

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
**Appeal of the Board of Stewards Official
Ruling #41, Pacific Racing Association,
dated December 10, 2015**

Case No. SAC 16-0004

HAROLD MCPHERSON
CHRB License #239053
Appellant

DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board, with the following modification, as provided by Government Code Section 11517 (c) (2) (B):

1. The proposed fine of fifteen hundred (\$1,500.00) is adopted.
2. The proposed suspension of thirty (30) days is reduced to seven (7) calendar days, commencing June 16, 2016.

The Decision shall become effective on May 27, 2016.

IT IS SO ORDERED ON May 26, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

1
2 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
3 **OF THE STATE OF CALIFORNIA**

4 IN THE MATTER OF:) Docket No.: SAC-16-0004
5 APPEAL OF THE BOARD OF STEWARDS)
6 OFFICIAL RULING # 41, PACIFIC) Hearing Date: April 6, 2016
7 RACING ASSOCIATION, DATED) Time: 9:30 A.M.
8 DECEMBER 10, 2015)

9 vs.)

10 HAROLD McPHERSON)
11 CHRB LICENSE #: 239053)
12 Appellant.)
13)
14)
15)

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17 **PROPOSED DECISION**

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19 The matter was heard on April 6, 2016 by Richard P. Margarita, a Hearing Officer
20 designated under California Horse Racing Board (CHRB) rule 1414 (Appointment of
21 Referee) at the California Horse Racing Board, Cal Expo, 1010 Hurley Way, Suite 300,
22 Sacramento, California.
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24 The Appellant, Harold McPHERSON, was present and not represented. Appellant
25 McPHERSON called Larry Swartzlander to testify on his behalf. Appellant also testified
26 at the hearing.
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2 The Co-Appellant, Ramon PULIDO, was present and not represented. Appellant called
3 Larry Swartzlander to testify on his behalf. Mr. Swartzlander is the Chief Operating Officer for
4 the California Authority of Racing Fairs, and the Director of the San Joaquin Fair.
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6 The California Horse Racing Board (hereinafter referred to as CHRB), Complainant, was
7 represented by CHRB Staff Counsel Phillip Laird and Sharyn Jolly, California Horse Racing
8 Board. Robert Chavez, CHRB staff employee, served as a Spanish translator for Appellant
9 PULIDO. It should be noted that Appellant PULIDO answered questions and made statements in
10 English, not utilizing the interpreter.
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12
13 The proceedings were recorded by Certified Court Reporter Wendy V. Frazier, CSR #:
14 8035.
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16 **I. PROCEDURAL BACKGROUND**
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18 The issue presented at this hearing, was an appeal from the Golden Gate Fields Board
of Stewards Ruling No. 41, Pacific Racing Association, dated December 2, 2015. The
ruling fined Mr. McPherson, the Appellant, \$1,500.00 and suspended him for thirty (30)
days for the period June 16, 2016 through July 15, 2016 pursuant to California Horse Racing
Board rule number 1900 (Grounds for Suspension or Revocation of License) for violation of
California Horse Racing Board rules number 1489 (j) (Grounds for Denial or Refusal of
License), number 1840 (Veterinary Practices and Treatments Restricted), number 1843 (c)
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1 (Medication Drugs and Other Substances) and number 1890 (a)(b) (Possession of Contraband)
2 on September 9, 2015. The ruling also stipulated that during the term of the suspension, all
3 licenses and license privileges of Appellant McPherson are suspended and pursuant to
4 California Horse Racing Board rule number 1528 (Jurisdiction of Stewards), Appellant
5 McPherson is denied access to all premises in this jurisdiction.
6

7
8 The Golden Gate Fields Board of Stewards, Pacific Racing Association, unanimously
9 issued the ruling.

10 On December 12, 2015, Appellant McPherson filed a timely appeal pursuant to Business
11 and Professions Code Section 19517 and CHRB Rule 1761.

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13 On March 15, 2015, a Notice of Hearing was issued by Ms. Sharyn Jolly, California
14 Horse Racing Board, for the April 6, 2015 appeal for Appellant.

15 The record was closed, and the matter deemed submitted on April 6, 2015.
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LIST OF EXHIBITS

CALIFORNIA HORSE RACING BOARD EXHIBITS:

- CHRB Exhibit 1: The CHRB Administrative Record for Ramon PULIDO.
CHRB Exhibit 2: The CHRB Administrative Record for Harold McPHERSON.

APPELLANT'S EXHIBITS:

25 None Submitted.
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FACTUAL FINDINGS

The following factual findings have been derived from the April 6, 2016 hearing as well as CHRB Exhibits 1 and 2.

I.

Appellant, Ramon Solis Pulido is a licensed trainer with the California Horse Racing Board.

II.

Appellant PULIDO's California Horse Racing Board Driver license number is 295986.

III.

The Golden Gate Fields Board of Stewards, Pacific Racing Commission, issued ruling No. 41, on December 2, 2015. The ruling fined the Appellant, Harold McPherson, \$1,500.00 and suspended him for thirty (30) days for the period June 16, 2016 through July 15, 2016 pursuant to California Horse Racing Board rule number 1900 (Grounds for Suspension or Revocation of License) for violation of California Horse Racing Board rules number 1489 (j) (Grounds for Denial or Refusal of License), number 1840 (Veterinary Practices and Treatments Restricted), number 1843 (c) (Medication Drugs and Other Substances) and number 1890 (a)(b) (Possession of Contraband) on September 9, 2015. The ruling also stipulated that during the term of the suspension, all licenses and license privileges of Appellant McPherson are suspended and pursuant to California Horse Racing Board rule number 1528 (Jurisdiction of Stewards), Appellant McPherson is denied access to all premises in this jurisdiction.

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IV.

The violation occurred at the San Joaquin County Fairgrounds, San Joaquin County, California on September 9, 2015.

V.

Appellant Ramon Solis Pulido was licensed with the CHRB as an Assistant Trainer on September 9, 2015, while working at the San Joaquin County Fairgrounds and his license was current, with an expiration date of August 2016.

VI.

Appellant Harold McPherson was licensed with the CHRB as an owner on September 9, 2015, while his mules were stabled on the grounds at the San Joaquin County Fairgrounds, and his license was current, with an expiration date of October 2016.

VII.

Helen Shelley was licensed with the CHRB as a Trainer on September 9, 2015, while working as a trainer at the San Joaquin County Fairgrounds, and her license was current with an expiration date of October 2016.

VIII.

CHRB Investigators Louis Quezada, Joe Mulligan, and Derek Merritt performed a barn inspection at the barn of Trainer Helen Shelley at the San Joaquin County Fairgrounds on September 9, 2015.

IX.

During the search, Assistant Trainer (Appellant) Ramon Pulido, Appellant, informed Investigator Louis Quezada that there were several hypodermic needles and some medications

1 in the office.

2 X.

3 Investigators Joe Mulligan and Derek Merritt located a small cardboard box within the
4 office of Trainer Helen Shelley which contained five needles and four syringes with the needles
5 attached and two bottles of injectable medications.

6 XI.

7 One of the bottles was Dormosedan, also known as Detomidine Hydrochloride, a sedative
8 and analgesic for horses. The second bottle was ButaJect, also known as Phenyl Buzatone. Both
9 bottles contained labels of Federal law restrictions for the use of the drug by a licensed
10 veterinarian or on the order of a licensed veterinarian.

11 XII.

12 CHRB rule number 1843.2 (Classification of Drug Substances) classifies Detomidine as a
13 Class III medication. Detomidine is the drug and Dormosedan is the trade name for the drug.
14 Phenyl Buzatone is classified as a class IV drug, and the trade name for the drug is ButaJect.

15 XIII.

16 The bottle of Dormosedan was almost empty.

17 XIV.

18 Neither medication had a prescription label nor a name of a horse or mule as required by
CHRB rule number 1864(c) (labeling of medication).

XV.

Appellant Pulido acknowledged to Investigator Quezada he knew he should not have
these items and confirmed to Investigator Quezada he knew they were illegal.

XVI.

Appellant Pulido presented testimony of being in possession of syringes, needles, and injectable medications, and injecting the mule "Dashing Jack" within the enclosure at the San Joaquin County Fairgrounds.

XVII.

Appellant Pulido acknowledged to Investigator Quezada that the mules' owner, Appellant Harold "Sunny" McPherson, had given him the bottle of Dormosedan. Appellant Pulido told Investigator Quezada that trainer Helen Shelley had no knowledge that he was injecting the mules or that he had the needles and medications.

XVIII.

Trainer Helen Shelley told Investigator Quezada that Appellant Pulido was her Assistant Trainer and she had no knowledge that the mule was being injected or that Appellant McPherson had provided Appellant Pulido with the injectable medications and that Appellant Pulido injected the mule "Dashing Jack" within the enclosure at the San Joaquin County Fairgrounds.

XIX.

Appellant Pulido was listed as Helen Shelley's Assistant Trainer but was not listed on her employee worksheet.

XX.

Appellant Pulido testified he forgot that he was not allowed, as an unlicensed veterinarian, to inject an animal on the race track.

XXI.

1 Appellant Pulido presented testimony of being an employee of Helen Shelley and getting
2 paid by her.

3 XXII.

4 Appellant Pulido testified that Helen Shelley was paid by Appellant McPherson and that
5 he (Pulido) was in charge of the ten mules.

6 XXIII.

7 Appellant Pulido testified the owner, Appellant McPherson, provided the medication to
8 him for the mule.
9

10 XXIV.

11 Appellant Pulido acknowledged training mules for Appellant McPherson and putting
12 them in Helen Shelley's name to avoid obtaining workman's compensation insurance.
13

14 XXV.

15 Appellant Pulido testified there were no veterinarians available at the time to administer
16 the medications.

17 XXVI.

18 Appellant McPherson has been licensed as a mule owner for approximately 20 years.

XXVII.

Appellant McPherson presented testimony of bringing a load of mules to Stockton and
dropping a bottle of Dormosedan (Detomidine) off that only had enough to treat one mule and
instructed Appellant Pulido to inject the mule for safety reasons.

25 XXVIII.

1 Appellant McPherson presented testimony that Appellant Pulido would take care of his
2 mules and he would pay \$900 a month directly to him (Mr. Pulido).

3 XXIX.

4 Appellant McPherson testified that Appellant Pulido was the trainer of his mules.

5 XXX.

6 Helen Shelley presented testimony of having no knowledge of Appellant McPherson
7 giving the drug Detomidine to Appellant Pulido or that Appellant Pulido had needles and
8 syringes.

9 XXXI.

10 Helen Shelley delegated complete control of the mules to Appellant Pulido.

11 XXXII.

12 Helen Shelley testified she did not pay Appellant Pulido for his services and that
13 Appellant McPherson paid Appellant Pulido.

14 XXXIII.

15 Appellant McPherson has filed a timely appeal.

16 XXXIV.

17 Appellant Pulido has filed a timely appeal.

18
APPLICABLE LAWS AND REGULATIONS

19 California Horse Racing Board Rule number 1420 defines a "Horse" to mean an equine
20 and includes a stallion, gelding, mare, colt, filly or ridgling and includes mule, jack, jenny,
21 ginnet, and hinney.
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1 California Horse Racing Board Rule number 1489 (Title 4, CCR 1489), which is
2 entitled, "Grounds for Denial or Refusal to License states as follows:

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

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

7 (2) Who has been convicted of a crime in another jurisdiction which if committed
8 in this state would be a felony.

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

11 (4) Who is unqualified to engage in the activities for which a license is required.

12 (5) Who fails to disclose the true ownership or interest in any or all horses as
13 required by any application.

14 (6) Who is subject to exclusion or ejection from the racing inclosure or is within
the classes of persons prohibited from participating in pari-mutuel wagering.

15 (7) Who has committed an act involving moral turpitude, or intemperate acts
16 which have exposed others to danger, or acts in connection with horse racing
and/or a legalized gaming business which were fraudulent or in violation of a trust
17 or duty.

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

19 (9) Who is not permitted by any law to engage in the occupation for which the
license is sought.

20 (10) Who has violated, or who aids, abets or conspires with any person to violate
any provision of the rules or the Horse Racing Law.

21 (b) When considering the denial, suspension or revocation of a license under
22 subparagraphs (a)(1), (a)(2), (a)(7), and (a)(8) of this section, pursuant to section
481 of the Business and Professions Code, a crime or act shall be considered to
23 be substantially related to the qualifications, functions or duties of a person
applying for or holding a license under the Horse Racing Law, if to a substantial
24 degree the crime or act evidences a present or potential unfitness to perform the
25

1 functions authorized by his or license or in a manner consistent with the public
2 health, safety, or welfare.

3 California Horse Racing Board Rule number 1528 (Title 4, CCR 1528), which is
4 entitled, "Jurisdiction of Stewards to Suspend or Fine", states as follows:

5 The stewards' jurisdiction in any matter commences at such time as entries
6 are taken for the first day of racing at the meeting and extends until thirty
7 (30) days after the close of such meeting. However, the Executive Director
8 or the Board may delegate the authority to adjudicate any matter occurring
9 at any racing meeting to another Board of Stewards at any time. The
10 stewards may suspend the license of anyone whom they have the authority
11 to supervise or they may impose a fine or they may exclude from all
12 inclosures in this State or they may suspend, exclude and fine. All such
13 suspensions, fines or exclusions shall be reported immediately to the
14 Board.

15 California Horse Racing Board Rule number 1840 (Title 4, CCR 1840), which is
16 entitled, "Veterinary Practices and Treatments Restricted", states as follows:

17 No person other than California-licensed veterinarians who have obtained
18 a license from the Board shall administer to any horse within the inclosure
19 any veterinary treatment or any medicine, medication, or other substance
20 recognized as a medication, except for recognized feed supplements or
21 oral tonics or substances approved by the official veterinarian, or except
22 under the direction or prescription of a veterinarian licensed by the Board.

23 California Horse Racing Board Rule number 1843 (Title 4, CCR 1843), which is
24 entitled, "Medication Drugs and Other Substances", states as follows:

25 It shall be the intent of these rules to protect the integrity of horse racing, to guard the
26 health of the horse, and to safeguard the interests of the public and the racing participants
27 through the prohibition or control of all drugs, medications and drug substances foreign
28 to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or

1 its metabolites or analogues, foreign to the horse except as hereinafter
2 expressly provided.

- 3 (b) No drug substance shall be administered to a horse which is entered to
4 compete in a race to be run in this State except for approved and authorized
5 drug substances as provided in these rules.
- 6 (c) No person other than a licensed veterinarian or animal health technician shall
7 have in his/her possession any drug substance which can be administered to a
8 horse, except such drug substance prescribed by a licensed veterinarian for a
9 specific existing condition of a horse and which is properly labelled.
- 10 (d) A finding by an official chemist that a test sample taken from a horse contains
11 a drug substance or its metabolites or analogues which has not been approved
12 by the Board, or a finding of more than one approved non-steroidal, anti-
13 inflammatory drug substance, or a finding of a drug substance in excess of the
14 limit established by the Board for its use shall be prima facie evidence that the
15 trainer and his/her agents responsible for the care of the horse has/have been
16 negligent in the care of the horse and is prima facie evidence that the drug
17 substance has been administered to the horse.

18 California Horse Racing Board Rule number 1890 (Title 4, CCR 1890), which is
19 entitled, "Possession of Contraband", states in part as follows:

- 20 (a) No person other than a veterinarian licensed by the Board, shall have in his
21 possession at a facility under the jurisdiction of the Board any drug which is a
22 narcotic, stimulant, or depressant, or any other substance or medication that
23 has been prepared or packaged for injection by a hypodermic syringe or
24 hypodermic needle, or any hypodermic syringe or hypodermic needle or
25 similar instrument which may be used for injection.
- 26 (b) No person other than a veterinarian licensed by the Board, shall have in his
27 possession at a facility under the jurisdiction of the Board any veterinary
28 treatment or any medicine, medication, or other substance recognized as a

1 medication, which has not been prescribed in accordance with Rule 1840 of
2 this division and labeled in accordance with Rule 1864 of this division.

3
4 California Horse Racing Board Rule number 1900 (Title 4, CCR 1900), which is
5 entitled, "Grounds for Suspension or Revocation of License", states as follows:

6 Any provision of any rule which is a ground for denial of a license is also a
7 ground for suspension or revocation of a license.
8

9
10 California Evidence Code Section 115, entitled, Burden of Proof, states that:

11 "Burden of proof" means the obligation of a party to establish by evidence a
12 requisite degree of belief concerning a fact in the mind of the trier of fact or the
13 court. The burden of proof may require a party to raise a reasonable doubt
14 concerning the existence or nonexistence of a fact or that he establish the
15 existence or nonexistence of a fact by a preponderance of the evidence, by clear
16 and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise
17 provided by law, the burden of proof requires proof by a preponderance of the
18 evidence.

19 California Business and Professions Code Section 19517, which is entitled, "Overrule of
20 Stewards' Decision by Board; Preponderance of Evidence", states as follows:

21 (a) The board, upon due consideration, may overrule any steward's decision other
22 than a decision to disqualify a horse due to a foul or a riding or a driving
23 infraction in a race, if a preponderance of the evidence indicates any of the
24 following:

- 25 (1) The steward mistakenly interpreted the law.
- 26 (2) New evidence of a convincing nature is produced.
- 27 (3) The best interests of racing and the state may be better served.

28 (b) However, any decision pertaining to the finish of a race, as used for purposes
of parimutuel fund distribution to winning ticketholders, may not be overruled.

1 Furthermore, any decision pertaining to the distribution of purses may be changed
2 only if a claim is made in writing to the board by one of the involved owners or
3 trainers, and a preponderance of the evidence clearly indicates to the board that
4 one or more of the grounds for protest, as outlined in regulations adopted by the
5 board, has been substantiated. The chairperson of the board may issue a stay of
6 execution pending appeal from a steward's decision if the facts justify the action.

7 DISCUSSION OF ISSUES

8 I. APPLICABLE BURDEN OF PROOF

9 The Appellant has the burden of proof to refute, by a preponderance of evidence
10 standard, that the ruling issued by the Golden Gate Fields Board of Stewards,
11 Pacific Racing Association, was such that any of the following occurred: (1) The
12 steward mistakenly interpreted the law, (2) new evidence of a convincing nature is
13 produced, or (3) the best interests of racing and the state may be better served.¹

14
15 The Appellant presented no evidence that could be construed as refuting, by a
16 preponderance of evidence standard, that the ruling issued by the Golden Gate Fields
17 Board of Stewards, Pacific Racing Association, was such that any of the following
18 occurred: (1) The steward(s) mistakenly interpreted the law, (2) new evidence of a convincing
19 nature is produced, or (3) the best interests of racing and the state may be better served.

20 II. APPELLANT McPHERSON HAS NEITHER CONTESTED NOR 21 REFUTED THE UNDERLYING CONDUCT RESULTING IN THE 22 CORRESPONDING SUSPENSION AND FINE

23
24
25 ¹ Reference is made to Business and Professions Code Section 19517.
26
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1 During the Appellant's hearing, neither he nor his co-Appellant, Ramon Pulido,
2 presented any evidence refuting the allegations of the underlying conducted which
3 resulted in the Board of Stewards issuing the corresponding suspension and fine against
4 both of them. They were both fined \$1,500.00 and suspended for thirty (30) days for
5 the period June 16, 2016 through July 15, 2016.
6

7
8 During the hearing, Appellant McPherson stated that all he was appealing was the
9 time of the sentencing issue (RT: pp. 11:2-4). Appellant Pulido also confirmed that all he
10 was doing in the current appeal was appealing the sentencing issue (RT: pp. 11:5-13).
11

12 During the hearing, Appellant McPherson readily admitted that one mule was
13 provided performance enhancing drugs, which he provided to Appellant Pulido, for
14 Appellant Pulido to inject into the mule.
15

16 Appellant McPherson stated, "but like he pointed out, this was not a performance
17 -- enhancing drugs that was there. That it was a tranquilizer specifically for the one mule.
18 And that -- because he gets a little violent when they tried to shoe him. And if you
don't give him some tranquilizer, you could have your shoer going to the hospital." (RT:
pp. 14: 15-21).

19 Appellant McPherson then stated that the performance-enhancing drug was
20 Dormosedan." (RT: pp. 14:25) Appellant McPherson also stated, "all its for is a tranquilizer to
21 calm him down while they are doing the shoeing, and everything." (RT: pp. 15: 6-8). Appellant
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1 McPherson admitted that he had purchased the drug, gave it to Appellant Pulido, and Appellant
2 Pulido injected the mule with the drug (RT: pp. 14:12-21).

3
4 Appellant McPherson agreed that performance-enhancing drug does not necessarily mean
5 it (animal) will run faster, it can change or alter the performance of an animal, whether it's
6 slower, faster, or alters the performance, as it would in some way, shape or form enhance it
7 (performance). (RT: pp. 15-16:22-25:1-4).

8
9 Appellant McPherson admitted that the drug (Dormosedan) has to be prescribed under the
10 auspices of a licensed veterinarian. Appellant McPherson also admitted that he failed to abide by
11 that regulation. (RT: pp. 16-17:23-25:8-10).

12
13 As a result of the complete lack of evidence refuting the allegations, against both of them,
14 and both Appellant McPHERSON and Appellant PULIDO stating on the record that they were
15 only appealing the sentencing issues, this Hearing Officer, in an abundance of caution, hereby
16 AFFIRMS the findings by the Board of Stewards against Appellant Pulido and Appellant
17 McPHERSON, as they relate to the underlying charges/allegations against both of them.
18

**III. THE SUSPENSION BY THE STEWARDS WAS REASONABLE AND
APPROPRIATE; THE STEWARDS DID NOT MISINTERPRET THE
LAW, NO NEW EVIDENCE WAS PRESENTED BY APPELLANT'S
PULIDO AND McPHERSON TO REFUTE THE APPLICABLE
BURDEN OF PROOF**

19
20 Appellants PULIDO and McPHERSON presented no new credible, admissible,
21 and convincing evidence that refuted their applicable burden of proof. The only evidence
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1 presented by both Appellants was the testimony of Larry Swartzlander, Chief Operating
2 Officer for the California Authority of Racing Fairs, and the Director of the San Joaquin
3 Fair. Mr. Swartzlander offered no evidence that refuted the applicable burden of proof
4 required of both Appellant's to overrule the decision by the Board of Stewards. Mr.
5 Swartzlander offered no evidence that the Board of Stewards mistakenly interpreted the
6 law or, that there was new evidence that was not presented to the Board of Stewards at
7 the December 2, 2015 hearing.
8

9
10 Neither Appellant presented any evidence that would suggest that the Board of
11 Stewards misinterpreted the applicable law as it pertained to their thirty (30) day
12 suspension and \$1,500.00 fine for both Appellants (McPHERSON and PULIDO).
13

14 Additionally, neither Appellant presented any evidence, let alone any new
15 evidence, that would suggest that the Board of Stewards had not been privy to during the
16 December 2, 2015 hearing, that would overcome their evidentiary burden for the instant
17 hearing.
18

**IV. THE \$1,500.00 FINE AND THIRTY (30) DAY SUSPENSION
COMMENCING AT THE START OF THE MULE RACING SEASON ON
JUNE 16, 2016 BY THE STEWARDS AGAINST APPELLANTS
PULIDO AND MCPHERSON FOR THEIR CONDUCT IS REASONABLE,
APPROPRIATE, FAIR, AND, IN THE BEST INTERESTS OF RACING**

The sole argument and evidence presented by Appellant McPHERSON and
Appellant PULIDO was the testimony of Mr. Swartzlander. Mr. Swartzlander essentially
25 testified that it would be in the bests interests of racing if the suspension for both
26
27
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1 Appellants be imposed at a time when the mules are not racing, not the start of the Fair
2 Season and Mule Racing season, which commences on June 16, 2016.

3
4 During the questioning by Appellant McPHERSON of Mr. Larry Swartzlander,
5 Mr. Swartzlander testified in part the following:

6 "... Well, let me give you a background, too, on the incident
7 directly. That on the fairs, we have thoroughbreds, Arabians,
8 quarter horses, and mules. The mules and the Arabians and quarter-horses are
9 referred to as the merging breeds. The thoroughbreds in California run year
10 round. If they are not running at the fairs, they are running at Golden Gate or
11 Southern California, or even out of state.

12 The mules and all the merging breeds, other than the quarter horses, have limited
13 times to run. They only run for four months during the fairs. And after that, they
14 are done. By suspending – if you are looking at a thoroughbred, it could take
15 twelve months out of the year. Mules only run four months out of the year. Thirty
16 days takes one-fourth of the time. And secondly, you got 30 mules. People that
17 are running mules are not in for making a living. You know, it's entertainment.
18 They enjoy it. It's a hobby.

19 But for the fans on the fairs, the fairs are the backbone of racing for new people,
20 the families. Families and their kids come to the fairs to see the mules. And what
21 you are doing is, we only have a limited 36 mules. By taking these mules away
22 from us, you have degraded the product. We try to have at least an eight-race
23 program. If we don't have an eight-race program, you don't have the mules, and
24 you have got the seventh race. It's a cost factor to the fair, the attendance,
25 beverage sales, et cetera.

26 But the first thing is that, you know, you take away from the fans. They
27 are great entertainment. And the mule racing is, to be honest with you,
28 almost extinct. They do a great job. I'm not that familiar with what the
case was here, but these were not performance enhancing drugs, you
know, that the mule was -- used.

The severity of it, there has to be a consequence if they did something wrong. Is

1 there some alternative probation, increased fine, other than taking these 30 days of
2 racing, which will degrade our product, you know, it will be a ripple-down effect
3 as far as impact financially (RT: pp.12-14)..."

4 Mr. Swartzlander further testified as both Appellant's sole witness that there was nothing in
5 his knowledge that prevented an owner or trainer from transferring ownership or training of a mule
6 during a suspension to another owner or trainer. (RT: pp. 17-18:21-25:1-3).

7
8 Mr. Swartzlander was asked if there was an offense that would justify a suspension for
9 a fourth of the year for the mule racing season, even if it severely reduced the stock of mules
10 available for racing. Mr. Swartzlander stated, "...yeah. It's performance-enhancing.... That's the
11 integrity of the sport..."(RT: pp. 18:4-12).

12
13 Mr. Swartzlander further stated that Appellant McPherson could transfer ownership of the
14 mules to someone else but it would be contingent on the approval of the stewards."
15 (RT: pp. 19:3-6).

16
17 Mr. Swartzlander then added, "Darrell McHargue, the Chief Steward in California, I
18 asked him that same question, "Could we transfer these mules to someone else?" Or, you know,
obviously we could sell them, but generally is just a transfer. And he said, "No." (RT: pp. 20: 1-
6).

Appellant Pulido was asked if he had anything to offer as far as evidence or testimony and
he answered, "no." (RT: pp. 20:13-15).

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1 Appellant McPherson reiterated that he was hoping that they could get the fine and
2 "...suspension reduced or changed around even if it meant a stiffer fine, or probation -- extended
3 probation, or whatever..." He further stated, "...and that -- so that we can get these mules
4 started, and everything, on a regular schedule and be able to fill the fields..." (RT: pp. 20:18-23).

5
6 Appellant McPherson was asked by this Hearing Officer the purpose of a fine. He stated, "for
7 punishment." (RT: pp. 21:20 -24). Appellant McPherson was also asked if the purpose of the fine
8 was to deter similar conduct. He responded, "yes." (RT: pp. 21-22:223-25:1).

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11 It should be noted that Appellant McPherson stated he had never been suspended by the
12 California Horse Racing Board (CHRB) (RT: pp. 22: 4-8).

13
14 Appellant McPherson also agreed that a suspension was meant to be a punishment and
15 deterrent. (RT: pp. 22:21 -25:1-3). Furthermore, Appellant McPherson agreed that if he was
16 suspended during a time the mules were not racing; it would not really be a deterrent or a
17 punishment. (RT: pp. 23:5-8).

18
19 Appellant McPherson stated that he does not make a cent off the mules and in fact loses
20 money. He stated he loses approximately \$60,000 – \$65,000 a year, and racing mules is a hobby
for him. (RT: pp. 23-24:25: 1-10).

21
22 Appellant McPherson was asked a rhetorical question by this Hearing Officer regarding
23 suspensions. Specifically, the hypothetical and rhetorical question was whether the NFL would
24 suspend (New England Patriots Quarterback) Tom Brady for some type of violation after the entire
25 football season, including the Super Bowl, had ended. Appellant McPherson responded that they
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1 would not. He then added, “because it wouldn’t be a punishment to him.”

2 (RT: pp. 24-25:18-25:1-7). Additionally, Appellant McPherson stated in the same line of
3 questioning, “but in football, they could bring in a backup quarterback.” (RT: pp. 25:5-7).

4
5 The sole argument propounded by both Appellants, that the best interests of racing would
6 be served by modifying their thirty (30) day suspension to a time when the mule racing season is
7 not running, lacks merit. No interest in racing would be served to reward such egregious conduct
8 by Appellants McPHERSON and PULIDO, by allowing them to negotiate with the Hearing
9 Officer and Board for a stiffer monetary fine but be allowed to race without a suspension during
10 the mule racing season. As Appellant McPHERSON admitted, the purpose of a fine and
11 suspension is to punish and deter such misconduct. Modifying the thirty (30) day suspension to a
12 time when there is no mule racing would only encourage others involved in the racing
13 sport/industry to intentionally violate the CHRB’s rules and regulations, and then arrogantly claim
14 that any such punishment imposed on them would not be in the best interest of racing and the
15 fans. The enacted California Horse Racing Rules, Regulations, and applicable statutes to the
16 racing industry/sport were purposely enacted to ensure that the utmost integrity was enforced at
17 all racing levels. To modify or negate the well-reasoned decision by the Board of Stewards in
18 their December 2, 2015 decision would subvert the very intent of the enacted California Horse
19 Racing Rules, Regulations, and applicable statutes.

20
21 Furthermore, Mr. Swartzlander’s testimony was such that although he wanted the Board
22 of Stewards decision to be reversed as it related to the thirty (30) days suspension because it
23 could financially impact his overall operations, he agreed that an offense that would justify a
24 suspension for a fourth of the year racing season, even if it severely reduced the stock of mules
25 available for racing, would be “...performance-enhancing.... That’s the integrity

1 of the sport...”(RT: pp. 18:4-12).

2
3 Additionally, Appellant’s argument that negating the thirty (30) days suspension during
4 the mule racing season would be in the best interests of racing, failed to present any credible and
5 admissible evidence that they tried to transfer ownership of the mules to other owners, absent an
6 inadmissible hearsay statement proffered by Mr. Swartzlander. Mr. Swartzlander’s testimony was
7 such that he attempted to blame the California Horse Racing Board when he stated, “by taking
8 these ten mules away from us, you have degraded the product.” (RT: pp. 13:17-22). Mr.
9 Swartzlander’s frustration with the CHRB is misplaced. But for the illegal conduct of Appellants
10 Pulido and McPherson, Mr. Swartzlander’s anxiety and angst of having a less than full stock of
11 mules for the mule racing season would be non-existent.
12

13
14 For all of the reasons set forth herein, it is not in the best interests of racing to modify or
15 negate the thirty (30) day suspension against both Appellants, nor modify or nullify the \$1,500.00
16 fine imposed on each of them.
17

18 **V. EXCLUDED HEARSAY EVIDENCE**

19
20 Appellant McPherson testified early in the hearing that CHRB Investigator Louis Quezada
21 told him that the charges were being dropped against him as a result of the Board of Stewards
22 hearing. First, Mr. Quezada was not subpoenaed to this hearing, nor was there any evidence
23 other than Appellant McPherson’s own self-serving hearsay statement about a statement that
24 Investigator Quezada allegedly made. Second, the statement is a hearsay statement offered
25 for the truth of the matter asserted, and is therefore inadmissible, based on the CHRB’s duty
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1 noted objection to the statement. Even if such a statement was made, it would have no impact on
2 the instant decision by this Hearing Officer.

3
4 Therefore, that statement has been excluded in the decision making process of this hearing
5 by this Hearing Officer.

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7
8 Mr. Swartzlander testified that Darrell McHargue, the Chief Steward in California, told him
9 that "we" could not transfer the mules to someone else. It should be noted that Mr. McHargue
10 was not subpoenaed for the hearing and the statement by Mr. Swartzlander was inadmissible
11 hearsay. The statement was offered for the truth of the matter asserted, and is therefore
12 inadmissible, based on the CHRB's duly noted objection to the statement. Even if such a
13 statement was made, it would have no impact on the instant decision by this Hearing Officer.

14
15 Therefore, that statement has been excluded in the decision making process of this hearing
16 by this Hearing Officer.

17
18 **CONCLUSION/PROPOSED DECISION**

19 The very purpose of this hearing was to contest the timing of the suspension,
20 because the suspension is due to commence on June 16, 2016 through July 15, 2016.
The California Mule Racing Season commences on June 16, 2016. This is the beginning of the
State Fair season in California. Any suspension time prior to that date would equate to a net zero
suspension time for both Appellants. This Hearing Officer agrees with the Board's position that
Appellants McPherson and Pulido committed serious violations of the California Horse Racing
26 Rules and Regulations, and as such, a thirty (30) day suspension and \$1,500.00 fine is warranted,
27 reasonable, and should serve as both a punishment and deterrent to them. Furthermore, such a
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1 suspension should be served during the California Mule Racing Season and at no other time.
2 Otherwise, such a suspension would be illusory and non-existent, serve no beneficial purpose
3 to horse racing, and make such a proposal desired by Appellant's, farcical.
4

5 Additionally, under California Business and Professions Code Section 19517 (2), it is
6 this Hearing Officer's opinion that no new evidence of a convincing nature was produced by the
7 Appellant. Additionally, pursuant to California Business and Professions Code Section 19517 (3),
8 it is this Hearing Officer's opinion that the best interest of racing and the state will not be better
9 served if the Stewards' decision is overturned.
10

11 The statement by Mr. Swartzlander best sums up the rationale for AFFIRMING the
12 Board of Stewards' prior decision and punishment to Appellants McPherson and Pulido,
13 "It's about the integrity of the sport." To alter or modify any punishment to accommodate
14 Appellant McPherson, Appellant Pulido, and others who engage in such serious violations, including,
15 but not limited to, the illegal administration of performance enhancing drugs to mules,
16 would seriously degrade the integrity of the sport.
17

18
19 Therefore, it is the decision of this Hearing Officer that the Board of Stewards rulings as
20 they pertain to Appellant McPherson and Appellant Pulido be AFFIRMED in their entirety.

21 Pursuant to California Business and Professions Code Section 19517 (1), it is this Hearing
22 Officer's opinion that the Steward's Ruling proposing a \$1,500.00 fine, as well as a suspension
23 for thirty (30) days for the period June 16, 2016 through July 15, 2016 pursuant to California
24 Horse Racing Board rule number 1900 (Grounds for Suspension or Revocation of License) for
25 violation of California Horse Racing Board rules number 1489 (j)
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1 (Grounds for Denial or Refusal of License), number 1840 (Veterinary Practices and Treatments
2 Restricted), number 1843 (c) (Medication Drugs and Other Substances) and number 1890 (a)(b)
3 (Possession of Contraband) on September 9, 2015, is reasonable, appropriate, and should be
4 upheld and AFFIRMED. The ruling also stipulated that during the term of the suspension,
5 all licenses and license privileges of Appellant Harold McPHERSON are suspended and pursuant to
6 California Horse Racing Board rule number 1528 (Jurisdiction of Stewards), Appellant McPherson
7 is denied access to all premises in this jurisdiction.
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9
10 DATED: May 6, 2016

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13 RICHARD P. MARGARITA, ESQ.
14 Hearing Officer
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