

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
**Appeal of the Board of Stewards Official
Ruling #42, Pacific Racing Association,
dated December 10, 2015**

Case No. SAC 16-0005

RAMON SOLIS PULIDO
CHRB License #295986
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-16-0005
5 APPEAL OF THE BOARD OF STEWARDS)
6 OFFICIAL RULING # 42, PACIFIC) Hearing Date: April 6, 2016
7 RACING ASSOCIATION, DATED) Time: 9:30 A.M.
8 DECEMBER 10, 2015)

9 vs.

10 RAMON SOLIS PULIDO
11 CHRB LICENSE #: 295986
12 Appellant.
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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.
23

24 The Appellant, Ramon Solis Pulido, was present and not represented. Appellant
25 PULIDO called Larry Swartzlander to testify on his behalf. Appellant also testified at the
26 hearing.
27

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1 The Co-Appellant, Harold McPherson, was present and not represented. Appellant called
2 Larry Swartzlander to testify on his behalf. Appellant McPHERSON also testified at the hearing.
3 Mr. Swartzlander is the Chief Operating Officer for the California Authority of Racing Fairs, and
4 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. 42, Pacific Racing Association, dated December 2, 2015. The
ruling fined Mr. Pulido, 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 Ramon S. Pulido are suspended and pursuant to California
4 Horse Racing Board rule number 1528 (Jurisdiction of Stewards), Mr. Pulido is denied access
5 to all premises in this jurisdiction.
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7
8 The Golden Gate Fields Board of Stewards, Pacific Racing Association, unanimously
9 issued the ruling.

10 On December 13, 2015, Appellant Pulido filed a timely appeal pursuant to Business and
11 Professions Code Section 19517 and CHRB Rule 1761.

12
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:

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

APPELLANT'S EXHIBITS:

25
26 None Submitted.
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28

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. 42, on December 2, 2015. The ruling fined the Appellant, Ramon Solis Pulido, \$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 Ramon S. Pulido are suspended and pursuant to California Horse Racing Board rule number 1528 (Jurisdiction of Stewards), Mr. Pulido 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 Harold 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.

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

XXII.

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

XXIII.

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

XXIV.

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

XXV.

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

XXVI.

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.

1 XXVIII.

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

4 XXIX.

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

6 XXX.

7 Helen Shelley presented testimony of having no knowledge of Appellant McPherson
8 giving the drug Detomidine to Appellant Pulido or that Appellant Pulido had needles and
9 syringes.
10

11 XXXI.

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

13 XXXII.

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

16 XXXIII.

17 Appellant McPherson has filed a timely appeal.

18 XXXIV.

Appellant Pulido has filed a timely appeal.

APPLICABLE LAWS AND REGULATIONS

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

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

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

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

11 (3) Who has made any material misrepresentation or false statement to the Board
12 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.

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

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

16 (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.

17 (7) Who has committed an act involving moral turpitude, or intemperate acts
18 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 or duty.

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

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

(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.

25 (b) When considering the denial, suspension or revocation of a license under
26 subparagraphs (a)(1), (a)(2), (a)(7), and (a)(8) of this section, pursuant to section
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1 481 of the Business and Professions Code, a crime or act shall be considered to be
2 substantially related to the qualifications, functions or duties of a person applying
3 for or holding a license under the Horse Racing Law, if to a substantial degree the
4 crime or act evidences a present or potential unfitness to perform the functions
5 authorized by his or license or in a manner consistent with the public health,
6 safety, or welfare.

7
8 California Horse Racing Board Rule number 1528 (Title 4, CCR 1528), which is
9 entitled, "Jurisdiction of Stewards to Suspend or Fine", states as follows:
10

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

21 California Horse Racing Board Rule number 1840 (Title 4, CCR 1840), which is
22 entitled, "Veterinary Practices and Treatments Restricted", states as follows:
23

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

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

It shall be the intent of these rules to protect the integrity of horse racing, to guard the
health of the horse, and to safeguard the interests of the public and the racing participants
through the prohibition or control of all drugs, medications and drug substances foreign

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1 to the horse. In this context:

- 2
- 3 (a) No horse participating in a race shall carry in its body any drug substance or
- 4 its metabolites or analogues, foreign to the horse except as hereinafter
- 5 expressly provided.
- 6 (b) No drug substance shall be administered to a horse which is entered to
- 7 compete in a race to be run in this State except for approved and authorized
- 8 drug substances as provided in these rules.
- 9 (c) No person other than a licensed veterinarian or animal health technician shall
- 10 have in his/her possession any drug substance which can be administered to a
- 11 horse, except such drug substance prescribed by a licensed veterinarian for a
- 12 specific existing condition of a horse and which is properly labelled.
- 13 (d) A finding by an official chemist that a test sample taken from a horse contains
- 14 a drug substance or its metabolites or analogues which has not been approved
- 15 by the Board, or a finding of more than one approved non-steroidal, anti-
- 16 inflammatory drug substance, or a finding of a drug substance in excess of the
- 17 limit established by the Board for its use shall be prima facie evidence that the
- 18 trainer and his/her agents responsible for the care of the horse has/have been
- 19 negligent in the care of the horse and is prima facie evidence that the drug
- 20 substance has been administered to the horse.

21 California Horse Racing Board Rule number 1890 (Title 4, CCR 1890), which is

22 entitled, "Possession of Contraband", states in part as follows:

23

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

1 possession at a facility under the jurisdiction of the Board any veterinary
2 treatment or any medicine, medication, or other substance recognized as a
3 medication, which has not been prescribed in accordance with Rule 1840 of
4 this division and labeled in accordance with Rule 1864 of this division.

5
6 California Horse Racing Board Rule number 1900 (Title 4, CCR 1900), which is
7 entitled, "Grounds for Suspension or Revocation of License", states as follows:
8

9 Any provision of any rule which is a ground for denial of a license is also a
10 ground for suspension or revocation of a license.

11
12 California Evidence Code Section 115, entitled, Burden of Proof, states that:

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

(a) The board, upon due consideration, may overrule any steward's decision if a
preponderance of the evidence indicates any of the following:

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

((

1 (b) However, any decision pertaining to the finish of a race, as used for purposes
2 of parimutuel fund distribution to winning ticketholders, may not be overruled.
3 Furthermore, any decision pertaining to the distribution of purses may be changed
4 only if a claim is made in writing to the board by one of the involved owners or
5 trainers, and a preponderance of the evidence clearly indicates to the board that
6 one or more of the grounds for protest, as outlined in regulations adopted by the
7 board, has been substantiated. The chairperson of the board may issue a stay of
8 execution pending appeal from a steward's decision if the facts justify the action.

DISCUSSION OF ISSUES

I. APPLICABLE BURDEN OF PROOF

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

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

25 ¹ Reference is made to Business and Professions Code Section 19517.

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2 **II. APPELLANT PULIDO HAS NEITHER CONTESTED NOR**
3 **REFUTED THE UNDERLYING CONDUCT RESULTING IN THE**
4 **CORRESPONDING SUSPENSION AND FINE**

5 During the Appellant's hearing, neither he nor his co-Appellant, Harold
6 McPherson, presented any evidence refuting the allegations of the underlying conduct
7 which resulted in the Board of Stewards issuing the corresponding suspension and fine
8 against both of them. They were both fined \$1,500.00 and suspended for thirty (30)
9 days for the period June 16, 2016 through July 15, 2016.

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

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

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

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

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

11
12
13 Appellant McPherson admitted that the drug (Dormosedan) has to be prescribed under the
14 auspices of a licensed veterinarian. Appellant McPherson also admitted that he failed to abide by
15 that regulation. (RT: pp. 16-17:23-25:8-10).

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

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

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

16
17 Neither Appellant presented any evidence that would suggest that the Board of
18 Stewards misinterpreted the applicable law as it pertained to their thirty (30) day
19 suspension and \$1,500.00 fine for both Appellants (McPHERSON and PULIDO).

20 Additionally, neither Appellant presented any evidence, let alone any new
21 evidence, that would suggest that the Board of Stewards had not been privy to during the
22 December 2, 2015 hearing, that would overcome their evidentiary burden for the instant
23 hearing.
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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 testified that it would be in the bests interests of racing if the suspension for both Appellants be imposed at a time when the mules are not racing, not the start of the Fair Season and Mule Racing season, which commences on June 16, 2016.

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

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

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

But for the fans on the fairs, the fairs are the backbone of racing for new people, the families. Families and their kids come to the fairs to see the mules. And what you are doing is, we only have a limited 36 mules. By taking these mules away from us, you have degraded the product. We try to have at least an eight-race

1 program. If we don't have an eight-race program, you don't have the mules, and
2 you have got the seventh race. It's a cost factor to the fair, the attendance,
3 beverage sales, et cetera.

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

9 The severity of it, there has to be a consequence if they did something wrong. Is
10 there some alternative probation, increased fine, other than taking these 30 days of
11 racing, which will degrade our product, you know, it will be a ripple-down effect
12 as far as impact financially (RT: pp.12-14)..."

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

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

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

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1 Mr. Swartzlander then added, "Darrell McHargue, the Chief Steward in California, I asked
2 him that same question, "Could we transfer these mules to someone else?" Or, you know,
3 obviously we could sell them, but generally is just a transfer. And he said, "No." (RT: pp. 20: 1-
4 6).

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

7
8 Appellant McPherson reiterated that he was hoping that they could get the fine and
9 "...suspension reduced or changed around even if it meant a stiffer fine, or probation -- extended
10 probation, or whatever..." He further stated, "...and that -- so that we can get these mules
11 started, and everything, on a regular schedule and be able to fill the fields..." (RT: pp. 20:18-23).

12
13 Appellant McPherson was asked by this Hearing Officer the purpose of a fine. He stated, "for
14 punishment." (RT: pp. 21:20 -24). Appellant McPherson was also asked if the purpose of the fine
15 was to deter similar conduct. He responded, "yes." (RT: pp. 21-22:223-25:1).

16
17 It should be noted that Appellant McPherson stated he had never been suspended by the
18 California Horse Racing Board (CHRB) (RT: pp. 22: 4-8).

19
20 Appellant McPherson also agreed that a suspension was meant to be a punishment and
21 deterrent. (RT: pp. 22:21 -25:1-3). Furthermore, Appellant McPherson agreed that if he was
22 suspended during a time the mules were not racing; it would not really be a deterrent or a
23 punishment. (RT: pp. 23:5-8).

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

4
5 Appellant McPherson was asked a rhetorical question by this Hearing Officer regarding
6 suspensions. Specifically, the hypothetical and rhetorical question was whether the NFL would
7 suspend (New England Patriots Quarterback) Tom Brady for some type of violation after the entire
8 football season, including the Super Bowl, had ended. Appellant McPherson responded that they
9 would not. He then added, “because it wouldn’t be a punishment to him.”
10 (RT: pp. 24-25:18-25:1-7). Additionally, Appellant McPherson stated in the same line of
11 questioning, “but in football, they could bring in a backup quarterback.” (RT: pp. 25:5-7).

12
13
14 The sole argument propounded by both Appellants, that the best interests of racing would
15 be served by modifying their thirty (30) day suspension to a time when the mule racing season is
16 not running lacks complete merit. No interest in racing would be served to reward such egregious
17 conduct by Appellants McPHERSON and PULIDO, by allowing them to negotiate with the
18 Hearing Officer and Board for a stiffer monetary fine but be allowed to race without a suspension
19 during the mule racing season. As Appellant McPHERSON admitted, the purpose of a fine and
20 suspension is to punish and deter such misconduct. Modifying the thirty (30) day suspension to a
21 time when there is no mule racing would only encourage others involved in the racing
22 sport/industry to intentionally violate the CHRB’s rules and regulations, and then arrogantly
23 claim that any such punishment imposed on them would not be in the best interest of racing and
24 the fans. The enacted California Horse Racing Rules, Regulations, and applicable statutes to the
25 racing industry/sport were purposely enacted to ensure that the utmost integrity was enforced at
26 all racing levels. To modify or negate the well-reasoned decision by the Board of Stewards in
27
28

1 their December 2, 2015 decision would subvert the very intent of the enacted California Horse
2 Racing Rules, Regulations, and applicable statutes.

3
4 Furthermore, Mr. Swartzlander's testimony was such that although he wanted the Board of
5 Stewards decision to be reversed as it related to the thirty (30) days suspension because it could
6 financially impact his overall operations, he agreed that an offense that would justify a suspension
7 for a fourth of the year racing season, even if it severely reduced the stock of mules available for
8 racing, would be "...performance-enhancing.... That's the integrity
9 of the sport..."(RT: pp. 18:4-12).

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

21
22 For all of the reasons set forth herein, it is not in the best interests of racing to modify or
23 negate the thirty (30) day suspension against both Appellants, nor modify or nullify the \$1,500.00
24 fine imposed on each of them.

1 **V. EXCLUDED HEARSAY EVIDENCE**

2
3 Appellant McPherson testified early in the hearing that CHRB Investigator Louis Quezada
4 told him that the charges were being dropped against him as a result of the Board of Stewards
5 hearing. First, Mr. Quezada was not subpoenaed to this hearing, nor was there any evidence
6 other than Appellant McPherson's own self-serving hearsay statement about a statement that
7 Investigator Quezada allegedly made. Second, the statement is a hearsay statement offered
8 for the truth of the matter asserted, and is therefore inadmissible, based on the CHRB's duly noted
9 objection to the statement. Even if such a statement was made, it would have no impact on the
10 instant decision by this Hearing Officer.
11

12
13 Therefore, that statement has been excluded in the decision making process of this hearing
14 by this Hearing Officer.
15

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

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

CONCLUSION/PROPOSED DECISION

The very purpose of this hearing was to contest the timing of the suspension, 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 Rules and Regulations, and as such, a thirty (30) day suspension and \$1,500.00 fine is warranted, reasonable, and should serve as both a punishment and deterrent to them. Furthermore, such a suspension should be served during the California Mule Racing Season and at no other time. Otherwise, such a suspension would be illusory and non-existent, serve no beneficial purpose to horse racing, and make such a proposal desired by Appellant's, farcical.

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


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

Therefore, it is the decision of this Hearing Officer that the Board of Stewards rulings as

1 they pertain to Appellant McPherson and Appellant Pulido be AFFIRMED in their entirety.

2
3 Pursuant to California Business and Professions Code Section 19517 (1), it is this Hearing
4 Officer's opinion that the Steward's Ruling proposing a \$1,500.00 fine, as well as a suspension
5 for thirty (30) days for the period June 16, 2016 through July 15, 2016 pursuant to California
6 Horse Racing Board rule number 1900 (Grounds for Suspension or Revocation of License) for
7 violation of California Horse Racing Board rules number 1489 (j) (Grounds for Denial or Refusal of
8 License), number 1840 (Veterinary Practices and Treatments Restricted), number 1843 (c)
9 (Medication Drugs and Other Substances) and number 1890 (a)(b) (Possession of Contraband) on
10 September 9, 2015, is reasonable, appropriate, and should be upheld and AFFIRMED. The ruling
11 also stipulated that during the term of the suspension, all licenses and license privileges of Appellant
12 Ramon S. Pulido are suspended and pursuant to California Horse Racing Board rule number 1528
13 (Jurisdiction of Stewards), Appellant Pulido is denied access to all premises in this jurisdiction.
14

15
16 DATED: May 5, 2016

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19 RICHARD P. MARGARITA, ESQ.
Hearing Officer

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