

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
FITNESS FOR LICENSURE

PATRICK VALENZUELA
Appellant

Case No. SAC 16-0009

DECISION

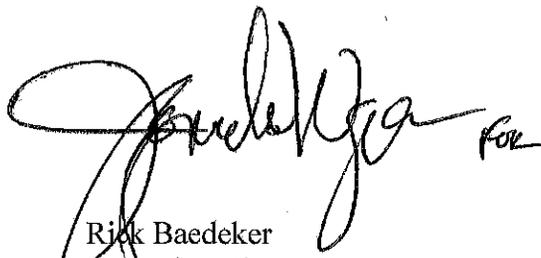
The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision. Appellant Patrick Valenzuela is advised to adhere to the following guidelines should he elect to reapply for a Jockey license with the California Horse Racing Board:

1. Appellant Patrick Valenzuela may reapply for a Jockey License in one year from the effective date of this Decision, pursuant to Business and Professions Code section 486.
2. Should Appellant Patrick Valenzuela elect to reapply for a Jockey License one year from the effective date of this Decision, Appellant Valenzuela is advised to present evidence of rehabilitation, including, but not limited to, the results of alcohol and drugs testing performed on a regular basis, not less than once a week, continuation of Appellant's work with the Winner's Foundation and the testimony of a representative of the Winner's Foundation as to the extent of Appellant's participation and involvement with the Winner's Foundation. Should Appellant Valenzuela leave the State of California during the one year period from the effective date of this Decision, Appellant Valenzuela is advised to present evidence of regular testing, not less than once a week, for alcohol and drugs while outside of the State of California.

The Decision shall become effective on July 18, 2016.

IT IS SO ORDERED ON July 14, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

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8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
9 **STATE OF CALIFORNIA**

10)	Case No.: SAC 16-0009
11	In the Matter of:)	
12	FITNESS FOR LICENSURE)	PROPOSED DECISION RE: PATRICK
13	PATRICK VALENZUELA)	VALENZUELA'S FITNESS FOR
14	Previous CHRB License No. 264397)	LICENSURE
15	Appellant)	Hearing Date: April 27, 2016
)	Time: 11:00 a.m.

16 **I. PROPOSED DECISION**

17 This matter came for hearing on April 27, 2016 at 11:00 a.m. at Los Alamitos Race
18 Course located in Los Alamitos, California 90720. Appellant Patrick Valenzuela ("Appellant")
19 was present and represented by Michael Oddenino, Esq. Phillip J. Laird, Esq. was present and
20 represented the California Horse Racing Board ("CHRB").

21 Pursuant to CHRB Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over
22 this matter. Michelle Derieg recorded all testimony presented during the instant proceeding.

23 The instant matter's record closed at the conclusion of the proceedings on April 27, 2016
24 at 12:45 p.m.

25 **II. EXHIBITS ADMITTED INTO EVIDENCE**

26 **A. Exhibits the CHRB Entered into Evidence.**

27 The CHRB entered the following exhibits into evidence:

28 Exhibit "1" Notice of Refusal of License;

- 1 Exhibit "2" Appeal Letter;
- 2 Exhibit "3" Application for License Forms;
- 3 Exhibit "4" C.H.R.B. Ruling LATS No. 035;
- 4 Exhibit "5" C.H.R.B. Ruling LATS No. 058;
- 5 Exhibit "6" Case No. SAC 15-006;
- 6 Exhibit "7" Appellant's C.H.R.I.S. History;
- 7 Exhibit "8" Appellant's A.R.C.I. History;
- 8 Exhibit "9" Appellant's Drug and Alcohol Testing Agreement;
- 9 Exhibit "10" Stipulated Agreement;
- 10 Exhibit "11" California Horse Racing Board Title 4: California Code of
- 11 Regulations; and
- 12 Exhibit "12" Notice of Hearing Packet.

13 **B. Exhibits Appellant Entered into Evidence.**

14 Appellant entered the following exhibits into evidence:

- 15 Exhibit "A" Correspondence from David Wilson Dated April 26, 2016;
- 16 Exhibit "B" Undated Correspondence from Mike Smith; and
- 17 Exhibit "C" Correspondence from Doug O'Neil Dated April 26, 2016.

18 **III. LIST OF TESTIFYING WITNESSES**

19 **A. Witnesses Testifying on Behalf of the CHRB.**

20 The CHRB called the following the witnesses:

- 21 • William D. Westermann, C.H.R.B. Investigator.

22 **B. Witnesses Testifying on Behalf of Appellant.**

23 Appellant called the following the witnesses:

- 24 • Rick Amieva, Retired C.H.R.B. Investigator;
- 25 • David Wilson, Horse Owner;
- 26 • Vladimir Cerin, Trainer Based in Southern California;
- 27 • Michael Tolaney;
- 28 • David Spalione; and

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- Patrick Valenzuela.

IV. FINDINGS OF FACT

After analyzing and admitting all exhibits into evidence, admitting the testimony provided by Appellant’s witnesses, and admitting testimony from CHRB Investigator William D. Westermann (“Westermann”), this Officer makes the following findings of fact:

A. Appellant’s Application for Licensure is Denied.

I.

On Friday March 18, 2016, Appellant presented an Application for License (“Application”) to the CHRB office located at Santa Anita Racetrack in Arcadia, California. Appellant’s Application included a criminal history information sheet listing two “Driving under the Influence (“DUI”)” convictions and a separate criminal matter purportedly dismissed. (Ex. 3.)

II.

On duty on March 18, 2016 CHRB investigator Westermann accepted and reviewed Appellant’s Application. After doing so, Westermann issued a C.H.R.B. Form 83 “Notice of Refusal of License” giving the following reasons for refusing Appellant’s Application:

- You have committed an act of moral turpitude, or have committed intemperate acts which have exposed others to danger, or have committed acts in connection with horse racing and/or a legalized gaming business which were fraudulent or in violation of a trust or duty; and
- You have violated, or have aided or abetted or conspired with any person to violate a provision of the rules of the Horse Racing Law.

(Ex. 3.)

In addition to the above, CHRB Enforcement determined Appellant failed to successfully demonstrate rehabilitation due to the “nature and extent of his [Appellant] past offenses in conjunction with the relatively short amount of time that has passed since his [Appellant] most recent rule violation.” (Ex. 12, “Report of Investigation.”)

1 and regains good standing with the CHRB upon payment of the March 14, 2014 fine, in full.
2 (Ex. 6 at p. 8.)

3 On July 22, 2015, the CHRB issued a "Notice of Decision" rejecting Officer Schiffer's
4 proposed decision. (Ex. 6.)

5 **VIII.**

6 On August 5, 2015, the CHRB and Appellant entered into a stipulation agreement
7 concerning Case No. SAC 15-0026. (Ex. 10.) Specifically, the CHRB agreed to issue
8 Appellant an exercise rider's license, provided Appellant successfully completed any licensing
9 examination, paid all outstanding fines, and agreed to submit to drug and alcohol testing. (Id.)
10 Appellant agreed to the above terms resulting in the CHRB issuing the Appellant an exercise
11 rider's license. (Exs. 9, 10.)

12 **C. Additional Offenses and Rule Violations.**

13 **IX.**

14 During the course of his riding career, Appellant was the subject to several CHRB rule
15 violations and criminal convictions. Specifically, Appellant's C.H.R.I.S. history states there are
16 "376 Rulings on file" and "128 cases on file." (See Ex. 7 at p 3.)

17 Appellant's rule violations and criminal offenses relevant to this appeal are as follows:

- 18 • An April 7, 2014 Non-Disqualifying Criminal Conviction;
- 19 • A January 29, 2014 "Pending Arrest";
- 20 • A March 28, 2013 "Pending Arrest/Non-Disqualifying";
- 21 • An August 15, 2012 Non-Disqualifying Criminal Conviction;
- 22 • A failure to fulfill riding engagements on May 25, 2012;
- 23 • A failure to fulfill a "jockey agreement" on December 18, 2011;
- 24 • A formal decision issued by the Office of Administrative Hearings revoking
25 Appellant's license on September 25, 2008;
- 26 • The termination of Appellant's conditional license on December 28, 2007;
- 27 • A 2007 DUI conviction in California;
- 28 • A 2007 DUI conviction in New Mexico;

- 1 • A "Failure to Report or Appear" on October 23, 2005;
- 2 • An July 2, 2004 license revocation and no right to re-apply;
- 3 • Falsifying a license application on June 7, 2004; and
- 4 • A February 11, 2000 suspension for the term of the license for a drug violation.

5 (Exs. 3, 7, 8.)

6 V. APPLICABLE RULES AND REGULATIONS

7 CHRBRule 1489 states, in relevant part, that:

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

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

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

16 VI. DISCUSSION AND DETERMINATION OF ISSUES

17 The issue before this Officer is whether Appellant shows he is fit for licensure and
18 whether Appellant demonstrates "rehabilitation" in light of Appellant's previous rule violations
19 and criminal offenses.

20 In support of demonstrating his fitness for licensure, Appellant called retired CHRBR
21 Investigator Rick Amieva ("Amieva"). The majority of Amieva's testimony concerned
22 Appellant's 2014-license suspension and how he never saw a jockey's license application
23 denied for failing to make mounts for two days during his tenure as a CHRBR Investigator.
(Hearing Transcript ("H.T.") at p. 13.)

24 While this Officer does not doubt Amieva's testimony that failing to make mounts is a
25 minor violation typically subject only to a small monetary fine, Amieva's testimony fails to
26 advance Appellant's fitness and rehabilitation argument.

27 Importantly, the CHRBR did not base its refusal of Appellant's Application solely upon
28 Appellant's 2014 suspension, as Amieva's testimony seems to indicate. Rather, the CHRBR

1 submitted evidence demonstrating its decision to deny Appellant's Application took Appellant's
2 previous rule violations and criminal offenses into consideration. (Exs. 6, 7, 12.)

3 If the decision to deny Appellant's Application was solely based upon Appellant
4 "missing two days of work," then there is no question such denial runs "afoul" of notions of
5 fairness and due process. However, the evidence admitted demonstrates the Appellant's
6 Application refusal considered all previous rule violations and criminal offenses.

7 Next, David Wilson ("Wilson") testified on behalf of Appellant. Wilson currently owns
8 about thirty (30) racehorses stabled in Southern California and explained Appellant previously
9 rode a great number of Wilson's horses. (H.T. at p. 19-20.) Wilson's testimony focused on
10 Appellant's skills as a rider, which no one disputes. Unfortunately, Wilson's testimony lacked
11 information as to why he believes Appellant "put his past behind him" with the exception of
12 stating Appellant is "of an age now where he's learned his lesson." (H.T. at p. 21.)

13 Similarly, Vladimir Cerin's ("Cerin") testimony provided little insight as to why he
14 believes Appellant is "rehabilitated" and why there is no reason to consider Appellant's past.
15 For example, Cerin did not know how California horseracing would benefit from licensing
16 Appellant. (H.T. at p. 23.) Instead, Cerin's testimony focused on Appellant's riding skills
17 stating he would begin using Appellant if approved to ride. (Id.)

18 Michael Tolaney ("Tolaney") and David Spalione ("Spalione") separately testified on
19 behalf of Appellant. In regards to Tolaney's testimony, it was largely irrelevant as he testified
20 to not having any specific knowledge concerning Appellant's past regulatory violations except
21 for what "he read in the press." (H.T. at p. 27.) This is despite "solidifying their friendship
22 since 2006." (H.T. at p. 25.)

23 As Tolaney lacks personal knowledge concerning Appellant's troubled past, he cannot
24 provide testimony as to whether Appellant is "rehabilitated" and fit for licensure.

25 As to Spalione's testimony, he explained he became close friends with Appellant during
26 a trip to Delta Downs in Vinton, Louisiana in October and/or November of 2015. (H.T. at p. 29;
27 p. 31-32.) Spalione did not provide any assurance that Appellant will not commit any future
28 violations, instead merely sharing his opinion that Appellant is great a rider, which again, is not

1 in dispute. (H.T. at p. 29-30.) Even if Spalione did provide relevant testimony, which he did
2 not, it would be viewed with skepticism, as Spalione has only been Appellant's close friend for
3 about six months. (H.T. at p. 29; p. 31-32.)

4 In regards to Appellant's testimony, he explained that he is fit for licensure and has "put
5 his past behind him." Specifically, Appellant testified that he: (1) goes to meetings; (2) no
6 longer associates with his friends from the past; (3) has grown closer to his family; (4) attends
7 church; (4) has been sober for four (4) years; and (5) would continue to work with the Winners
8 Foundation, a substance abuse support group. (H.T. at p. 34; 37-38.) Appellant further testified
9 to passing all drug and alcohol tests as well as meeting all riding assignments while riding in
10 Louisiana the past six months, which this Officer sees as encouraging. (H.T. at 32-33.)

11 While the above is a step in the right direction, the fact of the matter is that in contrast to
12 his self-serving testimony outlined above, when viewing the totality of circumstances regarding
13 Appellant's application for licensure Appellant has not demonstrated the required fitness. In
14 fact, Appellant's record in the last four years shows two arrests and two "criminal non-
15 disqualifying convictions," one of which occurred during Appellant's 2014 license suspension.
16 (Ex. 6.)

17 This Officer cannot ignore the number of chances the CHRB previously gave Appellant.
18 (Ex. 6.) It should be noted that since 2000, Appellant has what this Officer considers fifteen
19 major rule violations and/or criminal convictions, averaging to about one violation per year.
20 (Id.) As such, a six-month record free of violations fails to demonstrate adequate rehabilitation
21 in light of Appellant's numerous past transgressions.

22 Accordingly and based upon the evidence admitted, this Officer hereby finds that
23 Appellant did not demonstrate a record of rehabilitation justifying his licensure as a jockey in
24 the State of California. However, this Officer is encouraged by Appellant's six-month record
25 that is free of violations.

26 Appellant is encouraged to re-apply for a license in the future if he continues to maintain
27 a clean record and attends meetings regularly to assist with any substance abuse issues.

28 **VIII. CONCLUSION AND PROPOSED DECISION**

1 The evidence presented and admitted during the April 27, 2016 fitness hearing is
2 sufficient to reach a decision in this matter. Because of Appellant's substantial history of rule
3 violations and criminal convictions, a six-month record free of transgressions fails to show
4 "rehabilitation" necessary to permit Appellant to be licensed as jockey in the State of California.

5 WHEREFORE, it hereby recommended that Appellant's Appeal be denied, and that
6 Appellant's Application for License be denied. It is further recommended Appellant re-apply
7 for licensure assuming he continues to maintain a transgression free record.

8 Dated: June 13, 2016



Patrick J. Kane, Esq.
Hearing Officer

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