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

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

The Decision shall become effective on February 24, 2014.

IT IS SO ORDERED ON February 21, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

CALIFORNIA HORSE RACING BOARD Complainant, vs. DONALD LOCKWOOD Appellant.	Docket No.: 11GG216 Hearing Date: October 15, 2013 Time: 10:00 A.M.

PROPOSED DECISION

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

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

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

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

PROCEDURAL BACKGROUND

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

On August 19, 2013, counsel for Appellant, Carlo Fisco, faxed a letter to the Hearing officer attempting to confirm a hearing date of September 30, 2013, with a copy to Deputy Attorney General Daily (Hearing Officer's Exhibit 1). On September 4, 2013, Mr. Fisco faxed a letter to Ms. Daily requesting that the hearing date for Mr. Lockwood be October 15, 2013 (Hearing Officer's Exhibit 2), which was received by the Hearing Officer on or about September 5, 2013 from Sharyn Jolly, California Horse Racing Board.

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

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LIST OF EXHIBITS

CALIFORNIA HORSE RACING BOARD EXHIBITS:

CHRB Exhibit # 1: Report of Investigation.

CHRB Exhibit # 2: Complaint, Case No. 11GG216.

CHRB Exhibit # 3: Official Ruling, Ruling No. 43.

CHRB Exhibit # 4: Application for License.

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

CHRB Exhibit # 6: Findings of Fact.

CHRB Exhibit # 7: Notice of Refusal of License.

CHRB Exhibit # 8: CHRB Executive Directive 01-09.

CHRB Exhibit # 9: LA County Booking and Property Record.

CHRB Exhibit # 10: Application to set aside Judgment.

CHRB Exhibit # 11: Licensee/Rulings Inquiry.

CHRB Exhibit # 12: Fax from Carlo Fisco to DAG Kristin Daily dated July 22, 2013.

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

CHRB Exhibit # 13: Fax from Carlo Fisco to DAG Kristin Daily dated July 23, 2013.

CHRB Exhibit # 14: Letter from DAG Kristin Daily to Carlo Fisco dated July 24, 2013.

CHRB Exhibit # 15: Fax from Carlo Fisco to DAG Kristin Daily dated August 2, 2013.

CHRB Exhibit # 16: Letter from DAG Kristin Daily to Carlo Fisco dated August 6, 2013.

CHRB Exhibit # 17: Fax from Carlo Fisco to DAG Kristin Daily dated August 7, 2013.

CHRB Exhibit # 18: Letter from DAG Kristin Daily to Carlo Fisco dated August 9, 2013.

CHRB Exhibit # 19: Letter from DAG Kristin Daily to Carlo Fisco dated August 12, 2013.

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CHRB Exhibit # 20: Fax from Carlo Fisco to DAG Kristin Daily dated August 19, 2013 and Letter from Carlo Fisco to Hearing Officer Richard P. Margarita and copy to DAG Kristin Daily dated August 19, 2013.

CHRB Exhibit # 21: Fax from Carlo Fisco to DAG Kristin Daily dated August 29, 2013.

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

APPELLANT'S EXHIBITS:

Appellant Exhibit A: Notice of Refusal of License.

Appellant Exhibit B: Criminal History Information.

Appellant Exhibit C: Application for Renewal or Replacement License.

Appellant Exhibit D: Request Information Provided, Request ID: 8185001.

Appellant Exhibit E: Final Judgment, Sentence of Imprisonment.

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

Appellant Exhibit G: California Penal Code Section 290.002.

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

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

Appellant Exhibit J: Notice of Hearing.

Appellant Exhibit K: Recommendation from William Lux.

Appellant Exhibit L: Declaration of Jill Hallin.

Appellant Exhibit M: Recommendation from Ms. Najma Mashadi.

Appellant Exhibit N: Declaration of Carl Grether.

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

Appellant Exhibit P: Recommendation from Mike Chambers.

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

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

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

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

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

HEARING OFFICER'S EXHIBITS:

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

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

FACTUAL FINDINGS

I.

Appellant Donald Lockwood is a horse transporter.

II.

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

III.

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

IV.

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

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V.

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

VI.

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

VII.

On or about August 28, 1992, Appellant was convicted of sexual assault in the first degree, and two counts of burglary in the second degree, and sentenced to eight (8) years in the Kentucky State Prison system. He served five (5) years and eight (8) months in the Kentucky State Prison system.

VIII.

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

IX.

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

X.

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

XI.

On or about July 21, 2010, Appellant was initially arrested for violation of California Penal Code Section 273.5, as a felony, for inflicting corporal punishment on a spouse or co-habitant. Appellant was booked into the Los Angeles County Sheriff's Department Jail, and bail was set at

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$50,000. (Exhibit 9). The victim was Appellant's girlfriend. Due in part to the fact that the Victim did not desire prosecution of Appellant, the Los Angeles County District Attorney's Office declined to file charges against Appellant. Due to the fact that no charges were filed against the Appellant, he received a letter from the City of Arcadia Police Department dated August 11, 2010. This letter stated that, "Pursuant to California Penal Code Section 849.5, in any case in which a person is arrested and released and no accusatory pleading is filed charging him/her with an offense, any record of arrest of the person shall include a record of release. Thereafter the arrest shall not be deemed an arrest but a detention only."

XII.

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

XIII.

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

XIV.

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

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APPLICABLE LAWS AND REGULATIONS

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

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

C.C.R. Section 1489 (Grounds for Denial or Refusal License) states:

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

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

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

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

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

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

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

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

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

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

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

California Penal Code Section 290.03, entitled, "Scope of Sex Offender Registration Act, retroactive application," states:

The registration provisions of the Act are applicable to every person described in the Act, without regard to when his or her crime or crimes were committed or his or her

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duty to register pursuant to the Act arose, and to every offense described in the Act, regardless of when it was committed.

California Penal Code Section 290.002, which is entitled, "Registration of out-of-state residents working or attending school in California," states:

> Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with the Act. Persons described in the Act who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with the Act. The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this section shall, in addition to the information required pursuant to Section 290.015, provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this section shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

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

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

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

(2) Conviction of a crime.

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has

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been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

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

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

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

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

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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

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

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

California Penal Code Section 290, entitled, "Sex Offender Registration Act, lifetime duty to register," states:

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(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261,paragraph (1) of subdivision

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(a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1,266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i,Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10,311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f,subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

California Penal Code Section 290.002, entitled, "Registration of Out-of-State Residents working or attending school in California," states:

Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with the Act. Persons described in the Act who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with the Act. The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this section shall, in addition to the information required pursuant to Section 290.015, provide the registering authority with the name

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of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this section shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

California Penal Code Section 290.005, entitled, "Registration of Persons convicted of registrable offenses in out-of-state, federal, or military courts, "states:

The following persons shall register in accordance with the Act:

(a) Except as provided in subdivision (c) or (d), any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, based on the elements of the convicted offense or facts admitted by the person or found true by the trier of fact or stipulated facts in the record of military proceedings, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, including offenses in which the person was a principal, as defined in Section 31.

(b) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

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(c) Except as provided in subdivision (d), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(d) Notwithstanding any other law, a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense, based on the elements of the conviction offense or proven or stipulated facts in the record of conviction, contains all of the elements of a registerable California offense described in subdivision (c) of Section 290:

(1) Indecent exposure, pursuant to Section 314.

(2) Unlawful sexual intercourse, pursuant to Section 261.5.

(3) Incest, pursuant to Section 285.

(4) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in Section 290.019, and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(5) Pimping, pursuant to Section 266h, or pandering, pursuant to Section 266i.

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

(a) A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned shall be initiated by filing an accusation

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or District Statement of Reduction in Force. The accusation or District Statement of Reduction in Force shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules. The accusation or District Statement of Reduction in Force shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

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

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation, except that, if the hearing is held at the request of the respondent, Sections 11505 and 11506 shall not apply and the

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statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6, and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

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

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

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

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

(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues

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even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

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

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

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

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

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DISCUSSION OF ISSUES

I. APPLICABLE BURDEN OF PROOF

The California Horse Racing Board (CHRB) has the burden of proof and must establish the proprietary of the Appellant's licensure denial by a preponderance of evidence standard.[1]

The issue before this Board is whether Appellant Donald Lockwood is fit for licensure as a Horse Transporter in the State of California based on numerous factors, including, but not limited to, the fact that he has a prior sexual assault conviction in the State of Kentucky. That conviction, subject to the satisfaction of specific pre-conditions, subjected Appellant to registration as a sex offender in California, pursuant to Penal Code Section 290 and 290.02.

II. JURISDICTION

Counsel for Appellant asserted in the October 15, 2013 hearing and his closing brief that pursuant to Business and Professions Code Section 487, the October 15, 2013 hearing date set by the CHRB breached the statutory mandate of Business and Professions Code Section 487. Counsel for Appellant claims that Appellant requested a hearing on June 6, 2013 (Exhibit H). Pursuant to Business and Professions Code Section 487, ninety (90) days from June 6, 2013 would be September 4, 2013.

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

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

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

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

On August 19, 2013, Mr. Fisco sent a fax to Deputy Attorney General Kristin Daily and this Hearing Officer which in part stated, "Please be advised that my client would like to proceed to hearing on September 30, 2013." (Hearing Officer's Exhibit 1)(Attached). The September 30, 2013 date sought by Mr. Fisco would have been 116 days from the date of Appellant's request for a hearing. Appellant, by and through his counsel, agreed in writing to a continuance past the ninety (90) day period set forth in Business and Professions Code section 487, seventy three (73) days from Appellant's June 6, 2013 request for a hearing. The Complainant's brief contains Exhibits 12 – 22. Most of these Exhibits pertain to setting a hearing date, and for the Appellant to receive discovery. In some of these Exhibits, Ms. Daily explained to Mr. Fisco that she would not be available to conduct the Appellant's hearing until August 27 – 29, 2013, and contrary to Mr. Fisco's suggestion, would not conduct a hearing for Appellant on a Saturday or Sunday.

On August 27, 2013, Ms. Sharyn Jolly, CHRB, wrote an email to Mr. Fisco,

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

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

> Ms. Daily, Please set the hearing for October 15, 2013. None of the dates you listed in your letter of August 12, 2013 were available. I found that a bit puzzling. I have not been in contact with the Hearing Officer although perhaps a status conference somewhere down the road may be helpful. If you haven't already, please send me whatever documents you intend to introduce. You previously told me that your only witness for your case-in-chief would be Dan Dailey. If that has changed, please let me know. Thank you."

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

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hearing date was in fact completed on October 15, 2013.

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

III. NOTICE OF REFUSAL OF LICENSE – AMENDMENT OF CHARGES

Counsel for Appellant asserts in his closing brief that in the Notice of Refusal (Exhibit A), the only block/box that is checked relative to charges against the Appellant is the one that states, "You have been convicted of a crime punishable by imprisonment in the State or federal prison, or have been convicted of a crime involving moral turpitude." Counsel argues that any reference to additional charges, such as the other acts, conduct, and crimes involving moral turpitude, should be precluded, because that particular block/box was not marked by Supervisor Dan Dailey or a subordinate (Exhibit A). Counsel further alleges that pursuant to Government Code Section 11504, Complainant is precluded from including Appellant's other acts, conduct, and crimes involving moral turpitude, as they are prejudicial to Appellant. Pursuant to Government Code Section 11507, Complainant had the right to amend or supplement the accusations prior to the time that the matter was submitted for decision. There was no surprise or due process denial to Appellant when Complainant included, as part of their case-in-chief, acts, conduct, crimes, and convictions by Appellant, not just his convictions of crimes involving moral turpitude

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or crimes in which he was imprisoned in the State prison (Kentucky). These acts, conduct, crimes, and convictions involving moral turpitude had all been previously revealed to Complainant *by* [emphasis added] Appellant in his Application for License dated June 5, 2013 (Exhibit 4). Additionally, his own counsel elicited through Appellant's own testimony such acts, conduct, crimes, and convictions involving moral turpitude, as well as their submitted Exhibits (Exhibits B, C, D, E, F, G, K, L, M, N, O, Q, and R). There was no prejudice or denial of Appellant's due process rights.

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

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

IV.DOCTRINE OF EQUITABLE ESTOPPEL IS INAPPLICABLE

Counsel for Appellant asserts in his closing brief that under the Doctrine of Equitable Estoppel, the CHRB should be barred from revoking and/or denying the issuance of a Horse Transporter's license to Appellant, because he was previously granted one in 2006 and 2009. The Doctrine of Equitable Estoppel is inapplicable in this instance because Appellant engaged in felonious assaultive conduct on his girlfriend on or about July 21, 2010 in Arcadia, California, was initially arrested, and bail was set at $50.000.00. Although charges were eventually not filed by the Los Angeles County District Attorney's Office, Appellant's conduct constituted acts, conduct, crimes, and convictions involving moral turpitude, subsequent to the issuance of Appellant's license in 2006 and 2009. Furthermore, in 2011, Appellant was arrested in Scottsdale, Arizona for violation of third degree

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assault. On or about September 19, 2012, Appellant successfully completed twenty six Domestic Violence/Batterer's Program sessions in through Court Ordered Classes, 27116 Rio Prado Drive, Valencia, California, for the City of Scottsdale, Arizona conviction. Appellant received a ninety (90) day suspended sentence. Although the conviction was set aside in October 2012, Appellant's conduct constituted acts, conduct, crimes, and convictions involving moral turpitude, subsequent to the issuance of Appellant's license in 2006 and 2009. According to Appellant's own testimony, this Victim in the 2011 Arizona incident was the same girlfriend who was the victim in the July 21, 2010 incident in Arcadia, California (RT: pp. 122), constituting another act of domestic violence, again involving acts and conduct constituting moral turpitude. Despite the fact that Appellant's witness, Greg Fabbri testified as to the prior decision making process that he engaged in and was involved for the issuance of CHRB licenses to Appellant in 2006 and 2009, the subsequent 2010 and 2011 acts by Appellant involving moral turpitude, as well as Appellant's subsequent applicability to Penal Code Section 290 et seq. mandates (290.002 and 290.005) render the Doctrine of Equitable Estoppel inapplicable.

Therefore, the Doctrine of Equitable Estoppel is inapplicable to Appellant's case.

V. OBJECTION TO ADMISSIBILITY OF EXHIBITS CONSTITUTING HEARSAY BY BOTH COMPLAINANT AND APPELLANT

Both Counsel have asserted in their briefs their opposition to certain Exhibits submitted by the opposing party. Pursuant to Government Code section 11513 (d), hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration. Under Government Code Section 11513 (c), the hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the

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sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Under Government Code section 11513 (f), the presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

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

VI.RECIPROCITY IS INAPPLICABLE TO APPELLANT

Counsel for Appellant asserts in his closing brief that reciprocity is inapplicable to this Appellant relative to the prior State of Washington Horse Racing Commission ruling on or about October 29, 1997. Counsel is correct. That ruling in 1997 by the State of Washington against Appellant is inapplicable as to reciprocity. But, the underlying conduct committed by Appellant in the States of Washington, Kentucky, Arizona, and California from 1975 through 2011 is relevant and admissible against Appellant in the overall findings and conclusions for this hearing.

VII. APPELLANT SHOULD BE DENIED A HORSE TRANPORTER'S LICENSE DUE TO THE FACT THAT HE WAS REQUIRED TO REGISTER AS A SEX OFFENDER PURSUANT TO PENAL CODE SECTION 290

Pursuant to CHRB Directive 1-09, issued by the California Horse Racing Board on or

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about January 6, 2009, persons who are required to be registered pursuant to California Penal Code section 290 et seq., are precluded from possessing a license (Exhibit 8). Under Penal Code Section 290.002 and 290.005, Appellant was required to register as a sex offender based on his convictions in Kentucky, provided that he was employed or carrying on in a vocation in California on a full time or part-time basis, with or without compensation, for more than fourteen (14) days, or for an aggravated period exceeding thirty (30) days in a calendar year. Counsel for Appellant incorrectly argued that Directive 01-09 is wholly inapplicable. Section (a) on page 2 of Exhibit 8 specifically states, "Felony Convictions for violation(s) of California Penal Code Section 337 a-j: The license applicant is not eligible to be licensed anytime. In addition, persons who are required to register as a Sex Offender Registration Act pursuant to California Penal Code Section 290-290.023 shall not be eligible for licensing (This criteria will apply to felony convictions in all federal courts and to felony convictions in state courts other than California convictions for crimes of a similar class i.e. Racketeering, Career Criminal Enterprise as well as those jurisdictions having programs for registrants of Sexual Offenders, Sexually Violent Predators, etc.). (b) Felony Convictions (except as noted above subsection "a"): A license applicant is not eligible for licensing for a term of five (5) years following the termination of the parole and/or probation of the felony conviction." Section (a) is controlling, and if it is found that Appellant satisfies the pre-requisites of Penal Code Section 290.002 and 290.005, he is *ineligible* [emphasis added] to be licensed at any time. Appellant's counsel has clearly misinterpreted and misstated the law as set forth in Directive 01-09 (Exhibit 8). Section (b), as described above, applies to those with felony convictions other than those set forth in subparagraph (a), and makes those who have such a felony conviction wait five years subsequent to the termination of parole or probation to be eligible to even apply for a license. Section (b) is inapplicable to Appellant.

Although Appellant vehemently denied being subject to the dictates of Penal Code Sections 290.002 and 290.005 of carrying on in a vocation in California on a full time or part-time

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basis, with or without compensation, for more than fourteen (14) days, or for an aggravated period exceeding thirty (30) days in a calendar year, the circumstantial evidence proven by Complainant clearly contradicts Appellant's claim. Specifically, Appellant's Exhibit Q, a Progress Report/Domestic Violence/Batterer's Program from Court Ordered Classes, 27116 Rio Prado Drive, Valencia, California, dated September 19, 2012, reflects that Appellant had completed a twenty six (26) session Domestic Violence/Batterer's Program for case number cr2010025474, arising out of "Scottsdale City." Furthermore, Complainant's Exhibit 10, which is a City Court of Scottsdale Application to set aside the judgment, case number Cr2010025474, filed and signed by Appellant, and dated October 1, 2012, lists his address as P.O. Box 1586 Monrovia, California, 91017. This application to set aside the judgment was granted on October 24, 2012. A logical inference can be made that when Appellant filed this application with the Court on or about October 1, 2012, he was residing in the State of California, not the State of Washington for a period of more than thirty (30) days, based on the fact that no known response date from the Scottsdale City Court was known, and logically, the Appellant would check his mail from the area where he resided. Appellant testified that this mailing address was for his former bookkeeper. Appellant stated, "My former bookkeeper works for the California Breeders Association. Her name is a Loretta Vega. And to get mail to her in a timely manner, the Post Office box was set up for her as my checks come in for my business." (RT: pp. 125). Appellant's self-serving statement again reflects his lack of candor and credibility. Additionally, Appellant submitted Exhibit "O", which is a letter dated September 19, 2013 from Richard Clark, a MFT Therapist in Gardena, California to Appellant, his attorney, Carlo Fisco, and the California Horse Racing Board regarding an initial consultation and intake assessment for individual therapy. Mr. Clark's letter reflects that Appellant first met Mr. Clark on July 29, 2013. Appellant also testified during the hearing that he had personally met with Mr. Clark in 2013 at least three times in California and spoke with him another four times. (RT: pp. 143-144). The letter was issued on September 19, 2013, over forty five (45) days from July 29, 2013. A logical inference

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from this exhibit and Appellant's statements is that he in fact resides in California for a substantial period of time, in excess of thirty (30) days, per California Penal Code Sections 290.002, not just the State of Washington. Come of Appellant's good character reference letters are from residents from California, indicating significant ties to the State of California by Appellant with his peers, associates, and colleagues. Simply stated, Appellant has more than one residence.

Additionally, when Appellant was involved in the July 21, 2010 incident in Arcadia, California with his girlfriend, he listed his address of 6457 N. 47th Place, Phoenix, Arizona (RT: pp. 26), indicating he has various residences in different states. Furthermore, when Appellant testified about the July 21, 2010 incident in Arcadia, Arizona with his girlfriend, he stated, "... I was dating a lady from Arizona. And I had discovered that she was on methamphetamine. And I had contacted her folks, and they wanted to do an intervention. But they all wanted to do it in one day. And I said, "You can't get someone off methamphetamine in one day." So she got on the truck with me, and was probably 20 days on the truck clean and sober. We were together all the time. And we got to L.A. , and she - into Santa Anita at the racetrack. And it was like 1:00 in the morning we were supposed to load for DelMar, and she was throwing a tizzy fit about taking her to a doctor. And I said, "I have got things to do. And we can take you to the doctor in the morning." And I knew she was just placating me..." (RT: pp. 120). Clearly, by Appellant's own admission, he spent substantial time "on the road" and in California with this girlfriend. Therefore, Appellant should have been denied his license based on the fact that he was subject to the dictates of Penal Code Section 290, 290.002, and 290.005, and Board Directive 01-09, and was ineligible to even apply for such a license.

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VIII. APPELLANT'S CONDUCT SINCE 1975 REFLECTS MULTIPLE ACTS, CRIMES, AND CONVICTIONS INVOLVING MORAL TURPITUDE, JUSTIFYING THE BOARD'S DENIAL OF A HORSE TRANSPORTER'S LICENSE

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

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

These acts, crimes, and convictions by Appellant span an approximate thirty (30) year time frame. Starting in 1984, Appellant was arrested in Yakima, Washington for taking a motor vehicle without the permission of the owner, which is a crime involving moral turpitude. On or about August 28, 1992, Appellant was convicted of sexual assault in the first degree, and two counts of burglary in the second degree, and sentenced to eight years in the Kentucky State Prison system. He served five years and eight months in the Kentucky State Prison system. These too were crimes involving moral turpitude. On or about July 21, 2010, Appellant was arrested for violation of California Penal Code Section 273.5, as a felony, for inflicting corporal punishment on a spouse or co-habitant, another crime involving moral turpitude. In 2011, Appellant was arrested in Scottsdale, Arizona for violation of third degree assault, and subsequently convicted, requiring him to participate in a twenty six session Domestic Violence/Batterer's Program, ordered by the Court. The victim was Appellant's girlfriend. This was another, in a string of acts and crimes that involved moral turpitude. The 2011 Arizona conviction was subsequently set aside in October 2012, but still constitutes acts and conduct involving moral turpitude.

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The Appellant's testimony, during cross examination by Deputy Attorney General Daily was such that he wholly lacked credibility. For example, when questioned as to an incident relative to an assault of his girlfriend in Los Angeles County on or about July 21, 2010 in Arcadia, California, Appellant referred to the Victim as having a "tizzy fit." (RT: pp. 120). The Los Angeles County District Attorney Charge Evaluation Worksheet (Exhibit 9), specifically relates that Appellant choked his girlfriend, and then struck her seven (7) to eight (8) times on her hands, arms and back. There was bruising in those areas of the Appellant's girlfriend. Appellant's girlfriend had a restraining order from the State of Arizona against Appellant at the time of the incident, but she nonetheless disobeyed it and travelled to California with Appellant. Appellant's girlfriend was not desirous of prosecution of the Appellant. This evaluation worksheet also notes that Appellant told law enforcement officers that his girlfriend hit and punched him several times. It was noted that Appellant had bruising on his right arm, redness on the left side of his back, and redness on his forehead. During Appellant's cross examination testimony on this matter, Appellant testified that he did not have bruising from the incident. When asked if his girlfriend had bruising, he stated that he did not know. Appellant testified that his girlfriend was, "having a tizzy fit." (RT: pp. 120), again minimizing his own conduct, and shifting culpability and responsibility away from himself. Appellant's responses during this line of questioning were evasive, non-responsive, and overall, demonstrated a lack of candor and credibility to the Hearing Officer (Reporter's Transcript, Pages 137 and 139). (RT pp. 137-139).

Pursuant to California Business and Professions Code section 480, the Board properly denied Appellant his license, as his acts, conduct, and crimes were and are substantially related to the qualifications, functions, or duties of the business or profession for which application is made. Furthermore, the Board acted properly when they suspended and or revoked Appellant's Horse Transporter license, as his acts and crimes were and are substantially related to the qualifications, functions, or duties of the business or profession for which application is made. By the very nature

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of horse racing, a gambling event, integrity is of utmost importance. Individuals that have engaged in acts, conduct, crimes, and convictions involving moral turpitude, which is a readiness to do evil (People v. Castro, supra), calls into question their own integrity. Those individuals that lack such requisite integrity, should not be allowed to be in a position or area where they have access to the animals/horses, which is integral to the integrity of horse race gambling. Appellant, based on the overwhelming evidence presented at the October 15, 2013 hearing, including his own testimony, is such a person that lacks integrity, and should not be allowed access to barns, stables, and horses, due to his lack of integrity, truthfulness, and honesty.

Specifically, Appellant has demonstrated a propensity to engage in aggressive behavior, and acts of violence on others, including his girlfriend(s). These acts are not isolated or deminimis in nature; rather, they are substantial and significant acts involving moral turpitude. The acts and crimes of Appellant are substantially related to his business and profession. For example, on or about August 8, 1991, Appellant was involved in an altercation at Longacres Race Track in the State of Washington where he struck another licensee with a tire iron. As a result of this conduct, his license was suspended for the balance of the Longacres meeting. This conduct also involved a crime involving moral turpitude. During Appellant's testimony, he admitted that he was found by the Washington State Horse Racing Authority to have hit another licensee with a tire iron (RT: pp. 136). Appellant, when questioned if his conduct paralyzed the victim, responded, "No." He then denied any knowledge whether that victim was injured from his violent conduct (RT: pp. 136 – 137), but asserted that he was "held blameless." (RT: pp 136). Again, this Hearing Officer finds Appellant's response as lacking candor and credibility. Another example of the acts and crimes of Appellant being substantially related to his business and profession, Appellant was arrested in the City of Arcadia on or about July 21, 2010 with his girlfriend, a methamphetamine user. Appellant and his girlfriend got into an altercation, and Appellant was subsequently arrested near or at the barn area on the grounds of the Santa Anita Racetrack, after loading seven horses on the truck (RT: pp 121).

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Clearly this type of assaultive behavior is intimately related to the business and profession of a horse transporter. The denial of a Horse Transporter's license to Appellant is in part to protect the public and more specifically others involved in horse racing activities and the horse racing patrons from a violent, unsavory individual, like Appellant who attend horse races in California horse racing venues.

Based on the aforementioned facts and circumstances, the Board's denial of a Horse Transporter's license for Appellant is more than justified. Appellant is a person that engages in acts, conduct, and crimes involving moral turpitude, with an intent to do evil and harm to others, as evidenced by his lengthy list of arrests and convictions. Therefore, the denial of Appellant's license as a Horse Transporter should be affirmed.

IX. APPELLANT HAS NOT BEEN REHABILITATED

To demonstrate his rehabilitation, Appellant submitted Exhibits K through P, inclusively. Exhibit K is a letter from Mr. Bill Lux, a retired Police Officer from the Banning Police Department. Mr. Lux stated that he worked at Hollywood Park Racetrack in the City of Inglewood, California as a Security Agent/Investigator since 1992. He stated that he met Appellant in 2011. He opined that Appellant advised him of his incarceration in Kentucky for felony sexual assault, and Mr. Lockwood demonstrated his remorsefulness and did not deflect responsibility to his victim. Despite this claim by Mr. Lux, there is a complete lack of discussion and detail in Mr. Lux' letter as to Appellant's other convictions for crimes and acts involving moral turpitude, including his arrest and conviction in Arizona and felonious assault on his girlfriend in Arcadia in 2010, as well as other prior acts, conduct, and crimes involving moral turpitude previously discussed herein. In essence, the omissions by Mr. Lux in his letter are either the result of Appellant not providing Mr. Lux his full and complete history of assaultive and aggressive behavior towards others, or a purposeful decision by Mr. Lux to omit a discussion of such conduct by the Appellant. Either way, Mr. Lux' letter does not demonstrate rehabilitation by the Appellant. In Exhibit L, a good character letter by Ms. Jill Hallin, she stated that she knew Appellant since approximately 1974. She referenced Appellant's Kentucky and Arizona convictions, but opined that he had met all the court ordered

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mandates, and therefore, should not be continued to be punished. Despite these claims by Ms. Hallin, there is a complete lack of discussion and detail in Ms. Hallin's letter as to Appellant's other convictions for crimes and acts involving moral turpitude, including his arrest/detention for engaging in felonious assaultive conduct on his girlfriend in Arcadia in 2010, as well as other prior acts, conduct, and crimes involving moral turpitude. In essence, these omissions by Ms. Hallin in her letter are either the result of Appellant not providing Ms. Hallin his full and complete history of assaultive and aggressive behavior towards others, or a purposeful decision by Ms. Hallin to omit a discussion of such conduct by the Appellant. Either way, Ms. Hallin's letter does not demonstrate rehabilitation by the Appellant.

Except for the mere self-serving statements by Appellant at the Board hearing, there is little evidence that he has been rehabilitated. The record is replete with acts, conduct, crimes, and convictions reflecting the ongoing and systemic pattern of Appellant's complete lack of rehabilitation. Rather, Appellant seems to place blame on everyone except himself, including his girlfriend and the victim of the 1991 tire iron incident. This lack of remorse reflects Appellant's overall and total lack of rehabilitation. Although Complainant has objected to the admission of Appellant's submitted letters of good character, they are being admitted and given the appropriate weight that they are due. The letters, Appellant's Exhibits K through P, inclusively, taken as a whole, are not persuasive as to any measurable degree of rehabilitation by Appellant. Although there is reference to the fact that Appellant was a conscientious worker, they did not address any facet of rehabilitation in a persuasive manner. Some violent and assaultive individuals can be good workers, but, an individual's good work ethic in and of itself does not automatically and necessarily rise to any level of rehabilitation.

Although Appellant's counsel argued, as part of his alleged rehabilitation, that Appellant has shown a very positive basis allowing him to have a license, these mere assertions are contradicted by Appellant's complete lack of credibility during the October 15, 2013 hearing. For example, during the hearing, Appellant was frequently evasive in his responses on cross examination. His lack of honesty and truthfulness reflects his lack of rehabilitation. Although Appellant's counsel

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argues that Appellant is drug free, he clearly acknowledged that he associates with a methamphetamine using girlfriend. His choice of associates again demonstrates his lack of rehabilitation. (RT: pp. 120).

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

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: 1/10/14

Richard P. Margarita

RICHARD P. MARGARITA, ESQ.
Hearing Officer

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