

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

In the Matter of the Accusation Against:

OAH No. L2008030173

PATRICK VALENZUELA
Respondent

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 September 23, 2008.

IT IS SO ORDERED ON September 18, 2008.

1. Respondent Patrick Valenzuela's conditional jockey license is revoked.
2. Respondent Patrick Valenzuela is permanently ineligible to reapply for, or to hold, a license issued by the California Horse Racing Board.

CALIFORNIA HORSE RACING BOARD

Richard B. Shapiro, Chairman

By: 

Kirk E. Breed
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. L2008030173

PATRICK VALENZUELA,

Jockey.

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 15, 2008, in Los Angeles, California.

Patricia A. Nevenon, Deputy Attorney General, represented Richard Bon Smith (Complainant), Acting Executive Director of the California Horse Racing Board (CHRB).

Neil Papiano, Esq., Iverson, Yoakum, Papiano & Hatch, represented Patrick Valenzuela (Respondent).

At hearing, neither party offered any jurisdictional documents as exhibits to be admitted into the record. After the hearing, the ALJ, on his own motion, marked the jurisdictional documents as Exhibit J and admitted Exhibit J into the record.

The parties submitted the matter for decision on July 15, 2008.

FACTUAL FINDINGS

1. Complainant filed the Accusation on February 26, 2008. Respondent filed the Notice of Defense on February 29, 2008.

2. Respondent holds a conditional jockey license that is valid from November 14, 2007, to December 31, 2008.

3. Complainant contends Respondent's conditional jockey license is subject to immediate and permanent termination for a material violation of the terms and conditions imposed on that conditional license. The specific condition at issue is the requirement that Respondent abstain from alcohol. Complainant contends Respondent's violation was that he drank alcohol during the life of the conditional license.

4. Respondent does not dispute that he consumed alcohol during the current conditional license period, but contends the CHRB should not terminate his conditional jockey license because the requirement to abstain from alcohol is: 1) an unreasonable restraint, and 2) goes beyond the CHRB's statutory authority.

5. Respondent has professionally ridden thoroughbred racehorses for over 29 years. He is a leading rider who has won various prestigious horse races throughout the United States. At a time in the past, undetermined by the evidence, Respondent developed a drug addiction problem. He currently attends addiction counseling sessions, two times per week. Respondent has been tested for drug use since approximately 2001.¹ As a consequence of his drug addiction, since December 2001, the CHRB has issued Respondent conditional jockey licenses, each license being valid for an approximate one-year period.

6. Respondent's current conditional jockey license contains the following condition: "[d]uring the term of this conditional license, Applicant [Respondent] shall abstain from the consumption and/or possession of any alcohol, and any controlled substances." Each of Respondent's conditional jockey licenses, since 2002, contains the same or similar language. Respondent has signed his approval to each of his conditional jockey licenses since 2002.

7. Respondent explained that he believed the condition that he abstain from alcohol related solely to his horse racing activities. In a declaration, dated January 20, 2008, filed with the Los Angeles County Superior Court, in a related matter, Respondent wrote the following: "I understood that this provision in my Conditional License meant that I should not appear at the track or ride any horses with any alcohol in my system."

8. The terms and conditions of the conditional license also state, "[s]ubject to a finding of material violation by Applicant of any condition set forth herein, Applicant's conditional license shall be subject to immediate termination, and after such a violation, Applicant shall thereafter be [sic] permanently ineligible to reapply for, or to hold, a license issued by the CHRB." The same term and condition is set forth in Respondent's 2006 conditional license. Respondent's 2005 conditional license contains the same wording, except that the word "material" was omitted. Respondent's conditional licenses from 2004, 2003, and 2002 contain provisions that Respondent's failure to fulfill any condition would result in "summary termination" of the licenses; these three earlier conditional licenses do not contain a provision for permanent ineligibility.

9. Respondent agreed to the conditions in Factual Findings 6 and 8. The conditional license reads, "[i]n signing this document, I, Patrick Valenzuela, understand that any violation of the terms and conditions set forth in this Conditional License will result in the termination of my conditional license to participate as a jockey, and I will thereafter be ineligible to apply for a license, in any capacity, issued by the California Horse Racing Board. I have had the opportunity to review this conditional license, and the terms and conditions set forth herein, and to consult with my attorney, Neil Papiano, prior to executing it. I hereby agree to, and accept, each and every term and condition set forth above, accept this conditional license, and further waive any future right to appeal or otherwise contest the

¹ There was no evidence that Respondent has ever ridden in a horse race with alcohol in his system. There was no evidence that Respondent has ever had an alcohol addiction or other problem with alcohol.

conditional license issuance or the terms and conditions contained herein.” Respondent and Respondent’s attorney signed this agreement clause on November 2, 2007, and November 14, 2007, respectively. Respondent and Respondent’s attorney agreed to and signed the 2005 and 2006 conditional licenses. Respondent agreed to and signed the 2002, 2003, and 2004 conditional licenses, but without the signature of his current or any other attorney.

10. On approximately December 20, 2007, in San Bernardino County, Respondent drank alcohol while at a family Christmas gathering. Respondent did not intend to, and did not, race on that day or the following day. Respondent left the family event, driving an automobile and stopping at a fast food restaurant. While in the restaurant parking lot, Respondent drove over a raised divider and flattened two tires. A police officer witnessed the scene and administered field sobriety tests on Respondent. The officer took Respondent to the local police station, where police personnel took a blood sample. Respondent had a 0.12 percent blood alcohol level, a level over the legal limit to drive. Neither party proffered evidence of an arrest or conviction, but Respondent admitted that, ultimately, he was placed on criminal probation. There was no evidence as to the particular violation of law or the terms and conditions of his criminal probation.

11. Respondent does not dispute that he drank alcohol at the December 2007 family gathering. He argued, however, that the condition prohibiting him from doing so unreasonably restrains him from engaging in a lawful profession and is thus, substantively invalid and void pursuant to Business and Professions Code section 16600. (See Legal Conclusions 5 & 9.) Respondent emphasized that, under the terms and conditions of his conditional license, any material violation would permanently ban him from ever racing in California, an extreme and unreasonable result, in Respondent’s view. Respondent further argued that the Legislature limited the CHR’s authority to impose license conditions to horse racing activities. On this point, Respondent emphasized that he did not drink alcohol on a racing day, near a racetrack, or before he intended to race. Respondent argued the CHR should, consequently, not be able to proscribe the lawful activity of drinking alcohol.

12. Complainant argued that, 1) the CHR has the authority to impose any conditions it deems necessary and desirable, pursuant to Business and Professions Code section 19460 et seq. (See Legal Conclusion 3.) 2) Respondent agreed to the condition of sobriety, and has so agreed yearly since 2002. 3) The condition of abstinence was reasonable given his admitted drug addiction and the CHR’s interest in a drug-free industry. 4) Respondent admitted to consuming alcohol during the current conditional license period. Complainant further argued that Respondent’s act of driving under the influence of alcohol provides independent grounds to terminate his conditional license, pursuant to California Code of Regulations, title 4, section 1489. (See Legal Conclusion 11.)

LEGAL CONCLUSIONS

The Law

1. Business and Professions Code section 19420 states:

Jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board.

2. Business and Professions Code section 19440 states in pertinent part:

(a) The board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the board shall include, but not be limited to, all of the following:

- (1) Adopting rules and regulations for the protection of the public and the control of horse racing and parimutuel wagering.
- (2) Administration and enforcement of all laws, rules, and regulations affecting horse racing and parimutuel wagering.
- (3) Adjudication of controversies arising from the enforcement of those laws and regulations dealing with horse racing and parimutuel wagering.
- (4) Licensing of each racing association and all persons, other than the public at large, who participate in a horse racing meeting with parimutuel wagering.

3. Business and Professions Code section 19460 states:

All licenses granted under this chapter:

- (a) Shall be in writing.
- (b) Are subject to all rules, regulations, and conditions from time to time prescribed by the board.
- (c) Shall contain such conditions as are deemed necessary or desirable by the board for the purposes of this chapter.

4. Business and Professions Code section 19461 states in pertinent part:

Every license granted under this chapter is subject to suspension or revocation by the board in any case where the board has reason to believe that any condition regarding it has not been complied with, or that any law . . . or any rule or regulation of the board affecting it has been broken or violated. 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.

5. Business and Professions Code section 16600 states:

Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

6. California Code of Regulations, title 4, section 1489 states in pertinent part:

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

[¶] . . . [¶]

(g) Who has committed . . . intemperate acts which have exposed others to danger.

Discussion

7. There are appropriate grounds to revoke Respondent's conditional jockey license. Respondent's conditional license required abstinence from alcohol, but, while the conditional license was active, Respondent drank alcohol in a quantity that resulted in a blood alcohol content of 0.12 percent. Consequently, Respondent violated the terms and conditions of his conditional license. The conditional license specified that any violation of its terms and conditions would subject Respondent to immediate termination of the license and would result in permanent ineligibility to reapply for, or hold, a license. Respondent's violation invokes the CHRB's right to revoke the conditional jockey license and deem Respondent permanently ineligible to reapply for, or hold, a CHRB-issued license, as set forth in the mutually agreed-to terms and conditions.

8. Contrary to the assertions in his declaration (Factual Finding 7), these terms and conditions were clear. Respondent was well aware that his conditional license required him to completely abstain from alcohol and he was aware of the consequences if he violated that requirement. (Factual Finding 9.) Saliiently, every year, once per year, since 2002, Respondent has agreed to completely abstain from alcohol. Respondent has agreed to accept the immediate and/or summary termination of his conditional license, as a consequence of a violation, since 2002. He has agreed to accept permanent ineligibility, as a consequence of a

violation, since 2005. Respondent has agreed to these terms and conditions having the benefit of his attorney's counsel since 2005. Respondent cannot reasonably claim that he was unaware of the requirements of his conditional license or the consequences of a violation.

9. Respondent's other arguments against revocation and permanent ineligibility do not provide him a successful defense. Respondent's reliance on Business and Professions Code section 16600 is misplaced. According to the cases offered by Respondent, the courts have applied that statutory provision when assessing the propriety of restrictive covenants and anti-competition clauses in employment contracts. (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal.App.4th 853; *Campbell v. Bd. of Trustees* (9th Cir. 1987) 817 F.2d 499.) Respondent argues the broad and general language of the statute is applicable to the instant case, and analogizes the legal analysis in the employment contract cases to the case at hand, but there is a clear distinction between the circumstances here, and Business and Professions Code section 16600 cases. Firstly, in this case, distinct from the employment contract cases, the restriction at issue (abstaining from alcohol), involves the CHRFB's statutory authority, as a state regulatory body, to place necessary and desirable conditions on Respondent's conditional license. Such a governmental purpose was not at issue in either *Metro Traffic* or *Campbell*. Moreover, if, as Respondent argues, Business and Professions Code section 16600 were applied against the CHRFB in this circumstance, where the CHRFB is a regulatory body, invested with the legislative authority to condition licenses like Respondent's, section 16600 would eviscerate and nullify the regulatory power provided to the CHRFB.² Secondly, *Metro Traffic* and *Campbell* involved employment contracts that restricted certain employment activities through outright contractual provisions. In Respondent's case, his conditional license did not provide an outright restriction on his ability to work as a jockey. The license set forth conditions that, as long as he did not violate them, the CHRFB would allow Respondent to race. Had Respondent continued to abstain from alcohol, as he had since 2002, Respondent would continue to pursue his profession in California, albeit with a conditional license. The terms and conditions of his conditional license are therefore not the same as restrictive covenants that restrict rightful and lawful employment; that difference further emphasizes the inapplicability of Business and Professions Code section 16600 to the instant matter.

10. Respondent's arguments, that it is unreasonable to require Respondent to completely abstain from alcohol, unreasonable to deem him permanently ineligible for licensure, and that, in pursuing these actions, the CHRFB goes beyond its legislative authority, is flatly countered by the Legislature's broad and unambiguous language in Business and Professions Code section 19460 ("conditions as deemed necessary or desirable"). (See also Bus. & Prof. Code, §§ 19420, 19440, 19461.) Furthermore, given Respondent's previous drug addiction, it is reasonable to require Respondent to refrain from ingesting any drugs or

² It is the Legislature's intention to invest the CHRFB with the power to protect the public and ensure the integrity of the horse racing industry by authorizing the CHRFB to, among other things, issue appropriately conditioned licenses; restrictions and conditions are inherent in that power. (Bus. & Prof. Code, §§ 19420, 19440, 19460, & 19461.)

alcohol at any time, not just before a horse race. In response to Respondent's argument that a lifetime ban is unduly harsh, it is noteworthy that a review of other administrative bodies finds that, at the least, two state agencies have provisions permanently banning potential licensees from applying for and/or holding other state licenses under certain circumstances. (See Health & Saf. Code, § 1596.8897, subd. (h)(1)(A) [lifetime ban on licensure by the Department of Social Services]; Cal. Code Regs., tit. 2, § 20804 (see also Gov. Code § 8220) [lifetime ban on notary public licensure by the Secretary of State].)

11. Complainant also argued that Respondent's admitted drinking and driving provided additional grounds to revoke the conditional license, pursuant to California Code of Regulations, title 4, section 1489 ("intemperate acts which have exposed others to danger"). However, Complainant failed to plead those grounds sufficiently in the Accusation, and therefore, he cannot avail himself of that regulatory provision without violating Respondent's procedural due process rights.

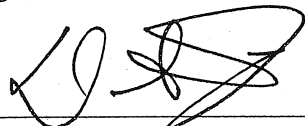
Conclusion

12. Cause exists to revoke Respondent's conditional jockey license, for his violation of the terms and conditions of the conditional license, pursuant to Business and Professions Code section 19461, as set forth in Factual Findings 1-12, and Legal Conclusions 1-11.

ORDER

1. Respondent Patrick Valenzuela's conditional jockey license is revoked.
2. Respondent Patrick Valenzuela is permanently ineligible to reapply for, or to hold, a license issued by the California Horse Racing Board.

Dated: August 11, 2008



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings