BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: WHITE HORSE TAVERN LLC d/b/a WHITE HORSE 107 YELM AVE E YELM, WA 98597-6602 LICENSEE LICENSE NO. 357002 AVN NO. 1R2309A	LCB NO. 24,504 OAH NO. 2013-LCB-0009 FINAL ORDER OF THE BOARD

The above-captioned matter coming on regularly before the Board, and it appearing that:

1. The Liquor Control Board issued a complaint dated January 30, 2013, alleging that on November 4, 2012 the above-named Licensee, or an employee, agent or manager thereof, failed to conduct the licensed premises in compliance with one or more sections of RCW Titles 9 or 9A, contrary to WAC 314-11-015(2); that on or about November 4, 2012, the above-named Licensee, or an employee, agent or manager thereof, was disorderly or apparently intoxicated on the licensed premises, contrary to RCW 66.44 and/or WAC 314-11-015(3)(a); that on or about November 4, 2012 the above-named Licensee, or an employee, agent or manager thereof, engaged in conduct which presented a threat to public safety on the licensed premises contrary to RCW 66.44 and/or WAC 314-11-015(3)(c).
2. The Licensee made a timely request for a hearing.

3. An administrative hearing was held on September 10, 2013 before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.
4. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Marisa Broggel and Kyle Phillips, owner-member, represented the Licensee.
5. On December 6, 2013, Administrative Law Judge Terry A. Schuh entered his Findings of Fact, Conclusions of Law and Initial Order in this matter, which affirmed Administrative Violation Notice 1R2309A.
6. The Licensee untimely filed a petition for review.
7. AAG Chad Standifer filed the Enforcement Division's reply to Licensee's petition.
8. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board.

IT IS HEREBY FURTHER ORDERED that the liquor license privileges granted to White Horse Tavern LLC d/b/a White Horse, License No. 357002, are hereby suspended for a term of five (5) days. In lieu of a license suspension, the Licensee may pay a monetary penalty in the amount of five-hundred dollars ($500) due within 30 days of this order. If timely payment is not received, suspension will take place from 11:00 a.m. on Thursday, March 20, 2014 until 11:00 a.m. on Tuesday, March 25, 2014. Failure to comply with the terms of this order will result in further disciplinary action.

Payment in reference to this order should be sent to:

Washington State Liquor Control Board
Financial Division
PO Box 43085
Olympia, WA 98504-3085

DATED at Olympia, Washington this 28th day of January, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Ruthann Kurose

Chair

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An

order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

Washington State
Liquor Control Board

January 29, 2014

Kyle Phillips, Owner/Member
White Horse Tavern LLC
d/b/a White Horse
PO Box 876
Yelm, WA 98597-0876

Chad Standifer, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: ***FINAL ORDER OF THE BOARD***
LICENSEE: White Horse Tavern LLC
TRADE NAME: White Horse
LOCATION: 107 Yelm Ave E, Yelm, WA 98597
LICENSE NO. 357002
LCB HEARING NO. 24,504
OAH NO. 2013-LCB-0009
AVN NO. 1R2309A
UBI: 602 994 189 001 0001

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter.

The applicable monetary penalty is due by Friday, February 28, 2014. If payment is not received timely, then suspension will take place during the dates specified in the order. If you have any questions, please contact me at (360) 664–1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)
cc: Tacoma and Olympia Enforcement and Education Divisions, WSLCB
Jamie Marshall, WSLCB Enforcement

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: WHITE HORSE TAVERN LLC d/b/a WHITE HORSE 107 YELM AVE E YELM, WA 98597-6602 LICENSE LICENSE NO. 357002 AVN NO. 1R2309A	LCB NO. 24,504 OAH NO. 2013-LCB-0009 DECLARATION OF SERVICE BY MAIL

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for applicants and licensees, by campus mail for state offices, on the date below to:

KYLE PHILLIPS, OWNER/MEMBER WHITE HORSE TAVERN LLC d/b/a WHITE HORSE PO BOX 876 YELM, WA 98597-0876	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION CHAD STANDIFER, ASSISTANT ATTORNEY GENERAL
KYLE PHILLIPS, OWNER/MEMBER WHITE HORSE TAVERN LLC d/b/a WHITE HORSE 107 YELM AVE E YELM, WA 98597-6602	

DATED this 29th day of January, 2014, at Olympia, Washington.

Kevin McCarroll, Adjudicative Proceedings Coordinator

Washington State Liquor Control Board
3000 Pacific Avenue SE
PO Box 43076
Olympia, WA 98504-3076
(360) 664-1602

RECEIVED
JAN 16 2013
Liquor Control Board
Board Administration

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE LIQUOR CONTROL BOARD

In The Matter Of: **WHITE HORSE TAVERN, LLC** **dba WHITE HORSE,** **107 Yelm Avenue East** **Yelm, WA 98663,** **Licensee.** **License No. 357002** **AVN No. 1R2309A**	**OAH Docket No. 2013-LCB-0009** **LCB No. 24,504** **FINDINGS OF FACT,** **CONCLUSIONS OF LAW,** **AND** **INITIAL ORDER**

I. ISSUES PRESENTED

1.1 Whether, on the night of November 3-4, 2012, Kyle Phillips, owner-member of White Horse Tavern, LLC dba White Horse, violated WAC 314-11-015(2), WAC 314-11-015(3)(a), and/or WAC 314-11-015(3)(c).

1.2 If Mr. Phillips violated one or more of the provisions recited above, whether the Liquor Control Board may impose on White Horse Tavern, LLC dba White Horse alternatively a five-day suspension or a monetary penalty of $500.00.

II. ORDER SUMMARY

2.1 On the night of November 3-4, 2012, Kyle Phillips, owner-member of White Horse Tavern, LLC dba White Horse, violated WAC 314-11-015(3)(a) and WAC 314-11-015(3)(c) but did not violate WAC 314-11-015(2).

2.2 Accordingly, the Liquor Control Board may impose on White Horse Tavern, LLC dba White Horse alternatively a five-day suspension or a monetary penalty of $500.00.

III. HEARING

3.1 **Hearing Date:** September 10, 2013

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 **Licensee:** White Horse Tavern, LLC dba White Horse

3.3.1 **Representative:** Kyle Phillips, owner-member

3.3.2 **Witness:** Kerrie Phillips, owner-member

3.4 **Agency:** Liquor Control Board

3.4.1 **Representative:** Marisa E. Broggel, Assistant Attorney General

3.4.2 **Witnesses:**

3.4.2.1 Megan Johnson, former employee, White Horse

3.4.2.2 Officer Devon Taylor, Yelm Police Department

3.4.2.3 Officer Kandra Tinnerset, Liquor Control Board

3.5 **Exhibits:** Exhibits 1 through 6C were admitted into the record.

3.6 **Close of the record:** At the request of the parties, the record remained open until October 10, 2013, for the parties to each submit proposed Findings of Fact and Conclusions of Law, if they chose to do so. The Liquor Control Board did not exercise its privilege to file such a document. The Licensee did so. The record closed on October 10, 2013.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On November 16, 2012, S. Eikum of the Liquor Control Board ("the Board") served AVN No. 1R2309A, dated November 14, 2012, on Kyle Phillips, owner-member of White Horse Tavern, LLC dba White Horse ("the White Horse"). Ex. 1.

4.2 On December 6, 2012, the Board received the White Horse's request for an Administrative Hearing, signed by Kyle Phillips on November 30, 2012. Ex. 2.

4.3 On January 30, 2013, the Board issued Complaint No. 24,504, regarding the conduct alleged AVN No. 1R2309A.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

4.4 There is no evidence in the record that White Horse had any similar violations within the last two years preceding November 4, 2012.

Kyle Phillips' conduct on November 3-4, 2012

4.5 Kyle Phillips worked the day shift at the White Horse on November 3, 2012. Testimony of Johnson.

4.6 Mr. Phillips returned that evening to determine if the White Horse was sufficiently staffed, given that one of the two bartenders scheduled was absent. Testimony of Kyle Phillips.

4.7 There were four employees working that evening: Megan Johnson, bartender; Tre Beachum, back-door security; Marsion Green, front-door security; and Brian "Ginger" MacWatters, disc-jockey. Testimony of Johnson.

4.8 While Mr. Phillips was present, he consumed a beer and a shot. Testimony of Johnson; Testimony of Kyle Phillips; Ex. 6A, p. 1.

4.9 The parties dispute whether Mr. Phillips was intoxicated that night.

Approximately 30 minutes after serving Mr. Phillips a shot and a beer, Ms. Johnson observed that Mr. Phillips was louder than normal, had a really flushed face, was slowly blinking his eyes, had slurred speech, and was overly friendly with patrons. Testimony of Johnson. Accordingly, Ms. Johnson believed that Mr. Phillips was intoxicated and decided that she would not serve him any more intoxicants that night. Testimony of Johnson.

Officer Devon Taylor, Yelm Police Department, was dispatched to the White Horse on November 4, 2012. Testimony of Taylor. Officer Taylor observed that Mr. Phillips smelled of intoxicants. Testimony of Taylor.

Kerrie and Kyle Phillips "have been together" for approximately 24 years. Testimony of Kerrie Phillips. Over the years, Ms. Phillips has seen Mr. Phillips intoxicated a few times. Testimony of Kerrie Phillips. Ms. Phillips has never seen Mr. Phillips exhibit violence when intoxicated. Testimony of Kerrie Phillips. He did not seem intoxicated on November 3-4, 2012. Testimony of Kerrie Phillips.

Kyle Phillips had no alcohol for several hours other than the shot and a beer. Testimony of Kyle Phillips.

The record contains no evidence that Mr. Phillips consumed more than a shot

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

and a beer. Officer Taylor observed an odor of intoxicants, which confirms consumption but does not of itself establish intoxication. Ms. Johnson observed several indicia of intoxication. However, Ms. Phillips did not. Moreover, Officer Taylor did not mention in his report that Mr. Phillips appeared to be intoxicated. Accordingly, I find by a preponderance of the evidence that Mr. Phillips was not "apparently intoxicated" on November 3-4, 2012.

4.10 Mr. Phillips is a sociable fellow, increasingly so after consuming intoxicants. Testimony of Johnson.

4.11 One of the patrons accused Mr. Phillips of trying to kiss her in the parking lot and reported that allegation to Tre Beachum. Testimony of Johnson; Testimony of Kerrie Phillips. Mr. Beachum reported it to Ms. Johnson. Testimony of Johnson. Ms. Johnson asked Mr. MacWatters to call Kerrie Phillips, Mr. Phillips' spouse, to come and get Mr. Phillips. Testimony of Johnson; Testimony of Kerrie Phillips.

4.12 Ms. Johnson told Ms. Phillips that Mr. Phillips allegedly had kissed one of the female patrons. Testimony of Johnson; Testimony of Kerrie Phillips; Ex. 6A, p. 1.

4.13 Ms. Phillips told Mr. Phillips about the allegation. Testimony of Kerrie Phillips. Mr. Phillips became angry. Testimony of Kyle Phillips. Accordingly, Mr. and Ms. Phillips returned to the White Horse shortly thereafter, purposefully arriving after the bar had closed, to confront Ms. Johnson when no patrons were present. Testimony of Kerrie Phillips; Testimony of Kyle Phillips. Mr. and Ms. Phillips were going to discharge Ms. Johnson. Testimony of Kerrie Phillips.

4.14 By this time, either shortly before or shortly after 2:00 a.m. on November 4, 2012, no patrons remained on the White Horse premises, and the staff had begun closing chores. Testimony of Taylor; Testimony of Kerrie Phillips. The record does not reflect whether the front door was locked. However, the back door was apparently not locked because the police entered through the back door when they responded shortly after 2:00 a.m. Testimony of Kyle Phillips; Ex. 6A, p. 1.

4.15 Mr. Phillips told the other employees to leave because he wanted to talk to Ms. Johnson. Testimony of Johnson; Ex. 5, p.1., Ex. 6A, p. 1. Mr. Phillips was very angry. Testimony of Kerrie Phillips; Testimony of Kyle Phillips; Ex. 6A, p. 1; Ex. 6B. He was yelling and swearing, and he was intimidating. Testimony of Johnson; Testimony of Kerrie Phillips; Testimony of Kyle Phillips. Employee Brian MacWatters approached Mr. Phillips and offered to talk with him until he had calmed down. Testimony of Johnson; Ex. 5, p. 1; Ex. 6A, p. 1; Ex. 6B. Mr. Phillips declined the offer, renewed his instruction for everyone but Ms. Johnson

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

to leave, and pushed Mr. MacWatters toward the door. Testimony of Johnson; Ex. 6A, p. 1; Ex. 6B; Ex. 6C. Mr. Phillips told Mr. MacWatters repeatedly to leave and when he did not do so, Mr. Phillips pushed Mr. MacWatters toward the door. Testimony of Kyle Phillips. Mr. Phillips also told Mr. Beachum and Mr. Green to leave. Testimony of Johnson. Mr. Beachum left. Testimony of Johnson. Mr. Phillips ordered Ms. Johnson to stay. Testimony of Johnson. Ms. Johnson was afraid. Testimony of Johnson; Ex. 6A, p. 1. Ms. Phillips was not afraid. Testimony of Kerrie Phillips. Ms. Johnson called 911 on her cell phone then hung up because she was afraid Mr. Phillips would observe her. Testimony of Johnson; Ex. 6A, p. 1. When the 911 dispatcher called back, Ms. Johnson asked for police to respond to White Horse. Testimony of Johnson; Ex. 6A, p. 1. Shortly thereafter, Ms. Johnson called Officer Devon Taylor, Yelm Police Department, directly, in an effort to assure a prompt response. Testimony of Johnson; Ex. 6A, p. 1. Officer Taylor was already enroute. Testimony of Taylor. He and Officer Gallagher arrived shortly after the alleged assault described below occurred. Testimony of Taylor; Testimony of Johnson.

4.16 In the meantime, prior to the 911 call, Ms. Phillips attempted to intervene and talk to Mr. Phillips to calm him down. Testimony of Johnson. They argued. Testimony of Johnson.

4.17 The parties disagree about what happened next.

Ms. Johnson saw Ms. Phillips try to calm Mr. Phillips down. Testimony of Johnson. Mr. Phillips told Ms. Phillips to shut up and pushed her so hard that she would have fallen if she had not caught herself with both hands on a table. Testimony of Johnson; Ex. 6a, p. 1.

Brian MacWatters reported that Mr. Phillips pushed Ms. Phillips towards the door but she did not fall. Ex. 6B.

Marsion Green reported that Mr. Phillips pushed Ms. Phillips. Ex. 6C.

Officer Taylor reported that Ms. Johnson, Mr. MacWatters, and Mr. Green "stated that Kyle shoved Kerry [sic] backwards with both hands into her chest/shoulders, so hard that she fell backwards and had to catch herself on a table to keep from falling down." Ex. 5, p. 1.

Both Mr. Phillips and Ms. Phillips told the officers that nothing physical occurred. Ex. 3, p. 3; Ex. 5, p. 1; Testimony of Kerrie Phillips. Officer Taylor observed no injuries to Ms. Phillips. Ex. 5, p. 1.

Kerrie Phillips testified that she tried to calm Mr. Phillips down and Mr. Phillips shoved her, causing her to back up into a table, and she might have stumbled

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

but she would not have fallen. Testimony of Kerrie Phillips. The episode was the result of an argument about what Mr. Beachum said and what Mr. and Ms. Phillips were going to do about it. Testimony of Kerrie Phillips. Mr. Phillips did not intend to hurt her. Testimony of Kerrie Phillips.

Kyle Phillips testified that Kerrie Phillips backed away from the argument. Testimony of Kyle Phillips. He did not put hands on her but they had contact. Testimony of Kyle Phillips.

Shortly thereafter, Officers Taylor and Gallagher arrived and investigated. After interviewing those present, Officer Taylor arrested Mr. Phillips for Assault 4th DV. Testimony of Taylor; Ex. 4, p. 1; Ex. 5, p. 1. Ms. Phillips did not seek to press charges. Testimony of Kerrie Phillips. Mr. Phillips paid a court fine and was ordered to have no hostile contact with Kerrie Phillips. Testimony of Kyle Phillips.

In view of the foregoing, I find as follows:

Mr. Phillips and Ms. Phillips describe the incident less harshly than do the other people present. Nevertheless, it is undisputed that Mr. Phillips had unwarranted contact with Ms. Phillips when he was angry. Moreover, only Mr. Phillips declined to call the contact a push or shove. Further, at the least, Mr. Phillips pushed Ms. Phillips sufficiently hard to cause her to back up and stumble. Finally, Officer Taylor investigated the incident and arrested Mr. Phillips for Assault 4th DV.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under WAC 314-29-010(1)(c); chapter 34.05 RCW, and chapter 10-08 WAC.

Mr. Phillips violated his responsibilities as a liquor licensee

5.2 In its complaint, the Board asserted that Mr. Phillips violated WAC 314-11-015(2), WAC 314-11-015(3)(a), and WAC 314-11-015(3)(c).

5.3 Licensees must conduct the licensed premises in compliance with "Titles 9 and 9A RCW, the criminal code laws". WAC 314-11-015(2).

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

5.4 Here, Mr. Phillips was arrested and apparently criminally charged but the outcome is less clear. Mr. Phillips paid a fine. But the record does not clearly reveal the legal result of the charge. Accordingly, I hold that the record does not demonstrate that Mr. Phillips conducted the White Horse premises other than in compliance with criminal law. Therefore, the licensee did not violate WAC 314-11-015(2).

5.5 "Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not be disorderly or apparently intoxicated on the licensed premises." WAC 314-11-015(3)(a).

5.6 "Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not engage in or allow behavior that provokes conduct which presents a threat to public safety." WAC 314-11-015(3)(c).

5.7 As an initial matter, I observe that the primary underlying conduct occurred on the White Horse premises but after the White Horse was apparently closed and certainly after all patrons had left. However, the authority referenced above hold the licensee liable "at all times", as opposed, for example, to "at all times the premises are open to the public". Here, "at all times" is unequivocal. Mr. Phillips, as owner-member of the licensed entity, is responsible for conduct on the premises "at all times". Therefore, it is of no consequence that the White Horse was apparently, if not actually, closed when Mr. Phillips behaved as discussed above.

5.8 Next I view the conduct with three different elements in mind: Was Mr. Phillips apparently intoxicated, was he disorderly, and/or was he a threat to public safety?

5.9 I found above that Mr. Phillips was not apparently intoxicated. So I consider whether Mr. Phillips was disorderly and/or a threat to public safety.

5.10 The Board did not define "disorderly" for the purposes of these regulations. Nor have I found analogous case law that defines the term. However, in a setting dissimilar to the instant matter, Division II of the Washington Court of Appeals concluded a discussion of the meaning of "disorderly" with the following: "Finally, in an attempt to synthesize expressions used in prior opinions into a meaningful whole, it was authoritatively determined that the term 'disorderly' connotes 'overt misconduct contrary to the rules of good order and behavior, which is violative of the public peace.'" *Corral, Inc. v. Washington State Liquor Control Bd.*, 17 Wn.App. 753, 757, 566 P.2d 214 (Div.

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

2, 1977)(quoting *State v. Maloney*, 78 Wn.2d 922, 925, 481 P.2d 1, 3 (1971).

5.11 Given the above-referenced authority, I hold that Mr. Phillips shoving his wife in the manner and circumstances in which he did, to the degree that a law enforcement officer determined he had probable cause to arrest Mr. Phillips for Assault DV, coupled with Mr. Phillips' demeanor toward and treatment of his employees, and especially Ms. Johnson, causing both Ms. Johnson and Mr. MacWatters to fear for the safety of others, constituted Mr. Phillips conducting himself in manner contrary to the rules of good order and behavior, and in a manner that violated the public peace. Thus, I hold that Mr. Phillips was disorderly as contemplated by WAC 314-11-015(3)(a) and a threat to public safety as contemplated by WAC 314-11-015(3)(c).

5.12 Accordingly, I hold that Mr. Phillips, as an owner-member of the White Horse and licensee, violated two provisions of WAC 314-11-15.

5.13 Therefore, AVN NO. 1R2309A, dated November 14, 2012, and Complaint No. 24,504, dated January 30, 2013, should be affirmed.

The Board may discipline the White Horse

5.14 Penalties for violating WAC 314-11-015 are addressed in WAC 314-29-015 through WAC 314-29-035.

5.15 A review of WAC 314-29-015 through WAC 314-29-035 demonstrates that Mr. Phillips' violation belongs in Group 1, subject to WAC 314-29-020, which provides for a first violation a 5-day suspension or a $500.00 penalty. The record herein indicates that this is a first violation for the licensee. The monetary penalty option is at the discretion of the Board. WAC 314-29-020; WAC 314-29-015(4).

5.16 Accordingly, the Board may, at its discretion, suspend White Horse's license for 5 days or require White Horse to pay a $500.00 monetary penalty.

INITIAL ORDER

IT IS HEREBY ORDERED THAT:

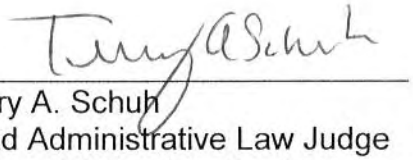
AVN No. 1R2309A, dated November 14, 2012, and Complaint No. 24,504, dated January 30, 2013, are each **AFFIRMED**.

White Horse Tavern, LLC dba White Horse must either submit to a five-day suspension of its Liquor License NO. 357002 or pay a monetary penalty of

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

$500.00, at the discretion of the Liquor Control Board.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Lead Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS – PLEASE READ CAREFULLY

Petition for Review of Initial Order

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the Liquor Control Board within twenty (20) days of the date of service of the initial order. RCW 34.05.464; WAC 10-08-211; WAC 314-42-095.

The petition for review must:

(i) Specify the portions of the initial order to which exception is taken;
(ii) Refer to the evidence of record which is relied upon to support the petition; and
(iii) Be filed with the liquor control board within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. **Within ten (10) days after service of the petition for review, any of the other parties may file a response to that petition with the Liquor Control Board.** WAC 314-42-095(2)(a) and (b). Copies of the reply must be mailed to the all other parties and their representatives at the time the reply is filed.

Address for filing a petition for review with the board:

Washington State Liquor Control Board
Attention: Kevin McCarroll
3000 Pacific Avenue, PO Box 43076
Olympia, Washington 98504-3076.

Final Order and Additional Appeal Rights: The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, stating the specific grounds upon which relief is granted. RCW 34.05.470; WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).

CERTIFICATION OF MAILING IS ATTACHED

Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Tel: (253) 476-6888 • Fax: (253) 593-2200

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-LCB-0009

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Kyle Phillips Owner/Member White Horse Tavern LLC dba White Horse 107 E Yelm Ave PO Box 876 Yelm, WA 98597-0876 ***Appellant***	☒ First Class US mail, postage prepaid ☐ Certified mail, return receipt ☐ Campus Mail ☐ Facsimile ☐ First Class, postage prepaid, Certified mail, return receipt
Marisa E. Broggel Assistant Attorney General Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504-0100 **Fax:** (360) 664-0229 ***Agency Representative***	☒ First Class US mail, postage prepaid ☐ Certified mail, return receipt ☐ Campus Mail ☐ Facsimile ☐ First Class, postage prepaid, Certified mail, return receipt
Kevin McCarroll Adjudicative Proceedings Coordinator Liquor Control Board 3000 Pacific Ave SE PO Box 43076 Olympia, WA 98504-3076 **Fax:** (360) 586-3190 ***Department Representative***	☒ First Class US mail, postage prepaid ☐ Certified mail, return receipt ☐ Campus Mail ☐ Facsimile ☐ First Class, postage prepaid, Certified mail, return receipt

Date: Friday, December 06, 2013

OFFICE OF ADMINISTRATIVE HEARINGS

Audrey C. Chambers
Legal Secretary

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
949 Market Street, Suite 500 • Tacoma, Washington 98402
253-476-6888 • 253-593-2200 fax • www.oah.wa.gov

RECEIVED
DEC 27 2013
Liquor Control Board
Board Administration

postmarked 12/26
km

December 16th, 2013

Judge Terry A. Schuh
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

RE: OAH Docket No. 2013-LCB-0009
LCB No. 24,504
Findings of Fact, Conclusions of Law, and Initial Order

Dear Judge Schuh,

We received your Initial Order, and respectfully request review of the directive given in the Initial Order. The initial Order on pages 8 and 9 states that "White Horse Tavern, LLC dba White Horse must either submit to a five-day suspension of its Liquor License NO. 357002 or pay a monetary penalty of $500.00, at the discretion of the Liquor Control Board." The initial AVN issued by the Liquor Control Board leaves this option of license suspension or fine up to the license holder, White Horse, on page 1 of 3 of the AVN. This option has always been left to the licensee in the past, and we ask that the licensee be able to choose a fine instead of suspension in the matter.

Thank you for your time and consideration,

Kyle Phillips
White Horse Tavern LLC
PO Box 876
Yelm, WA 98597

Cc: Marisa E. Broggel, Assistant Attorney General
Kevin McCarroll, Adjudicative Proceedings Coordinator, LCB

RECEIVED
DEC 3 1 2013
Liquor Control Board
Board Administration

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF: WHITE HORSE TAVERN LLC d/b/a WHITE HORSE 107 YELM AVENUE EAST YELM, WA 98597-0876 LICENSEE LICENSE NO. 357002 AVN NO. 1R2309A	OAH NO. 2013-LCB-0009 LCB NO. 24,504 ENFORCEMENT DIVISION'S REPLY TO LICENSEE'S PETITION FOR REVIEW

The Enforcement and Education Division (Enforcement) of the Washington State Liquor Control Board (Board), by and through its attorneys, ROBERT W. FERGUSON, Attorney General, and CHAD C. STANDIFER, Assistant Attorney General, hereby responds to White Horse Tavern LLC d/b/a White Horse's (Licensee) Petition for Review (Petition). As the Petition was not timely filed and does not contain a basis to disturb the findings of fact and conclusions of law contained in the ALJ's order, the ALJ's order should be affirmed by the Board.

I. PROCEDURAL HISTORY

On November 16, 2012, Enforcement served the above-identified Licensee with an Administrative Violation Notice (AVN) alleging that on or around November 4, 2012, the Licensee or an employee thereof engaged in criminal and/or disorderly conduct on the

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

premises. The AVN reflects a penalty of five hundred dollars ($500) or a five (5)-day suspension of the Licensee's liquor license, which is the standard penalty for a first violation of this kind within a two (2)-year penalty period. On or around January 30, 2013, the Liquor Control Board issued an administrative complaint based on the above-referenced AVN. The Complaint charged the Licensee as follows:

> (1) That on or about November 4, 2012, the above-named Licensee, or an employee, agent, or manager thereof, failed to conduct the licensed premises in compliance with one or more sections of RCW Titles 9 or 9A, contrary to WAC 314-11-015(2).
> (2) That on or about November 4, 2012, the above-named Licensee, or an employee, agent, or manager thereof, was disorderly or apparently intoxicated on the licensed premises, contrary to RCW 66.44 and/or WAC 314-11-015(3)(a).
> (3) That on or about November 4, 2012, the above-named Licensee, or an employee, agent, or manager thereof, engaged in conduct which presented a threat to public safety on the licensed premises, contrary to RCW 66.44 and/or WAC 314-11-015(3)(c).

See Complaint.

A full hearing on the merits was held by Administrative Law Judge (ALJ) Terry A. Schuh in Tumwater, Washington, on September 10, 2013. ALJ Schuh entered his Findings of Fact, Conclusions of Law, and Initial Order (Initial Order) on December 6, 2013. The ALJ sustained the Board's complaint with respect to the violations of WAC 314-11-015(3)(a) and WAC 314-11-015(3)(c), while finding no violation of WAC 314-11-015(2) occurred. The Initial Order advises that the Board may impose a penalty of five (5) day suspension or five hundred dollars ($500.00) monetary penalty in lieu of the suspension. The Licensee filed its Petition for Review of the ALJ's Initial Order on December 27, 2013.

II. LEGAL AUTHORITY AND ARGUMENT

A. The Petition For Review Was Not Timely Filed

The Licensee's petition for review was not timely filed, and therefore should not be considered by the Board. A licensee may file a petition for review of an initial order with the

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

Board within twenty days of the date of service of the initial order. WAC 10-08-211; WAC 314-42-095(2)(a). The Initial Order in this matter was served as of the date of mailing, December 6, 2013. RCW 34.05.010(19). Consequently, the Licensee was required to file a petition for review no later than December 26, 2013. The Licensee's Petition was not received by the Liquor Control Board until December 27, 2013, and was therefore one day late. The Board may therefore proceed to enter a Final Order in the matter without considering the untimely Petition.

B. It Is Within The Discretion Of The Board To Levy A Suspension Or A Monetary Penalty Based On The Licensee's Violations

Whether or not the Board considers the Petition, the Board should affirm the Initial Order and exercise its discretion to levy the appropriate penalty. The Licensee argues it should have the option of choosing a monetary penalty in lieu of a suspension. *See* Petition. The Licensee is mistaken, as there is no authority requiring the Board to consider a licensee's preferred penalty.[1] WAC 314-29-020 provides that the Board "may" offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in 314-29-015(4).[2] Thus, the Board may, at its discretion, suspend the Licensee's license for 5 days *or* require the Licensee to pay a $500.00 monetary penalty. At this stage of the proceeding, the decision regarding the appropriately penalty in this matter is entirely within the discretion of the Board. WAC 314-29-020.

III. CONCLUSION

For the reasons set forth above, Enforcement respectfully requests that the Board enter a Final Order affirming the findings of fact and conclusions of law set forth in the Initial Order,

///

[1] The Board may also offer a monetary option in lieu of suspension during a *settlement conference* prior to hearing, per WAC 314-29-015.

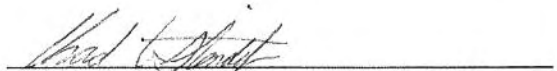
[2] No mitigating circumstances were found in the Initial Order.

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

and levying either a five-day suspension or a monetary penalty of $500.00 based on the Licensee's violation of WAC 314-11-015(3)(a) and WAC 314-11-015(3)(c).

DATED this 31st day of December, 2013.

ROBERT W. FERGUSON
Attorney General



CHAD C. STANDIFER, WSBA #29724
Assistant Attorney General
PO Box 40100
Olympia, WA 98504-0100
(360) 586-3650

PROOF OF SERVICE

I certify that I served a true and correct copy of this document on all parties or their counsel of record on the date below by placing same in the U.S. mail via state Consolidated Mail Service with proper postage affixed to:

Kyle Phillips
White Horse Tavern LLC
d/b/a White Horse
PO Box 876
Yelm, WA 98597-0876

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 31 day of December, 2013, at Olympia, Washington.

HANG NGUYEN-LE
Legal Assistant

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

RECEIVED
JAN 08 2013
Liquor Control Board
Board Administration

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
949 Market Street, Suite 500
Tacoma, WA 98402
TEL (253) 476-6888
FAX (253) 593-2200

January 3, 2014

Kyle Phillips
Owner/Member
White Horse Tavern LLC
107 E. Yelm Ave.
PO Box 876
Yelm, WA 98597-0876

Marisa E. Broggel
Assistant Attorney General
Office of the Attorney General
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504-0100

Re: In re: White Horse Tavern LLC dba White Horse
OAH Dkt. No. 2013-LCB-0009
LCB No. 24,504

Dear Parties:

On December 27, 2013, I received a letter dated December 16, 2013, from Mr. Phillips requesting review of a provision in the Initial Order I issued in this matter. That provision was that White Horse Tavern LLC must submit to a five-day suspension of its liquor license or pay a monetary penalty of $500 – at the discretion of the Liquor Control Board. Mr. Phillips wrote that the discretion should be the licensee's.

Effectively, Mr. Phillips requested that I reconsider my order. However, reconsideration is not available regarding an Initial Order, as was issued in this matter. Instead, White Horse Tavern LLC had an appeal right, to be directed to the Liquor Control Board, as was explained both at the end of the Initial Order and at end of the evidentiary hearing. That right expired 20 days after the Initial Order was mailed. According to Office of Administrative Hearing records, the Initial Order in this matter was mailed on December 6, 2013. This means that the period for appeal had run by time Mr. Phillips's letter arrived at the Office of Administrative Hearings.

Ultimately, the Liquor Control Board will issue a Final Order which may or may not incorporate the provision that Mr. Phillips is concerned about. White Horse Tavern LLC will have the right to appeal that order as well and undoubtedly the Final Order will recite what that right is.

Sincerely,

Terry A. Schuh

TERRY A. SCHUH
Lead Administrative Law Judge

cc: Kevin McCarroll, LCB