

**BEFORE THE CALIFORNIA HORSE RACING BOARD**

**STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**OSCAR GARCIA**  
**Respondent**

Case No. 18LA0206  
OAH No. 2019030738

**DECISION**

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

The Decision shall become effective on January 23, 2020.

IT IS SO ORDERED ON January 22, 2020.

CALIFORNIA HORSE RACING BOARD  
Gregory L. Ferraro, DVM, Chairman



Rick Baedeker  
Executive Director

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

**In the Matter of the Accusation against:**

**OSCAR GARCIA, Trainer**

**Respondent**

**CHRB Case No. 18LA0206**

**OAH No. 2019030738**

**PROPOSED DECISION**

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 25, 2019, in Los Angeles, California.

Robert D. Petersen, Deputy Attorney General, represented complainant.

Richard W. Craigo, Attorney at Law, represented respondent Oscar Garcia, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 25, 2019.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On January 10, 2019, complainant, Rick Baedeker, Executive Director of the California Horse Racing Board (CHRB) filed the Accusation, Case No. 18LA0206, solely in his official capacity. On January 31, 2019, respondent filed a Notice of Defense, which contained his request for a hearing to present his defense to the charges contained in the Accusation. This hearing ensued.

2. At all relevant times, Oscar Garcia (respondent) has been licensed by the CHRB as a trainer under license number 112425. The license was originally issued to respondent on June 25, 1988, and is currently set to expire in July 2020 (Exh. M.)

3. Trainers, such as respondent, "are responsible for the condition of horses in their care and are presumed to know the rules." (Cal. Code Regs., tit. 4, § 1894.)

### **September 8, 2018 Inspection**

4. Los Alamitos Race Course (Los Alamitos) is a horse racing track located in Los Alamitos, California. At all relevant times, respondent was assigned to Barn #18W at Los Alamitos. Respondent had four thoroughbreds and was assigned eight stalls located on the southwest side of Barn #18W. Respondent was also assigned tack room #D, which he used as an office and for storage of tack (i.e., equipment and accessories used for riding horses, such as saddles and bridles). Respondent's tack room was visible from all areas of the barn. (Exh. H.)

5. On September 8, 2018, CHRB Supervising Investigator Thomas A. Blake (Blake) and CHRB Investigator Kevin M. Kitashima (Kitashima) conducted an

unannounced inspection of respondent's barn (#18W) at Los Alamitos. Ron Church, Safety Steward, accompanied Blake and Kitashima during the inspection.

6. Blake has been employed by CHRB for 18 years, first as an Investigator for 11 years and then as a Supervising Investigator for the past seven years. Kitashima has been employed as a CHRB Investigator for eight years. Both Blake and Kitashima are peace officers.

7. On September 8, 2018, at approximately 4:30 p.m., Supervising Investigator Blake, Investigator Kitashima, and Mr. Church were driving behind the barns at Los Alamitos to verify that persons in the area were licensed and authorized to be there. Blake saw a person standing near Barn #18W who he did not recognize. Blake decided he and Kitashima should contact the person.

8. Blake, Kitashima, and Mr. Church entered Barn #18W and contacted the person, who was identified as respondent. Blake and Kitashima identified themselves as CHRB investigators and told respondent they would be inspecting his assigned area inside Barn #18W. Respondent cooperated with the inspection. Kitashima and Mr. Church inspected the shed row and feed bins, while Blake went to inspect respondent's tack room.

9. Blake entered the tack room, with respondent following behind him. Upon entering the tack room, Blake saw a clear plastic container on top of small white cabinet in the room. The plastic container contained an electronic stimulating or shocking device (commonly known as a buzzer). Blake asked respondent what the device was, and respondent said it was a buzzer. Blake advised respondent it was illegal to possess an electronic stimulating device at a race track. Blake did not recall respondent saying anything else about the device. Blake testified that he inspected the

device (buzzer) and found it was operable. He inserted the battery and touched his arm or leg with the device and felt a shock.

10. Blake gave the buzzer to Kitashima, who took custody of the device and established a chain of custody. Kitashima took a photograph of the device contained in the plastic container. (Exh. I.) The device was held in a safe in CHRB's office until Kitashima brought it to the hearing, still sealed in the plastic bag he placed the device in on September 8, 2018.

11. Kitashima prepared a written report and other documentation regarding the September 8, 2018 inspection and the items seized during the inspection, including the device. (See Exhs. D, F, G, H, J.)

12. At the time of the September 8, 2018 inspection, when the prohibited device (buzzer) was found in respondent's tack room, there was horse racing occurring at Los Alamitos. In fact, one of respondent's horses, Gambler's Wish, was scheduled to run in the third race on September 8, 2018. (Exh. E.)

### **Respondent's Testimony**

13. Respondent is 59 years old. He is married and has six children. Four of his children still live at home. In the past year, respondent has had only part-time work, including working on a farm training/breaking baby horses and doing side jobs like installing wood flooring. Respondent is not currently training any horses.

14. Respondent is licensed by the CHRB as a thoroughbred horse trainer. Respondent has been working with horses since 1981, when he came to the United States and started working as an exercise rider. He was issued his trainer license in 1988.

15. Respondent was previously stabled at Del Mar Race Track (Del Mar) near San Diego. He applied for stalls at Los Alamitos and, in or about August 2018, was approved for eight stalls. Respondent, however, had to wait 18 days for the prior occupant to move out before he could start moving to Los Alamitos. Respondent was assigned Barn #18W at Los Alamitos.

16. Respondent moved out of Del Mar on September 1, 2 or 3, 2018. He hired a transportation company to move his horses and tack from Del Mar to Los Alamitos. Respondent had to unload his horses and tack by himself, as he could not afford to hire anyone to help him. Respondent testified that, when he arrived at Barn #18W, the stalls were not clean, the tack room and barn area were littered with trash (e.g., drink containers, food wrappers, napkins, etc.) and the tack room had a broken window. For the first few days at Los Alamitos, respondent was focused on cleaning the stalls and caring for his horses. He did not have time to clean the tack room and organize his tack.

17. Respondent testified that he found the buzzer either on the day of the September 8, 2018 inspection before the CHRB investigators had arrived, or the day before the inspection. Respondent was dusting a high shelf in the tack room and knocked something off the shelf. Respondent recognized the item was a buzzer. He testified he has never used a buzzer on a horse, but had seen them being used on horses when he lived in Mexico. Respondent believes that using a buzzer on a horse is terrible and abusive, and he would not do it.

18. Respondent testified he did not know if the buzzer was operable. It was in two pieces when it fell to the floor and the battery was detached. Respondent testified that when he saw the buzzer on the floor, he thought he should put it in an empty plastic container he had in the room. Respondent testified he knew the item

was a buzzer, he was aware that possessing a buzzer was not allowed, and he knew it was a serious offense to possess a buzzer. Respondent testified he was going to call his friend, Luis, to tell him about the buzzer, but he did not make the call because he got busy working with his horses and getting one horse ready for a race that day. Respondent testified he never thought about throwing the buzzer away in the trash.

19. Respondent testified that he was with Supervising Investigator Blake when Blake found the buzzer in the tack room. Respondent testified he told Blake that the buzzer was not his and that he found the buzzer in the tack room. The CHRB investigation report, however, contains no statement by respondent disclaiming ownership of the device. (Exh. D.) Respondent testified that the buzzer was in plain sight in the tack room when Blake found it.

### **LEGAL CONCLUSIONS**

1. Complainant has the burden of proving cause for discipline against respondent by a preponderance of the evidence. (Evid. Code, § 115.)

2. The Horse Racing Law is set forth at Business and Professions Code section 19400 et seq., and the CHRB's rules and regulations are set forth in Title 4 of the California Code of Regulations. The Title 4 regulations shall be referred to herein as "Rule" followed by the section number (e.g., Rule 1890).

3. Business and Professions Code section 19461 provides that every license granted by the CHRB "is subject to suspension or revocation by the board in any case where the board has reason to believe that any condition regarding [the license] has not been complied with, or that any law, . . . or any rule or regulation of the board affecting [the license] has been broken or violated." Section 19461 further provides:

"All proceedings to revoke a license shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code [i.e., Government Code section 11500 et seq.].

4. Rule 1890, subdivision (c), states: "No person shall have in his possession on the premises during any recognized meeting any electrical stimulating or shocking device commonly known as a battery, or any mechanical stimulating device, or any other appliance, which might affect the speed or actions of a horse."

5. "Premises" means "the inclosure and all other areas collectively utilized by an association in connection with its conduct of a licensed race meeting, including parking lots, auxiliary stabling areas, public inclosure and restricted areas, whether or not the areas are adjacent to the inclosure." (Rule 1420, subd. (q).) "Association" means "any person engaged in the conduct of a recognized horse race meeting." (Bus. & Prof. Code, § 19403.) "Recognized meeting," "race meeting," or "authorized meeting" means "the entire period under the conduct of an association within the inclosure of the designated grounds, and for which the Board has granted a license." (Rule 1420, subd. (u).)

6. Rule 1891.1, subdivisions (a) and (b), provide, as follows:

(a) A complaint against a licensee for a violation of, or conspiring to violate, Rule 1890(c) of this division shall be referred to the Board for hearing and adjudication.

(b) Any licensee whom the Board finds to have violated, or conspired to violate Rule 1890(c), shall have his or her license revoked.

7. Cause exists to revoke respondent's trainer license, pursuant to Business and Professions Code section 19461 and Rule 1891.1, subdivision (b), in that, on September 8, 2018, respondent violated Rule 1890, subdivision (c), by possessing a prohibited electrical stimulating or shocking device while on the premises of Los Alamitos during a recognized horse race meeting, based on Factual Findings 1-12 and Legal Conclusions 8-10 below.

8. Respondent's violation of Rule 1890, subdivision (c), was not mitigated or excused by his explanation that the buzzer found by the CHRB investigator in his tack room was not his, and that respondent had found it while cleaning the room. A person violates Rule 1890, subdivision (c), by mere possession of an electrical stimulating or shocking device, regardless of the device's ownership. The word "possession" is defined in the dictionary as "the act of having or taking into control" and "control or occupancy of property without regard to ownership." (Webster's 9th New Collegiate Dict. (1983) p. 918.)

9. The preponderance of the evidence established that respondent was in possession of a prohibited device on September 8, 2018. Respondent's possession of the device was established when he took control of the buzzer by placing it in an empty plastic container, and then leaving the container with the device on top of a cabinet in his tack room. Although respondent was aware that possessing a buzzer was prohibited, he did not report to anyone at Los Alamitos that he found the device in his tack room. Such a report could have corroborated and lent substance to his claim that he found the device in his tack room. It is reasonable to expect that a person who finds an item that he knows is prohibited or illegal to possess would immediately report and hand over the item to authorities, so as to sever any ties to the item. Respondent took no action to free himself of possession of the buzzer. Instead, he put

the buzzer in a plastic container and then left it on top of a cabinet in his tack room. He did not throw the device away in the trash. Respondent's uncorroborated testimony failed to establish mitigation or excuse for his violation.

10. Because respondent violated Rule 1890, subdivision (c), his trainer license must be revoked in accordance with Rule 1891.1, subdivision (b). (Factual Findings 1-19; Legal Conclusions 1-9.)

### ORDER

Trainer License Number 112425, issued by the California Horse Racing Board to Oscar Garcia, is revoked.

DATE: December 19, 2019

DocuSigned by:  
*Erinda Shrenger*  
ERLINDA G SHRENGER  
Administrative Law Judge  
Office of Administrative Hearings

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