BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the Fitness for Licensure against: **Merced Franco Ruiz** **Exercise Rider Applicant (#409627)**	Case No.: SAC 24DM0028

DECISION

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

IT IS SO ORDERED ON November 22, 2024.

Gregory L. Ferraro, DVM
Digitally signed by Gregory L. Ferraro, DVM
Date: 2024.11.22 12:30:24 -08'00'

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

C. Scott Chaney
Digitally signed by C. Scott Chaney
Date: 2024.11.22 11:48:32 -08'00'

Scott Chaney
Executive Director

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BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of: FITNESS FOR LICENSURE **MERCED FRANCO RUIZ,** Exercise Rider Applicant	Case No. **24DM0028** PROPOSED DECISION RE: MERCED FRANCO RUIZ FITNESS FOR LICENSURE Hearing Date: October 17, 2024 Time: 11:00 a.m.

PROPOSED DECISION

This matter was heard on October 17, 2024 by Shauna Weeks Avrith, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) remotely via Microsoft Teams audio and videoconference.

The Applicant, formerly licensed exercise rider Merced Franco Ruiz (hereinafter "Ruiz" or "Applicant") appeared via Teams with his wife, Tanya Schvaneveldt, and was unrepresented by counsel.

CHRB Investigator Anne Dillon appeared via Teams.

The California Horse Racing Board (hereinafter "CHRB" or "Respondent") was represented by California Deputy Attorney General Ina Rechdouni, who appeared via Teams.

The proceedings were recorded by court reporter Michelle E. Derieg of Weinstein Court Reporters, LLC.

PROCEDURAL BACKGROUND

Applicant Merced Franco Ruiz was previously licensed by the CHRB as an exercise rider. His license expired in 2017. On July 27, 2024, Ruiz applied for and received a temporary exercise rider's license, pending CHRB's receipt of criminal history information. On that application, signed under penalty of perjury, Ruiz denied ever having been convicted of any criminal offense. After CHRB obtained Ruiz's criminal history, reflecting multiple criminal convictions and pending criminal charges, CHRB revoked Ruiz's exercise rider license. Ruiz submitted a new application on August 9, 2024, this time disclosing multiple convictions, including for trespass, witness tampering, providing false information to a police officer, possession of methamphetamine, and DUI. On August 22, 2024, the CHRB served Ruiz with a Notice of Refusal of License, based on his criminal history and his failure to disclose that history in his initial application, and advised him of his right to a fitness hearing.

LIST OF EXHIBITS

A. CHRB Exhibits:

CHRB Exh. No. 1: Ruiz License Application dated July 27, 2024

CHRB Exh. No. 2: Ruiz License Application dated August 9, 2024

CHRB Exh. No. 3: Notice of Refusal of License, Case No. 24DM0028, dated August 22, 2024

CHRB Exh. No. 4: California Department of Justice Criminal History re Merced Franco Ruiz

B, Applicant Exhibits:

None

LIST OF WITNESSES

A. CHRB Witnesses:

CHRB Investigator Anne Dillon

B. Applicant Witnesses:

Merced Franco Ruiz

Tanya Schvaneveldt (as uncertified Spanish interpreter)

APPLICABLE LAWS AND REGULATIONS

California Horse Racing Board Rule 1488 (Temporary Occupational License) provides:

(a) Pending completion of an investigation of the qualifications and fitness of an applicant for license, any initial occupational license granted by the Board is temporary, shall carry no presumption of the qualifications or fitness of the applicant, and may be summarily terminated by the Board. Unless terminated earlier, a temporary license shall be made permanent upon completion of an investigation by the Board of all facts relative to the applicant's qualifications, and a determination that the applicant is fit to hold a license.

(b) A temporary license shall be terminated if the applicant's fingerprints, completed application(s), and such other documentation as may be required for license are not submitted to the Board within 45 calendar days following the date of issuance of the license. In the event of termination of a temporary license,, the occupational license fee shall be forfeited. Termination of temporary license is without prejudice to the applicant unless the Board finds that the applicant has made a material misrepresentation or false statement to the Board to obtain a license privilege.

(c) No more than one temporary license shall be issued to an applicant without that applicant first submitting to the Board such fingerprints and completed applications as required under this article.

California Horse Racing Board rule 1489 (Grounds for Denial or Refusal of License), provides, in pertinent part, as follows:

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

(1) Who has been convicted of a crime punishable by imprisonment in a California state prison or a federal prison, or who has been convicted of a crime involving moral turpitude;

. . .

(3) Who has made any material misrepresentation or false statement to the Board or its agents in his or her application for license or otherwise, or who fails to answer any material question on an application for a license;

. . .

(8) Who has unlawfully engaged in or who has been convicted of possession, use or sale of any narcotic, dangerous drug or marijuana.

California Horse Racing Board Rule 1489.2 provides:

(a) When considering the denial of a license under Business and Professions Code section 480, or the suspension or revocation of licensure under Business and Professions Code section 480, on the grounds that the person has committed an act or been convicted of a crime, the California Horse Racing board will evaluate the rehabilitation of such person and his or her eligibility for licensure, and shall consider the following criteria:

(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 section 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.

(6) Evidence, if any, of rehabilitation submitted by the person seeking licensure or by the licensee. If the evidence of rehabilitation consists of written statements by third parties in support of the person seeking licensure or the licensee, the written statements shall include a description of their relationship to the person or licensee, a description of the length of time their relationship has existed, a description of the rehabilitative efforts of the person seeking licensure or the licensee and should contain the following sentence at the end: "I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." The written statement should be signed by the third party making the statement and dated.

FACTUAL FINDINGS

I.

The CHRB's Application for License Form (CHRB-4) requires applicants to disclose all criminal convictions and pending cases. In his application for an exercise rider's license, signed by Ruiz under penalty of perjury on July 27, 2024, Ruiz responded "No" to the question "Have you **EVER** been convicted of any criminal offense," and identified no prior convictions or pending charges. This was a knowing and material false statement. (CHRB Exh. 1 (emphasis in original); Dillon Testimony; Ruiz Testimony.)

II.

On July 27, 2024, Ruiz was granted a temporary exercise rider's license pending completion of the CHRB's criminal history investigation. That temporary license was revoked upon the CHRB's

receipt of Ruiz's criminal history reflecting criminal convictions and pending charges. (Dillon Testimony.)

III.

After being advised by the CHRB that he had failed to disclose his criminal history, Ruiz submitted a renewed application for an exercise rider's license on August 9, 2024. On that application, Ruiz disclosed the following:

3/2019 Trespassing; Sentence: 3 years probation

6/2018 Felony threat; Sentence: 90 days / 3 years probation

3/2019 Driving poorly with suspended license: fine

7/2022 Possession of "meth": fine

7/2022 DUI

1/2022 Trespass / false info to police: pending

1/2024 Trespass: pending

(CHRB Exh. 2.)

IV.

Ruiz's criminal history, provided to the CHRB by the California Department of Justice, revealed the following criminal convictions and pending cases:

Convictions:

March 26, 2019: Penal Code section 602(O) **Trespass: Refuse to Leave Property**
Misdemeanor conviction – 36 months probation, 40 days jail, fine

June 18, 2018 Penal Code section 136.1(B)(1) **Witness Tampering**
Felony conviction – 36 months probation, 90 days jail
Probation violation / probation revoked August 11, 2021
Sentence: 36 months probation, 30 days jail, Fine
Early dismissal from probation: July 15, 2022

March 25, 2019 Veh. Code section 14601.1(A) **Driving on Suspended License**
Misdemeanor sentence: fine

July 15, 2022: Health & Safety Code section 11377(A) **Possess. Controlled Substance**

Misdemeanor conviction -- fine

Pending cases:

July 13, 2022 Veh. Code section 23152(A) – DUI

Bench Warrant issued; as of August 22, 2024 action still pending

Nov. 13, 2022 Penal Code section 602.1(A) **Trespass Obstruct Business Operation;** Penal Code section 148.9 **False Identification to Police Officer**

Bench warrant issued: as of July 30, 2024, action still pending

Jan. 9, 2024: Penal Code section 602.1(A) **Trespass Interfere/Obstruct Business Operation**

Bench warrant issued: as of July 30, 2024, action still pending[1]

DISCUSSION OF ISSUES

The relevant facts are undisputed. Ruiz knowingly omitted his substantial criminal history from his first license application. Ruiz claimed he did not include this information because he thought the CHRB already knew about it, and he was afraid that if he did disclose it, his license application would be denied. The CHRB demonstrated that it properly refused to license Ruiz based on (1) conviction of a crime punishable by imprisonment in the State or Federal prison (witness tampering, pursuant to Penal Code section 136(b)(1)) ; (2) material misrepresentation or false statement to the Board or its application for license; and (3) conviction of possession of a narcotic, dangerous drug, or marijuana (methamphetamine conviction pursuant to Health & Safety Code section 11377(A).)

Consideration of the rehabilitation criteria set forth in Rule 1489.2 also fully supports the CHRB's refusal to license Ruiz. These criteria include the following:

(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: Ruiz has a felony conviction for

[1] This charge appears to have the same case number as the November 13, 2022 trespass charge. It is unclear from the criminal history whether the January 9, 2024 entry reflects a renewed bench warrant for the November 13, 2022 offense.

witness tampering pursuant to Penal Code section 136.1(b)(1), for which his probation was revoked. Section 136(b)(1) criminalizes attempts to prevent or dissuade a crime victim or witness from reporting the crime. This conviction fully justifies the CHRB's refusal to license Ruiz. See *Gleason v. Glasscock,* 2012 WL 1131438 at *5 (E.D. Cal. Mar. 29, 2012) (noting that California courts have explained that "the public's interest in legitimate horse racing and wagering requires its protection from individuals the [CHRB] rationally believes will threaten the honesty, fairness and safety of the activity," citing *Morrison v. Cal. Horse Racing Bd.,* 205 Cal.App.3d 211, 218 (1988).) Ruiz also has a conviction for possession of methamphetamine. These are serious charges that implicate the safety of both racetrack employees and 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: In addition to Ruiz's criminal convictions, he has charges pending, including trespass and providing false identification to a police officer, for which he failed to appear, resulting in the issuance of bench warrants against him. These charges could ultimately result in convictions which in themselves would justify a refusal to license Ruiz.

(3) The time that has elapsed since commission of the act(s) or offense(s): Ruiz's criminal convictions span the period from June 18, 2018 through July 15, 2022, with additional charges filed against him in July and November, 2022. As such, Ruiz's criminal conduct may fairly considered to be both recent and possibly ongoing as well, depending on the outcome of the currently pending charges.

(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: As noted above, Ruiz had probation for his felony witness intimidation conviction revoked in 2021, and currently has at least two bench warrants outstanding against him, indicating that he violated the terms of his probation, and ignored court orders to appear on the currently pending charges.

(5) The credibility of the person seeking licensure or the licensee, and his or her acceptance of responsibility and remorse for the conduct: Mr. Ruiz's explanation for failing to disclose his criminal history was that he thought the Board already knew about it, and that he was afraid that if he disclosed it, he would not be licensed. The evidence demonstrates that Ruiz made a false statement of material fact under penalty of perjury when he denied having ever been convicted of a criminal offense, and failed to list his convictions and pending charges. Furthermore, Ruiz's conviction for witness tampering demonstrates that he attempted to obstruct justice by preventing a crime from being reported by a victim or a witness, a crime which certainly affects his credibility.

(6) Evidence, if any, of rehabilitation submitted by the person seeking licensure or by the licensee: Ruiz presented no evidence of rehabilitation. To the contrary, the evidence, including Ruiz's own statements, shows that Ruiz has yet to resolve pending criminal charges against him. Ruiz claimed that he had befriended the person who was the subject of witness tampering, and that the victim of his crime was working with him to have the charges against him reduced or expunged. In the absence of corroborating evidence, this claim carries little weight, especially in light of his previous knowingly false statements to the Board. Notably, Ruiz offered no third party witness testimony or declarations attesting to his rehabilitation as permitted by Rule 1489.2(a)(6).

CONCLUSION / PROPOSED DECISION

In a fitness hearing for an occupational license, the burden of proof is on the applicant to prove his fitness to hold a license by a preponderance of the evidence. Ruiz failed to meet his burden. The CHRB properly denied Ruiz's August 9, 2024 license application based on (1) conviction of a crime punishable by imprisonment in the State or Federal prison; (2) material misrepresentation or false statement to the Board or its application for license; and (3) conviction of possession of a narcotic, dangerous drug, or marijuana, pursuant to Rule 1489(a) (1), (3) and (8). The criteria set forth in Rule 1489.2 further support the Board's refusal to license Ruiz.

DATED: November 5, 2024

By

Shauna Weeks Avrith
Hearing Officer