BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the Fitness for Licensure: Against: **Gustavo Medina** **Exercise Rider Applicant**	Case No. SAC 23-0004

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 May 19, 2023.

IT IS SO ORDERED ON May 18, 2023.

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

Scott Chaney (May 18, 2023 15:41 PDT)

Scott Chaney
Executive Director

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BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of: FITNESS FOR LICENSURE **GUSTAVO MEDINA** **Previous CHRB License Nos. 305642 and 312339** **Appellant.**	Case No.: SAC 23-0004 **PROPOSED DECISION RE: GUSTAVO MEDINA'S FITNESS FOR LICENSURE** Hearing Date: February 16, 2023 Time: 9:00 a.m.

This matter came for hearing on February 16, 2023 at 9:15 a.m. at Golden Gate Fields located 1100 Eastshore Highway, Berkeley, California 94710. Appellant Gustavo Medina ("Appellant") and interpreter Pablo Portillo were present. The California Horse Racing Board ("CHRB") was present and represented by attorney Robert Brodnik, who appeared remotely via Microsoft Teams.

Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over this matter remotely via Microsoft Teams. Michelle Derieg recorded all testimony presented during the instant proceeding.

The instant matter's record closed at the conclusion of the proceedings on February 16, 2023 at 10:15 a.m.

I. EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits the CHRB Entered into Evidence.

The CHRB entered the following exhibits into evidence:

Exhibit "1" The CHRB's Investigation File; and

Exhibit "2" The Notice of Hearing Dated January 26, 2023.

B. Exhibits Appellant Entered into Evidence.

Appellant did not enter any exhibits into evidence.

II. LIST OF TESTIFYING WITNESSES

A. Witnesses Testifying on Behalf of the CHRB.

The CHRB called the following the witnesses:

- Mike Alford, C.H.R.B. Investigator; and
- Jennifer Tohlman, C.H.R.B. Investigator.

B. Witnesses Testifying on Behalf of Appellant.

Appellant called the following the witnesses:

- Gustavo Medina.

III. FINDINGS OF FACT

After analyzing and admitting all exhibits into evidence, admitting Appellant's testimony, and admitting testimony from CHRB Investigators Mike Alford ("Alford") and Jennifer Tohlman ("Tohlman"), this Officer makes the following findings of fact:

A. Appellant's 2019 License Revocation.

I.

On January 25, 2019, Alford was given an assignment to investigate the events surrounding the death of "Tiz Willow (the "Horse")." Alford's investigation revealed that on November 1, 2018, the Horse was claimed from a claiming race at Golden Gate Fields. However, the Horse was deemed "lame" resulting in the "claim" being voided. (Ex. 1, Hearing Transcript ("H.T.") at p. 18.) As of November 2018, the Horse weighed approximately 1,000 pounds. (H.T. at p. 19.)

II.

As a result of the voided claim, the Horse was "gifted" to Appellant who was an exercise rider at Golden Gate Fields at the time. (Ex. 1.) No paperwork confirming the Horse's transfer to Appellant was completed, meaning the Horse remained in the name of its former owner, Gary

Stute. (Id.)

III.

On December 3, 2018, the Horse was shipped to a ranch located in American Canyon, California (the "Ranch"). (Ex. 1.) Appellant allegedly paid a "friend," who was also boarding horses at the Ranch, $100.00 a month to look after the Horse. (Id.) Appellant admits to not visiting the Horse. (Id.)

The Ranch was later found to be a very substandard boarding facility that did not include shelter to protect the animals. (Ex. 1.) The enclosure where the Horse was kept was muddy and wet, with a "small collapsed shed roof too small for a horse to seek shelter under." (Id.) There was no food or water available in the Horse's enclosure. (Id.) In fact, the Ranch was in such disarray that the Napa County Animal Services previously investigated the Ranch. (Id.)

IV.

On January 23, 2019, Appellant removed the Horse from the Ranch and brough it back to Golden Gate Fields. (Ex. 1.) Appellant stabled the Horse with trainer Jose Puentes ("Puentes") who stated the Horse was walking without any visible problems being noticed when it returned to his stable. (Id.)

V.

On January 24, 2019, Puentes contacted Dr. Steve Matuszak to inform him that the Horse was found lying in the shed row outside its stall and had to be "dragged back into its stall before he responded." (Ex. 1.)

VI.

Dr. Matuszak subsequently administered the Horse with Dexamethasone, Banamine, and a "DMSO Jug of vitamins" while determining the Horse to be suffering from colic to the point where the Horse threw itself "against the walls of its stall to the point of self-injury and exhaustion." (Ex. 1.) Dr. Matuszak separately noted that the Horse clearly had been starved and neglected during its stay at the Ranch. (Ex. 1.)

VII.

On January 25, 2019, Puentes contacted Dr. Matuszak to advise him the Horse had

tragically passed away overnight. (Ex. 1.) A necropsy was subsequently performed by Equine Medical Director, Dr. Rick Arthur (the "Necropsy"). (Id.)

VIII.

On February 2, 2019, Alford received the Necropsy results, which revealed the following:

> (1) Thin body condition with negative energy balance; (2) serious atrophy of fat (coronary grove, bone marrow); (3) bone marrow fat percentage of 2.3% (normal is 62 to 99%); (4) small colon impaction; (5) dry and firm fecal balls; and (6) the Horse weighed 800 pounds at the time of the Necropsy and weighed 1,020 pounds the last time the Horse ran on November 3, 2018, just 3 months before the Necropsy. (Ex. 1.)

IX.

During his investigation of Appellant, Alford separately learned that Appellant had been exercising horses without a valid exercise rider's license as his exercise rider's license expired in 2017. (Ex. 1.) A review of Appellant's C.H.R.I.S. history further revealed Appellant previously acted as a trainer without holding a valid license to do so. (Id.)

X.

On February 28, 2019, the CHRB filed a Complaint ("Complaint") against Appellant asserting violations of CHRB Rules §§ 1902.5, 1902, 1489(7) and (10), 1481(b)(10), and 1900, all of which were based upon following the allegations:

> Owner Gustavo Medina acquired the horse "Tiz Willow" at Golden Gate Fields as a result of the owner donating the horse to him. At that time, Owner Medina assumed responsibility for the horse. On 10/13/18, he shipped the horse off the grounds to a substandard stabling facility where the horse was not properly cared for. On 01/23/19, the horse was returned to Golden Gate Fields in an emaciated state. On 01/25/19, the horse was found deceased in its stall. The official necropsy report from UC Davis reported that the horse was severely under nourished. During the course of the investigation, it was discovered that Owner Medina was working as an Exercise Rider almost daily and that this license had expired in 2017.
> (Ex. 1.)

XI.

On June 8, 2019, the Golden Gate Fields' Board of Stewards ("Stewards") heard the Complaint and issued Official Ruling No. 101 deeming Appellant ineligible for licensing until February 28, 2022 while fining Appellant $10,000.00 for causing the Horse's passing (the "Ruling"). (Ex. 1.) Specifically, the Ruling made the following findings:

> Expired Exercise Rider/Owner Gustavo Medina is hereby deemed ineligible for licensing until February 28, 2022 pursuant to California Horse Racing Board [R]ule #1900 (Grounds For Suspension or Revocation) and fined the sum of Ten Thousand Dollars ($10.000.00) for failure to provide adequate care to the horse Tiz Willow from December 3, 2018 through January 25, 2019 and exercising horses without a valid license. A violation of California Horse Racing Board rules # 1902.5 (Animal Welfare), #1902 (Conduct Detrimental to Horse Racing), #1489 (b) (7) (Grounds for Refusal of License) and #1481 (b)(10) (Occupational Licenses and Fees).
>
> ***Further it is the recommendation of this Board of Stewards that Gustavo Medina never be relicensed by the California Horse Racing Board for an egregious violation of rule #1902.5 (Animal Welfare).***
> (Ex. 1, emphasis added.)

B. Procedural History.

XII.

In or around December 2022 or early January 2023, Tohlman met with Appellant concerning his request to be relicensed. (H.T. at p. 23.) During this meeting, Tohlman informed Appellant how to request a fitness hearing in order to be relicensed. (Id.)

XIII.

On January 26, 2023, the CHRB set the instant action for hearing on February 16, 2023 at Golden Gate Fields (the "Hearing"). (Ex. 2.)

IV. ISSUES ON APPEAL AND CONTROLLING LAW

When considering the denial of a license on the grounds that the applicant committed a "bad act" act or has been convicted of a crime, the following criteria are relevant in evaluating Appellant's rehabilitation and fitness for licensure:

> (1) The nature and severity of the act(s) and/or offense(s), including its relation to horse racing or pari-mutuel wagering and the protection of the public; (2) the total criminal record, including evidence of any act(s) and/or offense(s) committed subsequent to the act(s) or offense(s) under consideration as grounds for denial, suspension or revocation which also could be considered grounds for denial, suspension, or revocation under Business and Professions Code sections 480 or 490; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the 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. (Cal. Code Regs. Tit. 4 § 1489.2.)

Appellant must demonstrate, by a preponderance of the evidence, that he meets the necessary licensure requirements. (See, Cal. Code Regs. Tit. 4 § 1764 ["The burden shall be on

the appellant to prove the facts necessary to sustain the appeal."], Cal. Evid. Code § 115, *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784, *Owen v. Sands* (2009)176 Cal.App.4th 985, 989.)

"Preponderance of the evidence means evidence that has more convincing force than that opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) "Preponderance of the evidence means what it says, viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325 [citations omitted].)

Because this action concerns the denial of a license due to previous "bad acts," Appellant must provide sufficient evidence of rehabilitation and overall fitness for licensure.

V. DISCUSSION

A. Appellant Neither Establishes Rehabilitation Nor Overall Fitness for Licensure.

Appellant indisputably failed to meet the rehabilitation criteria set forth in Cal. Code Regs. Tit. 4 § 1489.2 ("Section 1489.2"), much less provide any evidence demonstrating a fitness for licensure. Thus, Appellant cannot make the necessary showing of "rehabilitation" to permit Appellant to be licensed as an exercise rider in the State of California.

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

> (1) The nature and severity of the act(s) and/or offense(s), including its relation to horse racing or pari-mutuel wagering and the protection of the public; (2) the total criminal record, including evidence of any act(s) and/or offense(s) committed subsequent to the act(s) or offense(s) under consideration as grounds for denial...; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the 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.

Here, the nature and severity of Appellant's regulatory offenses include egregiously failing to care for the Horse resulting in its untimely passing. Since the Ruling's issuance, Appellant was convicted of a DUI in Washington and served six months in prison as a result of

said conviction. (H.T. at p. 11.) In fact, Appellant remains on probation for the DUI conviction and has been in violation of his probation for six months due to leaving Washington State for California. (H.T. at p. 11-13.) Appellant was previously convicted of two separate DUIs in 2014 and 2015. (Id. at p. 16.)

In addition to the multiple DUIs, Appellant was convicted of domestic violence for an incident involving his wife in either 2019 or 2020, for which he served a short prison term. (H.T. at p. 16.)

The fact Appellant has multiple criminal convictions, including one for domestic violence, demonstrates Appellant's total disregard for the law while simultaneously calling his character into serious question. Because Appellant's egregious regulatory violations and severe criminal history, and because Appellant admits to violating his parole, Appellant cannot demonstrate the necessary fitness to be licensed as an exercise rider.

Nor has Appellant complied with the terms of the Ruling as he freely admits to never paying the $10,000.00 fine despite having three and half years to do so. (H.T. at p. 14-15.) Additionally, this Officer finds no evidence of rehabilitation. Instead, the record demonstrates that Appellant: (1) has been convicted of multiple DUIs and domestic violence; (2) is in violation of his probation; and (3) continues to engage in criminal conduct.

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

This Officer further notes his unequivocal agreement with the Stewards' Ruling that Appellant should never be relicensed by the CHRB. (See, Ex. 1.)

VI. CONCLUSION

Because of Appellant's sickening regulatory violations concerning the death of Tiz Willow as well as his criminal convictions, and because Appellant admits to currently violating his parole, and because Appellant presented no evidence of rehabilitation, Appellant cannot meet Section 1489.2's rehabilitation criteria as a matter of law.

WHEREFORE, and for the reasons set forth above, it is hereby recommended that the

CHRB deny Appellant's Application for Licensure and that Appellant should not be licensed by the CHRB at any point in the future.

Dated: April 12, 2023

Patrick J. Kane, Esq.
Hearing Officer