse Racing Law (§1489) and the California Evidence Code (§1153). Further, even if they were admissible, which they are not, it would be unprecedented for a state agency to permanently deny a licensee a license based on, at best, a misdemeanor. A personal review of CHRFB cases going back at least 3 years shows no prior incident of the agency permanently denying a license because of a misdemeanor conviction. There are, on the other hand, several instances where the CHRFB has recently granted licenses to felons and felons with sex crime convictions. [See, e.g., Licensure of Michael Baze, Licensure of Larry Hanson, and others.]

In addition, one must be reminded that this entire affair began when the CHRFB decided to become involved in a commercial dispute when competing horse transporters complained about Lockwood charging lower prices to ship horses. The Directive was merely a pretext for the

CHRB investigator to favor one horse transporting company over another and exercise authority over Lockwood despite the fact that he had been granted a license in 2006 and again in 2009.

Permanent denial of a license is very much inappropriate under these circumstances especially given the very limited contact a horse transporter has with the racing enclosure. Any argument to the contrary is just the prejudicial opinion of someone who has very little knowledge, if any at all, of how things work in the backstretch of a racetrack. The contact a horse transporter has with the horse or the enclosure pales in comparison to the contact of the trainer, the owner, the jockey, the valet, the veterinarian, the blacksmith, the groom, the assistant trainer, the hot walker, the barn foreman, the pony boy/girl, the race secretary, the assistant starter, the spit box tester, the paddock judge, and many others who come into close contact with the horse after the horse transporter.

A more equitable solution, and one that protects the interests of all parties concerned, is to issue a probationary license for a term of up to 2 years contingent upon no further convictions.

November 10, 2014



Carlo Fisco, Esq.
Attorney for Petitioner
Donald Lockwood

DECLARATION OF SERVICE BY CERTIFIED AND FIRST CLASS

Complaint: **In the Matter of the Decision After Remand
Donald Lockwood**

Case No.: **California Horse Racing Board Case Number SAC 13-0017**

I declare: I am employed by the California Horse Racing Board, I am 18 years of age or older and not a party to this matter; my business address is 1010 Hurley Way, Suite 300, Sacramento, CA 95825. On November 20, 2014, I served the attached **Decision After Remand**, by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another copy of the **Decision After Remand**, in a second sealed envelope as first class mail with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Carlo Fisco, Esq.
3000 S. Robertson Blvd., Suite 215
Los Angeles, CA 90034-3156
Certified Mailing No.
7012 2920 0000 1569 7502

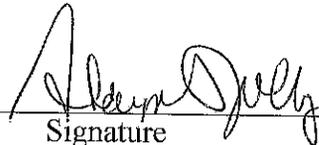
Donald Lockwood
21206 South East 286th Place
Kent, WA 98042
Certified Mailing No.
7013 1710 0001 6854 5047

On November 20, 2014 I served the attached **Decision After Remand**, by placing a true copy thereof enclosed in a sealed envelope addressed as follows

Kristin Daily, Deputy Attorney General
Hearing Officer- Richard Margarita
Supervising Investigator Dan Dailey
CHRB-4
BOS-4
ARCI

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this Declaration was executed on November 20, 2014, California.

Sharyn S. Jolly
Declarant


Signature