

BEFORE THE ATHLETIC COMMISSION
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case No. AC-19-03-COM

Aric J. Montoya,
License No. ACMA08241,

Respondent.

SETTLEMENT AGREEMENT
PROPOSED PRIOR TO REFERRAL FOR ADMINISTRATIVE PROSECUTION

WHEREAS, Aric J. Montoya (hereafter, "Respondent") is licensed in New Mexico under the Athletic Competition Act ("the Act"), and is therefore subject to the jurisdiction of the New Mexico Athletic Commission ("Commission"); and

WHEREAS, the Commission has received a formal complaint alleging that Respondent has violated the Act; and

WHEREAS, Respondent wishes to resolve this matter before the complaint is reviewed and possibly referred to the Commission's administrative prosecutor at the Office of the Attorney General for the issuance of formal charges through the issuance of a Notice of Contemplated Action ("NCA"); and

WHEREAS, this Settlement Agreement ("Agreement") is entered into voluntarily; and

WHEREAS, the Commission staff believes a settlement agreement would be in the best interest of the Commission; and

WHEREAS, if the Agreement is rejected by Respondent or not accepted by the Commission, the formal complaint in this matter will be forwarded to the Commission for further consideration, which may include referral to the Office of the Attorney General for issuance of an NCA, and initiation of a formal disciplinary action, which could result in discipline by the Commission up to and including revocation of the license; and

WHEREAS, Respondent is willing to resolve this matter without the need for, and time and expense of, a formal hearing that may occur if the matter is referred for administrative prosecution and an NCA is issued.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. Jurisdiction: Respondent is licensed by the Commission or otherwise subject to the Act and jurisdiction of the Commission.

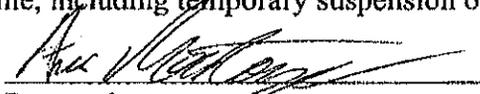
2. Voluntary Agreement: Respondent enters into this Agreement knowingly and voluntarily, without duress or coercion, and after a full opportunity to consult an attorney. Respondent understands that the Commission has not, at this time, taken any formal disciplinary action against Respondent, and that if Respondent rejects this agreement there is no certainty that the matter will be referred for prosecution or that any disciplinary action will occur.
3. Commission Approval: This Agreement requires Commission approval. If the Commission rejects this Agreement, the matter will be further investigated and may be referred to the Commission for additional disciplinary proceedings, including a request for the issuance of a Notice of Contemplated Action by the Commission's administrative prosecutor at the Office of the Attorney General and a full evidentiary hearing on the matter. If the Commission rejects this Agreement, the terms of this Agreement or statements made by Respondent in support of this Agreement shall not be used against Respondent in a subsequent hearing. The approval shall be effective the date this Agreement is signed by the Commission or its designee.
4. Waivers: If this Agreement is accepted by the Commission, Respondent agrees to waive any and all rights under the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), including but not limited to the right to an evidentiary hearing, the right to discovery, the right to present evidence, the right to call and cross examine witnesses, and the right to judicial review.
5. Violations: Respondent admits to the following violation(s) of the Act or Commission's rules:
 - a. NMSA 1978, Section 60-2A-14. A (4) – The commission may suspend or revoke any license when in its judgment the licensee is guilty of participating in an event while under the influence of illegal drugs.
 - b. 15.6.15.7.C – “**Controlled substance**” includes the following five prohibited classes of drugs: narcotics, depressants, stimulants, hallucinogens and cannabis. A controlled substance includes any chemical substances having the capacity to affect behavior and regulated or prescribed by law with regard to possession, use or distribution.
 - c. 15.6.15.7.E – “**Drugs**” include the following five types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, metabolites of previously identified drugs; or non-prescription substances containing previously identified drugs.
 - d. 15.6.15.12.A – It is expressly prohibited for any event contestant licensed by the commission to use or be under the influence, at any time, of any drug, stimulant, or foreign substance designed to be ingested that would unfairly increase or decrease his performance; or impair his or the physician's ability to recognize a potentially serious injury or physical condition.

- e. 15.6.15.13.B – The following drug or foreign substance classifications are prohibited except as otherwise indicated: Narcotics.
6. Sanctions and Conditions: Respondent agrees to the following disciplinary sanctions and conditions:
 - a. Suspension: Respondent's licenses shall be suspended for a period of ninety days, beginning on the date that this Agreement is signed and accepted by the Commission.
 - b. Respondent shall also submit to drug tests at his next three unarmed combat contests after he is relicensed. The drug tests shall be at respondent's own expense. If he tests positive for any drug, stimulant, or foreign substance designed to be ingested that would unfairly increase or decrease his performance; or impair his or the physician's ability to recognize a potentially serious injury or physical condition he will be referred to the Commission for further action.
7. Reportable Discipline: Respondent understands that this Agreement DOES constitute formal disciplinary action by the Commission. If this Agreement does constitute formal discipline, the Commission will report the action to the applicable professional licensing national database, if any.
 - a. Box Rec, all violations; and
 - b. FightFax, all violations.
8. Non-Compliance: Respondent understands and agrees that failure to comply with the terms of this Agreement will result in further Commission action. Any violation of this Agreement will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by Commission staff. Upon the filing of a Notice of Non-Compliance, the matter shall be scheduled for the next public meeting of the Commission, at which time the Commission shall hear from Commission staff regarding the alleged non-compliance. Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Commission meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement. Upon finding such violation occurred, the Commission may suspend Respondent's license(s), provided that this suspension may only remain in effect until such time as the Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitute acts that are prohibited under the Commission's statute or rules, the Commission may also initiate a new disciplinary action and refer that matter for administrative prosecution.

- 9. **Contact Information:** Respondent shall notify the Commission within ten (10) calendar days if there is a change in employment or home address during the term of discipline or prior to completion of any conditions stated herein.
- 10. **Public Record:** This Agreement and the original complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Commission may also publish this Agreement or a summary of the Agreement to the public, which may include posting to the Commission's website.
- 11. **Full Compliance and Final Disposition:** Upon Respondent's satisfactory completion of the terms of this agreement, the case will be deemed closed for administrative purposes without the filing of an order or official vote of the Commission. However, this matter may still constitute disciplinary action as provided herein for purposes of Respondent's record with the Commission.

I understand and have read this document and hereby agree to the terms of this Agreement freely and voluntarily. I understand that by entering into this Agreement I am giving up my rights under the Uniform Licensing Act, including my right to an evidentiary hearing on the merits of the alleged violations.

I understand that if the Commission accepts this Agreement, I am required to comply with the terms stated herein, and that failure to comply with the Agreement may subject me to further discipline, including temporary suspension of my license(s).


 Respondent

12-17-19
 Date

 Respondent's Attorney (if any)

 Date

ORDER

This document is not valid unless it is accepted by vote of the Commission. Having come before the Commission during a properly scheduled public meeting, with a quorum present and majority voting in the affirmative, this Agreement is:

_____ ACCEPTED

IT IS SO ORDERED.



 Joe Chavez, Chairman
 New Mexico Athletic Commission

January 23, 2020

 Date