
The purposes of the proposed amendments are to abridge the rule, expand and define reasons for summary suspension furthering goals of disciplinary processes, provide stewards direction and options when conducting hearings and providing notices of hearings and rulings, modify time frame for payment of fines, and relocate a portion to a more applicable rule section.

15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

~~[A. — Purpose of chapter: This chapter contains the rules of procedure for stewards' hearings and commission proceedings.~~

~~B.]~~ A. Proceedings before the stewards:

(2) Complaints.

(a) On their own motion or on receipt of a complaint from ~~an~~ [a racing] official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's actions.

(b) A complaint made by someone other than ~~the stewards~~ [a racing official] must be in writing and filed with the stewards not later than 72 hours after the action that is the subject of the complaint.

(c) In case of a notice from the state of New Mexico human services department that a licensee is in non-compliance with the Parental Responsibility Act, the licensee shall be notified by the board of stewards. Thereafter the licensee shall have 30 days to provide documentation of compliance to the board of stewards and failure to do so will result in the suspension of the licensee's license.

(3) Summary suspension.

(a) If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, integrity or welfare of the horseracing industry, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the 10th day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the 10-day limit.

(c) ~~[The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings.]~~ At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

~~[(d) — If a positive test arises in a trial race, the horse is eligible for entry into a race for which the trial was conducted unless that positive test requires the horse to be placed on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC. The purse for both the trial and the race for which the trial was conducted will be held until the case has been adjudicated.]~~

(4) Notice.

(a) Except as provided by these rules regarding summary suspension, jockey riding infractions and trial races, the stewards or a racing commission designee shall provide written notice, at least 10 days before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive their right to 10 days notice by executing a written waiver.

(b) Notice given under this section must include: a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes or rules involved; a short, plain description of the alleged conduct that has given rise to the disciplinary hearing; the possible penalties that may be imposed.

(c) ~~[If possible, the]~~ The stewards or the racing commission designee ~~[shall]~~ may hand deliver, certified mail to the licensee's last provided address or by email the written notice of the disciplinary hearing to the person who is the subject of the hearing. ~~[If hand delivery is not possible, the stewards or a racing commission designee shall forthwith mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail.]~~ If the disciplinary hearing involves an alleged medication violation that could result

in the disqualification of a horse, the stewards or a racing commission designee shall provide notice of the hearing to the owner of the horse in the manner provided by this subsection.

(d) Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards. The stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent, in compliance with this subsection.

(6) Evidence.

(a) Each witness at a disciplinary hearing conducted by the stewards must be sworn by the presiding steward.

(b) The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The stewards may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards. Hearsay evidence alone is insufficient basis for a ruling.

(c) The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence that the licensee has violated or is responsible for a violation of the act or a commission rule.

(d) The stewards ~~[shall]~~ may ~~[make a tape recording of]~~ record a disciplinary or summary suspension hearing and make a copy of the recording available on request, at the expense of the requesting person.

(7) Ruling.

(a) The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reasons for the dissent.

(b) A ruling by the stewards must be on a form prescribed by the commission and include: the full name, license type, license number, and applicant ID number of the person who is the subject of the hearing; a statement of the charges against the person, including a reference to the specific section of the Racing Act or rules of the commission that the licensee is found to have violated; the date of the hearing and the date the ruling was issued; the penalty imposed; any changes in the order of finish or purse distribution; other information required by the commission.

(c) A ruling must be signed by a majority of the stewards.

(d) ~~[If possible, the]~~ The stewards or their designee ~~[shall]~~ may hand deliver, certified mail to licensee's last provided address or by email a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the stewards shall mail the ruling to the person's last known address, as found in the commission's licensing files, by regular mail. ~~If the ruling includes the disqualification of a horse, the stewards shall provide a copy of the ruling to the owner of the horse, the horsemen's bookkeeper, and the appropriate past performance service.~~

(e) At the time the stewards inform a person who is the subject of the proceeding of the ruling, the stewards shall inform the person of the person's right to appeal the ruling to the commission and apply for a stay.

(f) All fines imposed by the stewards shall be paid to the commission within ~~[30]~~14 days after the ruling is issued, unless otherwise ordered.

~~[C.]~~B. Proceedings by the commission:

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003; A, 5/30/2003; A, 6/15/2004; A, 6/30/2009; A, 9/15/2009; A, 12/1/2010; A, 5/1/2013; A, 1/1/2014; A, 3/16/2015; A, 5/1/2015; A, 9/16/2015; A, 3/15/2016; A/E, 6/28/2016; A, 9/16/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 4/9/2019; A, 10/11/2022]