



California State Athletic Commission  
2005 Evergreen St., Ste. #2010  
Sacramento, CA 95815  
www.dca.ca.gov/csac/  
(916) 263-2195 FAX (916) 263-2197



Members of the Commission

Commissioner John Frierson, Chair  
Commissioner Christopher Giza, Vice-Chair  
Commissioner Van Lemons, M.D.  
Commissioner Steve Alexander  
Commissioner DeWayne Zinkin  
Commissioner Eugene Hernandez

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**Action may be taken on any item listed on  
the agenda except public comment.**  
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## MEETING AGENDA

**Wednesday, August 18, 2010**

10:00 A.M. to 2:00 P.M.

**Location**

Ronald Reagan State Office Building  
300 South Spring Street  
Press Room, 5<sup>th</sup> Floor North Tower  
Los Angeles, CA

1. Call to order/Roll call/Pledge of allegiance
2. Application For Professional Boxer License – Antonio Margarito
3. Adjournment

NOTICE: The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting George Dodd at (916) 263-2195 or email [george\\_dodd@dca.ca.gov](mailto:george_dodd@dca.ca.gov) or sending a written request to George Dodd at the California State Athletic Commission, 2005 Evergreen Street, Suite 2010, Sacramento, CA 95815. Providing your request at least five (5) days before the meeting will help ensure availability of the requested accommodation. Requests for further information should be directed to George Dodd at the same address and telephone number.

Meetings of the California State Athletic Commission are open to the public except when specifically noticed otherwise in accordance with the Open Meetings Act. The audience will be given appropriate opportunities to comment on any issue presented.



## California State Athletic Commission

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Sacramento, CA 95815  
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July 30, 2010

Daniel Petrocelli  
David Marroso  
O'Melveny & Myers LLP  
1999 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067-6035

RE: Antonio Margarito Licensing Application

Dear Messrs. Petrocelli and Marroso:

Pursuant to your request of July 28, 2010 on behalf of Antonio Margarito, the California State Athletic Commission has scheduled a special meeting to hear the Petition of Mr. Margarito for reinstatement of license as a professional boxer in California.

We are in receipt of the application materials, with the exception of some medical test results that I understand will be forwarded shortly.

The hearing will take place on Wednesday August 18, 2010 at the Ronald Reagan State Office Building, 300 S. Spring Street, Los Angeles, California 90013 in the Press Room 5th Floor North Tower. It is scheduled from 10:00 a.m. to 3:00 p.m.

If you would like to submit anything in writing for the Commissioners to consider other than what has already been presented, please submit seven copies to the above address, with a copy of all such materials to Karen Chappelle, Supervising Deputy Attorney General, at her office no later than August 9, 2010 so that it can be included in the commission packet. Please be advised that the commission will be most interested in evidence of rehabilitation.

Sincerely,

  
George Dodd  
Executive Officer

cc: John Frierson, Chairperson  
Karen Chappelle  
Anita Scuri



**CALIFORNIA STATE ATHLETIC COMMISSION PROGRAM**

**LICENSE APPLICATION HEARING  
AUGUST 18, 2010**

**REINSTATEMENT HEARING  
ANTONIO MARGARITO**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
4 State Bar No. 141267  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-8944  
6 Facsimile: (213) 897-2804  
*Attorneys for California State Athletic Commission*  
7

8 **BEFORE THE**  
**CALIFORNIA STATE ATHLETIC COMMISSION**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition for Reinstatement  
12 of Revoked Boxer's License of:

13 **ANTONIO MARGARITO**

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Petitioner.

Case No.

**RESPONSE TO PETITION FOR  
RECONSIDERATION**

17 PURSUANT TO THE PROVISIONS OF Government Code Section 11522,  
18 Edmund G. Brown Jr., Attorney General of the State of California, by Supervising Deputy  
19 Attorney General, Karen Chappelle, files this response to the Petition for Reinstatement of  
20 Revoked Boxer, Antonio Margarito.

21 **FACTUAL AND PROCEDURAL HISTORY**

22 Petitioner Antonio Margarito (hereinafter "Petitioner"), was a professional boxer  
23 licensed by the California State Athletic Commission (hereinafter "Commission") having  
24 originally been licensed on or about January 1, 2009. On January 24, 2009, Petitioner was  
25 scheduled to participate in a Commission sanctioned, professional welterweight championship  
26 boxing match at the Staples Center located in Los Angeles, California.

27 Prior to the fight, Petitioner's trainer, Mr. Javier Capetillo, wrapped Petitioner's fists  
28 in anticipation of placing boxing gloves over his hands. After wrapping Petitioner's right hand,

1 trainer Capetillo then began wrapping Petitioner's left hand. As trainer Capetillo was wrapping  
2 Petitioner's left hand, Commission inspectors were directed by opponent boxer "Sugar" Shane  
3 Mosley's trainer to Petitioner's fist wraps where they observed what they determined was a  
4 foreign and therefore illegal material inside the "knuckle pad," a collection of gauze wrapped  
5 over itself to create a pad, on Petitioner's hand. Whereupon, Commission inspectors  
6 subsequently examined Petitioner's right knuckle pad, and determined that this pad also contained  
7 a foreign and therefore illegal material. The inspectors took physical possession of both knuckle  
8 pads, and ordered trainer Capetillo to prepare new pads in their presence.

9 Petitioner lost the boxing contest of January 24, 2009 and thus his world welterweight  
10 title transferred to boxer "Sugar" Shane Mosley.

11 Several days later, on or about January 27, 2009, Commission Assistant Executive  
12 Officer Bill Douglas notified Petitioner via letter that pursuant to Business and Professions Code  
13 section 18842, Petitioner's professional boxing license was temporarily suspended pending the  
14 Commission's final determination of what had occurred during the pre-fight wrapping of  
15 Petitioner's fists. (Ex. 1)

16 The letter explained that Petitioner appeared to violate rule (section) 323 of Title 4 of  
17 the California Code of Regulations as said regulation limits the amount and use of gauze and tape  
18 that can be applied in hand-wraps, and bans all other foreign substances in the fabrication of  
19 hand-wraps. The letter also explained that rule (section) 390 of Title 4 of the California Code of  
20 Regulations authorizes the Commission "to revoke, fine, suspend or otherwise discipline any  
21 licensee who 'conducts himself . . . at any time or place in a manner which is deemed by the  
22 Commission to reflect discredit to boxing.'

23 On February 10, 2009, the Commission convened a hearing at which testimony was  
24 heard, including Petitioner's, as well as oral argument held. At the hearing, Commission  
25 Inspectors Che Guevara, Mike Bray, Dean Lohuis and David Pereda testified that the knuckle  
26 pads trainer Capetillo initially placed on Petitioner's hands appeared stiffer than usual.

27 On March 31, 2009, the Commission, via unanimous vote, ordered the revocation of  
28 Petitioner's professional boxing license. (Ex. 2)



1 In a case analogous to the present case, *Epstein v. California Horse Racing Board*,  
2 (1966) 222 Cal.App.2d 831, the respondent was denied admission to a horse racing track on the  
3 basis that he had, on previous occasions, engaged in illegal betting at race tracks. (*Id. at 836.*)  
4 Respondent sued, claiming that there was no evidence that he was still engaging in illegal betting,  
5 and the trial court ruled in his favor. (*Id.*) On appeal, the Court of Appeal reversed the trial court  
6 noting that “the burden was upon [Petitioner] to prove his rehabilitation in the administrative  
7 proceeding . . . and this burden must be met by producing *positive* evidence of rehabilitation.”  
8 (*Id. at 843.*) The present case is similar to *Epstein* in that this Commission has excluded Mr.  
9 Margarito from the sport of boxing due to his prior illegal and unethical conduct. Thus, Mr.  
10 Margarito has the burden of proving that he is fit to be relicensed by introducing evidence of his  
11 rehabilitation, just as the respondent did in the *Epstein* case.

12 **REHABILITATION CANNOT EXIST IN A VACUUM**

13  
14 While this proceeding is not an adversarial proceeding it is, however, a proceeding  
15 designed to elicit as much useful information as possible to allow the Commission to perform its  
16 charge of deciding whether Petitioner has been rehabilitated from those acts or omissions which  
17 led to the revocation of his boxer’s license.

18 Thus, the logical place to start, indeed, the only “proven” facts from which  
19 “rehabilitation”, (or even lack thereof), can be measured are the very specific findings contained  
20 in the Commission’s prior Decision following the hearing at which Petitioner himself testified, as  
21 well as others and which, ultimately, resulted in petitioner’s license revocation.

22 Following the February 10, 2009, Commission hearing, at which many witnesses  
23 testified, including witnesses who were present when Mr. Margarito’s fists were initially wrapped  
24 prior to the boxing match, the Commission voted and issued it’s written Decision, and found  
25 petitioner, by clear and convincing evidence to a reasonable certainty, guilty of multiple instances  
26 of illegal and unethical conduct.

27 In said Decision, the Commission found Mr. Margarito’s claims that he was  
28 unaware of the foreign and illegal substance found in his fist wraps and that it was entirely the

1 fault of his trainer, to not be credible. In short, by assuming no responsibility or knowledge of  
2 wrongdoing, Petitioner's testimony at the hearing was evasive, inherently improbable, in most  
3 respects, and, in certain specific instances, disingenuous in the extreme.

4 Equally disturbing is the fact that not only was Mr. Margarito's testimony simply  
5 unconvincing (claiming that as an experienced, professional boxer of many years he had no way  
6 of knowing that something other than mere gauze wrappings and tape was being applied to his  
7 fist wraps underneath his gloves) his denials strained credulity.

8 It is from this precept that the Commission must determine whether Petitioner has  
9 been "rehabilitated."

10 **HOW TO START TO DETERMINE WHETHER**  
11 **"REHABILITATION" HAS OCCURRED**

12 The *Callaway v. State Bar*, (1986) 41 Cal3d 743 case points out that the person  
13 seeking reinstatement after disbarment [in that case] is required to adduce stronger proof of his  
14 present honesty and integrity than one seeking admission for the first time whose character has  
15 never been in question." *Callaway*, at p. 746. "In other words, although an application for  
16 reinstatement is treated by [the Court] as a proceeding for [licensure], the proof presented must  
17 be sufficient to overcome our prior judgment of the applicant's character." *Callaway*, *supra*, at  
18 746; citing *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.

19 To help in that determination, the Commission's own regulations, at Title 4,  
20 Section 399 provides a starting point by which rehabilitation, lack thereof or even digression can  
21 be measured. Section 399 states, in relevant part, as follows:

22 "399. Anyone who has had his license revoked may not petition for reinstatement  
23 or apply for a new license until one year after the date of such revocation. Any  
24 petition for reinstatement filed within the one year period may be denied without  
25 the necessity of a hearing."

26 The California Business and Professions Code, which regulates the granting or  
27 denial of licenses to a great many and varied professions, including boxing, at Section 480,  
28 provides, in pertinent part, as follows:

1 “480 (a) A board may deny a license regulated by this code on the grounds that the  
2 applicant has one of the following:

3 .....

4 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
5 substantially benefit himself or another, or substantially injure another; or

6 (3) Done any act which if done by a licentiate of the business and profession in  
7 question, would be grounds for suspension or revocation of license.”

8 While the Commission has not yet finalized any regulation to establish a metric by  
9 which to gauge whether someone whose boxing license has been revoked can demonstrate  
10 “Rehabilitation”, there are several well established universal principles that can help to guide the  
11 Commissioners.

12 The Commissioners deciding the present Petition for Reinstatement should  
13 consider all activities of the Petitioner since the disciplinary action was taken; the nature of the  
14 offense for which the petitioner was disciplined; Petitioner's activities during the time the  
15 certificate was in good standing, and the petitioner's rehabilitative efforts, if any, as well as his  
16 general reputation for truthfulness.

17 Further, while not establishing a mandate for this Commission, other licensing and  
18 regulatory agencies have developed criteria for determining whether “Rehabilitation” has  
19 occurred in similar instances. One such example of such criteria can be found at Title 16,  
20 California Code of Regulations, Section 1360.2 which governs physician and surgeons who have  
21 been disciplined. The section provides as follows:

22 1360.2 “When considering a petition for reinstatement of a license, certificate or  
23 permit holder pursuant to the provisions of Section 11522 of the Government  
24 Code, the Division or panel shall evaluate evidence of rehabilitation submitted by  
25 the petitioner considering the following criteria:

26 (a) The nature and severity of the act(s) or crime(s) under consideration as grounds  
27 for denial.

28 (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or

1 crime(s) under consideration as grounds for denial which also could be considered  
2 as grounds for denial under Section 480.

3 (c) The time that has elapsed since commission of the act(s) or crime(s) referred to  
4 in subsections (a) or (b).

5 .....

6 (e) Evidence, if any, of rehabilitation submitted by the applicant.”

7 **SUGGESTED FACTORS TO BE CONSIDERED**

8 There are several factors that the Commission should consider in making a  
9 determination about Mr. Margarito’s Petition for Reinstatement, including both factors in  
10 aggravation and factors in mitigation. Factors in aggravation that can be considered in the present  
11 case include the following:

- 12 1. **Prior Disciplinary Record:** The California State Athletic Commission imposed  
13 discipline in the form of license revocation against Mr. Margarito on March 31,  
14 2009 (Case. No. 2009-0210-1). Mr. Margarito was found to have violated  
15 California Code of Regulations, Title 4, section 323, because a prohibited plaster-  
16 like substance was found in his hand wraps. The Commission imposed the penalty  
17 of revocation against Mr. Margarito because such an adulteration to the hand wraps  
18 “seriously endangers the boxer’s opponent.” (Ex. 2, p. 4)
- 19 2. **Lack of Candor:** This can be defined when the respondent was less than candid  
20 when testifying about the misconduct, if he tended to blame others for the  
21 misconduct, or if he tended to minimize the effects of the misconduct.<sup>1</sup> Petitioner  
22 claimed he was unaware of any illegal pads, and blamed his trainer for inserting the  
23 illegal pads. (Ex. 2, pp. 3-4.) He also testified that he examined one of the illegal  
24 pads and did not think that there was anything wrong with it, that it simply looked  
25 old. (Ex 2, pp. 3-4.)

26  
27  
28 <sup>1</sup> See *id*; see also, *Franklin v. State Bar*, 41 Cal. 3d 700 (1986).

1           3. **Lack of Remorse:** One court has described a lack of remorse as the “petitioner’s  
2 stubborn refusal to acknowledge the impropriety of his actions [which] makes it  
3 difficult to feel confident that he will conform his conduct to the required high  
4 professional standards in the future . . .”<sup>2</sup> However, courts have also noted that an  
5 individual’s consistent refusal to retract a claim of innocence is not always fatal, in  
6 that it may actually show good character by demonstrating that the petitioner refused  
7 to become a fraudulent penitent to his own advantage.<sup>3</sup>

8           In addition to aggravating factors, the Commission should also consider factors in  
9 mitigation when deciding on a petitioner’s application for relicensure. The following are some  
10 relevant factors to consider in mitigation:

11  
12           1. **Rehabilitation:** Courts have held that rehabilitation “requires a consideration of  
13 those offenses from which one has allegedly been rehabilitated.”<sup>4</sup> Furthermore,  
14 “The amount of evidence of rehabilitation required to justify admission [or  
15 relicensure] varies according to the seriousness of the misconduct at issue.”<sup>5</sup> By  
16 its plain definition, rehabilitation can only involve a consideration of what Mr.  
17 Margarito has done to demonstrate his rehabilitation *since* the revocation of his  
18 license. Rehabilitation is not an event but rather a process. The opportunity at a  
19 second chance has long and deep roots in our society and our law. But the  
20 opportunity at a second chance does not come automatically, simply earned with  
21 the passage of time; rather, it must be earned. This is the core notion of  
22 rehabilitation. Rehabilitation is a process by which an individual earns back the  
23 trust of the community.

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25  
26 <sup>2</sup> *Kapelus v. State Bar* 44 Cal. 3d 179 (1987).

27 <sup>3</sup> *See Hall v. Committee of Bar Examiners* 25 Cal. 3d 73 (1979).

28 <sup>4</sup> *Pacheo v. State Bar*, 43 Cal. 3d 933 (1989).

<sup>5</sup> *Kwasnik v. State Bar*, 50 Cal. 3d 1061 (1990).





CALIFORNIA STATE ATHLETIC COMMISSION  
2005 EVERGREEN STREET, SUITE 2010  
SACRAMENTO, CA 95815  
INTERNET: [www.dca.ca.gov/csac](http://www.dca.ca.gov/csac)  
(916) 263-2195 FAX (916) 263-2197



January 27, 2009

**Antonio Margarito**  
208 Clogston Drive  
La Puente, CA 91746

*Re: Suspension Order*

Dear Mr. Margarito:

Pursuant to California Business and Professions Code section 18842 your license as a professional boxer is temporarily suspended pending final determination of your case by the California State Athletic Commission ("Commission"). Section 18842 allows temporary suspension by the Commission when "the action is necessary to protect the public welfare or is in the best interest of boxing or martial arts."

This action is taken because of your recent participation in what appears to be a violation of rule 323. Rule 323 limits the use of gauze and tape on an athlete's hands and requires that both contestants be represented while the gauze and tape are applied. The rule also prescribes the manner in which the gauze and tape is applied to an athlete's hands. Here, it appears that a foreign substance was used in the hand-wraps in violation of Rule 323.

Additionally, Commission rule 390 allows the commission to revoke, fine, suspend or otherwise discipline any licensee who "conducts himself or herself at any time or place in a manner which is deemed by the Commission to reflect discredit to boxing."

The initial hearing in this case is set for the Commission's next scheduled meeting, 10 a.m. on February 10, 2009. At that time, the Commission will begin its formal hearing to determine whether a fine, suspension, or revocation of your license is appropriate. The meeting location:

Van Nuys State Building  
6150 Van Nuys Blvd.  
Van Nuys, California 91401

I can be reached at (916) 263-2195.

Respectfully,

A handwritten signature in cursive script that reads 'Bill Douglas'.

Bill Douglas  
Assistant Executive Officer

cc: Karen Chappelle, Supervising Deputy Attorney General, Office of the Attorney General  
cc: James Maynard, Legal Counsel, Department of Consumer Affairs  
cc: Anita Scuri, Senior Legal Counsel, Department of Consumer Affairs  
cc: Tim Noonan, Chairman, California State Athletic Commission



FOR IMMEDIATE RELEASE  
January 28, 2009

Contact: Luis Farias – (916) 826-6069  
Russ Heimerich – (916) 574-8171

## **Statement by California Athletic Commission Chair Tim Noonan**

*Following is a statement by Tim Noonan, Chairman of the California Athletic Commission, regarding Antonio Margarito:*

“The California State Athletic Commission (CSAC) has temporarily suspended the licenses of Antonio Margarito and his chief corner man, Javier Capetillo. The temporary suspension will remain in effect until CSAC has fully investigated the circumstances surrounding events at the Staples Center in Los Angeles on January 24, 2009. A foreign substance was found by California State Athletic Commission staff in the hand wraps of Antonio Margarito before his bout against Shane Mosley at Staples Center in Los Angeles. The substance found in Margarito’s hand wraps is currently being analyzed by the California Department of Justice. An investigation as to whether either licensee violated CSAC rules is ongoing. Mr. Margarito and Mr. Capetillo have been asked to appear at an initial hearing scheduled for February 10, 2009.

“The licenses of Mr. Margarito and Mr. Capetillo were suspended pursuant to Business and Professions Code section 18842, which allows for the temporary suspension of a license when such an action is necessary to ‘protect the public welfare.’ CSAC Rule 323 limits the amount and type of gauze and tape allowed under a fighter’s boxing glove. Rule 390 allows CSAC to discipline a licensee when his or her actions are a “discredit to boxing” or violate the rules of CSAC.

“Commission staff will have no further comment until such time as the Commission makes a final determination of whether licensee actions in this case warrant fines, suspensions, or the revocation of licenses. The Commission has asked Mr. Margarito and Mr. Capetillo to appear at an initial hearing currently scheduled for February 10, 2009.”

###

**BEFORE THE  
CALIFORNIA STATE ATHLETIC COMMISSION  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of: )  
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 ANTONIO MARGARITO )  
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 )  
 \_\_\_\_\_ )

Case No. 2009-0210-1

This matter came on regularly for hearing before a quorum of the California State Athletic Commission ("Commission") at 8:40 a.m. on February 10, 2009 pursuant to a Notice of Suspension issued by Assistant Executive Officer Bill Douglas on January 27, 2009. Mr. Antonio Margarito ("Respondent") was present at the hearing and was represented by Mr. Daniel M. Petrocelli. Ms. Karen Chappelle, Supervising Deputy Attorney General, was present and represented Bill Douglas, Assistant Executive Officer of the Athletic Commission ("Complainant"). Documentary evidence and oral testimony were presented to the Commission. At the conclusion of the hearing, the matter was submitted to the Athletic Commission for decision.

The Commission heard the matter pursuant to the authority granted it by Business and Professions Code section 18841 which authorizes the revocation or suspension of a license for any violation or attempted violation of the laws and rules governing boxing. The hearing was consolidated, after stipulation by all parties, with that of Respondent's trainer, Javier Capetillo. The Commission determined, based on the evidence presented, that Respondent violated the laws and rules governing boxing and revoked Mr. Margarito's boxing license after unanimous vote.

**BACKGROUND**

The formal provisions of the Administrative Procedure Act, beginning with California Government Code § 11500, are not applicable to Commission hearings. (Rudolph v. Athletic Commission of Cal. (1960) 177 Cal. App. 2d 1, 12.) The Commission is bound, however, by the California Administrative Adjudication Bill of Rights. (Cal. Gov. Code §§ 11425.10 *et seq.*) The Commission must also comply with the requirements of procedural due process which requires reasonable notice of any discipline along with an opportunity to be heard. (Rudolph, supra, 177 Cal. App. 2d at 12.) Finally, when exercising a quasi-judicial function, the Commission's decision must be fair and based on sufficient evidence. (Wyatt v. Tahoe Forest Hospital Dist. (1959) 174 Cal.App.2d 709, 716.)

Respondent was notified of the immediate, temporary suspension of his boxing license pursuant to Business and Professions Code section 18842 on January 28, 2009. Further, Complainant notified Respondent that a hearing to determine whether his license should be revoked would be held in twelve days on February 10, 2009. (*cf.* Gov't Code § 11509 (although not binding on the Commission APA time limits are relevant).) The notice of hearing alleged that Respondent violated Commission Rule 323 and in doing so brought discredit to boxing. (Cal. Code Regs., tit. 4, §§ 323, 390 (hereinafter "Commission Rules."))

### **STANDARDS**

Commission Rule 323 mandates that tape and gauze under a boxer's gloves be limited to:

One winding of surgeon's adhesive tape, not over one and one-half inches wide, placed directly on the hand to protect that part of the hand near the wrist. Said tape may cross the back of the hand twice but shall not extend within one inch of the knuckles when hand is clenched to make a fist.

Contestants shall use soft surgical bandage not over two inches wide, held in place by not more than two yards of surgeon's adhesive tape for each hand. One 10-yard roll of bandage shall complete the wrappings for each hand.

Bandages shall be adjusted in the dressing room in the presence of a commission representative and both contestants. Either contestant may waive his privilege of witnessing the bandaging of his opponent's hands.

Similarly, Rule 390 states:

Any licensee who violates the laws of the State of California, with the exception of minor traffic violations, or the rules of the Athletic Commission, or who fails or refuses to comply with a valid order of a commission representative, or who conducts himself or herself at any time or place in a manner which is deemed by the commission to reflect discredit to boxing, may have his or her license revoked, or may be fined, suspended or otherwise disciplined in such manner as the commission may direct.

### **FINDINGS OF FACT**

1. As a result of events at the January 24, 2009 Mosley-Margarito championship fight at Staples Center in Los Angeles, California; Complainant Bill Douglas, in his official capacity as Assistant Executive

Officer of the Commission, issued an Order of Suspension regarding the license of Respondent Antonio Margarito pursuant to Business and Professions Code section 18842.

2. The Commission's Rule 323 allows only the use of surgeon's adhesive tape and soft surgical bandage (gauze) when wrapping a boxer's hands prior to a fight. Likewise, the Commission's Boxing Rules and Guidelines for Championship Bouts also only permit adhesive tape and gauze.
3. During the wrapping of Respondent's hands by his trainer, Commission inspectors were alerted to the possible presence of a substance or material other than tape and gauze in Respondent's hand wraps. The observer from the other boxer's camp, Nazim Richardson, asked to inspect the left hand gauze pad and believed it might be illegal.
4. Chief Athletic Inspector Dean Lohuis inspected the "knuckle pad" provided to Respondent by Javier Capetillo, Respondent's trainer. Dean Lohuis turned the pad over to the Commission Inspector assigned to Respondent at which point that Inspector, Che Guevara, discovered a thin, stiff, gauze pad with hardened edges that appeared to have been adulterated with a white substance and which is impermissible under Commission laws and rules.
5. Once the initial hard gauze pad was discovered Respondent became quite agitated about the situation and insisted there was no similar pad in his right hand wrap.
6. The right hand wrap, previously completely wrapped but not approved, was subsequently rechecked by Mr. Guevara. Mr. Guevara discovered a second thin, hard pad that also appeared to be adulterated with a white substance and that was impermissible under Commission laws and rules.
7. One adulterated pad was sent to the California Department of Justice Forensic Laboratory in Sacramento where it was examined and would be processed for testing. The pad was photographed under 6x magnifications. The photographs show a white flaky substance on the pad and within the interstices of the gauze itself.
8. Respondent testified that he was not aware that there were any problems with his hand wraps and that he did not see anyone arguing or discussing the thin gauze pads which had just been declared illegal. Respondent also testified that he was unsure as to why he had to appear before the Commission. Finally, Respondent testified, after examining one of the illegal pads, that he did not think there was anything wrong with the pad and that it just looked old.

9. During the hearing each Commissioner examined one of the thin, stiff pads found in Respondent's gauze knuckle wrap. The Commissioners compared the adulterated gauze pad with a sample of unadulterated gauze. At the time of the hearing, the second adulterated pad was undergoing analysis at the Department of Justice forensic lab in Sacramento, California.

### LEGAL CONCLUSIONS

1. California Code of Regulations, Title 4, section 323 limits a boxer's hand wraps to gauze and tape only. The thin gauze pads were determined, after examination by the Commission, to have been adulterated with a white plaster-like substance.
2. The use of a plaster-like substance in a boxer's hand wraps seriously endangers the boxer's opponent. Such use gives a boxer an unfair advantage and causes discredit to boxing.
3. Because Respondent violated Commission Rule 323 there is sufficient cause for revocation of Respondent's boxing license pursuant to Commission Rule 390 and Business and Professions Code section 18841.

### DISCUSSION

The principle that strict liability is appropriate in regulatory offenses has been followed in construing a variety of regulatory provisions. (See, e.g., Aantex Pest Control Co. v. Structural Pest Control Bd. (1980) 108 Cal. App. 3d 696, 702 (use of unlicensed poison); People v. Travers (1975) 52 Cal. App. 3d 111, 114 (sale of improperly branded motor oil); see Brodsky v. Cal. State Bd. of Pharmacy (1959) 173 Cal. App. 2d 680, 688 (liability of pharmacist for compounding of prescriptions by unlicensed person). Strict liability offenses are denoted where "qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense." (In re Marley (1946) 29 Cal. 2d 525, 529.)

Respondent argues that because he was unaware that his trainer, Javier Capetillo, inserted the illegal pads into his knuckle pads that he may not be held responsible for violating Rule 323. The Commission's laws and rules, enacted to protect public health and safety, do not require either knowledge or intent for a violation to occur.

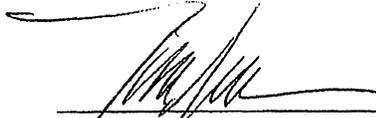
Because of the serious physical consequences which could have resulted to the other boxer from the use of boxing gloves loaded with illegal knuckle pads, the appropriate penalty is revocation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's license is revoked.

It is so ordered, this 31<sup>st</sup> day of March, 2009.



---

TIM NOONAN, Chair,  
California State Athletic Commission

PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF SACRAMENTO )  
\_\_\_\_\_ )

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 1625 North Market Blvd., Suite S 309, Sacramento, California, 95834. On April 1, 2009, I served the foregoing document described as:

**Decision of Revocation of License in the Matter of Javier Capetillo**

on the interested party or parties in this action by placing the original thereof, enclosed in a sealed envelope, and addressed as follows:

Geoffrey Benz, Esq.  
1127 Embury Street  
Pacific Palisades, CA 90272

Karen Chappelle  
Office of the Attorney General  
Licensing Section  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013

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Executed on April 1, 2009, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Georgann Wallace

**BEFORE THE  
CALIFORNIA STATE ATHLETIC COMMISSION  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of: )  
 )  
 )  
JAVIER CAPETILLO )  
 )  
 )  
\_\_\_\_\_ )  
 )

Case No. 2009-0210-2

This matter came on regularly for hearing before a quorum of the California State Athletic Commission ("Commission") at 8:40 a.m. on February 10, 2009 pursuant to a Notice of Suspension issued by Assistant Executive Officer Bill Douglas on January 27, 2009. Mr. Javier Capetillo ("Respondent") was present at the hearing and was represented by Mr. Geoffrey Benz. Ms. Karen Chappelle, Supervising Deputy Attorney General, was present and represented Bill Douglas, Assistant Executive Officer of the Athletic Commission ("Complainant"). Documentary evidence and oral testimony were presented to the Commission. At the conclusion of the hearing, the matter was submitted to the Athletic Commission for decision.

The Commission heard the matter pursuant to Business and Professions Code section 18841 which authorizes the revocation or suspension of a license for any violation or attempted violation of the laws and rules governing boxing. The hearing was consolidated, after stipulation by all parties, with that of Respondent's trainer, Javier Capetillo. The Commission determined, based on the evidence presented, that Respondent violated the rules governing boxing and revoked Mr. Capetillo's license for a period of one-year on a unanimous vote.

**BACKGROUND**

We note that the formal provisions of the Administrative Procedure Act, California Government Code §§ 11500 et seq., are not applicable to Commission hearings. (Rudolph v. Athletic Commission of Cal. (1960) 177 Cal. App. 2d 1, 12.) The Commission is bound, however, by the California Administrative Adjudication Bill of Rights. (Gov. Code §§ 11425.10 et seq.) The Commission must also comply with the requirements of procedural due process which requires reasonable notice of discipline along with an opportunity to be heard. (Rudolph, supra, 177 Cal. App. 2d at 12.) Finally, when exercising a quasi-judicial function, the

Commission's decision must be fair and based on sufficient evidence. (Wyatt v. Tahoe Forest Hospital Dist. (1959) 174 Cal.App.2d 709, 716.)

Respondent was notified of the immediate, temporary suspension of his manager's license pursuant to Business and Professions Code section 18842 on January 28, 2009. Further, Complainant notified Respondent that a hearing to determine whether his license should be revoked would be held twelve days later on February 10, 2009. (cf. Gov't Code § 11509 (although not binding on the Commission, APA time limits are relevant).) The notice of hearing alleged that Respondent violated Commission Rule 323 and in doing so brought discredit to boxing. (Cal. Code Regs., tit. 4, § 323, 390 (hereinafter "Commission Rules."))

### STANDARD

Rule 323 states that "bandages shall not exceed" the following restrictions:

One winding of surgeon's adhesive tape, not over one and one-half inches wide, placed directly on the hand to protect that part of the hand near the wrist. Said tape may cross the back of the hand twice but shall not extend within one inch of the knuckles when hand is clenched to make a fist.

Contestants shall use soft surgical bandage not over two inches wide, held in place by not more than two yards of surgeon's adhesive tape for each hand. One 10-yard roll of bandage shall complete the wrappings for each hand.

Bandages shall be adjusted in the dressing room in the presence of a commission representative and both contestants. Either contestant may waive his privilege of witnessing the bandaging of his opponent's hands.

Similarly, Rule 390 states:

Any licensee who violates the laws of the State of California, with the exception of minor traffic violations, or the rules of the Athletic Commission, or who fails or refuses to comply with a valid order of a commission representative, or who conducts himself or herself at any time or place in a manner which is deemed by the commission to reflect discredit to boxing, may have his or her license revoked, or may be fined, suspended or otherwise disciplined in such manner as the commission may direct.

## FINDINGS OF FACT

1. As a result of certain events at the January 24, 2009 Mosley-Margarito championship fight at Staples Center in Los Angeles, California; Complainant Bill Douglas, in his official capacity as Assistant Executive Officer of the California State Athletic Commission, issued a notice suspending the license of Respondent Javier Capetillo pursuant to Business and Professions Code section 18842.
1. The Commission's Rule 323 allows only the use of surgeon's adhesive tape and soft surgical bandage (gauze) when wrapping a boxer's hands prior to a fight. Likewise, the Commission's Boxing Rules and Guidelines for Championship Bouts also only permit adhesive tape and gauze.
2. During the wrapping of Margarito's hands by Respondent Commission inspectors were alerted to the possible presence of a substance or material other than tape and gauze in Margarito's hand wraps. The observer from the other boxer's camp, Nazim Richardson, asked to inspect the left hand gauze pad and believed it might be illegal.
3. Dean Lohuis, Chief Athletic Inspector examined the "knuckle pad" used by Respondent on Margarito's hands. Mr. Lohuis turned the pad over to the Commission Inspector assigned to Margarito at which point the Inspector, Che Guevara, discovered a thin, stiff, gauze pad with hardened edges that appeared to have been adulterated with a white substance which is impermissible under Commission laws and rules.
4. Once the initial hard gauze pad was discovered Respondent became quite upset and became increasingly agitated and defensive. Respondent also resisted the instructions of Chief Athletic Inspector Dean Lohuis.
5. The right hand wrap, previously completely wrapped but not approved, was subsequently rechecked by Mr. Guevara. Mr. Guevara discovered a second thin, hard pad that also appeared to be adulterated with a white substance and that was impermissible under Commission laws and rules.
6. One adulterated pad was sent to the California Department of Justice Forensic Laboratory in Sacramento where it was examined and would be processed for testing. The pad was photographed under 6x magnification. The photographs show a white flaky substance on the pad and within the interstices of the gauze itself.
7. Respondent testified that he was nervous and that he used the wrong knuckle pads in both of Margarito's hand wraps. Respondent testified that the adulterated gauze pads must have been thrown into his trainer's bag by another boxer during a training session at Respondent's gym.

Respondent testified inconsistently as to when he prepared the knuckle pads used in wrapping Margarito's hands stating both that the pads had been prepared in advance and also that they were prepared at Staples Center.

8. During the hearing each Commissioner examined one of the thin, stiff pads found in Margarito's gauze knuckle wrap. The Commissioners compared the adulterated gauze pad with a sample of unadulterated gauze. At the time of the hearing, the second adulterated pad was undergoing analysis at the Department of Justice forensic lab in Sacramento, California.

### LEGAL CONCLUSIONS

1. California Code of Regulations, Title 4, section 323 limits a boxer's hand wraps to gauze and tape only. The thin gauze pads were determined, after examination by the Commission, to have been adulterated with a white plaster-like substance.
2. The use of a plaster-like substance in a boxer's hand wraps seriously endangers the boxer's opponent. Such use gives a boxer an unfair advantage and causes discredit to boxing.
3. Because Respondent violated Commission Rule 323 there is sufficient cause for revocation of Respondent's boxing license pursuant to Commission Rule 390 and Business and Professions Code section 18841.

### DISCUSSION

The principle that strict liability is appropriate in regulatory offenses has been followed in construing a variety of regulatory provisions. (See, e.g., Aantex Pest Control Co. v. Structural Pest Control Bd. (1980) 108 Cal. App. 3d 696, 702 (use of unlicensed poison); People v. Travers (1975) 52 Cal. App. 3d 111, 114 (sale of improperly branded motor oil); see Brodsky v. Cal. State Bd. of Pharmacy (1959) 173 Cal. App. 2d 680, 688 (liability of pharmacist for compounding of prescriptions by unlicensed person). Strict liability offenses are denoted where "qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense." (In re Marley (1946) 29 Cal. 2d 525, 529.)

Respondent testified that he made an innocent mistake and did not cheat but instead twice reached into his trainer's bag and twice grabbed the wrong knuckle pad. Although the Commission does not find Respondent's testimony on this issue to be credible, even if Respondent's acts were the result of a mistake such



PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF SACRAMENTO )  
\_\_\_\_\_ )

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is 1625 North Market Blvd., Suite S 309, Sacramento, California, 95834. On April 1, 2009, I served the foregoing document described as:

**Decision of Revocation of License in the Matter of Antonio Margarito**

on the interested party or parties in this action by placing the original thereof, enclosed in a sealed envelope, and addressed as follows:

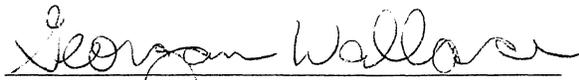
Daniel Petrocelli, Esq.  
O'Melveny & Myers  
1999 Avenue of the Stars, Suite 700  
Los Angeles, CA 90067-6035

Karen Chappelle  
Office of the Attorney General  
Licensing Section  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013

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Executed on April 1, 2009, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Georgann Wallace

REQUESTING AGENCY CASE NO. AR-0001

**CALIFORNIA DEPARTMENT OF JUSTICE  
BUREAU OF FORENSIC SERVICES  
SACRAMENTO CRIMINALISTICS LABORATORY  
4949 Broadway, Room F-201 Sacramento, CA 95820  
Phone No. (916) 227-3777 FAX No. (916) 227-3776**

BFS CASE NUMBER  
SC-09-000210-0001

Attn: Bill Douglas  
California Dept of Consumer Affairs  
California State Athletic Commission  
2005 Evergreen Street, Suite 2010  
Sacramento, CA 95815

Copy: Supervising DAG Karen Chapelle  
Department of Justice  
Office of the Attorney General  
300 South Spring Street  
Suite 1702  
Los Angeles, CA 90013

**PHYSICAL EVIDENCE EXAMINATION REPORT**

Suspect: Margarito, Antonio; Capetillo, Javier

Offense: None

Victim: State of California

Offense Date: January 24, 2009

*I, the undersigned, declare under penalty of perjury: (1) I am employed by the State of California, Department of Justice (DOJ), Bureau of Forensic Services; (2) I conducted an examination of the material described below in the ordinary course of my work as a qualified examiner, according to approved laboratory procedures that include creation of contemporaneous documentation and the technical review of my work; (3) The observable data is set forth in the associated laboratory case record; (4) Any opinions, interpretations, or conclusions in this report are based upon data in the associated laboratory case record and findings listed below.  
Note: This laboratory report has been prepared and retained by DOJ in the normal course of business according to DOJ's regular practices and procedures. The Department of Justice Laboratory is accredited by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB).*

**SUMMARY**

Calcium and sulfur, two elements found in plaster of Paris, were found on the submitted gauze pad [item #1].

**EVIDENCE**

The following evidence was submitted to this laboratory by Athletic Inspector Che Guevara of the California Department of Consumer Affairs on January 27, 2009:

<u>Item #</u>	<u>Description</u>
1	gauze pad

**EXAMINATION**

The submitted gauze pad was examined using a stereomicroscope. A white solid material was seen adhering to and between the gauze fibers. Calcium and sulfur were detected in samples of the white

TR/HJ  
March 19, 2009  
AS K

California Dept of Consumer Affairs  
California State Athletic Commission  
MAR-0001

SC-09-000210-0001

solid using an X-ray fluorescence [XRF] spectrometer. The elements calcium, sulfur and oxygen are found in plaster of Paris [calcium sulfate - CaSO<sub>4</sub>]. These three elements are also found in substances other than plaster. Oxygen is not detectable by XRF.

**DISPOSITION**

The evidence is available for release to a representative of your agency.

Date of Report: March 19, 2009

EXAMINED BY: RE Cooksey  
Ricci E. Cooksey  
Senior Criminalist

Technical review by: DR Date: 3/19/09

Administrative review by: JK Date: 3/19/09  
REC:rec



DMUND G. BROWN JR.  
Attorney General

State of California  
DEPARTMENT OF JUSTICE

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OFFICE: Bureau of Forensic Services

LOCATION: 4949 Broadway, Rm F-201, Sacramento, CA 95820

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5 Fax: (213) 897-2804  
E-mail: Karen.Chappelle@doj.ca.gov  
6 *Attorneys for Respondent California State Athletic  
Commission*

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
9 CENTRAL DISTRICT  
10

11 **ANTONIO MARGARITO,**

Petitioner,

12  
13 v.  
14

15 **CALIFORNIA STATE ATHLETIC  
COMMISSION,**

16 Respondent.  
17  
18

CASE NO. BS120436

**OPPOSITION TO MOTION FOR WRIT  
OF ADMINISTRATIVE MANDATE, OR  
IN THE ALTERNATIVE,  
TRADITIONAL MANDATE**

Date: September 10, 2009  
Time: 8:30 a.m.  
Dept: 86  
Judge: Hon. David Yaffe  
Trial Date: None assigned  
Action Filed: April 30, 2009

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1     **I.     INTRODUCTION**

2             Before addressing the opposition, the State Athletic Commission (the Commission)  
3 respectfully explains its unique history for the purpose of aiding the Court in making its ruling.  
4 Starting with California’s inception as a state, prize fights and boxing were prohibited. (*Hudson*  
5 *v. Craft* (1949) 33 Cal.2d 654, 657.) Eventually, in 1924, the Commission was created by  
6 initiative measure in order for prize fights and boxing to be regulated. (*Id.* at p. 658.) Although  
7 the 1924 initiative act has been codified into the Business and Professions Code, the California  
8 Constitution provides that the Legislature has “no power to take away the effect of the provisions  
9 of the initiative act ....” (*Ibid.* citing Cal. Const., art. IV, § 25 ¾.) Significantly, the “Business  
10 and Professions Code based on the 1924 initiative act comprehensively regulates boxing and prize  
11 fighting....” (*Hudson v. Craft, supra*, 33 Cal.2d at pp. 658-659.)

12             The history of the creation of the Commission “evinces an unusually strong policy,  
13 obviously resting upon a detailed study of the problems relative to boxing matches. While there  
14 are other purposes underlying that policy, it is manifest that one of the chief goals is to provide  
15 safeguards for the protection of persons engaging in the activity.” (*Hudson v. Craft, supra*, 33  
16 Cal.2d at p. 659.) Business and Professions Code section 18602.1 articulates the main purpose of  
17 the Commission, stating, “[p]rotection of the public shall be the highest priority for the State  
18 Athletic Commission in exercising its licensing, regulatory, and disciplinary functions.  
19 Whenever the protection of the public is inconsistent with other interests sought to be promoted,  
20 the protection of the public shall be paramount.”

21  
22     **II.    FACTUAL AND PROCEDURAL HISTORY**

23             Petitioner Antonio Margarito is a professional boxer. (Petition, ¶ 8, p. 3.) On January 24,  
24 2009, he was scheduled to participate in a professional boxing match in Los Angeles licensed by  
25 the Commission. (Petition, ¶ 9, p. 4.)

26             After his trainer, Javier Capetillo, wrapped his right hand, the trainer began wrapping his  
27 left hand. As Capetillo was wrapping Petitioner’s left hand, Commission inspectors observed  
28 what they determined was illegal material inside the “knuckle pad,” a collection of gauze

1 wrapped over itself to create a pad, on the boxer's hand. (Petition, ¶ 12, p. 4.) The Commission  
2 inspectors subsequently examined Petitioner's right knuckle pad, and determined that this pad  
3 also contained illegal material. (Petition, ¶ 15, p. 5.) The Commission took both knuckle pads,  
4 and had Capetillo prepare new pads. (Petition, ¶¶ 12 and 15, pp. 4 and 5.)

5 On January 27, 2009, Commission Assistant Executive Officer Bill Douglas notified  
6 Petitioner by letter that pursuant to Business and Professions Code section 18842, Petitioner's  
7 professional boxing license was temporarily suspended pending the Commission's final  
8 determination of his case. The letter explained that Petitioner appeared to violate rule (section)  
9 323 of title 4 of the California Code of Regulations because that regulation limits the use of gauze  
10 and tape in hand-wraps, and bans all foreign substances. The letter also explained that rule  
11 (section) 390 of title 4 of the California Code of Regulations authorizes the Commission "to  
12 revoke, fine, suspend or otherwise discipline any licensee who 'conducts himself . . . at any time  
13 or place in a manner which is deemed by the Commission to reflect discredit to boxing.'" (Petition, ¶ 17, p. 5; Exh. "A" to Petition.)

14 On February 10, 2009, the Commission held a hearing. At the hearing, Commission  
15 Inspectors Che Guevara, Mike Bray, Dean Lohuis and David Pereda testified that the knuckle  
16 pads Capetillo initially placed on Petitioner's hands appeared stiffer than usual. (Petition, ¶¶ 28-  
17 29, p. 8.) The Commission unanimously voted to revoke Petitioner's boxing license. (Petition, ¶  
18 34, p. 9.)

19 On March 31, 2009, the Commission ordered revocation of Petitioner's professional boxing  
20 license. (Petition, ¶ 36; Exh. "G" to Petition.)

21 On April 29, 2009, Petitioner's counsel served the Commission's counsel with the  
22 underlying Petition. On July 27, 2009, Petitioner's counsel served the Commission's counsel  
23 with the subject Motion and Memorandum of Points and Authorities.  
24

25 Petitioner's alleges that the Commission's decision, lodged by Petitioner as Administrative  
26 Record Exhibit "X," is invalid for the following reasons:

- 27 1. The Commission erred as a matter of law and committed prejudicial abuse of  
28 discretion by revoking Petitioner's license based on strict, vicarious or respondeat

1 superior liability. (Pet'r.'s Mem. P. & A., p. 7.);

- 2 2. The Commission deprived Petitioner of his due process rights by changing theories of  
3 liability mid-hearing and suppressing crucial evidence. (Pet'r.'s Mem. P. & A., p. 12.)

4  
5 **III. STANDARD OF REVIEW**

6 Adjudicatory decisions by the Commission are not subject to review under the  
7 Administrative Procedures Act, but upon questions of law only. (Bus. & Prof. Code § 18841.)  
8 The adjudicatory powers exercised by the Athletic Commission in revoking for cause a boxing  
9 license are conferred on the Commission with constitutional sanction, and a court inquiring into  
10 the validity of such revocation is not authorized to exercise its independent judgment on the  
11 evidence. (*Rudolph v. Athletic Commission of California* (1960) 177 Cal.App.2d 1, 6 [1 Cal.Rptr.  
12 898].)

13  
14 **IV. ARGUMENT**

15 **A. The Athletic Commission Act's limit of judicial review to only questions of**  
16 **law warrants denying the petition.**

17 In examining the Petition at issue, it is important to keep in mind that the State Athletic  
18 Commission Act (Bus. & Prof., § 18600 et seq.) governs Commission disciplinary actions.  
19 Therefore, Business and Professions Code section 18841 is controlling in determining the  
20 viability of any writ petition challenging the Commission's decision regarding disciplinary action  
21 imposed against a Commission licensee.

22 Section 18841 provides in pertinent part: "Notwithstanding any other provision of this  
23 code, licenses issued under this chapter may be revoked, suspended, or placed on probation . . .  
24 for any violation . . . of this chapter, any rule or regulation adopted pursuant thereto, or for any  
25 cause for which a license may be denied. [¶] Such action shall be final, except that the propriety  
26 of such action is subject to review, upon *questions of law only*, by the superior court." (Emphasis  
27 added.)

28 Although the Petition alleges the Commission's decision is invalid for reasons that on the

1 surface may appear to involve questions of law, the Petition in essence is a fact-based challenge  
2 of Respondent's decision. This is because the Petition contests Respondent's decision, which is  
3 based on factual findings supporting the conclusion that Petitioner violated section 323 of title 4  
4 of the California Code of Regulations (Regulation 323) by receiving hard knuckle pads  
5 adulterated with a white, plaster-like substance. (Petitioner's lodged Administrative Record (AR)  
6 Exh. "X," Factual Finding Nos. 4, 6 and 7; Legal Conclusion Nos. 1 and 3, pp. 3-4.)

7 Regulation 323 imposes specific requirements for professional fighter hand wraps,  
8 including that they consist of surgeon's adhesive tape, and that "[c]ontestants shall use soft  
9 surgical bandage...." (Cal. Code Regs., tit. 15, § 323; AR Exh. X, Factual Finding No. 2, p. 3.)

10 Respondent's decision found the following. During the wrapping of Petitioner's hands for  
11 a professional boxing match on January 24, 2009, Commission Inspector Che Guevara observed  
12 that the pads for both hands were thin, stiff, hard, and appeared to have been adulterated with a  
13 white substance, in violation of Commission laws and rules. (AR Exh. X, Finding of Fact Nos. 1,  
14 3, 4 and 6, pp. 2, 3.) The Commission sent the pads to the California Department of Justice  
15 Forensic Laboratory for examination and testing. (AR Exh. X, Finding of Fact Nos. 7, 9, p. 3.)  
16 The first adulterated pad was photographed under six-times magnification, revealing "a white  
17 flaky substance on the pad and within the interstices of the gauze itself." (AR Exh. X, Finding of  
18 Fact No. 7, p. 3.) The second pad was not available at the hearing, but the Commissioners  
19 examined the available pad with a sample unadulterated gauze. (AR Exh. X, Finding of Fact No.  
20 9, p. 4.)

21 Because of the above factual findings, Respondent concluded Petitioner had violated Rule  
22 323, thus warranting license revocation under section 390 of title 4 of the California Code of  
23 Regulations (Regulation 390). Regulation 390 provides in pertinent part: "Any licensee who  
24 violates . . . the rules of the Athletic Commission . . . may have his or her license revoked...."

25 Petitioner fails to raise a question of law reviewable by this Court. Petitioner purports to  
26 raise two issues for review: "(1) did the Commission err in revoking Margarito's license under  
27 Boxing Rules 323 and 390 based solely on vicarious and strict liability? and (2) did the  
28 Commission violate Margarito's due process rights by changing theories of liability mid-hearing

1 and suppressing evidence?" (Pet'r.'s Mem. P & A, p. 7.) Petitioner's first stated issue fails to  
2 raise a reviewable question of law because the plain language of Rule 323 shows that no specific  
3 actor or state of mind is required for the Commission to find a violation, and the plain language of  
4 Rule 390 shows that the Commission may revoke a license for any conduct which "*is deemed by*  
5 *the commission* to reflect a discredit to boxing...." (Cal. Code Regs., tit. 4, §§ 323, 390)  
6 (emphasis added.) Petitioner's second stated issue fails to raise a reviewable question of law  
7 because it hinges on two allegations of fact that lack any support in the record of this case.  
8 Accordingly, for the reasons stated here and more fully articulated below, Respondent  
9 respectfully requests the Court deny the Petition for failure to raise a reviewable issue of law.

10 **B. The Commission acted within its regulatory authority.**

11 Petitioner first argues the Commission ruled in error because it supposedly based its  
12 decision solely on vicarious liability, which he contends does not apply because Petitioner claims  
13 he did not authorize or know that his former trainer Javier Capetillo wrapped his hands with  
14 illegal knuckle pads. Assuming, *arguendo*, Petitioner did not authorize or know about the  
15 adulteration of his knuckle pads, liability is still appropriate because the regulation at issue  
16 imposes strict liability for its violation; Petitioner's arguments regarding vicarious liability are  
17 inapplicable.

18 The subject regulation, section 323 of title 4 of the California Code of Regulations  
19 (Regulation 323), states:

20 "Bandages shall not exceed the following restrictions: [¶] One winding of surgeon's  
21 adhesive tape, not over one and one-half inches wide, placed directly on the hand to  
22 protect that part of the hand near the wrist. Said tape may cross the back of the hand  
23 twice but shall not extend within one inch of the knuckles when hand is clenched to  
24 make a fist. [¶] Contestants shall use soft surgical bandage not over two inches wide,  
25 held in place by not more than ten yards of surgeon's adhesive tape for each hand. Not  
26 more than twenty yards of bandage may be used to complete the wrappings for each  
27 hand. [¶] Bandages shall be applied in the dressing room in the presence of a  
28 commission representative and both contestants. Either contestant may waive his  
privilege of witnessing the bandaging of his opponent's hands."

26 Strict liability provisions omit "qualifying words such as knowingly, intentionally, or  
27 fraudulently" and do not require the violator of the provisions to possess guilty knowledge or  
28 intent. (*In re Marley* (1946) 29 Cal.2d 525, 529.) The language of Regulation 323 indicates it is

1 such a provision. Moreover, “[t]he imposition of strict liability . . . does not of itself contravene  
2 the due process clauses of the federal or state Constitutions. . . .” (*Sandstrom v. California Horse*  
3 *Racing Board* (1948) 31 Cal.2d 401, 406.)

4 State licensing agencies have the statutory duty to regulate and discipline their licensees in  
5 order to protect the public. (Bus. & Prof. Code, § 18602.1.) Accordingly, the Medical Practice  
6 Act (Bus. & Prof. Code, § 2000 et seq.) requires the Medical Board of California to make public  
7 protection its highest priority in exercising its licensing, regulatory and disciplinary functions.  
8 (Bus. & Prof. Code, § 2000.1.) Likewise, the State Athletic Commission Act (Bus. & Prof. Code,  
9 § 18600 et seq.) requires the Commission to make public protection its highest priority in  
10 exercising its licensing, regulatory and disciplinary functions. (Bus. & Prof. Code, § 18602.1.)

11 In *Khan v. Medical Board of California* (1993) 12 Cal.App.4th 1834, a doctor challenged  
12 the Medical Board’s revocation of his approval to supervise physician’s assistants and stayed  
13 revocation and three years’ probation imposed against his physician’s and surgeon’s certification,  
14 arguing he had not known a physician assistant he hired was not licensed. (*Id.* at pp. 1837, 1844.)  
15 The Court of Appeal held the doctor violated Business and Professions Code section 2264. (*Id.* at  
16 p. 1837.) At the time of the violation, section 2264 provided, “[t]he employing, directly or  
17 indirectly, the aiding, or the abetting of any unlicensed person . . . to engage in the practice of  
18 medicine or any other mode of treating the sick or afflicted which requires a license to practice  
19 constitutes unprofessional conduct.” (*Id.* at p. 1838.) Applying the general rule of statutory  
20 construction “to give effect to statutes according to the usual, ordinary import of the language  
21 used in them” and noting that the purpose of section 2264 is public protection, the Court of  
22 Appeal held the absence of the words “knowingly” or “intentionally” meant “section 2264 does  
23 not require a showing of either knowledge or intent on the part of the practitioner” in order for the  
24 statute to be violated. (*Id.* at pp. 1842, 1845.)

25 Similarly, Regulation 323 contains no language either requiring a licensee to possess  
26 knowledge of a violation of the hand-wrapping procedures or requiring an intent to violate those  
27 procedures. Pursuant to general statutory construction rules and in furtherance of the  
28 Commission’s statutory duty to protect professional fighters from serious harm, the Commission

1 correctly concluded Petitioner is subject to strict liability for violating Regulation 323, regardless  
2 of whether he knew his former trainer wrapped his hands in a way that would have placed  
3 Petitioner's opponent in danger of serious bodily harm had the illegal knuckle pad not been  
4 discovered prior to the fight on January 24, 2009.

5 Having found Petitioner's knuckle pads violated Regulation 323, the Commission—acting  
6 pursuant to its duty of public protection and its broad authority under Regulation 390—deemed  
7 Petitioner's participation in the spectacle “to reflect discredit to boxing.” (Cal. Code Regs., tit. 4,  
8 § 390.) Accordingly, the Commission properly revoked Petitioner's license.

9 **C. Capetillo's purported status as an independent contractor does not matter.**

10 Petitioner contends that the Commission erred as a matter of law because it supposedly  
11 based its revocation of his license on a theory of Petitioner's vicarious liability for the acts of his  
12 former trainer, Javier Capetillo. (Pet.'s Mem. P & A, p. 7.) Petitioner further contends that such  
13 a decision is invalid because even if vicarious liability were appropriate, Capetillo was an  
14 “independent contractor” and not an “employee,” and therefore Petitioner is not liable for the  
15 conduct of Capetillo. (Pet.'s Mem. P & A, p. 7.) These arguments are unavailing for the reasons  
16 detailed below.

17 **1. The Commission did not base its decision on a theory of vicarious**  
18 **liability**

19 When exercising a quasi-judicial function, a public administrative body must base its  
20 decision on sufficient evidence. (*Wyatt v. Tahoe Forest Hospital Dist.* (1959) 174 Cal.App.2d  
21 709, 716.) In exercising this quasi-judicial power, a public administrative body may rightly base  
22 its findings upon inferences drawn from circumstantial evidence. (*Union Oil Co. v. Industrial*  
23 *Acc. Commission* (1931) 211 Cal. 398, 401 [295 P. 511].)

24 The Commission based its ruling on the principle that Regulation 323 requires strict  
25 liability in order to preserve the health and safety of the public. (AR Exh. X, p. 4.) The  
26 Commission did not—and was not required to—decide whether this violation occurred with  
27 Petitioner's knowledge or authorization, or was done entirely by his former trainer Capetillo. The  
28 Commission's Order to revoke Petitioner's license cited substantial evidence showing

1 Commission inspectors discovered adulterated knuckle pads in violation of Regulation 323 in  
2 Petitioner's hand-wraps on January 24, 2009. (AR Exh. X, p. 2.) Whether Petitioner denies  
3 personal involvement is immaterial. Indeed, during the February 10, 2009, hearing, Petitioner  
4 strained the credulity of the Commission by denying any responsibility for the rules-violation,  
5 claiming he had no knowledge of any illegal materials in his hand-wraps. (AR Exh. L, p. 183: 3-  
6 7.) Thereafter, the Commissioner who first moved at the hearing to revoke Petitioner's license  
7 specifically questioned this denial of responsibility, stating:

8 "[Petitioner], in his testimony, did not feel that he bore any responsibility for this. In  
9 fact, he said it wasn't his job. And yet the consequences of that could have been, you  
10 know, career ending or severely impairing for his opponent. . . [s]o I would make a  
11 motion to revoke his license." (AR Exh. L, p. 252: 12-17.)<sup>1</sup>

12 Based on this substantial evidence and the serious risk of bodily injury Petitioner's loaded  
13 knuckle pads could have posed to his opponent had they been deployed, the Commission properly  
14 acted to protect public health and safety, as mandated by Business and Professions Code section  
15 18602.1, and properly revoked Petitioner's license.

16 **2. Principles are accountable for the acts of hired independent  
17 contractors involved in inherently dangerous activities.**

18 Petitioner contends that if vicarious liability is permissible under Regulation 323, the  
19 Commission nonetheless erred by allegedly holding him to account for the acts of his former  
20 trainer Javier Capetillo, because Capetillo was not an employee but an independent contractor.  
21 Petitioner's argument fails for the following reasons.

22 First, Petitioner's claim that Capetillo was an independent contractor over whom Petitioner  
23 exercised no supervisory authority is not credible. Petitioner worked with Capetillo closely for  
24 eleven years. (AR Exh. L, p. 176: 4-12.) In fact, during those eleven years Capetillo had been  
25 exclusively responsible for wrapping Petitioner's hands before fights, Petitioner testified  
26 Capetillo did so the same way every time. (AR Exh. L, p. 183: 6-24.) Petitioner's claim that he  
27 did not have supervisory authority over the manner in which Capetillo wrapped his hands before

28 <sup>1</sup> Citations to the transcript of the State Athletic Commission's hearing of February 10,  
2009, will adhere to the court reporter's internal pagination.

1 a championship fight is unpersuasive.

2 Second, even if the Commission predicated Petitioner's liability on the acts of Capetillo,  
3 and even if Capetillo acted under Petitioner as an independent contractor, liability is still  
4 appropriate because both men were engaged in an inherently dangerous activity. Though as a  
5 general rule the employer of an independent contractor does not bear responsibility for the acts or  
6 omissions of a hired independent contractor, case law recognizes an exception where the principle  
7 has hired the contractor to engage in an inherently dangerous activity. Under this doctrine, a  
8 person seeking to carry out an inherently dangerous activity is under a nondelegable duty to take  
9 precautions against the hazards of the activity, and is answerable for the manner in which the  
10 activity is carried out even though an independent contractor has been employed to do the work.  
11 (*Camargo v. Tjaarda Dairy* (2001) 25 Cal.4th 1235, 1238 [25 P.3d 1096].) Here, Petitioner  
12 claims that he employed Capetillo as an independent contractor wholly responsible for wrapping-  
13 his fists prior to fights. However, the underlying joint endeavor undertaken by Petitioner and  
14 Capetillo, to handle last minute preparation for a championship boxing match, is the  
15 quintessential inherently dangerous activity; any negligence or malfeasance by Capetillo could  
16 have led to the death or serious bodily injury of Petitioner's opponent. Accordingly, the  
17 Commission acted properly to revoke Petitioner's license regardless as to whether Capetillo was  
18 an independent contractor.

19 **3. Sound policy supports holding boxers responsible for the acts of**  
20 **members of their team.**

21 Petitioner contends that because Capetillo was an independently licensed boxing trainer  
22 and the Commission revoked his license following the February 10, 2009, hearing, revoking  
23 Petitioner's license is without a sound justification in policy. (Pet'r.'s Mem. P. & A., p. 11.)  
24 However, holding a boxer responsible for the acts of independently licensed members of his team  
25 is not only justified by sound policy, but also required in order to maintain the integrity of boxing.

26 During the hearing, Capetillo testified that he received \$200,000 for training and prepping  
27 Petitioner for the January 24, 2009, championship fight. (AR Exh. L, p. 205: 4-10.) This,  
28 coupled with testimony of the close, eleven-year relationship between Capetillo and Petitioner,

1 led one Commissioner to openly question whether Capetillo accepted responsibility for the loaded  
2 knuckle pads merely to “fall on his sword” for Petitioner’s sake. (AR Exh. L, pp. 212: 11-25,  
3 213:1.)

4 As Petitioner points out, each member of a boxer’s team is required to be licensed by the  
5 Commission. (Pet’r.’s Mem. P. & A., pp. 11: 21-23, 12: 1-6.) Petitioner contends this should  
6 insulate the boxer from liability for the acts of his team, since the Commission can pursue  
7 licensing actions against each team member for his or her own acts. (*Id.*) However, what  
8 Petitioner’s rationale fails to address is that such a rule would function to insulate a boxer from  
9 licensing censure for any act which could be blamed on a subordinate team member. All such  
10 deflection would require is a team member willing to “fall on his sword” on behalf of the boxer  
11 and claim that any out-of-the-ring rules violation was his fault. Such a policy would leave the  
12 Commission powerless to take action against a boxer even if, as here, the exculpatory story  
13 offered is based on nothing more than the word of the boxer and his sacrificial teammate.

14 **4. Similar circumstances have resulted in much harsher penalties**  
15 **against the boxer involved.**

16 Petitioner cites to a decision by the Nevada State Athletic Commission for the proposition  
17 that a boxer’s license should not be revoked for the unauthorized acts of his trainer. (Pet’r.’s  
18 Mem. P. & A., p. 12: 7-15.)<sup>2</sup> However, the facts and consequent reasoning in that matter are  
19 entirely inapposite. The decision by the Nevada Commission concerned an incident where Floyd  
20 Mayweather’s trainer spontaneously leapt into the ring and started a melee with the opponent’s  
21 support team. (Pet’r.’s Mem. P. & A., Exh. E, pp. 1-2.) The Commission did not discipline  
22 Floyd Mayweather because he did not instigate or participate in the all-out melee that occurred  
23 between the fighters’ support teams. (Berlin, *Boxing and the Law: Judah-Mayweather and Its*  
24 *Aftermath* (May 22, 2006) *The Sweet Science*, at ¶7, p. 1.)<sup>3</sup>

25 A far more analogous situation arose in 1983, in the aftermath of the highly publicized fight

26 <sup>2</sup> Respondent notes that Exhibit E of the subject Motion, purportedly the basis for  
27 Petitioner’s analysis, does not appear to contain any language supporting Petitioner’s argument.

28 <sup>3</sup> Attached for the Court’s convenience as appendix 1, also available online at:  
[http://www.thesweetscience.com/boxing-article/3822/boxing-law-judah-mayweather-its-  
aftermath/](http://www.thesweetscience.com/boxing-article/3822/boxing-law-judah-mayweather-its-aftermath/)

1 between Luis Resto and Billy Ray Collins Jr. Prior to that fight, Resto's trainer removed padding  
2 from his gloves, allowing Resto to administer such a severe beating to Collins that the boxer was  
3 permanently disabled and his career ended. (*Collins v. Resto* (S.D.N.Y. 1990) 746 F.Supp. 360,  
4 361.) For the next twenty-five years, Resto denied he had any knowledge that his trainer had  
5 tampered with his gloves. (Mladinich, *Resto Comes Clean: He Knew Gloves Were Loaded* (April  
6 6, 2008) *The Sweet Science*, at 1.)<sup>4</sup> Despite Resto's denials, he was banned from boxing for life  
7 and sent to prison for several years following a criminal conviction for assault. (Mladinich,  
8 *supra*, at ¶ 6, p. 1.) In 2008, Resto finally came clean and admitted not only that he had known  
9 all along his trainer had removed padding from his gloves, but also that his trainer had put *plaster*  
10 *underneath his hand wraps*. (Mladinich, *supra*, at ¶ 9, p. 1.)<sup>5</sup>

11 The Resto-Collins fight demonstrates exactly why glove-loading must be taken so  
12 seriously. A twenty-one year old boxer suffered a career-ending disability because of a cheating  
13 trainer and a fighter willing to "play dumb." Had Commission inspectors not discovered  
14 Petitioner's loaded knuckle pads, a similar tragedy could have occurred at the Staples Center on  
15 January 24, 2009. It is because of the intense danger such rules violations pose that the  
16 Commission properly chose to revoke Petitioner's license despite his self-serving claim not to  
17 have known what was strapped to his fist.

## 18

### 19 V. THE COMMISSION DID NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS

20 Petitioner additionally argues the Court should issue a writ of mandate ordering the  
21 Commission to set aside its revocation of his license because the Commission violated  
22 Petitioner's due process rights. Specifically, Petitioner alleges the Commission "unfairly changed  
23 theories of liability mid-hearing" and "suppressed crucial evidence." (Pet'r.'s Mem. P. & A. pp.  
24 12, 14.) As detailed below, both of these arguments are counter-factual and unavailing.

25 \_\_\_\_\_  
26 <sup>4</sup> Attached for the Court's convenience as appendix 2, also available online at:  
[http://www.thesweetscience.com/boxing-article/5801/resto-comes-clean-knew-gloves-were-](http://www.thesweetscience.com/boxing-article/5801/resto-comes-clean-knew-gloves-were-loaded/)  
27 [loaded/](http://www.thesweetscience.com/boxing-article/5801/resto-comes-clean-knew-gloves-were-loaded/)

28 <sup>5</sup> For the Court's reference, attached as appendix 3 is a photograph of Billy Ray Collins Jr.  
after fighting ten rounds against Resto's loaded gloves.

1           **A. The Commission did not change theories of liability.**

2           Petitioner argues that the Commission accused him of having directly violated the rules,  
3 only to switch to a theory of vicarious liability “mid-hearing.” (Pet’r.’s Mem. P. & A. p. 13: 13-  
4 24.) Neither statement is accurate.

5           The original letter sent to notify Petitioner the Commission had suspended his license stated  
6 two bases for a further hearing on the matter:

7           (1) “This action is taken because of your recent participation in what appears to be a  
8 violation of rule 323. Rule 323 limits the use of gauze and tape on an athlete’s hands  
9 and requires that both contestants be represented while the gauze and tape are applied.  
10 The rule also prescribes the manner in which the gauze and tape is applied to an  
11 athlete’s hands. Here, it appears that a foreign substance was used in the hand-wraps  
12 in violation of Rule 323.” (AR Exh. A.)

13           (2) “Additionally, Commission rule 390 allows the commission to revoke, fine,  
14 suspend or otherwise discipline any licensee who ‘conducts himself or herself at any  
15 time or any place in a manner which is deemed by the Commission to reflect discredit  
16 to boxing.’” (*id.*)

17           Neither accusation can reasonably read in a manner capable of limiting the inquiry solely to  
18 Petitioner’s personal actions. Each charge directed Petitioner to the relevant regulation, neither of  
19 which states a requirement of knowledge or intent.

20           The Commission suspended Petitioner’s license on the same basis that it later revoked the  
21 license: Petitioner’s hand-wraps were in violation of Regulation 323, and pursuant to regulation  
22 390, the Commission deemed that violation to “reflect discredit to boxing.” (AR Exh. X, p. 4.)

23           **B. The Commission timely produced all available evidence.**

24           Petitioner contends the Commission withheld “three key pieces of evidence” from him  
25 leading up to the hearing of February 10, 2009. (Pet’r.’s Mem. P. & A. p. 14: 14-15.) The claim  
26 is without merit because the Commission did not withhold any of the evidence in question, and  
27 because two of the pieces of evidence are wholly irrelevant to the Commission’s decision to  
28 revoke Petitioner’s license to box.

          First, Petitioner contends the Commission did not disclose that two inspectors disputed  
“key factual statements” in the post-incident report of one of the Commission’s inspectors.

1 (Pet'r.'s Mem. P. & A. p. 14: 16-22, Exh. B, C, D.)<sup>6</sup> Petitioner claims he was prejudiced because  
2 without this information he could not adequately cross-examine that particular inspector about his  
3 "truthfulness, biases, and motives." (Pet'r.'s Mem. P. & A. p. 15: 1-2.) However, all three of the  
4 inspectors in question were made available and were cross examined by Petitioner's counsel at  
5 the February 10, 2009, hearing. Moreover, Petitioner admits the disputes in question concerned  
6 immaterial matters such as which inspector directed Capetillo to remove Petitioner's right hand-  
7 wrap after an illegal insert was found in the left knuckle pad. (Pet'r.'s Mem. P. & A. p. 14: 19-  
8 22.) In any situation with a large number of eyewitnesses, post-incident accounts are going to  
9 have minor variances. Counsel for the Commission exercised her prosecutorial discretion by  
10 deciding not to involve an immaterial personnel matter in the factual record of the case. The  
11 material, undisputed facts remain that on January 24, 2009, Commission inspectors removed an  
12 illegal insert from Petitioner's left hand-wrap, and thereafter found a similarly illegal insert in the  
13 wrappings on his right hand. (AR Exh. X, Factual Finding Nos. 3, 4, and 6.)

14 Second, Petitioner contends the Commission violated his due process rights by failing to  
15 produce several magnified photographs of one of the illegal knuckle pads until mid-hearing.  
16 (Pet'r.'s Mem. P. & A., p. 15: 3-10.) Petitioner ignores the fact, demonstrated both in the hearing  
17 transcript and by the dates on the photographs themselves, that Department of Justice forensic  
18 analysts had only taken these pictures the day before the hearing and did not send them to the  
19 Commission's representatives until that evening. (AR Exh. L, p. 38: 9-18.) The hearing began at  
20 8:40 a.m., making production of the photographs prior to the hearing unfeasible. (AR Exh. L, p.  
21 1: 12-22.) Petitioner provides no basis for his contention that the use of the photographs violated  
22 his right to due process. Accordingly, the Court should discard Petitioner's argument.

23 Lastly, Petitioner contends that because the Commission did not produce the laboratory  
24 testing results for the right hand-wrap until months after the hearing, the Commission's  
25 revocation of his license violated his due process rights. (Pet'r.'s Mem. P. & A., p. 11-18.) This

26 <sup>6</sup> Respondent objects to Petitioner's Exhibits A through D to the subject Motion, on the  
27 ground that they lack relevance in this matter. Should the Court choose to consider them, it  
28 should consider their evidentiary weight in light of the fact that inspector Lohuis is now a  
disgruntled former employee embroiled in an adverse personnel action.

1 argument is wholly without merit, as the Commission did not in any way base its decision on  
2 these lab results (which did not yet exist on February 10, 2009). Moreover, while Petitioner  
3 characterizes the results as “inconclusive,” they certainly are not exculpatory—if anything, they  
4 confirmed the Commission’s finding that the knuckle pads violated Regulation 323. (Pet’r.’s  
5 Mem. P. & A., 15: 15-16, fn. 9.)

6 In short, Petitioner can maintain no good-faith argument that the actions of the Commission  
7 violated his right to due process of law in the proceedings to revoke his license to professionally  
8 box.

9  
10 **VI. PETITIONER HAS ABANDONED SEVERAL ARGUMENTS PREVIOUSLY ADVANCED**

11 Prior to filing the subject Motion, Petitioner advanced several arguments in the underlying  
12 Petition that he has apparently abandoned. The abandoned arguments are summarized below:

13 Petitioner alleged that the Commission erred as a matter of law by revoking Petitioner’s  
14 license for violating the Commission’s “Inspectors’ Manual and Boxing Referee Rules,” because  
15 such rules “cannot serve as a basis for revoking a license.” (Petition, ¶41(b), p. 11.)

16 Petitioner alleged the Commission’s decision to revoke his license was not supported by  
17 substantial evidence. (Petition, ¶41(c), p. 11.)

18 Petitioner alleged the Commission violated his due process rights by “forcing a hearing a  
19 mere 17 days after the January 24, 2009 fight.” (Petition, ¶41(d), p. 11.)

20 Respondent affirmatively controverted each of these allegations in its Answer, filed June  
21 26, 2009. Because Petitioner has not re-asserted any of these allegations in the subject Motion,  
22 nor claimed these issues remain in dispute, Petitioner has implicitly acknowledged these  
23 allegations lack merit. Parties are required to include argument and citation to authority in their  
24 briefs, and the absence of these necessary elements allows the court to treat the unsupported issue  
25 as waived. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.) As such,  
26 Respondent respectfully asks the Court to disregard Petitioner’s abandoned allegations.

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**CONCLUSION**

For the reasons stated above, the Commission respectfully requests that the Court deny  
Petitioner's Motion for Writ of Mandate and dismiss the Petition without leave to amend.

Dated: August 28, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California

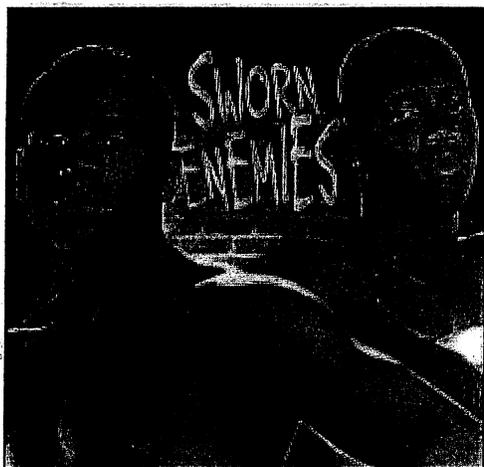
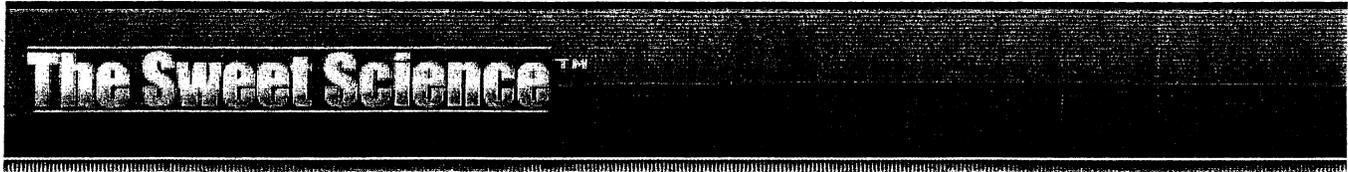


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# **Appendix 1**



**The Sweet Science**  
Monday May 22, 2006

Only by enforcing the rules, only by insisting on appropriate behavior in the ring, will boxing be able to improve its image and attract fans who now view boxing as a sport out of control.

PRINT ARTICLE EMAIL TO A FRIEND

## Boxing and the Law: Judah-Mayweather and Its Aftermath

By David Berlin

The better man won. And he won by outperforming his opponent in the ring. That is as it should be. But the melee that erupted in the tenth round of Judah-Mayweather, and how that melee was handled after the fight, revealed what is wrong and what is right with boxing.

On Saturday night, April 8, at the Thomas & Mack Center in Las Vegas, Floyd Mayweather met Zab Judah in a welterweight showdown. Judah started fast, using speed and straight left hands to take three of the first four rounds. Mayweather took over in the fifth. Behind a solid defense, Mayweather wore down Judah with a steady attack to the body. His effective and consistent body work set the foundation for a possible late round knockout. But Judah, looking to avoid that fate, did what Floyd's trainer and uncle Roger warned him might happen if Zab got in trouble – Zab got dirty. Twice. Near the end of the tenth round, Zab hit Floyd below the belt and followed the low blow with a rabbit punch. Referee Richard Steele called time to give Floyd a chance to recover from the illegal one-two combination. And then the trouble began.

Roger Mayweather, incensed that his forecast had come true, jumped into the ring and went after Zab. Yoel Judah from Zab's corner and Leonard Ellerbe from Floyd's were not far behind. Quickly the ring filled with cornermen and security men, leaving in doubt whether the fight would continue. It took several minutes to clear the ring, and to eject the offending Roger from his nephew's corner. Steele, known for stopping fights too early, rightly allowed this one

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More Video

**FLOYD BACK T**  
"I can't wait to bring flavor to WWE Mor Mayweather. "Whe it was a thrill for me bringing entertainm am going to be a h relationship and my whole new level. V alike are going to b night and on Septe face Marquez." ---F about his forthcomi Aug. 24 edition of "

### ROUND

to go forward. The timeout called to give Floyd a chance to recover from the illegal blows, and the several minutes of chaos that followed, gave Zab the time he needed to recover from Mayweather's debilitating body attack. The fight went the distance, and a refreshed Judah even won the final round. But it was not enough as Mayweather earned a clear-cut unanimous decision.

When the fight finished, the politics started. Don King didn't like the result of the fight – so he tried to change it. That's what Don King does. In 1990, when Buster Douglas dominated a seemingly invincible Mike Tyson en route to a sensational tenth round knockout, King attempted to erase his fighter's loss by claiming that Douglas was given a long count when he was dropped by a Tyson uppercut in the eighth round. This time he argued that Floyd should have been disqualified when Roger Mayweather entered the ring. King's henchman Bobby Goodman wrote a public letter invoking "the integrity of the sport" in calling on the Nevada State Athletic Commission to change the result of the fight. Then Don King himself spent fifteen minutes preaching to the Commission that his fighter Zab should be declared the winner.

The Nevada Commission, to its credit, rejected the self-serving efforts of Don King and his minions to steal a victory where his fighter could not earn one honestly in the ring. It upheld the decision of Richard Steele, who used his discretion well when he allowed the bout to continue after the ring was finally cleared in the tenth round. Nevada Administrative Code Rule 467.662 states that "[t]he referee may, in his discretion, stop a contest. . .if an unauthorized person enters the ring. . .during a round." The Commission had no reason to interfere with the referee's use of his discretion in choosing NOT to stop the contest. If Steele's judgment can be questioned at all, it can be argued that he should have deducted points from Zab Judah for the low blow and rabbit punch that precipitated the tenth round melee. In fact, the referee had the authority not only to deduct points but also to disqualify Judah for his fouls. (Bobby Goodman forgot to mention that in his letter.) But it is a point not worth arguing. Mayweather was far ahead on the scorecards at the end of the tenth and the outcome of the fight was not in serious question.

Nevada's most important decision in the fight's aftermath was to uphold Floyd's victory. Some say that the Commission had no choice since the local sports books had already paid the winners who put their money on Floyd. Cynicism certainly has its place in boxing, but not here. Floyd won the fight in the ring, and when a fighter shows his superiority inside the ropes, he should not have that taken from him by anything that goes on outside the ropes.

The Nevada Commission also acted appropriately in targeting for punishment those who misbehaved during the melee. Where a contestant or participant "[i]s guilty of an act or conduct that is detrimental to a contest or exhibition of unarmed combat, including, but not limited to, any foul or unsportsmanlike conduct in connection with a contest or exhibition of unarmed combat," the Commission has the power to discipline that person. It meted out harsh but fitting punishment in the aftermath of the April 8 incident. At an April 13 hearing, it hit Roger Mayweather with a \$200,000 fine, Roger's entire share of his nephew's purse, and revoked his license. At a hearing held on May 8, the Commission disciplined the other offenders in the melee. It fined Yoel Judah \$100,000 and revoked his license. It fined Mayweather cornerman Leonard Ellerbe \$50,000 and suspended his license for four months.



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for every blow be  
6:00pm PT.

And it imposed the harshest sanction on Zab Judah, who joined the fray once the cornermen entered the ring, fining him \$250,000 and revoking his license. The hefty fine reflects the fact that for Zab, this is the second time around. On November 3, 2001, at the MGM Grand, Zab suffered a technical knockout at the hands of Kostya Tszyu; when referee Jay Nady waved off the fight in the second round, Zab reacted by shoving his gloved fist into Nady's neck and throwing a stool. That conduct cost Zab \$75,000 and a six-month suspension. Joe Brown, one of Nevada's five commissioners, called the Brooklyn native "a recidivist in this state" in explaining the Commission's decision to impose the most severe penalty on Zab.

"A person whose license has been revoked cannot reapply for a license for a period of one year," says Keith Kizer, chief counsel for the Nevada Commission at the time of the Judah-Mayweather fight and now its new executive director. Unfortunately, the revocation of the Nevada licenses of Zab and Yoel and Roger, and the suspension of Leonard Ellerbe's license, may not prevent other states from licensing them. The Muhammad Ali Boxing Reform Act states that "no boxer is permitted to box while under suspension from any boxing commission due to . . . unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition in a professional boxing match." The participants in the tenth round melee were disciplined by Nevada for precisely this reason, their unsportsmanlike conduct. However, the Ali Act, on its face, only applies to boxers, thereby leaving an opening for Yoel Judah and Roger Mayweather and Leonard Ellerbe to find work in other states. As for Zab, although the Ali Act seems to require that other commissions abide by the revocation imposed by Nevada, there is already talk in the boxing community that New York and New Jersey may allow Zab to fight. And in light of the decision in the case of Joe Mesi, where a Nevada judge held that the Nevada Commission had no authority to continue the suspension of Mesi's license once the license itself expired, it seems doubtful that other commissions will be required to respect the ruling of Nevada when Zab's license expires on the last day of 2006. Whether the revocations imposed by Nevada will be respected by other commissions remains an open question, and potentially diminishes the severity of the sanctions. It highlights once again the need for uniformity in boxing, the need for a national commission which can enforce its rules and its standards throughout the United States.

Still, the heavy fines send a clear message that Nevada, at least, will not stand for conduct that disrupts the orderly progression of a bout and that damages the image of an already damaged sport. Indeed, the very fact that Nevada has the ability to impose such heavy fines indicates its seriousness in working to curb misconduct inside the ring. When Mike Tyson took two bites out of Evander Holyfield's ears at the MGM Grand on June 28, 1997, the Commission imposed the maximum possible fine of \$3,000,000. This may seem like a lot, but it represented a mere ten percent of Tyson's purse. At the time, the law allowed for a fine of \$250,000 or ten percent of a fighter's purse, whichever was greater. Nevada reacted to the relatively light penalty imposed on Tyson for his barbaric conduct by amending the law. Now the Commission can impose a fine of \$250,000 or 100 percent of the fighter's purse, whichever is greater. Armed with this power, the Commission has used it to good effect. It has made a clear statement that boxing has rules, and that those rules must be followed.

The Nevada Commission borrowed a page, or at least a line, from referee Joe Cortez, who is also based in Las Vegas. At every fight that Cortez referees, when the fighters meet in the

middle of the ring prior to the first bell, Cortez speaks his final words, "I'm fair but I'm firm." That's the message that the Commission is sending to boxers and their seconds who work in Nevada. It is fair but firm. When Roger Mayweather asked the Commission to reconsider what he considered an excessive fine, the Commission firmly rejected his request. It is a good bet that the other participants in the melee will receive the same response if they request reconsideration of their fines.

Part of being fair but firm is imposing appropriate penalties on those guilty of misconduct. The other part is making certain that only the guilty are punished. In upholding the victory of Floyd Mayweather, the non-offending fighter, Nevada demonstrated its fairness.

Floyd Mayweather not only fought a disciplined and intelligent fight, but exercised discipline and intelligence in staying out of the fray. In earlier days, "Pretty Boy" Floyd presented himself as a gangster wannabe. But like Shakespeare's Prince Hal, whose youthful misbehavior provides a backdrop against which his later displays of responsibility and leadership shine particularly bright, boxing's pound-for-pound best exhibited his growth as a man and as a fighter. Floyd, who recently signed with the William Morris Agency, kept his new image intact and conducted himself like the professional he has become. Floyd did everything right on April 8, and it is appropriate that he was not made to suffer for the misconduct of others.

The melee that interrupted the tenth round of Judah-Mayweather was bad for the fight and bad for boxing. But the Nevada Commission dealt with the incident appropriately. The hope is that Nevada's response will curb such conduct in the future, that it will dissuade other fighters and other cornermen from breaking the rules. If so, the Commission will have accomplished its purpose, and done some good for boxing. The hope is also – since boxing does not have a national commission – that other state and tribal commissions will respect and abide by the revocations handed down by Nevada, and will follow the example set by Nevada. Only by enforcing the rules, only by insisting on appropriate behavior in the ring, will boxing be able to improve its image and attract fans who now view boxing as a sport out of control.

Contact [David Berlin @ TheSweetScience.com](mailto:David.Berlin@TheSweetScience.com)

Name:  Email:  (will not be displayed, [TSS Privacy](#))

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# Appendix 2

# The Sweet Science™



Resto said that a burden was lifted when he admitted his complicity in the evil deed at MSG



PRINT ARTICLE



EMAIL TO A FRIEND

## Resto Comes Clean: He Knew Gloves Were Loaded

By Robert Mladinich

After nearly a quarter century of denials, Luis Resto has finally come clean. At a Manhattan press conference on April 3, the onetime welterweight prospect admitted that he knew that his trainer Carlos "Panama" Lewis had removed about a quarter of the horsehair in his boxing gloves on the night he beat the previously undefeated Billy Collins Jr. at Madison Square Garden.

The 10 round Collins/Resto fight, which occurred on June 16, 1983, was part of the undercard of the Roberto Duran-Davey Moore extravaganza.

The incident involving Collins Jr. and Resto has long been considered one of the most sordid incidents in a sport known for sleaze.

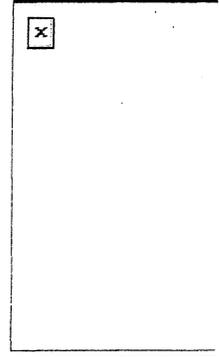
The relatively light-hitting Resto, who was then 19-8-2 (8 KOS), had given a tremendous beating to the 21-year-old Collins, who was 14-0 (11 KOS) going into the fight. Many insiders considered him to be a blue-chip prospect.

At several intervals throughout the fight, Collins Jr. had told his father and trainer, a former welterweight contender named Billy Sr., that Resto "is a lot stronger than I thought." At the end of the fight, Collins Sr. went to shake Resto's hands and noticed that the padding was missing. He began screaming for officials to safeguard the gloves.

### The Sweet Science

Sunday Apr 6, 2008

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"I can't wait to bring flavor to WWE Mor Mayweather. "Whe it was a thrill for me bringing entertainm am going to be a h relationship and my

Resto or Lewis never admitted to any wrongdoing in this incident, but both were convicted of several crimes after jury trials. Each served several years in state prison and were banned from boxing for life.

Lewis, who is now 52, went on to unofficially work with such fighters as Joe Gatti and Frans Botha, while Resto still works with youngsters at the Morris Park Gym in the Bronx. For many years he has inhabited a squalid apartment connected to the gym.

Collins never got over the heartbreak of the loss and began to drink heavily. Less than a year after the fight, he was killed in an auto accident in his native Tennessee. Many of his family members believe he committed suicide.

On the day of the press conference, Resto not only admitted to having full knowledge of Lewis' chicanery, he also made another startling admission. He said that Lewis had placed plaster underneath his hand wraps. If this is true, both Resto and Lewis should have served a lot more prison time than they did.

This new evidence is being used as the cornerstone of a soon to be released documentary film called "Cornered," which is directed by former booking agent Eric Drath, as well as a new civil suit against the New York State Athletic Commission (NYSAC).

According to the press release, the film "exposes to the whole truth behind what really happened that June evening in the world's most famous arena. 'Cornered' reveals the lurid chain of events that allowed a boxer to endure a 30 minute assault. What transpired before and during the Collins-Resto fight was so heinous, it led to Resto's conviction, incarceration and lifetime ban from boxing. The brutally beaten Collins quickly fell into a tragic downward spiral."

Marc R. Thompson of the New York law firm Pulvers, Pulvers and Thompson is representing Andrea Collins-Nile, the widow of the late Collins Jr., in the civil suit. He has recently filed a motion to reopen the case.

If the previous civil cases are any indication, he has an uphill battle. The first civil suit was dismissed on a technicality and the second resulted in a hung jury. A Court of Claims case against the State of New York was dismissed, and an Appeals Court affirmed the dismissal.

The reasons for the dismissals relate to the fact that the NYSAC rules at the time were "vague" and "nebulous." Although NYSAC inspectors were there to secure the safety of the fighters, there were no clear-cut rules that stated an inspector had to be present when the gloves or hand wraps actually went on the fighter.

Moreover, the court determined that there was no requirement to check the surface of the interior of the gloves. The Court of Claims basically said the State had no duty to protect Billy Collins Jr.

Many of those rules have been changed, so it is highly unlikely that such an egregious

whole new level. W  
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incident could happen today.

In the years after the incident, Randy Gordon was appointed to the position of New York State Athletic Commissioner. He was present at the press conference, where he confronted Resto in the strongest of terms.

"You used to come to my office and ask for your license back," Gordon told Resto. "I said, 'Did you know that the padding was taken out of the gloves?' On many occasions, you said you did not."

On this date, the waif-looking Resto hung his head and admitted that he not only knew Lewis removed the glove padding and loaded his hand wraps with plaster, he also said that Lewis had done it before.

He couldn't remember the names of those opponents, but when pressed he said it had occurred in Italy and Venezuela.

The only time Resto fought in Italy was in April 1978, against Mario Omar Guilotti. He lost an eight round decision. And the only time he fought in Venezuela was three months later, in July 1978. He was stopped in one round by Luis Primera, which meant Lewis went 1 for 3 in the glove-tampering shenanigans.

Asked if he resisted Lewis's attempts to cheat, Resto said he did not. "I said, 'Let's go ahead and do it,'" admitted Resto.

In the build-up to the Collins fight, Resto said there was a lot of posturing between Lewis and Collins Sr. He believes it resulted in a bet being made between the two on whether or not Collins Jr. would last the distance.

Resto knew what he was doing was wrong, but says he never resisted Lewis' attempts at fight fixing.

"At the time, I was young," he said. "I went along."

Immediately after administering the dreadful beating to Collins Jr., he said he was consumed by grief and guilt. For years he told his children, who are now 30 and 23, that he was innocent. While serving prison time, he said he was treated like "a superstar" by his fellow convicts.

But, he says, the knowledge of what he had done was eating at the core of his being. After developing a relationship with Drath and finally coming clean, Resto said he felt 20 years younger.

"It took a lot of guts for him to do what he did," said Drath. "Roger Clemens was not willing to do what he did. Luis and I spent a lot of time together during the making of the film. We created a relationship of trust. He carried around the weight of what he did for 25 years. I think his admitting what he did brought him a certain type of spiritual redemption."

To this day, Lewis denies any criminal involvement in the fight between Resto and Collins Jr. When told about Resto's controversial statements, he said he had nothing bad to say about Resto and would continue to pray for him.

The widow of Collins Jr. was reached by phone during the press conference. She was asked if she has forgiven Resto and, if not, if she would ever be capable of forgiving him.

"Ultimately I'm not Luis Resto's judge," she said.

Steve Farhood, the commentator for ShoBox: The New Generation, is considered one of the most honorable people in a sport that many consider a most ignoble profession.

He was present for the Collins Jr.-Resto debacle, and is still affected by what he saw, as well as what he later learned.

"My first reaction is an emotional one," he said immediately after Resto admitted being involved in the diabolical plot against Collins Jr. "It gives me an oily feeling to be part of this business. When something this heinous can happen, it destroys any faith you can have in the decency of people."

When asked if he had any empathy for the pitiable Resto, he recounted a visit to his living quarters about 10 years ago for a story he wrote for Britain's Boxing Monthly magazine.

"His living conditions were so pathetic, you had to have no heart to not feel bad for this fellow human being," he said.

But, he added, "I believe in accountability for one's actions. He was not a child when this happened. He was an adult, so for that reason my pity goes only so far."

**Contact [Robert Mladinich @ TheSweetScience.com](mailto:Robert.Mladinich@TheSweetScience.com)**

**Radam G:**

Play a violin for Resto or hit him with a brick. This dude is just trying to get rich for a crime that he knowingly committed. This guy was a bum fighter who always looked for an angle to cheat. He knew about the gloves. This guy did it in the amateurs, and Panama Lewis was not in his corner. This guy did it against Bruce Curry, Panama Lewis was not in his corner. It is no telling how many times that Resto did it. But it did not always help him win. He still got beatdown because he had a glass jaw and was a turtle-slow fighter that slapped a lot, rabbit punched and just fouled in way he could before getting blasted out and/or disqualified, especially in the amateurs. The powers that be are the guilty ones. They would glove Resto, then let him leave the area. Most of the time, he conveniently had to piss. In the time that he was in the bathroom, he did his dirt -- one of the Tricks of the Trade of boxing. I pity Resto like I pity Michael Vick. Vick abused and kill dogs. Resto did it to a human. Being from New York, he and his team looked at Billy Collins Jr as a "hick" -- "(an) old country white boy." The powers in American boxing will never admit that there was extreme hatred against "deep-south upcoming white fighters" as Collins Jr was. It is amazing that no really good white fighter have come out of the deep south. Name one in the Olympic Games in the last fifty-odd years. And what about the pros. It seems that white deep-south fighters have been whiteout. Back to Resto, he is gutless person. He probably came up with the

idea to Lewis or they conspired together, period! Lewis was a trainer that used psychology and mental tricks. He tricked Aaron Pryor into winning by telling him about the bottle he mixed -- mixed with Santeria Holy words. Holla!  
Tuesday Apr 8, 2008 12:21:02 AM

**rudy:** Well put G, couldnt of said it better my self.  
Tuesday Apr 8, 2008 09:03:50 AM

**peter:** I ran across sad Luis Resto the other day at the fights. The psychic damage etched upon his prematurely wizened face and his old rotting teeth seemed far worse than any fistic damage he and Panama Lewis inflicted upon a young Billy Collins Jr. Nevertheless, it's hard not to feel a bit of sympathy for Resto-- an old fighter who has gone from living in a jail cell to a Bronx basement hovel down in the gym.  
Tuesday Apr 8, 2008 01:47:39 PM

**Adrian:** I agree with Radam, except, I don't excuse Panama Lewis. There was enough evidence here to send Lewis to jail for 6 years. Both were wicked; I find it hard to believe that a guy like Resto thought this up and got Lewis to go along; it's much more probably that Lewis's hands are as bloody. No sympathy for people like these.  
Tuesday Apr 8, 2008 02:14:31 PM

**Saul:** Damn G, you know your stuff brotha.  
Tuesday Apr 8, 2008 02:52:13 PM

**Radam G:** Adrian, glove tampering was just a part of the game, back in the day. Nobody needed to think it up. It is something that happened on a regular basis. This is why in elite, heavily attended bouts, boxers would be gloved in the ring in front of the audience. Now a boxer is gloved in front of an opposing trainer in the dressing room. Back in the day, in lesser important bouts, trainers and boxers came up with all type of cheating tricks. Gloving and hand wrapping were not watched that intensively. This was the game back then and even now -- in a lot of backwood places. Holla!  
Tuesday Apr 8, 2008 05:46:16 PM

**Jack:** Nice article! and good comments from Radam G. What did happen to the Duran-Moore main event? Are you saying there was some funny business there too? When I saw the fight I thought it was fantastic! Duran was a little slower but he still had the guile and the power. Moore's face was a bloody mess by the later rounds.  
Tuesday Apr 8, 2008 06:19:06 PM

**Saul:** What was the funny business in the Duran-Moore fight?????  
Tuesday Apr 8, 2008 07:00:25 PM

**Jonald:** Resto seems to have genuine remorse. As difficult as it is, I'm inclined to forgive him and move on. But I agree and respect those that are unable to forgive him for his egregious act. There are many levels in which to view this, but the common denominator is sadness, and that everyone lost. There were no winners in this one. Just a sad story. Radam G makes a great point about the glove wrapping too, a point that makes much sense and is right on the money.  
Tuesday Apr 8, 2008 07:54:01 PM

**Morrison HIV+:** All I remember about Duran - Moore was that RD savaged and taunted him unmercifully. Fought dirty too. He was literally trying to hurt Moore, and did.  
Tuesday Apr 8, 2008 08:10:03 PM

**Mike McNamara:** Lets not forget that Resto and Lewis were ultimately responsible for the death of Collins. He was never the same after that fight.  
Tuesday Apr 8, 2008 09:06:43 PM

**Really:** Its good for Resto to have remorse, but billy had a young bright career with a young family at the time. It all was taken away by heartless greed. How does billy and his family get back their dues for the horrible damages? He was just a young lion who had everything took from him and boxing was how he probably intended to support his family. He was left disabled after that fight and it is surely a shame.  
Wednesday Apr 9, 2008 11:14:09 PM

**William A Major:** i remember that fight very well and i remember thinking how fragile this kids skin was untill it was revealed what had happened. the father ,ill never forget shook restos hand and wouldnt let go,he knew something was up but i never could understand why he let billy keep going.im telling ya,it was like he was

getting hit with a brick every punch that resto hit him with .look at the pictures.no way i would have let my guy continue after a few rounds of that . panama lewis is a scumbag just like luis resto . youthful mistake my a\_s! you know right from wrong and what they did to billy collins is criminal .and lewis is still in the game what the f--- !

Sunday Apr 13, 2008 05:00:05 PM

**D:** Resto and Lewis should be destroyed.  
Saturday Jul 18, 2009 06:19:46 PM

**Rich:** Panama Lewis is guilty and should have at least done his full sentence behind bars. He also needed to be banned for life. Whether or not "everybody was doing it" doesn't matter. Then everybody was guilty, but not caught. HE, however, was CAUGHT. Every dime he has should be going to the Collins family.

Saturday Jul 18, 2009 06:33:21 PM

**tommy:** It wasn't Santeria Holy words in that bottle of water. It was asthma pills crushed up in the water, so don't try to say Resto did this without the help of Lewis. Lewis is a con piece of sh\*t who makes money in boxing to this day i really wish him bad luck.

Sunday Aug 2, 2009 08:44:54 AM

**kmac:** The dirty business in the main event was that Duran thumbed Moore early on, and closed his eye. Knowing Duran, there is a strong possibility that it was intentional. Also, later in the fight, Duran (clearly intentional) rakes Moore's face with the laces of the gloves, and did not even receive a warning by the referee. Actually, the referee spent plenty of time warning Moore about minor infractions, and said very little to Duran. It must be tough to fight a championship fight with one eye. I wonder if the outcome would have been any different without the thumb.

Sunday Aug 2, 2009 11:43:31 AM

**Chuck Duce:** Panama Lewis...wow. I didn't know who this guy was until I saw the documentary on HBO over the weekend. What a piece of work. Did everyone else's BS detector go off like an air raid siren every time he opened his gob? Its easy to say this guy's a scumbag, but for me its not quite that easy to write off Resto completely. I kind of feel sorry for him because its obvious he's a weak minded man-child that looked to his corner for direction & approval. Resto didn't come clean WILLINGLY, he had to be REMINDED of the conversation he had with the police and what he'd told them. He looked at Panama like a little boy looks up at a role model/father figure-infallible, and did whatever he could to garer favor....even went to jail while not saying what really happened.

Monday Aug 3, 2009 08:50:06 AM

**Tony V:** Just saw the HBO Doc. Very interesting.  
Monday Aug 3, 2009 03:04:28 PM

**manny:** Panama Lewis is guilty and should have at least done his full sentence behind bars. He also needed to be banned for life. you know right from wrong and what they did to billy collins is criminal .and lewis is still in the game what the f-- - !

Monday Aug 3, 2009 11:26:58 PM

**vince a:** i worked a fight in atlanta against a lewis trained fighter sultan ibrabamof. i told the commission about panama and he went and told panama he could not be in the arena. when we entered the ring panama was in front row behind sultans corner. i called the commissioner and he played dumb who where? and he was allowed to give instructions from his seat. the atlanta commission is a disgrace to allow this to happen\$\$\$\$ so how well does the ban really work? we felt thretened before the fight. after the fight panama asked my fighters manager where i lived. he does not scare me. he is the lowest form of life there is. and the crime continues.

Monday Aug 3, 2009 11:53:09 PM

**Percy:** In reading the comments above, it is truly obvious that Radam G and those who comment "boy you know what you are talking about, great comments G"...well, it's obvious that you have never participated in a sport, at a high enough level to even come close to understanding how an athlete feels, and looks up to his superiors. Resto is clearly far from an intelligent man. Do you think he really had the thought process to come up with the plaster of Paris, the removal of the horse-hair padding, and the antihistamine crushed pills in the water all on his own. Highly...HIGHLY doubt it. I mean, the pill in the water was

there with Panama in the AA vs. AP fight. Unless you have participated in any sport at a higher-than-below amateur level, you have no clue what you are talking about. When you are a trained athlete...whether it be boxing, MMA, rugby, baseball, etc...you do what your trainer, coach, manager, etc...tell you to do. YOU, as the athlete, are just an instrument of the game, being played by those who are smarter and have the control to dictate your actions. People like Radam G fall along the same lines of sports-talk-radio and TV personalities who have never played a sport at a level higher than middle school who think they know it all. They know numbers and plays, etc...all which can be seen by the eyes, not truly known in the heart, mind, and soul. Your evaluation of what happened is reckless and lacks knowledge. Shame on you, and those like you who spew b.s. into media outlets and blogs. Rant done. Holla.  
Sunday Aug 9, 2009 01:00:00 PM

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# **Appendix 3**



*This is what Billy Collins, pictured with his father, Billy Sr., looked like the morning after his infamous fight with Luis Resto. Resto and his trainer, Panama Lewis, both did jail time for removing the padding from the fighter's gloves and received a lifetime ban from boxing.*

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Antonio Margarito vs. California State Athletic Commission**

Case No.: **BS120436**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

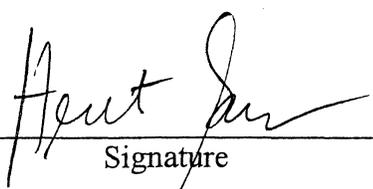
**On August 28, 2009**, I served the attached **OPPOSITION TO MOTION FOR WRIT OF ADMINISTRATIVE MANDATE, OR IN THE ALTERNATIVE, TRADITIONAL MANDATE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

**Daniel M. Petrocelli, Esq.**  
**O'Melveny & Myers LLP - Los Angeles**  
**1999 Avenue of the Stars, 7th Floor**  
**Los Angeles, CA 90067-6035**  
Attorney for Petitioner,  
Antonio Margarito

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 28, 2009**, at Los Angeles, California.

Henrietta Gaviola

Declarant

  
Signature

**DECLARATION OF SERVICE BY MESSENGER**

Case Name: **Antonio Margarito v. California State Athletic Commission**

No.: **BS120436**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

**On August 28, 2009, I caused the attached OPPOSITION TO MOTION FOR WRIT OF ADMINISTRATIVE MANDATE, OR IN THE ALTERNATIVE, TRADITIONAL MANDATE to be personally served by ACE ATTORNEY SERVICE, INC. by placing a true copy thereof for delivery to the following person(s) at the address(es) as follows:**

**DANIEL M. PETROCELLI, ESQ.  
O'Melveny & Myers LLP - Los Angeles  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067-6035**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 28, 2009; at Los Angeles, California.

Henrietta Gaviola

Declarant



Signature

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

<b>ANTONIO MARGARITO,</b>  <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">v.</p> <b>CALIFORNIA STATE ATHLETIC COMMISSION,</b>  <p style="text-align: right;">Respondent.</p>
--

Case No. BS120436  
**[PROPOSED] JUDGMENT  
DENYING PEREMPTORY  
WRIT OF MANDAMUS**  
Hearing Date: September 10, 2009  
Dept.: 86  
Judge: Hon. David Yaffe

The Petition for Writ of Mandamus, brought by Petitioner Antonio Margarito (Petitioner) pursuant to Code of Civil Procedure section 1094.5, came on for hearing in Department 86 of this court on September 10, 2009. Attorney David Marroso appeared on behalf of Petitioner. Supervising Deputy Attorney General Karen B. Chappelle appeared on behalf of Respondent California State Athletic Commission.

Having received into evidence and examined the administrative record, having read and considered the parties' moving and opposing papers, as well as counsel's oral argument,

**IT IS ORDERED AND ADJUDGED THAT:**

1. The Petition for Writ of Mandamus is denied on the grounds set forth in the attached September 10, 2009 minute order and incorporated by reference herein.

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2. Substantial evidence supports Respondent's Decision, that judgment be entered in favor of Respondent, and that this judgment be filed with the clerk and entered forthwith; and

3. Respondent shall recover its costs in this action in the amount of \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable David Yaffe,  
Judge Presiding in Department 86

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DA 09/10/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE  
#5

JUDGE PRO TEM

B. JAUREGUI, COURTROM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am

BS120436

Plaintiff

Counsel

ANTONIO MARGARITO

Defendant

Counsel

VS

CALIFORNIA STATE ATHLETIC  
COMMISSION

**NATURE OF PROCEEDINGS:**

HEARING ON PETITION FOR WRIT OF MANDATE;

Deny Petition for Writ of Mandate.

Petitioner challenges the revocation of his professional boxing license for permitting his trainer to slip something hard into the gauze and tape that are the only permitted substances to used to wrap a boxer's hands before a fight.

The standard of review that is applicable in this case is uncertain. Ordinarily when a license granted to a skilled professional to practice his profession is revoked by an administrative agency, this court is to judicially review the administrative decision by independently reviewing the administrative record and exercising its independent judgment as to the weight of the evidence.

In this case, however, RUDOLPH v. ATHLETIC COMMISSION, 177 Cal.App.2d 1(1960) holds that the revocation of a boxing manager's license is to be reviewed by the court only to the extent of determining whether the administrative decision is supported by substantial evidence. The RUDOLPH case is no longer valid authority for that proposition, however, because, at the time that it was decided, the State Athletic Commission was a constitutionally

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DA 09/10/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE  
#5

JUDGE PRO TEM

B. JAUREGUI, COURTROM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am BS120436

Plaintiff  
Counsel

ANTONIO MARGARITO

Defendant  
Counsel

VS

CALIFORNIA STATE ATHLETIC  
COMMISSION

**NATURE OF PROCEEDINGS:**

created commission that had judicial power. Two years after the decision, however, the constitutional provision authorizing the Athletic Commission was repealed, and it is now an entity created by statute, Business & Professions Code section 18600 et seq. Business & Professions Code section 18841, still states that an action by the Athletic Commission revoking a boxing license, "shall be final, except that the propriety of such action is subject to review, upon questions of law only, by the superior court." When this court determines whether an administrative decision is supported by substantial evidence, it is deciding a question of law, not fact, but when the trial court applies the independent judgment test, it is deciding a factual question for which findings of fact must be made. ANGELIER v. STATE BOARD OF PHARMACY, 58 Cal.App.4th 592, 598, Footnote 5 (1997).

This court will therefore comply with the statute and review the administrative decision by applying the substantial evidence test.

The Athletic Commission decided that petitioner is responsible for the acts of his trainer whether or not he knew that the trainer had placed a hard substance in the gauze and tape that was used to wrap his hands. The rules and regulations adopted by the Athletic Commission clearly state that only surgeon's adhesive tape and "soft surgical bandage" can be used to wrap a boxer's hands before a fight. (4 CCR section 323).

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DA 09/10/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE #5

JUDGE PRO TEM

B. JAUREGUI, COURTROM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am

BS120436

Plaintiff

ANTONIO MARGARITO

Counsel

VS

Defendant

CALIFORNIA STATE ATHLETIC  
COMMISSION

Counsel

**NATURE OF PROCEEDINGS:**

The rules and regulations also state that any licensee who violates the rules of the Athletic Commission, "may have his or her license revoked, or may be fined, suspended or otherwise disciplined in such manner as the Commission may direct." (4 CCR section 390).

The Commission was correct in determining that petitioner's license can be revoked for his violation of the hand wrap rule whether petitioner knew what his trainer was doing or not.

If the court were free to apply the independent judgment rule, it would come to the same conclusion. The court does not believe petitioner's testimony that he did not know what his trainer was using to wrap his hands with before a fight. Petitioner had used the same trainer for eleven years, and was a seasoned professional boxer. The court is convinced that petitioner knew very well what his trainer was using to wrap his hands.

Other contentions made by petitioner are also without merit.

Counsel for respondent is to submit a proposed judgment to this department within ten days with a proof of service showing that a copy has been served upon opposing counsel by hand delivery or facsimile. The court will hold it for ten days before signing and filing it.

\*3 WORK 11

DECLARATION OF SERVICE BY FACSIMILE AND MAIL

Case Name: ANTONIO MARGARITO v. CALIFORNIA STATE ATHLETIC COMMISSION

No.: BS 120436

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My facsimile machine telephone number is (213) 897-2804.

On September 14, 2009, I served the attached [**PROPOSED**] **JUDGMENT DENYING PEREMPTORY WRIT OF MANDAMUS** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(g)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

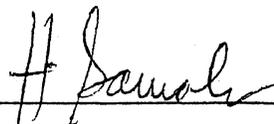
Fax #: (310) 246-6779

DAVID MARROSO, Esq.  
O'Melveny & Myers LLP - Los Angeles  
1999 Avenue of the Stars, 7th Floor  
Los Angeles, CA 90067-6035

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 14, 2009, at Los Angeles, California.

Henrietta Gaviola

Declarant



Signature

MODE = MEMORY TRANSMISSION

START=SEP-14 16:35

END=SEP-14 16:37

FILE NO.=254

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**EDMUND G. BROWN JR.**  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



**FAX TRANSMISSION COVER SHEET**

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DATE: September 14, 2009 TIME: \_\_\_\_\_ NO. OF PAGES: 8  
(Including Fax Cover Sheet)

**TO:**

NAME: DAVID MARROSO, Esq.

OFFICE: O'Melveny & Myers LLP - Los Angeles

LOCATION: Los Angeles

FAX NO.: (310) 246-6779 PHONE NO.: (310) 246-8469

**FROM:**

NAME: Henrietta Gaviola, Legal Secretary

OFFICE: Licensing Section

LOCATION: Los Angeles

FAX NO.: (213) 897-2804 PHONE NO.: (213) 897-2550

**MESSAGE/INSTRUCTIONS**

Attachments: **[PROPOSED] JUDGMENT DENYING PEREMPTORY WRIT OF MANDAMUS;  
PROOF OF SERVICE (PROPOSED JUDGMENT)**



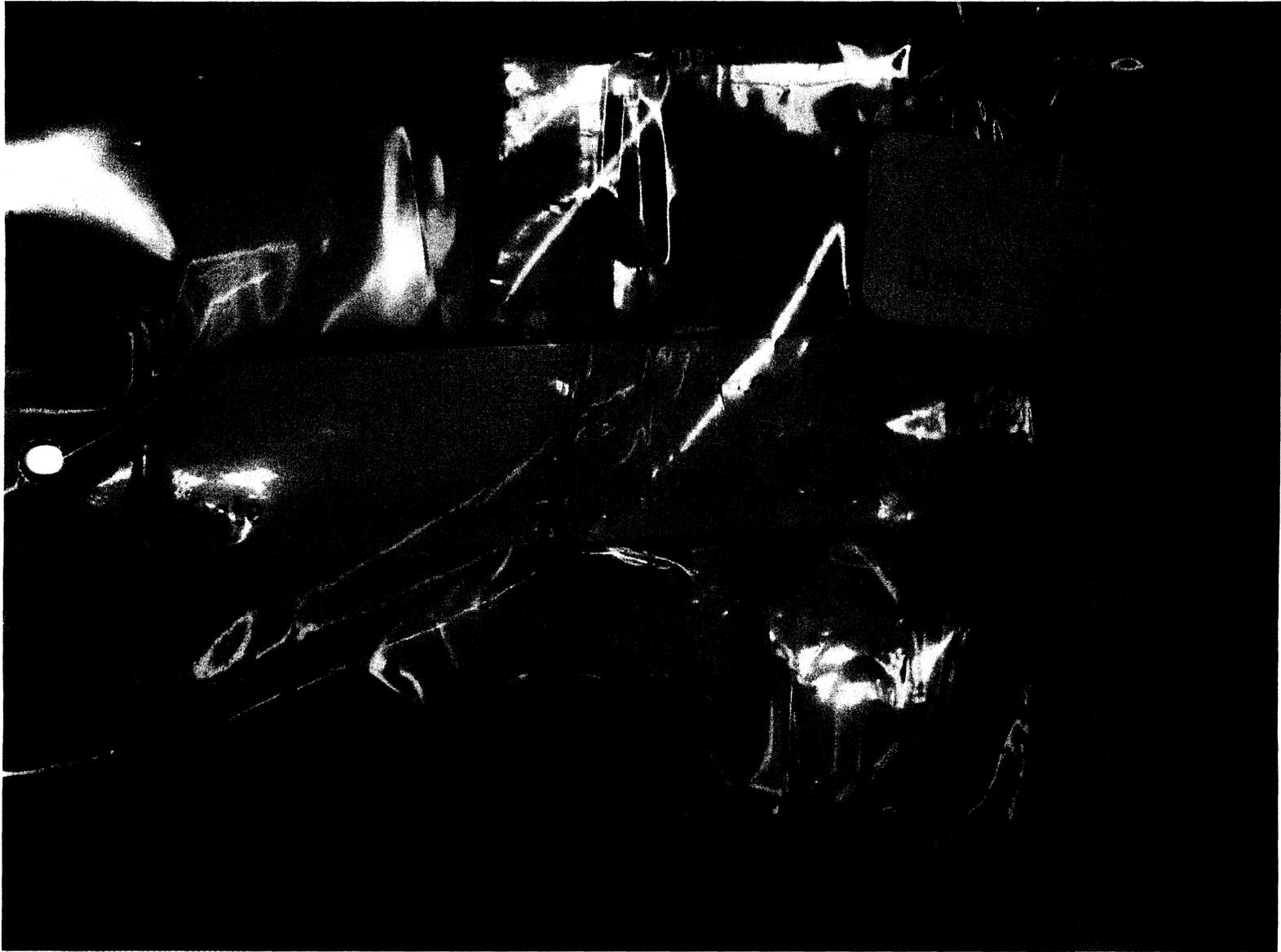
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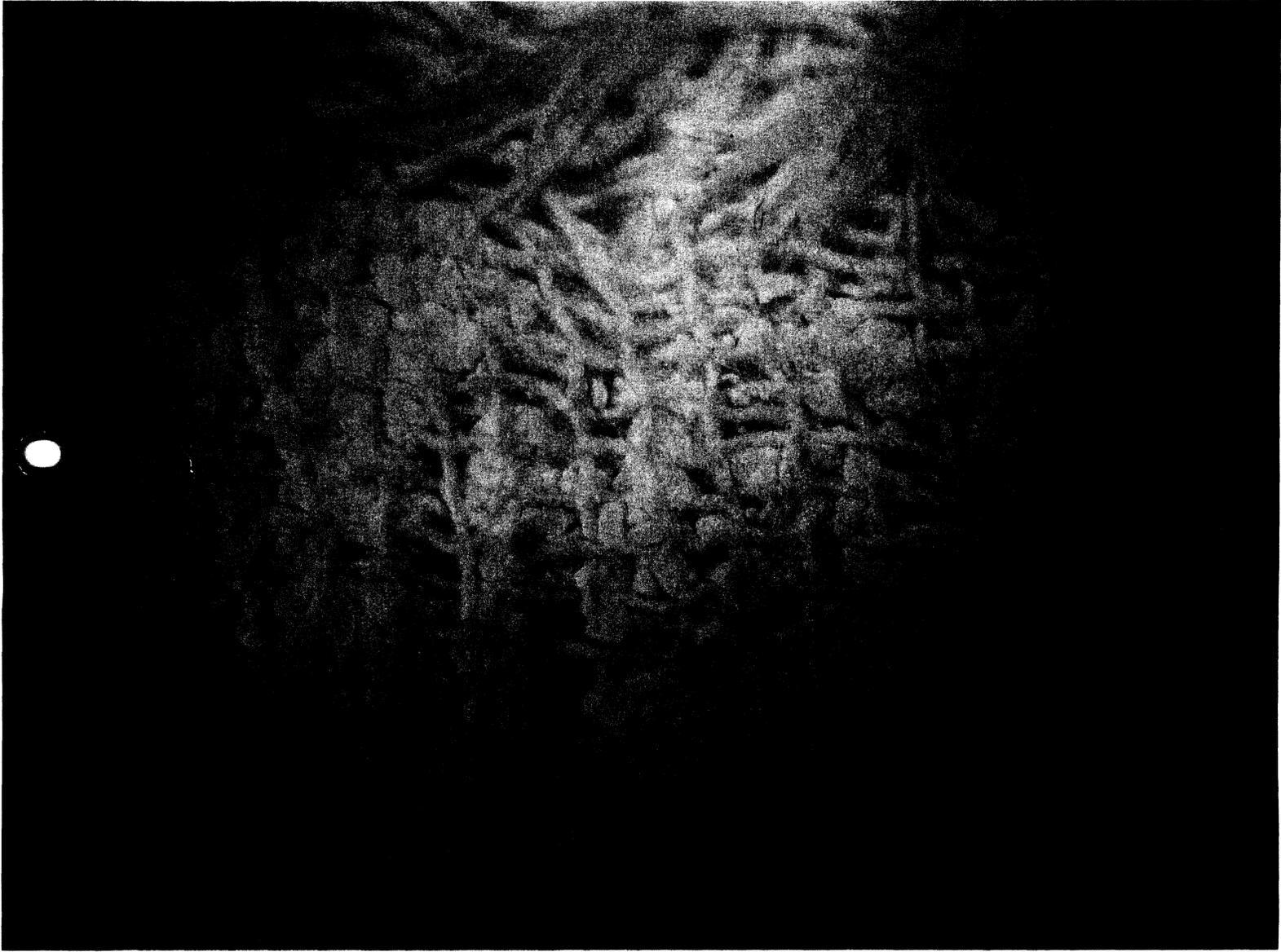
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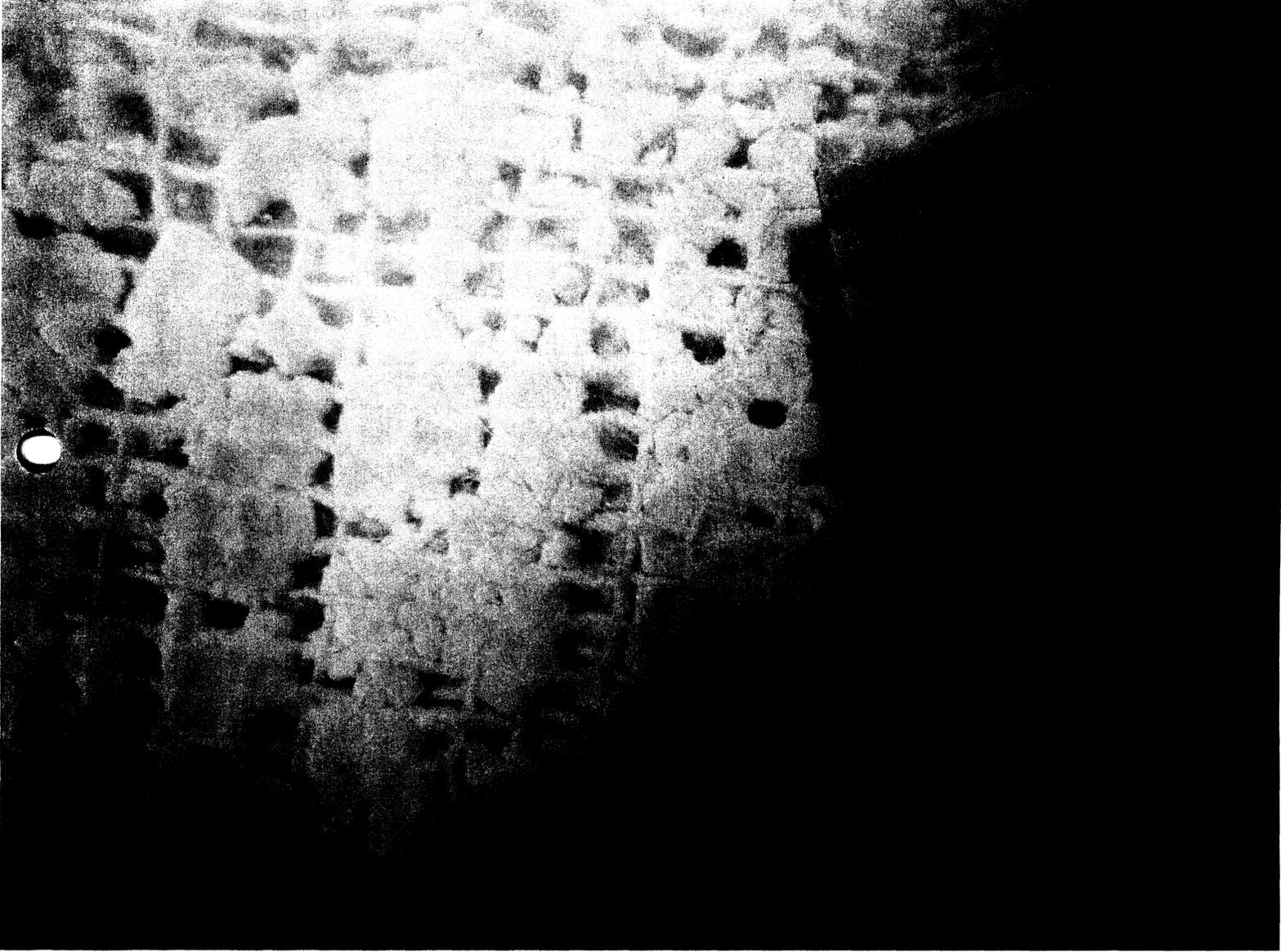
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