

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

FITNESS FOR LICENSURE

PATRICK VALENZUELA
Appellant

Case No. SAC 18-0042

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 22, 2019.

IT IS SO ORDERED ON February 21, 2019.

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 18-0042
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
	Appellant)	Hearing Date: November 28, 2018
)	Time: 9:00 a.m.

15 **I. INTRODUCTION**

16 This matter came for hearing on November 28, 2018 at 9:20 a.m. at the Del Mar
17 Thoroughbred Club located in Del Mar, California 92014 (the "Appeal"). Appellant Patrick
18 Valenzuela ("Appellant") was present and represented himself. The California Horse Racing
19 Board ("CHRB") was present and represented by Robert Brodnik, Esq.

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

22 This matter's record closed at the conclusion of the proceedings on November 28, 2018
23 at 10:30 a.m.

24 **II. EXHIBITS ADMITTED INTO EVIDENCE**

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

26 The CHRB entered the following exhibits into evidence:

27 Exhibit "1" PICTURE OF A METHAMPHETAMINE PIPE;

28 Exhibit "2" PICTURE OF THE UNDERSIDE OF A METHAMPHETAMINE

- 1 PIPE;
- 2 Exhibit "3" PICTURE OF THE MOUTH PIECE PORTION OF THE
- 3 METHAMPHETAMINE PIPE LOOKING INTO THE PIPE;
- 4 Exhibit "4" THREE-PAGE WRITTEN NARRATIVE BY OFFICER
- 5 RAMIREZ;
- 6 Exhibit "5" ARREST REPORT;
- 7 Exhibit "6" MR. VALENZUELA'S CERTIFICATE OF COMPLETION OF
- 8 DRUG AND ALCOHOL TREATMENT CENTER, DATED
- 9 JANUARY 23, 2018;
- 10 Exhibit "7" DOMESTIC VIOLENCE PROGRAM ENROLLMENT REPORT
- 11 FORM;
- 12 Exhibit "8" REQUEST FOR FITNESS HEARING DOCUMENT;
- 13 Exhibit "9" REQUEST FOR FITNESS HEARING DOCUMENT (CONT'D);
- 14 AND
- 15 Exhibit "10" PATRICK VALENZUELA'S LETTER TO SHARYN JOLLY,
- 16 DATED OCTOBER 2, 2018.

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

18 Appellant entered the following exhibits into evidence:

- 19 Exhibit "1" PATRICK VALENZUELA'S DOMESTIC VIOLENCE
- 20 CERTIFICATE OF ENROLLMENT, DATED NOVEMBER 27,
- 21 2018.

22 **III. LIST OF TESTIFYING WITNESSES**

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

24 The CHRB called the following the witnesses:

- 25 • Edward Ramirez;
- 26 • Darin Scharer; and
- 27 • Patrick Valenzuela.

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

1 Appellant called the following the witnesses:

- 2 • Patrick Valenzuela.

3 **IV. FINDINGS OF FACT**

4 After admitting all exhibits and testimony into evidence, this Officer makes the following
5 findings of fact:

6 **A. Appellant's 2016 Application for Licensure.**

7 **I.**

8 On March 18, 2016, Appellant presented an Application for License (the "2016
9 Application") to the CHRB. (CHRB Ex. 9 at ¶ I.) The CHRB denied Appellant's 2016
10 Application because Appellant: (1) committed acts of moral turpitude or acts that exposed others
11 to danger; (2) violated the rules of "Horse Racing Law"; and (3) failed to demonstrate
12 rehabilitation. (Id. at ¶ II.)

13 **II.**

14 Upon receiving notice that the CHRB denied his 2016 Application, Appellant timely
15 appealed the CHRB's refusal of licensure. (CHRB Ex. 9 at ¶ II.) This Officer heard Appellant's
16 appeal, Case No. SAC 16-0009, on April 27, 2016 (the "2016 Appeal"). (Id. at p. 1.)

17 **III.**

18 On June 13, 2016, this Officer issued a Proposed Decision denying Appellant's 2016
19 Appeal (the "2016 Decision"). (CHRB Ex. 9.) Specifically, this Officer made the following
20 findings:

21 (1) Appellant failed to demonstrate an adequate record of rehabilitation in light of
22 Appellant's substantial history of rule violations and criminal convictions; and (2)
23 Appellant's six-month transgression free record failed to show the "rehabilitation"
24 necessary to permit Appellant to be licensed as a jockey in the State of California.
(Id. at p. 8-9.)

25 However, this Officer encouraged Appellant to reapply for licensure if he "continued to
26 maintain a clean record and attend meetings [that] assist[ed] with [his] substance abuse issues."
(Id. at p. 8.)

27 **IV.**

28 On July 14, 2016, the CHRB adopted the 2016 Decision and provided the following

1 requirements Appellant must meet if he wished to reapply for a jockey license in the State of
2 California:

3 (1) Appellant Patrick Valenzuela may reapply for a Jockey License in one year
4 from the effective date of this Decision; (2) [s]hould Appellant Patrick Valenzuela
5 elect to reapply for a Jockey License one year from the effective date of this
6 Decision, Appellant Valenzuela is advised to present evidence of rehabilitation,
7 including, but not limited to, the results of alcohol and drugs testing performed on
8 a regular basis, not less than once a week, continuation of Appellant's work with
9 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; and (3) [s]hould 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.
(CHRB Ex. 9.)

10 **B. Appellant's Sporadic Rehabilitation Attempts.**

11 **V.**

12 In or around November 2017, with assistance from the Winner's Foundation, Appellant
13 entered a sixty-day (60) residential in-house treatment program. (Hearing Transcript ("H.T.") at
14 p. 39-41, CHRB at Ex. 6.) Appellant completed the residential treatment program on January 23,
15 2018. (CHRB at Ex. 6.)

16 **VI.**

17 Upon completing the residential treatment program, Appellant moved into a sober living
18 facility. (H.T. at p. 42.) Appellant resided at said facility for approximately thirty days, before
19 moving to San Diego in March 2018. (Id. at p. 41-43.) After moving to San Diego, Appellant's
20 participation in the Winner's Foundation became "scattered" with little in-person contact and
21 "some phone calls here and there." (Id. at p. 43.) Indeed, the Winners Foundation had little
22 contact with Appellant since March 2018. (Id. at p. 46.)

23 **C. Appellant's 2018 Criminal Offenses.**

24 **VII.**

25 On September 7, 2018, Appellant was named a suspect in a felony domestic violence
26 incident involving Appellant and his then girlfriend (the "Domestic Abuse Incident"). (CHRB
27 Ex. 5, H.T. at p. 30-34.) Specifically, Appellant was accused of: (1) abusing his then girlfriend
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1 in the parking lot of a Carlsbad bar, which resulted in Appellant's girlfriend suffering minor
2 injuries; and (2) vandalism causing at least \$400.00 in damages. (Id.)

3 **VIII.**

4 On October 4, 2018, Appellant was the subject of a traffic stop conducted by the Carlsbad
5 City Police. (H.T. at p. 12; CHR B Ex. 4.) During the traffic stop, police officers discovered a
6 methamphetamine pipe (the "Pipe") "in between the driver side seat and the floor panel of the
7 vehicle." (Id. at p. 13; CHR B Exs. 1-4.) The Pipe's burn marks and "caked white substance"
8 indicated it had been previously used. (H.T. at p. 17-18.) Appellant was removed from his vehicle
9 and detained while officers searched the vehicle. (H.T. at p. 22.)

10 During his detention, officers discovered that Appellant was a suspect in the Domestic
11 Abuse Incident, and thus placed Appellant under arrest. (H.T. at p. 31, 33.) Police officers then
12 transported Appellant to the Vista Dentition Facility where he was booked on felony charges
13 relating to the Domestic Abuse Incident. (CHR B Ex. 4.)

14 **IX.**

15 In or around October 2018, Appellant entered a plea deal with the District Attorney
16 concerning the Domestic Abuse Incident. (H.T. at p. 55-56.) Specifically, Appellant agreed to
17 plead guilty in exchange for: (1) being placed on probation for three years; and (2) having to
18 attend a fifty-two week (52) domestic violence program. (Id.) Appellant enrolled in the domestic
19 violence program on November 27, 2018. (CHR B Ex. 7.)

20 **D. Procedural History.**

21 **X.**

22 On October 2, 2018, Appellant gave the CHR B notice of his intention to reapply for a
23 Jockey License and requested a hearing on whether said license should be issued. (CHR B at Ex.
24 10.) On November 7, 2018, the CHR B set this Appeal for hearing on November 28, 2018 at the
25 Del Mar Thoroughbred Club (the "Hearing"). (CHR B Ex. 8.)

26 **V. ISSUES ON APPEAL AND CONTROLLING LAW**

1 An applicant for a license shall apply in writing on the application forms furnished
2 by the Board. Every applicant for an original license shall provide two (2) or more
complete sets of fingerprints on regulation forms.

3 Here, there is no evidence of Appellant formally submitting an application for a Jockey's
4 License in accordance with Section 1483. Rather, Appellant merely sent correspondence to the
5 CHRB declaring his intention to "reacquire [his] Jockey's License." (CHRB Ex. 10.)
6 Unfortunately, Appellant's correspondence does not meet the requirements set forth in Section
7 1483. And, Appellant was aware that he had to submit an application for licensure as Appellant
8 submitted a license application in 2016. (CHRB Ex. 9 at ¶ I.)

9 Because Appellant failed to submit a license application, the CHRB could not deny
10 Appellant's license application as a matter of law. Accordingly, this Appeal is procedurally
11 improper and must be denied. (See e.g., *Richards v. Department of Alcoholic Beverage Control*
12 (2006) 139 Cal. App. 4th 304, 309 ["We conclude that [plaintiff's] failure to apply for a transfer
13 of the license or for an original license was a failure to exhaust an administrative remedy and is a
14 complete defense to this action."].)

15 **B. Appellant Fails to Establish Rehabilitation or Overall Fitness for Licensure.**

16 Even if Appellant submitted a formal license application, which there is no evidence
17 indicating he did, Appellant independently failed to meet the rehabilitation criteria set forth in
18 Cal. Code Regs. Tit. 4 § 1489.2 ("Section 1489.2"). Thus, Appellant cannot make the necessary
19 showing of "rehabilitation" to permit Appellant to be licensed as a jockey in the State of
20 California.

21 As discussed above, Section 1489.2. provides the following relevant criteria in evaluating
22 Appellant's rehabilitation and fitness for licensure:

23 (1) The nature and severity of the act(s) and/or offense(s), including its relation to
24 horse racing or pari-mutuel wagering and the protection of the public; (2) the total
25 criminal record, including evidence of any act(s) and/or offense(s) committed
26 subsequent to the act(s) or offense(s) under consideration as grounds for denial...;
27 (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the
28 extent to which the person seeking licensure or the licensee has complied with any
terms of parole, probation, restitution or any other sanctions lawfully imposed
against the person or licensee; (5) the credibility of the person seeking licensure or
the licensee, and his or her acceptance of responsibility and remorse for the
conduct; and (6) evidence, if any, of rehabilitation submitted by the person seeking
licensure or by the licensee.

1 Here, the nature and severity of Appellant's regulatory offenses as well as his criminal
2 past are unquestionably severe. Indeed, since this Officer's 2016 Decision, Appellant was
3 convicted concerning the Domestic Abuse Incident and was separately arrested while possessing
4 drug paraphernalia. These criminal acts are in addition to Appellant's fifteen separate rule
5 violations and/or criminal convictions as detailed in the 2016 Decision. (See CHR B Ex. 9 at ¶
6 IX.)

7 The fact Appellant pled guilty to a domestic abuse charge and was arrested while
8 possessing a used methamphetamine pipe in the last eighteen months evidences Appellant's total
9 disregard for the law while simultaneously calling his character into serious question. It must be
10 noted that Appellant was supposed to focus on rehabilitating his image and demonstrating an
11 overall fitness for licensure subsequent to the 2016 Decision. Unfortunately, Appellant wholly
12 failed to do so.

13 Because Appellant's previous regulatory violations and criminal history are undoubtedly
14 severe, and because Appellant pled guilty to domestic abuse charges in October 2018, Appellant
15 fails to demonstrate the necessary fitness to be licensed as jockey.

16 Nor has Appellant complied with the terms the CHR B set forth in the 2016 Decision.
17 Indeed, Appellant presented no evidence: (1) that he participated in drug and alcohol tests, much
18 less submitting to such tests once a week; or (2) of his continued participation with the Winner's
19 Foundation. In fact, a Winner's Foundation representative testified to having only sporadic
20 communication with Appellant since 2018 and that Appellant has not attempted to contact the
21 representative since his domestic abuse conviction. (H.T. at p. 43, 45-46.)

22 Additionally, this Officer finds no evidence of rehabilitation. Instead, the record
23 demonstrates that Appellant: (1) is associating with individuals who are obvious drug users, at
24 the very least; (2) entered a plea deal concerning charges of spousal abuse; and (3) infrequently
25 sought treatment for drug and alcohol abuse despite this Officer, the Winner's Foundation, and
26 the CHR B instructing Appellant otherwise.

27 Finally, this Officer finds Appellant lacks credibility in claiming he is rehabilitated for the
28 reasons set forth above. This Officer informed Appellant what he should do to demonstrate

1 rehabilitation, which Appellant agreed to do. Appellant did not do what was expected of him in
2 any sense despite stating his intentions otherwise. As a result, this Officer openly questions
3 Appellant's credibility and whether he accepts responsibility for his actions.

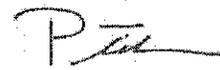
4 Due to Appellant's recent criminal transgressions and total lack of rehabilitation evidence,
5 this Officer finds that Appellant woefully falls short of meeting the rehabilitation criteria set forth
6 in Cal. Code Regs. Tit. 4 § 1489.2.

7 **VII. CONCLUSION**

8 Because of Appellant's substantial history of rule violations and criminal convictions, and
9 because Appellant made the same rehabilitation claims during the 2016 Appeal only to
10 subsequently plead guilty to spousal abuse charges, Appellant cannot meet Section 1489.2's
11 rehabilitation criteria as a matter of law.

12 WHEREFORE, and for the reasons set forth above, it is hereby recommended that the
13 CHRB deny Appellant's Appeal, and, to the extent Appellant may have applied for Licensure,
14 deny Appellant's Application for Licensure.

15 Dated: February 8, 2019



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17 Patrick J. Kane, Esq.
18 Hearing Officer

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