

# 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

### 402.1 Standards of Conduct

The opportunity to participate in Masters swimming is made possible by USMS. Members and one-event registrants 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 and one-event registrants 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the privileges of others who share this mission; therefore, the privileges of membership and participation may be withdrawn or denied if the conduct of a member, prospective member, or one-event registrant is inconsistent with the mission of the organization or the best interest of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 and one-event registrants to comply with the rules and regulations of USMS and the applicable rules, constitution, and bureau decisions of World Aquatics.

### 402.3 Enforcement

Any prospective member may be denied membership; any member may be denied membership, censured, placed on probation, suspended, fined, or expelled from USMS;

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and any person may be prohibited from one-event registration if such person engages or has engaged in any unsporting conduct listed in article 402.4.

### 402.4 Unsporting Conduct

Unsporting conduct includes:

- 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, one-event registrations, or event entries.
- 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 USMS administrative activities, events, or workouts.
- 402.4.6 Any discrimination or harassment based on an individual's age, sex, 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 workouts. Application of *Part 1: Swimming Rules* regarding age groups, sex or gender categories, swimwear, and guidelines for officiating swimmers with disabilities shall not be considered as violations of this article.
- 402.4.7 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.
- 402.4.8 Any act, conduct, or omission that is detrimental to the image or reputation of USMS, an LMSC, or the sport of swimming.
- 402.4.9 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 402.4.9.
- 402.4.10 Aiding or abetting another person to engage in any of the foregoing conduct.

## ARTICLE 403: Hearings and Appeals

### 403.1 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.

**403.2 Grievances**

A USMS member, an individual eligible for membership in USMS, or the chief executive officer may initiate a grievance upon allegation that any USMS member or any individual participating in the affairs of USMS has engaged in any of the unsporting conduct listed in article 402.4.

**403.2.1 Original and Exclusive National Board of Review Jurisdiction**

Because certain disputes are most appropriate heard at the national level, the National Board of Review has original and exclusive jurisdiction to hear:

- A Any grievance between or among LMSCs or involving members of more than one LMSC.
- B Any grievance alleging violation of article 402.4.4 (providing false information) or article 402.4.9 (causing a credible and material risk to safety).
- C Any grievance initiated by the chief executive officer or designee on behalf of USMS or any USMS employee.
- D Any grievance alleging violation of article 402.4 and seeking redress affecting the alleged violator’s eligibility for membership in USMS or for participation in event(s) as a one-event registrant.
- E Any dispute for which LMSC bylaws, rules, policies, or procedures preclude filing of a grievance.
- F 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 USMS or Masters Swimming.

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**403.2.2 Original and Exclusive LMSC Jurisdiction**

Grievances arising within a single LMSC and involving only allegations that a person has violated LMSC rules or policies shall be filed directly with such LMSC and handled according to LMSC rules and procedures.

**403.2.3 Original and Overlapping National Board of Review and LMSC Jurisdiction**

- A Grievances other than those grievances described in article 403.2.1 may be filed directly with the relevant LMSC and handled according to LMSC rules and procedures. Alternatively, such grievances may be filed with the National Board of Review.
- B Grievances other than those grievances described in article 403.2.2 may be filed with the National Board of Review. Alternatively, such grievances may be filed directly with the relevant LMSC and handled according to LMSC rules and procedures.

**403.2.4 Appellate Jurisdiction**

The National Board of Review has appellate jurisdiction to hear appeals of LMSC decisions.

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### 403.3 Authority of the National Board of Review

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

- 403.3.1 Impose penalties for any violation of the rules and regulations, administrative or technical, of USMS.
- 403.3.2 Determine the eligibility and right to participate of any member or individual.
- 403.3.3 Vacate, modify, sustain, reverse, or stay any decision or order properly submitted for review, or remand the matter for further action.
- 403.3.4 Investigate any alleged election impropriety.
- 403.3.5 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.
- 403.3.6 Review any revocation, suspension, reinstatement of USMS membership, or challenge to the granting or denial of USMS membership.
- 403.3.7 Issue such interim orders as may be necessary pending a final decision of the National Board of Review.
- 403.3.8 Require the production of any available evidence bearing on an alleged violation.
- 403.3.9 Take testimony from witnesses.
- 403.3.10 Transcribe National Board of Review hearings.
- 403.3.11 Assess costs and fees against one or more parties, and refund filing fees.
- 403.3.12 Take such further action and make such further directives as deemed necessary under the circumstances.

### 403.4 Authority of an LMSC

An LMSC's bylaws or policies with respect to grievances may authorize the LMSC to:

- 403.4.1 Impose penalties for any violation of the rules and regulations, administrative or technical, of USMS or of the LMSC. An LMSC's authority to penalize an individual extends only to violations occurring within that LMSC.
- 403.4.2 Determine the eligibility and right to participate of any member or individual. An LMSC's authority to prohibit or limit participation extends only to activities conducted within that LMSC.
- 403.4.3 Investigate any alleged election impropriety within the LMSC.
- 403.4.4 Interpret any provision of the LMSC's rules and regulations of USMS, with the exception of the rules of competition, which the LMSC shall defer to the USMS Rules (Part 1) or Long Distance (Part 3) Committees.
- 403.4.5 Issue such interim orders as may be necessary pending a final decision by the LMSC.
- 403.4.6 Require the production of any available evidence bearing on an alleged violation.
- 403.4.7 Take testimony from witnesses.
- 403.4.8 Transcribe LMSC hearings.
- 403.4.9 Assess costs and fees against one or more parties, and refund filing fees.
- 403.4.10 Take such further action and make such further directives as deemed necessary under the circumstances.

**403.5 Duties of the National Board of Review Chair**

With regard to grievances 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:

- 403.5.1 Initiate an investigation into misconduct alleged in any written grievance or appeal.
- 403.5.2 Dismiss a grievance or appeal determined to be without merit, with the concurrence of the USMS president.
- 403.5.3 Refer or remand a grievance or an appeal of an LMSC decision to the relevant LMSC.
- 403.5.4 Mediate or delegate the mediation of a grievance or appeal.
- 403.5.5 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.

**403.6 National Board of Review Procedures**

The Board of Directors shall adopt and maintain National Board of Review procedures, which 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.

- 403.6.1 An original grievance to the National Board of Review shall be initiated by a written filing made in accordance with the National Board of Review procedures.
- 403.6.2 An appeal to the National Board of Review for review of an LMSC decision shall be initiated by a written filing made in accordance with the National Board of Review procedures.

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

- 403.7.1 In appeals from LMSC decisions, the National Board of Review chair shall exercise the authority detailed in article 403.5.
- 403.7.2 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 403.5, the National Board of Review 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 upon determination by the hearing panel, the hearing may be held in private.

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- 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(s), respondent(s), 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 14 days after the hearing.
- 403.8.5** Communications among the parties, the National Board of Review, and the hearing panel shall be made as prescribed by the National Board of Review 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.

### **403.10 Documentation**

The National Office shall maintain a permanent file of all 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.

### **403.11 Filing Fee**

The Board of Directors may 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.