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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 and sanctioned or recognized events 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 102.16.2 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the privileges of others who share this mission; therefore, the privileges of membership and participation may be withdrawn or denied if the conduct of a member or prospective member is inconsistent with the mission of the organization or the best interest of the sport and those who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**

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### **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 meet personnel, in connection with a USMS event.

**402.4.6** Any act, conduct or omission that is detrimental to the image or reputation of USMS, an LMSC or the sport of swimming.

**402.4.7** 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 JURISDICTION OF THE NATIONAL BOARD OF REVIEW**

**403.4.1** 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.
- C** Any complaint initiated by USMS.

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 grievance served upon the National Office accompanied by the filing fee. The written grievance shall set forth all parties against which the grievance is filed (respondents) and shall state the grounds for the grievance, citing factual and legal issues in as much detail as possible. Instructions on how to file a grievance may be obtained from the National Office administrator.

#### **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.
- 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.

#### **403.6 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 has the authority to:

- 403.6.1** Initiate an investigation into the alleged misconduct, as described in a written grievance or appeal.

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## **403.6**

- 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 within 30 days of the postmark date of the mailing of the LMSC's written decision and shall be accompanied by the filing fee. The petition shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.
- 403.7.3** In appeals from LMSC decisions, the National Board of Review chair shall exercise the authority detailed in article 403.6

### **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 matter, the following procedure shall be used:

- 403.8.1** The chair shall set a hearing date, which shall be 50 to 75 days from the postmark date of mailing the notice of hearing.
- 403.8.2** The chair shall mail the notice of hearing, together with a copy of the written grievance received by the National Office, to the respondents.
- 403.8.3** The respondents shall have 30 days from the postmark date of mailing to submit a written response to the charges. The response shall be mailed to the chair and the grievant.
- 403.8.4** The grievant shall have 10 days from the postmark date of mailing of the response to submit a written rebuttal. The written rebuttal shall be mailed to the chair and the respondents.
- 403.8.5** At the hearing panel's discretion, a decision may be rendered based solely on the written submissions. A written decision shall be mailed to the parties and shall inform the parties that an appeal to the Board of Directors is available.
- 403.8.6** Conduct for all hearings shall be in accordance with policies and procedures of the National Board of Review. The grievant and respondents shall be provided copies of these policies and procedures by the chair.
- 403.8.7** A written decision shall be rendered by the hearing panel and shall be mailed to the parties within seven days after the hearing. The written decision shall set forth the right of appeal.
- 403.8.8** Upon the request of either party for good cause shown or the determination of the hearing panel, the hearing may be held in private.
- 403.8.9** The hearing panel shall have the authority to stay the enforcement of its

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decision during the time allowed for appeal of the decision, with the decision going into effect automatically if no timely appeal is filed.

**403.8.10** All mailings and other correspondence from the grievant, respondent and any witnesses shall be made as prescribed by the 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 postmark date of the mailing of the National Board of Review's written decision.

**403.9.1** The petition for appeal shall be served upon the National Office and shall be accompanied by the filing fee. The petition shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.

**403.9.2** The USMS president and National Board of Review chair shall select, from the Board of Directors, a board panel chair and four additional board panel members to hear the appeal.

**403.9.3** The National Office shall send a copy of the petition for appeal to the respondent and all members of the board panel. The respondent shall then have 30 days from the postmark date of mailing of the petition to file a written response with the board panel chair and the grievant. The board panel chair may decrease or increase the time limits for any of the foregoing, upon request of either party on a showing of good cause.

**403.9.4** The board panel may assess costs and fees against any or all named parties.

**403.9.5** The review by the board 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 panel may decide to take new evidence and hear testimony.

**403.9.6** The board panel shall render a final and binding decision within 75 days from the appeal filing date. A written decision shall be sent to all parties.

#### **403.10 DOCUMENTATION**

The National Office administrator 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. That file shall be retained for at least 10 years after the date of any final decision or withdrawal of any matter brought under Part 4.

#### **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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## **In Memoriam**

Jack Bertram (Pacific)

Abrasha Brainin (Florida)

Victoria Chidester (Colorado)

Jesse Coon (South Texas)

John Cox (Florida)

Mickey Eaton (Wisconsin)

Raymond Edelhoff (Maryland)

Richard Harley (Pacific)

David Harrison (Delaware Valley)

Ron Johnson (Arizona)

Rob Lavanture (Florida)

Don McKenzie (Pacific)

Patrick Moore (Southern Pacific)

Jan Morrow (Kentucky)

Austin Newman (New Jersey)

Dorothy Riordan (Kentucky)

Perry Rockwell (Wisconsin)

Paula Smart (Southern Pacific)

Petey Smith (New England)

Sara Snoek (Pacific)

Lynn Surles (Wisconsin)

Ellen Tait (Pacific)

Frank Tillotson (Florida)

George Viguie (Pacific)

Dottie Whitcomb (Southeastern)