



U.S. Masters Swimming

LMSC Grievance Process & National Board of Review (NBR)

August 10, 2021 Webinar

Board of Directors

Education for LMSC Volunteers

Welcome Everyone!



- The webinar will begin in a few minutes; please stand by as everyone gets connected
- All attendees will be muted throughout the presentation
- You can submit questions to the moderator via the Q&A 'Chat' window



Grievance Process & NBR Presenters



Sarah Welch



Juliet Cox



Peter Guadagni





Grievance Process & NBR Presenters

Sarah Welch swims with Puget Sound Masters Club and ORCA workout group in Seattle, WA. Last year she led a task force charged with updating the National Board of Review (NBR) process. This training is one of the recommendations of that task force. Sarah currently serves as chair of the USMS Diversity & Inclusion Committee.

Juliet Cox swims with Manatee Aquatic Masters in Oakland, CA. In her professional life, she is an administrative law judge with the California Office of Administrative Hearings. Juliet currently serves as chair of the NBR.

Peter Guadagni swims with Walnut Creek Masters in Walnut Creek, CA. He has dealt with several grievance issues in his volunteer career within the Pacific LMSC. Peter currently serves as president of USMS.

Overview

USMS last updated its grievance process, called the National Board of Review, in 2013. During 2020 the USMS President appointed an ad hoc committee to conduct a review and report recommendations to the Board of Directors. Overall the committee found that the NBR process serves USMS well and recommended:

- Training in the grievance process and dispute resolution at the LMSC level
- Promoting/visibility of LMSC grievance procedures to members
- Additional NBR volunteers to act as ombudsperson in the early stages of an NBR grievance
- Clarifying confidentiality
- Adding forms and templates for filing at the NBR to simplify the process
- Single point of contact for NBR grievances at the National Office

Purpose

The purpose of this webinar is to:

- Initiate the recommended LMSC training
- Provide an overview of types of cases and what worked and didn't in their resolution
- Provide useful resources and links
- Share examples to LMSC leaders as to how LMSCs can intervene early when a dispute arises and guide the parties to a successful outcome.

Agenda

- Right to Participate In U.S. Masters Swimming (USMS)
- Circumstances under which that right may be qualified or withdrawn
- Definition of “Unsporting Conduct”
- Examples of Cases filed with the NBR
- Grievance Process
- Questions

Right to Participate

- USMS default principle: Come on, everyone; let's swim!
- One person's actions may interfere with another's participation.
- Rules describe unacceptable behavior.
- Rules also describe process to restrict participation.

Unsporting Conduct - Definition

- Rule Book (Article 402) describes why and how USMS can limit someone's participation.
- General principle in Section 402.1: no conduct that is “inconsistent with the mission of the organization or the best interest of the sport and those who participate in it.”
- Specifics in Section 402.4:
 - Discrimination re sex, race, sexual orientation, etc.
 - Dishonesty
 - Nonconsensual physical or sexual contact

Unsporting Conduct – Examples

- Facilitating misrepresentation in a postal event
 - Entrants (if any) disqualified
 - Person who coordinated dishonest entries punished
- Wrongly refusing to sanction an event
 - Bogus safety and financial concerns
 - Real reason was personal animosity

Unsporting Conduct – Examples

- Wrongly refusing participation in an event
 - USMS member leaves private club on bad terms
 - Club hosts USMS-sanctioned event, outside club facility
 - Member tries to enter event; club refuses entry
 - Initial procedure at LMSC (grievance, appeal)
 - Appeal from LMSC to NBR
 - Appeal from NBR to USMS BOD

Grievance Process

- Have a Plan! (and don't ignore issues that come up)
- Intervention & Prevention
- Jurisdiction-where to go: LMSC, NBR, or not within USMS jurisdiction

Steps

- Filing (submissions in writing)
- Mediation (if parties are willing)
- LMSC (most dispute resolution should start here)
- NBR (sometimes original, often appeal)
- Board review

Grievance Process – Importance of Early Intervention



The best outcome of a grievance is when the issue is settled early without the use of a formal process.

- Most grievances start with a complaint delivered to a leader.
- The leader should respond rapidly and keep an open mind.
- Frequently, the complainant just wants to be heard and taken seriously.
- All sides should be heard prior to any action.
- Encourage both sides to appreciate the other's perspective.
- When appropriate, encourage apologies.
- Seek expertise when you feel out of your depth: Zone Chair, volunteers with legal or HR expertise, others with more experience.

Grievance Process – Role of Club



Most of our USMS experience happens at our club

- It is a good practice for clubs to have an established code of conduct.
- Follow recommendations for early intervention: Respond rapidly, keep an open mind, hear all sides, seek expertise, ...
- When possible, empower head coach to address grievances (coach should step back if subject of grievance).
- Follow club's code of conduct but use common sense.
- Maintain confidentiality.
- Strive for rapid resolution and use disciplinary actions when necessary.
- Interpersonal issues will always be challenging.

Grievance Process – Role of LMSC



- LMSC leaders should read Part 4 of the Rule Book.
- Be prepared, have a robust process in place modeled after USMS standard or that of another LMSC.
- Respond rapidly in a manner consistent with LMSC process.
- If LMSC does not have formal Grievance Chair, the LMSC Chair should have pool of volunteers with relevant experience (i.e. legal or HR).
- Attempt mediation.
- Rigorously follow LMSC grievance process.
- **AVOID** unnecessary delays, appearance of conflict of interest, and involvement in club issues that are not pertinent to unsporting conduct.

Grievance Process – Role of NBR

- NBR and its chair administer national grievance process as described in Part 4 and procedures adopted by Board of Directors.
- NBR is seeking to create ombudsperson positions to help resolve disputes and support clubs and LMSCs.
- Steps in NBR process:
 - Complaint or appeal filed
 - Chair dismisses, refers back to LMSC, arranges mediation, or names hearing panel
 - Panel hears evidence and renders decision with penalties if appropriate
 - Hearing panel decision can be appealed to the Board of Directors
- Process provides for information sharing to grievant and respondent.
- National office provides administrative support for process.

Wrap-Up

LMSC Action Steps:

- Review with your LMSC Leadership/Board-what to do if/when a grievance is filed
- Member access to grievance procedures
- Grievance procedures as single resource on websites

Coach Training “Code of Conduct” Thurs. June 15-Invite your local coaches!

Ad Hoc Committee Follow-Up

- More templates/forms

Questions?

- Right to Participate In U.S. Masters Swimming (USMS)
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- Examples of Cases filed with the NBR
- Grievance Process Steps
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Additional Resources

- USMS National Board of Review Process and Steps
https://www.usms.org/admin/lmschb/nbr_procedures.pdf
- LSMC Standards: A mandatory standard for LMSCs is to have grievance procedure :
 - 2.1.4 LMSC bylaws shall contain a provision for handling disputes within the LMSC (article 403.2: Jurisdiction of the LMSC). Note: Procedures may be addressed in LMSC policies.
 - Link to the LMSC template to develop your grievance procedure. Recommended by LMSC Development Committee
https://www.usms.org/-/media/usms/pdfs/guide%20to%20operations%20-%20gto/lmsc%20management/lmsc_hb_bylaws_grievance.pdf

Additional Resources (Con't)



LMSC Development Workshop: Avoiding Grievances

<https://www.usms.org/admin/conv/2016/grievanceworkshop.pdf>

Sample LMSC Grievance Procedures and Resources:

- Pacific Masters Administrative Policies (See Page 33)
https://pacificmasters.org/sites/default/files/docs/PacMastersAdminHandbook_20200319.pdf
- Pacific Northwest LMSC (See Policies, Page 27)
<https://swimpna.org/bylaws-policies/>
- Florida LMSC Grievance Procedure:
<https://floridalmc.org/wp-content/uploads/2015/03/Grievance-Procedure2006.pdf>

402.4 Unsporting Conduct



The following shall be considered unsporting conduct as it relates to Part 4:

- 402.4.1 Violation of the opportunity to participate, as set forth in [Participation] article 401.
- 402.4.2 Discrimination in violation of [Equal Opportunity] article 501.3.
- 402.4.3 Any act of fraud, deception, or dishonesty in connection with any USMS related activity.
- 402.4.4 Knowingly providing false information including name, date of birth, age, or gender on USMS membership applications or meet entries.
- 402.4.5 Any intentional nonconsensual physical contact, obscene language or gesture, or other threatening language or conduct directed toward members, volunteers, or staff in connection with a USMS event.
- 402.4.6 Any nonconsensual sexual conduct, pattern of unwelcome sexual advances, or other inappropriate sexually oriented behavior or action by a USMS member toward a member or any other person participating in any capacity whatsoever in the affairs or activities of USMS.
- 402.4.7 Any act, conduct, or omission that is detrimental to the image or reputation of USMS, an LMSC, or the sport of swimming.
- 402.4.8 Causing a credible and material risk to the safety of USMS members or others who may be present during USMS activities. A lifetime ban, declaration of permanent ineligibility, or permanent resignation of membership from a member organization of United States Aquatic Sports may be considered as evidence of a violation of this article 402.4.8.
- 402.4.9 Aiding or abetting another to engage in any of the foregoing violations.

Proposed D&I Legislation for 2021 Convention

- **Section 402.4 “Unsporting Conduct”**
- **Update 402.4.5 to apply to all “activities” (not just ‘events’) and to all people present, not just participants**
 - **402.4.5** Any intentional nonconsensual physical contact, obscene language or gesture, or other threatening language or conduct directed toward members, volunteers, staff or *bystanders* in connection with a USMS ***event activity***.
- **Add 402.4.6 to prohibit discrimination, harrasement or offensive comments**
 - **402.4.6** Any discrimination or harassment based on an individual’s age, gender, race, ethnicity, national origin, religion, sexual orientation, gender identity, gender expression, genetic information, mental or physical disability, protected health and medical information, or any other status protected by federal, state or local law, where applicable, directed toward members, volunteers, staff, or bystanders in connection with USMS administrative activities, events, or sanctioned workouts. Application of Part 1: Swimming Rules regarding age groups, gender categories, swimwear, and guidelines for officiating swimmers with disabilities shall not be considered violations of this article.