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# PART 4: PARTICIPATION, CONDUCT, HEARINGS, AND APPEALS

## ARTICLE 401: Participation

### 401.1 Protection

USMS and its LMSCs shall respect and protect the opportunity of every eligible individual to participate in USMS administrative activities and sanctioned or recognized events.

### 401.2 Participation

No member of USMS or any organization associated with USMS may deny or threaten to deny any eligible individual the opportunity to participate in USMS administrative activities or deny any member the opportunity to host or participate in USMS activities without just cause. It is not a violation of this article to restrict an individual's eligibility based on one or more of the following:

**401.2.1** The individual's age.

**401.2.2** Membership in the organization that is conducting the event.

**401.2.3** Qualifying times.

Any member or eligible individual who alleges that the opportunity to participate has been denied or is about to be denied by an individual or organization associated with USMS shall follow the procedures set forth in article 102.14.2 or article 403, as applicable, to seek redress for the alleged violation of opportunity.

## ARTICLE 402: Conduct of Members

### 402.1 Standards of Conduct

The mission of USMS is to promote fitness and health in adults by offering and supporting Masters swimming programs. The opportunity to participate in Masters swimming is made possible by USMS. Members accept that this opportunity to participate is a privilege and as such shall conduct themselves with integrity and in a sporting manner. In matters relating to Masters swimming, members shall respect and protect the privileges of others who share this mission; therefore, the privileges of membership and participation may be withdrawn or denied if the conduct of a member or prospective member is inconsistent with the mission of the organization or the best interest of the sport and those who participate in it.

### 402.2 Compliance With Rules and Regulations

It shall be the responsibility of all members to comply with the rules and regulations of USMS and the applicable rules, constitution, and bureau decisions of FINA.

**402.3 Enforcement**

Any prospective member may be denied membership, and any member may be denied membership, censured, placed on probation, suspended, fined, or expelled from USMS if such member engages in any unsporting conduct listed in article 402.4.

**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 article 401.
- 402.4.2** Discrimination in violation of 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 nonconsensual physical contact, obscene language or gesture, or other threatening language or conduct directed toward 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.

**ARTICLE 403:  
Hearings and Appeals**

**403.1 General Jurisdiction**

As provided herein, USMS may deny membership, censure, place on probation, suspend, fine, or expel any member or any person participating in the affairs of USMS who has engaged in any of the unsporting conduct listed in article 402.4.

**403.2 Jurisdiction of the LMSC**

Disputes arising within a single LMSC and not brought by USMS shall be filed directly with such LMSC and handled pursuant to LMSC rules and procedures. Any appeal of the LMSC's decision shall be made to the National Board of Review.

**403.3 National Board of Review**

The National Board of Review shall be composed of a chair and a pool of potential hearing panel members, all of whom shall be USMS members. The National Board of Review chair shall be appointed by the USMS president. The pool of potential hearing panel members shall be appointed by the chair. The Board of Directors shall approve

the appointment of the chair and the pool of potential hearing panel members. The term of the chair shall be two years, with no limit to the number of terms of service.

#### **403.4 National Board of Review Procedures**

The Board of Directors shall adopt and maintain National Board of Review procedures. These procedures shall set forth the process that will be used for matters filed with the National Board of Review including how disputes and appeals shall be filed, timing for each aspect of the National Board of Review hearing and appeal process, fees, structure of hearing panels, conduct of panel hearings, and notifications to the parties. The National Board of Review procedures shall be made publicly available and shall be updated on a periodic basis.

- 403.4.1** Because certain disputes are most appropriately heard at the national level, the National Board of Review has original and exclusive jurisdiction to hear:
- A** Any complaint from members of USMS where more than one LMSC is involved.
  - B** Any complaint of violation of article 402.4.4, providing false information, or article 402.4.8, causing a credible and material risk to safety.
  - C** Any complaint initiated by USMS.
  - D** Any complaint in which LMSC bylaws, rules, policies, or procedures preclude filing of a grievance by a USMS member.
  - E** Upon a majority vote of the Executive Committee, the National Board of Review may be assigned exclusive and immediate jurisdiction at any stage of any matter within the purview of this article 403 to serve the best interests of Masters Swimming.
- 403.4.2** The National Board of Review has appellate jurisdiction to hear appeals of LMSC decisions.
- 403.4.3** Matters of jurisdiction to the National Board of Review shall be initiated by a written filing made in accordance with the National Board of Review procedures.
- 403.4.4** Requests to the National Board of Review for review of LMSC decisions shall be initiated by a written request for review filed in accordance with the National Board of Review procedures.

#### **403.5 Authority of the National Board of Review**

The National Board of Review, through its hearing panels, in hearing grievances and appeals of LMSC decisions, has the authority to:

- 403.5.1** Impose and enforce penalties for any violation of the rules and regulations, administrative or technical, of USMS.
- 403.5.2** Determine the eligibility and right to participate of any member or individual.
- 403.5.3** Vacate, modify, sustain, reverse, or stay any decision or order properly submitted for review, or remand the matter for further action.
- 403.5.4** Investigate any alleged election impropriety.
- 403.5.5** Interpret any provision of the rules and regulations of USMS, with the exception of the rules of competition, which the National Board of Review shall defer to the USMS Rules (Part 1) or Long Distance (Part 3) Committees.

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## 403.6

- 403.5.6 Review any revocation, suspension, reinstatement of membership, or challenge to the granting or denial of membership.
- 403.5.7 Issue such interim orders as may be necessary pending a final decision of the National Board of Review.
- 403.5.8 Require the production of any available evidence bearing on an alleged violation.
- 403.5.9 Take testimony from witnesses.
- 403.5.10 Transcribe the National Board of Review hearings.
- 403.5.11 Assess costs and fees against one or more parties, and refund filing fees.
- 403.5.12 Take such further action and make such further directives as deemed necessary under the circumstances.

### 403.6 Authority of the National Board of Review Chair

With regard to matters within the original or appellate jurisdiction of the National Board of Review, the National Board of Review chair must take one or more of the following actions when reviewing a matter:

- 403.6.1 Initiate an investigation into the alleged misconduct, as described in a written grievance or appeal.
- 403.6.2 Dismiss a grievance or appeal determined to be without merit, with the concurrence of the USMS president.
- 403.6.3 Refer a grievance or an appeal of an LMSC decision back to the LMSC.
- 403.6.4 Mediate or delegate the mediation of a grievance or appeal.
- 403.6.5 Appoint a hearing panel, drawn from the hearing panel pool, consisting of not less than three members to conduct a formal hearing to decide a grievance or appeal.

### 403.7 Appeal of LMSC Decision to the National Board of Review

- 403.7.1 Decisions rendered by an LMSC may be appealed to the National Board of Review.
- 403.7.2 The petition for appeal shall be served upon the National Office in accordance with the National Board of Review procedures.
- 403.7.3 In appeals from LMSC decisions, the National Board of Review chair shall exercise the authority detailed in article 403.6.
- 403.7.4 Any review of an LMSC decision by a National Board of Review hearing panel shall be made on the basis of the evidence and materials submitted to the LMSC, the written decision of the LMSC, concise statements from involved parties as to why the LMSC's decision is incorrect or correct, and such further information as the hearing panel may, in its sole discretion, request.

### 403.8 Hearing Panel Procedure

If, pursuant to the authority in article 403.6, the chair chooses to appoint a hearing panel to decide a dispute, the National Board of Review procedures shall govern the process for submissions and scheduling, and the conduct of any hearing. A written decision shall be rendered by the hearing panel. The written decision shall set forth the right of appeal.

- 403.8.1** Upon the request of either party for good cause shown or the determination of the hearing panel, the hearing may be held in private.
- 403.8.2** The hearing panel shall have the authority to stay the enforcement of its decision during the time allowed for appeal of the decision, with the decision going into effect automatically if no timely appeal is filed.
- 403.8.3** All mailings and other correspondence from the grievant, respondent, and any witnesses shall be made as prescribed by the chair.
- 403.8.4** A written decision shall be rendered by the hearing panel and shall be mailed to the parties within seven days after the hearing.
- 403.8.5** Communications between the parties, the National Board of Review, and the hearing panel shall be made as prescribed by the NBR chair.

#### **403.9 Appeal to the Board of Directors**

Any person directly affected by the National Board of Review's decision may appeal to the Board of Directors for review of any decision of the National Board of Review within 30 days of the receipt of the National Board of Review's written decision.

- 403.9.1** The petition shall set forth the grounds for appeal, citing specific facts. The petition shall not include new evidence that was not part of the record from the National Board of Review.
- 403.9.2** The Board of Directors panel may assess costs and fees against any or all named parties.
- 403.9.3** The review by the Board of Directors panel shall be on the basis of the record from the National Board of Review and written briefs and shall not include new evidence. However, by majority vote, the Board of Directors panel may decide to take new evidence and hear testimony.
- 403.9.4** The Board of Directors panel shall render a final and binding decision and a written decision shall be sent to all parties.
- 403.9.5** The review by the Board of Directors panel shall be on the basis of the record from the National Board of Review and written briefs. The Board of Directors panel may decide in its sole discretion to take new evidence and hear testimony.

#### **403.10 Documentation**

The National Office shall maintain a permanent file of all physical evidence and written decisions pertaining to any matter that was reviewed by the National Board of Review or the Board of Directors pursuant to Part 4. The files shall be made available to any member wishing to examine them.

#### **403.11 Filing Fee**

The Board of Directors shall establish fees for filing grievances with the National Board of Review and for filing appeals with the National Board of Review and the Board of Directors.

#### **403.12 Recognition and Enforcement**

Final decisions rendered by the National Board of Review or the Board of Directors pursuant to Part 4 shall, when applicable, be recognized and fully enforced.

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## Notes
