

7897.0150 DISCIPLINARY AND APPEAL PROCEDURES.

Subpart 1. **Stewards' meetings.** Whenever the stewards have reasonable cause to believe that a Class C licensee has committed an act or engaged in conduct in violation of statute or rules of the commission or which in the opinion of the stewards otherwise adversely affects the integrity of horse racing, the following procedures will apply:

A. The licensee shall be immediately subject to such intermediate conditions, limitations, and restrictions as the stewards decide necessary to protect the public safety, health, and welfare and to ensure the integrity of racing.

B. Within three days of the matter coming to the attention of the stewards, the licensee shall be summoned to a meeting of the stewards called for the purpose of investigating suspected or alleged misconduct by the licensee at which all stewards or their appointed deputies shall be present; however, the licensee may request a continuance and such continuance need not necessarily stay any intermediate sanction.

C. The summons given to the licensee shall be in writing and give adequate notice of the date, time, place, and purpose of the stewards' meeting, and shall specify by number the statutes or rules allegedly violated.

D. Every person called to testify before the stewards at such meeting is entitled to have counsel or an observer of the person's choosing present at the meeting; however, such counsel or observer may only participate under such conditions or in such manner as the stewards direct.

E. If a licensee, after receiving adequate notice of a stewards' meeting, fails to appear as summoned, the licensee will be deemed to have waived any right to appear and present evidence to the stewards.

F. No special announcement of the meeting or of the alleged infraction of rules shall be made until after the stewards' meeting, when the stewards shall transmit a signed written decision to the commission and to the licensee containing the stewards' findings and the penalty imposed.

G. In the event the stewards are unable to arrive at a decision by a majority vote, the matter will automatically be referred to the commission and treated as an appeal.

Subp. 2. Penalties imposed by stewards.

A. The stewards may suspend a license up to 90 days or impose a fine of up to \$5,000 in accordance with the schedule of fines in part 7897.0130 or both; in addition, they may order any other appropriate disciplinary or corrective action. The stewards may also make recommendations to the commission for penalties in excess of their authority.

B. Upon a finding of a violation of chapter 7890, the stewards shall consider the classification and penalty category of the substance at the time of the violation

as referenced in the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances and Recommended Penalties, as well as any existing mitigating or aggravating factors, and shall impose penalties and disciplinary measures consistent with the recommendations contained therein except as limited by part 7897.0130, subpart 5.

C. Mitigating or aggravating factors must be shown by a preponderance of evidence that the circumstances were actually present in the instant case. Mere speculation that the circumstances might have been present is not sufficient proof.

For purposes of this subpart, mitigating factors are conditions or circumstances that do not excuse or justify wrongful conduct, but are considered out of fairness in deciding to reduce a penalty.

For purposes of this subpart, aggravating factors are conditions or circumstances that permit a harsher penalty to be imposed but do not permit a penalty to be imposed greater than that allowed under the law or rule.

Subp. 3. **Appeal to commission.** A stewards' decision regarding a Class C licensee may be appealed to the commission by:

A. The licensee asking the commission to reverse the stewards' decision in whole or part or to lessen the sanction ordered by the stewards.

B. Appeals to the commission are not subject to the contested case procedures.

Subp. 4. **Review or appeal by commission, director, or deputy director.** Nothing in this chapter precludes the commission, director, or deputy director from instituting proceedings to appeal a steward's decision; or the commission from instituting proceedings to review a steward's decision on its own motion.

Subp. 5. **Stays of stewards' decisions.** An appeal of a stewards' decision will not automatically stay the decision. A party may request the director to stay the decision. The director may order a stay unless he or she determines that a stay would adversely affect the public welfare.

Subp. 6. **Procedure for appeal of decision of stewards.** A licensee may appeal a decision of the stewards by filing with the director a written request for an appeal within three days after the stewards have orally advised the licensee of the decision. The written request shall contain the following information:

- A. the name, address, and telephone number, if any, of the appellant;
- B. a description of the objections to the decision of the stewards;
- C. a statement of the relief sought;
- D. the date on which the decision was made; and

E. whether the appellant desires to be present in person at the hearing of the appeal.

Subp. 7. **Deposit shall be required.** The appellant shall deposit with the commission at the time of filing his or her written request for an appeal an amount equal to ten times the appellant's occupational license fee in part 7877.0120, subpart 1, but not to exceed \$250. The deposit will be refunded by the commission upon the conclusion of the appeal unless the commission finds that the appeal was frivolous, in which case the deposit will be forfeited. In addition, if the commission determines that the appeal was commenced in bad faith for purposes of delay or was unreasonable and without substance or merit, the commission may impose a fine of not more than \$450.

Subp. 8. **Commission shall set date for hearing.** Within three days of receipt of a written request for an appeal and the deposit, the commission chair, director, or the deputy director shall set a date, time, and place for the hearing. The hearing must be held within eight days of the receipt of the request for the appeal and the deposit. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of the sanction or prolong a stay issued by the director.

Subp. 9. **Appeal by commission.** When the commission institutes an appeal on its own motion or at the request of the stewards or director, a notice of appeal shall be served personally or sent by mail to the licensee, addressed to his or her last known place of residence, at least ten days prior to the hearing of the appeal. This notice of appeal shall contain the following:

- A. the decision being appealed from;
- B. the date on which the decision was made;
- C. the grounds of the appeal; and
- D. the date, time, and place on which the commission proposes to hear the appeal.

Statutory Authority: *MS s 240.03; 240.08; 240.10; 240.13; 240.15; 240.16; 240.19; 240.22; 240.23; 240.24*

History: *9 SR 2527; 11 SR 2201; 14 SR 2008; 24 SR 1568; 34 SR 1135; 41 SR 1322*

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