

CHAPTER 7897
MINNESOTA RACING COMMISSION
HORSE RACING; PROHIBITED ACTS

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7897.0100 PROHIBITED ACTS.

Subpart 1. **Scope.** The following activities are considered prohibited acts.

Subp. 2. **Violations of laws.** No person shall engage in conduct which is in violation of federal, state, or local criminal or civil laws.

Subp. 3. **Possession of firearms or weapons.** No person if prohibited by the association shall possess while on the grounds of an association a firearm or other dangerous weapon as defined in Minnesota Statutes, section 609.02, subdivision 6.

Subp. 4. **Destruction of property.** No person shall damage or destroy property of the association or another by fire or any other means.

Subp. 5. **Smoking.** No person shall smoke in nonsmoking areas as designated by the commission or the association.

Subp. 6. **Altercations.** No person shall provoke or engage in a physical altercation while on the grounds of an association.

Subp. 6a. **Hostile acts.** No person shall engage in conduct or use language that is threatening, harassing, or abusive toward a person or animal while on the grounds of an association.

Subp. 7. **Cooperation with security officers.** No person shall fail to comply with orders of security officers or racing officials or interfere with security officers or racing officials in the

performance of their official duties. No racing official shall fail to comply with orders of a steward while in the performance of the steward's duties.

Subp. 8. **Contact with jockeys/drivers.** No persons, except as authorized by the stewards, shall communicate or attempt to communicate with a jockey or driver during racing hours, or attempt to gain entrance to the jockeys'/drivers' quarters at any time.

Subp. 9. **Fraud.** No person shall engage in any fraud or misrepresentation with regard to the sale, breeding, or racing of horses.

Subp. 10. **Financial responsibility.** No licensee shall willfully or deliberately refuse to pay any money when due for any service, supplies, or fees connected with his or her activities as a licensee, nor shall he or she falsely deny any such amount due or the validity of the claim therefore with the purpose of hindering or defrauding the person to whom the indebtedness is due.

A. All financial responsibility complaints against a licensee shall be made in writing, presenting facts sufficient to enable the stewards to determine that the claim is meritorious and is directly related to the licensee's racing activities and that the debt became due within the last two years. The commission shall honor all horse racing related financial complaints that go through the civil courts whereby a civil judgment is presented.

B. Upon receipt of a complaint, the stewards may conduct an investigation and attempt to resolve the matter informally. If the stewards determine that the complaint has merit, and cannot resolve the matter informally or determine that it is not appropriate to settle the matter informally, then the stewards shall commence the appropriate disciplinary procedures in chapter 7897.

Subp. 11. **Nerved horses.** No person shall bring onto the grounds of a racetrack for the purpose of racing or selling any horse which has had a nerve removed from its leg, other than a horse upon which a posterior digital neurectomy has been performed below the lowest aspect of the base of the proximal sesamoid bones.

Subp. 12. **Horses with impaired vision.** No person shall bring onto the grounds of a racetrack, or enter or cause to be entered in any race, or sell or offer for sale, any horse which has impaired vision in both eyes or suffers from periodic ophthalmia (commonly referred to as "moon blindness").

Subp. 13. **Failure to obtain license.** No person shall fail to secure a Class C license, if required, prior to the performance of his or her occupational duties.

Subp. 14. **Employing unlicensed personnel.** No licensee shall employ unlicensed personnel unless licenses are not required for such personnel.

Subp. 15. **Removing a horse without permission.** No person shall remove from the stable area of a licensed racetrack any horse without the written permission of the racing secretary or the stewards. No person shall remove from the stable area of a licensed racetrack any horse that is in the entries without written permission of the stewards.

Subp. 16. **Helmets to be worn.** No person shall ride or drive a horse while on the grounds of an association without a properly fastened protective riding helmet.

Subp. 17. **Hypodermic equipment and injectable substances prohibited.** The following shall apply to the possession of hypodermic equipment and injectable substances while on the grounds of an association:

A. While within a restricted area of a licensed racetrack no person, other than a veterinarian, shall have in his or her possession any equipment for hypodermic injection or any substance for hypodermic administration. A noninjectable medication prescribed by a veterinarian for an existing condition may be possessed, provided its user has a valid current prescription and its use is consistent with the purposes of this chapter.

B. Notwithstanding item A, any person may have in his or her possession within a restricted area of a licensed racetrack:

(1) a chemical or biological substance for his or her own personal use; provided, that if such chemical substance is prohibited from being dispensed by any federal or state law without prescription, he or she possesses documentary evidence that a valid prescription for such substance has been issued to him or her; and/or

(2) a hypodermic syringe or needle for the purpose of administering a prescribed chemical or biological substance to himself or herself, provided that he or she has notified the stewards of the possession of such device, the size of such device, and the chemical substance to be administered by the device.

Subp. 18. **Possession of electrical devices.** No person, while on the grounds of an association, shall have in his or her possession any electrical or mechanical device or other appliance, other than an ordinary riding whip, that could be used for the purpose of stimulating a horse or affecting its speed in a race or workout.

Subp. 19. **Driving violation.** No person may park or drive a vehicle on the grounds of the association in a manner which creates a potential hazard to persons or property.

Subp. 20. **Possession, administration to, or presence in a horse of a prohibited drug, substance, medication or metabolites, biological product, growth hormone, hormone releasing factor, venom, or synthetic analog of venom.**

A. No person may possess or administer, on the premises of a licensed association under the jurisdiction of the commission, a prohibited drug, substance foreign to the natural horse, medication or metabolites, biological product, blood doping agent, growth hormone, venom, synthetic analogue of venom, derivative of venom, synthetic analogue of a derivative of venom, or a synthetic or natural analogue of a hormone releasing factor that has not been approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA) for any use in humans or animals without prior permission of the stewards or judges and commission veterinarian.

B. No person may possess or administer a prohibited drug, substance, medication or metabolites, biological product, venom, synthetic analogue of venom, derivative of venom, synthetic analogue of a derivative of venom, synthetic or natural analogue of a hormone releasing factor, or growth hormone on the premises of a facility under the jurisdiction of the commission:

(1) for which a recognized analytical method has not been developed to detect and confirm the administration of such substance;

(2) the use of which may endanger the health and welfare of the horse or endanger the safety of the rider;

(3) the use of which results in concentrations in the horse in excess of those that occur naturally; or

(4) the use of which in established concentrations would cause interference with testing procedures.

C. The presence in or administration to a horse of the following, on the premises of a licensed association under the jurisdiction of the commission, is prohibited at any time:

(1) blood doping agents, including erythropoietin, darbepoetin, hemoglobin-based oxygen carriers, or any other substance that abnormally enhances the oxygenation of equine body tissue;

(2) naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, synthetic analogues of derivatives of venoms, synthetic or natural analogues of hormone releasing factors, or growth hormone;

(3) androgenic anabolic steroids other than as provided in part 7890.0110, subpart 7a;
or

(4) whole blood or packed red blood cells except as provided in item D.

D. No person other than a licensed veterinarian rendering emergency care may possess, on the premises of a licensed association under the jurisdiction of the commission, whole blood or packed red blood cells. The licensed veterinarian shall notify the commission veterinarian of the intent to administer whole blood or packed red blood cells prior to collection or possession of the whole blood or packed red blood cells.

E. No person shall feed, or cause or knowingly permit to be fed, or conspire in any manner to feed products that contain any drug not permitted by chapter 7890 to a horse entered or to be entered for a race.

F. No person shall have in the person's possession, within the confines of a racetrack or within its stables, buildings, sheds, or grounds, where horses are lodged or kept which are eligible to race over a racetrack, any feed products containing drugs not otherwise and expressly approved for use in race horses.

Subp. 21. **Pregnant filly or mare.** No filly or mare over 150 days gestation may be entered to race.

Subp. 22. **Use of nonrecognized racing equipment.** Nonrecognized racing equipment must not be used on a horse on a day the horse is scheduled to race, unless the use is approved in advance by the stewards in consultation with the commission veterinarian.

Subp. 23. **Chain shank.** No person may lead a horse with a chain shank unless the oral portion is covered with a soft, nonabrasive material.

Statutory Authority: *MS s 240.03; 240.23; 240.24*

History: *9 SR 2527; 10 SR 1908; 12 SR 2393; 14 SR 332; 15 SR 2307; 16 SR 2684; 28 SR 1482; 34 SR 1135; 36 SR 1407; 40 SR 1393; 41 SR 1322; 42 SR 1258*

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7897.0110 USE OF DRUGS AND ALCOHOL.

Subpart 1. **Drugs.** The commission, the commission's director of security, or the stewards may, at any time, require any licensee having direct physical contact with horses or direct responsibility for some portion of the day's racing program, or whose racing duties place him or her in a position of danger, or who commits an act that endangers a horse or human, to provide one of the following for analysis: blood, breath, saliva, or urine samples. The type or types of sample to be provided shall be determined by the board of stewards after consideration of the circumstances involved and the alleged substance involved. Failure to comply with this requirement shall be a serious violation under part 7897.0130.

Should any licensee other than a racing official, jockey, apprentice jockey, assistant starter, or driver be found to have levels of any nonprescription, prohibited, or illegal drug, or prescription medication at a concentration greater than which has been prescribed, or an alcohol concentration greater than 0.04 percent, the licensee shall be subject to disciplinary action by the stewards and the commission. For purposes of this part, "alcohol concentration" means:

- A. the number of grams of alcohol per 100 milliliters of blood; or
- B. the number of grams of alcohol per 210 liters of breath; or
- C. the number of grams of alcohol per 67 milliliters of urine.

Should a licensee who is a racing official, jockey, apprentice jockey, assistant starter, or driver be found to have any level of any nonprescription, prohibited, or illegal drug, or alcohol, or prescription medication at a concentration greater than which has been described, the licensee shall be subject to disciplinary action by the stewards and the commission.

Subp. 2. [Repealed, 15 SR 2307]

Statutory Authority: *MS s 240.03; 240.08; 240.16; 240.23; 240.24*

History: *9 SR 2527; 11 SR 2201; 15 SR 2307; 19 SR 2307; 22 SR 1785; 28 SR 1482; 42 SR 1258*

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7897.0115 FAILURE TO APPEAR.

No licensee shall fail to appear in any court of competent jurisdiction on any criminal complaint, indictment, tab charge, citation, or bench warrant.

Statutory Authority: *MS s 240.23*

History: *11 SR 2201*

Published Electronically: *January 27, 2005*

7897.0120 DISCIPLINARY SANCTIONS.

Subpart 1. **Sanctions.** Any licensee engaging in any prohibited act as provided in parts 7897.0100 to 7897.0115, or any other violation of Minnesota Statutes, chapter 240, or the commission's rules, is subject to license suspension or revocation, the levying of a fine as provided in part 7897.0130, and having such conditions placed on the license as reasonably necessary to ensure the integrity of racing and the health, safety, and welfare of its participants. The commission or stewards may also impose such sanctions on a person whose license has expired for conduct that occurred when the license was in effect. When determining what sanction or sanctions to issue, the commission or stewards must consider the nature, chronicity and severity of the violations, and their effects on the integrity of racing and the safety and welfare of racing participants.

Subp. 2. **Exclusion from racetrack.** Any person engaging in any prohibited act as provided in part 7897.0100 is subject to exclusion pursuant to Minnesota Statutes, section 240.27, from all licensed racetracks under the jurisdiction of the commission.

Subp. 3. **Reciprocity of rulings.** The commission, its designee, or stewards may deny, suspend, or revoke a Class C license if it is found that the applicant or licensee, or any person who is an agent, employee, or associate of such applicant or licensee:

A. is presently under suspension or his or her license has been denied or revoked for any reason by a legally constituted racing commission or gaming authority of another jurisdiction; or

B. becomes suspended or has his or her license denied or revoked for any reason by a legally constituted racing commission or gaming authority of another jurisdiction while such licensee is licensed in Minnesota.

Before considering a licensee for reinstatement in Minnesota or granting a license to an applicant, the commission, its designee, or stewards shall require such licensee to obtain reinstatement in the original racing jurisdiction where his or her license was denied, suspended, or revoked, and to establish his or her fitness to be reinstated in Minnesota.

Subp. 4. **Effect of sanctions.**

A. An individual whose license has been denied is ineligible to apply for a license from the commission for two years.

B. An individual whose license has been revoked is ineligible to apply for a license from the commission for five years.

C. An individual whose license has been revoked or suspended, and has not been restored to good standing, is excluded from the grounds of all licensed racetracks under the jurisdiction of the commission.

D. An individual who has not paid a fine levied by the commission, and has not timely appealed the fine, is ineligible to reapply for a license until the fine is paid in full.

E. An individual whose license has been denied, revoked, or suspended, and has not been restored to good standing, may not benefit financially from racing, training, or caring for horses at a licensed racetrack. This includes but is not limited to prohibiting the transfer of ownership, training, or care of horses to any of the following without the express permission of the stewards:

- (1) a licensee related to the individual by blood, marriage, or domestic partnership;
- (2) a licensee related to the individual's spouse by blood; or
- (3) a licensee who has had a business or employment relationship with the individual in the past year.

Statutory Authority: *MS s 240.03; 240.13; 240.15; 240.16; 240.18; 240.23; 240.24; 240.25*

History: *9 SR 2527; 10 SR 1908; 11 SR 2201; 41 SR 1322; 42 SR 1258*

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7897.0130 SCHEDULE OF FINES.

Subpart 1. **Imposition of fines.** The commission may impose a civil fine upon any licensee for a violation of laws related to horse racing or the commission's rules after a determination of the severity of the violation. The stewards may impose a civil fine upon a Class C licensee.

Subp. 2. **Categories of violations.** The commission or stewards shall assign a violation to one of the following categories:

A. A "serious violation" is a failure to comply with law or rule when the failure has a substantial adverse effect on the integrity of pari-mutuel horse racing, public welfare, health, or safety.

B. A "violation" is any failure, other than a serious violation, to comply with a law or rule.

Subp. 3. **Assignment of categories and determination of fine amount.** In assigning a particular violation to a category, and in determining the amount of the fine for any violation, the commission or stewards shall consider the following factors:

- A. the potential or actual harm to persons, property, or the integrity of racing;
- B. the culpability of the violator;
- C. the frequency of the violator's failure to comply with law or rule; and

D. any other factors reasonably related to the health, safety, and welfare of participants in racing or the integrity of pari-mutuel racing in Minnesota, as long as the same factors are considered with regard to all similarly situated violators.

Subp. 4. **Serious violations.** Violations of Minnesota Statutes, section 240.25, misrepresentation of the identity of a horse, possession of a firearm in violation of state law, setting or attempting to

set a fire on the racetrack premises, a violation of part 7897.0110, and any violation involving a substance defined by the Association of Racing Commissioners International Uniform Classification Guidelines for Foreign Substances as a Class 1 foreign substance shall be deemed per se serious violations.

Subp. 5. **Amount of fines.** The fine for a serious violation of law or rule shall be at least \$1,000 and up to \$10,000 for a first serious violation; up to \$25,000 for a second serious violation; or up to \$50,000 for a third serious violation. The fine for other violations shall not exceed \$999. The commission may impose a fine in excess of \$5,000 but no more than \$200,000 against a Class A, B, or D licensee as necessary to enforce parts 7870.0430, 7870.0450 to 7870.0470, or 7870.0500.

Subp. 6. **Timetable for paying fines.** All fines imposed by the stewards or commission must be paid within 72 hours of the date of the ruling imposing the fine. Failure to pay the fine within the required time is grounds for suspension, an additional fine, and such other sanctions and restrictions as the commission, its designee, or the stewards reasonably deem necessary. The commission shall designate one or more employees responsible for collecting fines and they shall notify the stewards and executive director of delinquent fines.

Statutory Authority: *MS s 240.03; 240.22; 240.23; 240.24*

History: *9 SR 2527; 11 SR 2201; 28 SR 1482; 41 SR 1322; 42 SR 1258*

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7897.0140 SUSPENSION OR REVOCATION.

Any ground for denial of a license also is a ground for imposition of a fine, suspension, or revocation of the license.

Statutory Authority: *MS s 240.08; 240.22; 240.23*

History: *9 SR 2527*

Published Electronically: *January 27, 2005*

7897.0150 DISCIPLINARY 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.** 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.

Subp. 3. [Repealed, 42 SR 1258]

Subp. 4. [Renumbered 7897.0155 subp 2]

Subp. 5. [Repealed, 42 SR 1258]

Subp. 6. [Repealed, 42 SR 1258]

Subp. 7. [Renumbered 7897.0155 subp 5]

Subp. 8. [Repealed, 42 SR 1258]

Subp. 9. [Renumbered 7897.0155 subp 7]

Subp. 10. **Penalties imposed by stewards or commission for medication violations.**

A. Upon a finding of a violation of chapter 7890, the stewards or commission 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.

B. 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.

C. 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.

D. 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.

Statutory Authority: *MSs 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; 42 SR 1258*

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7897.0155 APPEAL TO COMMISSION.

Subpart 1. Appeals.

A. A license denial, a sanction under part 7897.0120, or a stewards' decision regarding a Class C licensee may be appealed to the commission.

B. The licensee may ask the commission to reverse the decision in whole or in part or to lessen the sanction ordered.

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

Subp. 2. **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. 3. **Stays of decisions.** An appeal of a sanction or stewards' decision shall not automatically stay the decision. A party may request the director to stay the decision. The director shall order a stay for good cause shown.

Subp. 4. **Procedure for appeal to commission.** A licensee may appeal a license denial, sanction, or decision of the stewards by filing with the director a written request for an appeal within five days after being orally advised of the decision or receiving a written order, whichever is earlier. The appeal 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 license denial, sanction, or decision of the stewards;
- C. a statement of the relief sought; and
- D. whether the appellant desires to be present in person at the hearing of the appeal.

Subp. 5. **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. 6. **Commission shall set date for hearing.** Within five days of receipt of a written request for an appeal and the deposit, the commission chair, director, or deputy director shall set a date, time, and place for the hearing. The hearing must be held within 15 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. 7. **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.

Subp. 8. **Designation of panel.** All appeals shall be heard by a panel of three or more commission members. The commission chair shall appoint the panel members and shall also designate one of them as the chair of the panel.

Subp. 9. **Hearing panel's decision.** All decisions of the hearing panel must be made by majority vote. In the event the hearing panel is unable to arrive at a decision by a majority vote, the commission shall consider the appeal based on the record before the hearing panel. The hearing panel shall issue its written decision within ten days, excluding Saturdays, Sundays, and holidays, based on the record and must include the hearing panel's findings of fact and conclusions on all material issues. A copy of the panel's decision shall be served upon all parties by first class mail or personal service. The decision of the hearing panel shall be the final agency decision.

Statutory Authority: *MS s 240.03; 240.23*

History: *42 SR 1258*

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7897.0160 [Repealed, 42 SR 1258]

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7897.0170 CONDUCT OF APPEAL HEARING.

Subpart 1. **Rights of parties.** All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Subp. 2. **Witnesses.** Any party may be a witness or may present witnesses on his or her behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon the motion of the hearing panel, witnesses may be sequestered from the hearing room during the testimony of other witnesses.

Subp. 3. **Admissible evidence.** The hearing panel may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence which reasonable, prudent persons are accustomed to rely upon in the conduct of their serious affairs. The hearing panel shall give effect to the rules of legal privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded. All rulings on evidentiary matters shall be made by the chair of the hearing panel.

Subp. 4. **Evidence part of record.** All evidence to be considered in the case, including all records and documents in the possession of the stewards or commission, or a true and accurate photocopy thereof, may be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

Subp. 5. **Documents.** Documentary evidence in the form of copies or excerpts may be received or incorporated into the record by reference in the discretion of the hearing panel, or upon agreement of the parties.

Subp. 6. **Official notice of facts.** The hearing panel may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Subp. 7. **Burden of proof.** The appellant must prove that the stewards' ruling is clearly erroneous or not supported by applicable law.

Subp. 8. **Examination of adverse party.** A party may call an adverse party or his or her managing agent or employees, or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him or her by leading questions and contradict and impeach him or her on material matters in all respects as if he or she had been called by the adverse party. The adverse party may be examined by his or her counsel upon the subject matter of his or her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his or her testimony.

Subp. 9. **Record of proceedings.** All proceedings before the hearing panel must be recorded. Court reporters may be used upon the request of any party; however, the court reporter's cost shall be borne by the requesting party.

Subp. 10. **Summary disposition.** If the hearing panel finds there are no genuine issues of material fact and the matter can be decided as a matter of law, the hearing panel shall, within ten days of receiving the written request for appeal, issue a written decision without holding a hearing. The decision shall be a final agency decision.

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

History: *9 SR 2527; 14 SR 2008; 42 SR 1258*

Published Electronically: *May 1, 2018*

7897.0180 SUBPOENAS.

Subpart 1. **Written request.** Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing panel and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, and shall identify any documents sought with specificity, and shall name all persons to be subpoenaed.

Subp. 2. **Service.** A subpoena shall be served in the manner provided by the rules of civil procedure for the district court of Minnesota, unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. When the subpoena is issued on behalf of the commission or employees thereof, fees and expenses need not be paid. The person serving the subpoena shall make proof of service by filing a copy of the subpoena with the hearing panel, together with an affidavit of service.

Subp. 3. **Motion to quash.** Upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith, the hearing panel may quash or modify the subpoena if it finds that it is unreasonable or oppressive.

Statutory Authority: *MS s 240.08; 240.10; 240.16; 240.19; 240.22; 240.23*

History: *9 SR 2527*

Published Electronically: *January 27, 2005*

7897.0190 CONTESTED CASE HEARINGS.

Subpart 1. **Right to a contested case hearing.** In lieu of an appeal under part 7877.0155, if the commission orders any of the following disciplinary sanctions, the licensee may elect to appeal by requesting a contested case hearing, to be held in accordance with the contested case procedures in Minnesota Statutes, chapter 14 and rules adopted pursuant thereto:

- A. revocation of a license;
- B. suspension of a Class A, B, or D license;
- C. suspension of a Class C license for more than one year; or
- D. a fine of more than \$10,000.

Subp. 2. **Contested case procedure.** The commission shall notify a licensee in writing of the sanction, and of the licensee's right to appeal by requesting a contested case hearing. A request for

a contested case hearing must be made in writing and delivered to the commission's director by certified mail or personal service. If delivered by certified mail, the request must be postmarked within ten calendar days after the licensee received the commission's sanction order. If a request is delivered by personal service, it must be received by the commission's director within ten calendar days after the licensee received the commission's sanction order. If a licensee submits a timely request for a contested case hearing under this subpart, the disciplinary sanction shall be stayed until the commission issues a final order following the contested case hearing. However, the imposition of the sanction shall not be stayed if the commission had summarily suspended the license in the 90 days preceding the issuance of the sanction order and the licensee either did not appeal the summary suspension or the commission affirmed the summary suspension after appeal. Any contested case hearing shall be commenced and held in the manner provided for in Minnesota Statutes, chapter 14, and rules adopted pursuant thereto.

Subp. 3. **Exceptions.** Parties affected by the report of the administrative law judge shall have 20 days from the date of service of the report to file exceptions with the commission and request an opportunity to present written arguments to the commission.

Subp. 4. **Consideration of arguments.** If there has been a request for an opportunity to present written arguments, the commission shall, as soon as practicable, set dates for the filing of such arguments and give reasonable notice thereof to all parties to the contested case.

Subp. 5. **Decision or order.** The decision or order shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceeding shall be served personally or by first-class mail with a copy of the decision or order and accompanying statement of reasons.

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

History: *9 SR 2527; 11 SR 2201; 42 SR 1258; 44 SR 1031*

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7897.0200 Subpart 1. [Repealed, 42 SR 1258]

Subp. 2. [Renumbered 7897.0190 subp 4]

Subp. 3. [Renumbered 7897.0190 subp 5]

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7897.0210 REHEARING.

Subpart 1. **Limitations.** The commission may, upon request or its own motion and for good cause shown, reopen, rehear, and redetermine a contested case after a final decision has been reached adverse to a party to the contested case other than the commission. This right may be exercised until it is lost by appeal or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

Subp. 2. **Parties other than commission.** At any time prior to the commission's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain the name and address of the petitioner, the commission designation for the case, and the basis for the petition.

Subp. 3. **Commission's own motion.** The commission may, on its own motion, for good cause stated in the record, reopen, rehear, and redetermine a contested case if the decision was adverse to a party to that case other than the commission.

Subp. 4. **Default judgments.** A party against whom a default has been adjudged pursuant to part 1400.6000 may obtain a rehearing upon a timely showing of good cause for his or her failure to appear or plead.

Subp. 5. **Determination.** The commission shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision, or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the commission in written or oral form, or both, by any party to the contested case with respect to the petition.

Subp. 6. **Rehearing procedure.** A rehearing in a contested case shall be conducted in the same manner prescribed by the rules of the Office of Administrative Hearings.

Subp. 7. **Decision after rehearing.** The decision after rehearing shall be made in the same manner prescribed for the decision after the hearing.

Statutory Authority: *MS s 240.08; 240.10; 240.16; 240.19; 240.22; 240.23*

History: *9 SR 2527*

Published Electronically: *January 27, 2005*

7897.0220 APPEAL BY COMMISSION.

The commission may appeal pursuant to Minnesota Statutes, sections 14.63 to 14.68 any adverse decision. The commission shall be deemed a "person" for such purposes.

Statutory Authority: *MS s 240.08; 240.10; 240.16; 240.19; 240.22; 240.23*

History: *9 SR 2527*

Published Electronically: *January 27, 2005*