

## Dispute Resolution Task Force Report – June 29, 2013

The mission of the Dispute Resolution Task Force is to examine dispute resolution at multiple levels of USMS and to make recommendations regarding (1) education and resources for dispute avoidance and (2) improving systems intended to handle grievances. The examination will include the grievance process under Part 4 of USMS Rules, including the National Board of Review and appeals to the USMS BOD; and dispute resolution at the club and LMSC levels. If necessary, the task force will recommend changes, including potential legislation, and best practices to the BOD. Task force members include Hugh Moore (chair), Leianne Crittenden, Patty Miller, Laura Groselle, Maria Elias-Williams, and Sean Fitzgerald.

To accomplish its mission the task force has been working on four primary areas:

- 1) Updating current NBR Procedures so that they can be presented to the BOD for approval
- 2) Updating LMSC Model Grievance Procedures
- 3) Creating a set of tools for clubs and LMSCs to use for resolving disputes
- 4) Proposed changes to Part IV of USMS Rules

The task force anticipates completing the first three tasks prior to the 2013 convention. The task force recommends that the BOD submit the following legislative proposals for the 2013 convention.

### L-1

#### **403.4 National Board of Review Procedures** (New paragraph, re-number subsequent paragraphs)

The Board of Directors shall establish National Board of Review Procedures. These procedures shall set forth the process that will be used for matters filed with the National Board of Review including, but not limited to 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.

**Rationale:** Code should state clearly that there shall be NBR Procedures and that the Board of Directors is responsible for establishing them. While the Board of Directors may delegate the creation and updating of the procedures to others, such as the NBR Chair or a task force, it should be stated in code that the procedures are the board's responsibility. The procedures should also be made publicly available, which may mean posting on the USMS website today, but could take some other form in the future.

### L-2

**403.4.1** Because certain disputes are most appropriately heard at the national level, the ~~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.

**Rationale:** This explains why the NBR has "exclusive jurisdiction" in specific matters.

### L-3

#### **403.4.3**

**a.** Matters of jurisdiction to the National Board of Review shall be initiated by a written grievance filing made in accordance with the National Board of Review Procedures. 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.

b. Requests to the National Board of Review for review of LMSC decisions shall be initiated by a written request for review filed in accordance with the National Board of Review Procedures.

~~403.7.2 The petition for appeal shall be served upon the National Office in accordance with the National Board of Review Procedures. 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.~~

#### **403.8 Hearing Panel Procedure**

If, pursuant to the authority in article 403.6, the chair chooses to appoint a hearing panel to decide a dispute matter, 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, 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 the National Board of Review Procedures.~~

~~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.~~

#### **403.9 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, in accordance with NBR Procedures.

~~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 and a written decision shall be sent to all parties.~~

**Rationale:** This proposal will take the operational processes out of the Rules and put them into the NBR Procedures which will be approved by the Board and then posted on the USMS Website so they are accessible to all. The basic structure (NBR Chair and NBR Committee, jurisdiction)-and basic procedural requirements

should still be in the Rules. The operational processes (time frames, page length of filings, filing fees) should be in the Procedures, so that they can be changed as needed (but only with Board approval).

#### L-4

##### **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 take one or more of the following actions when reviewing a matter:

**Rationale:** We want to be sure that the NBR Chair has the right to take any of these actions, but is required to pick at least one of them (e.g., refer an appeal of an LMSC decision back to the LMSC, or start an investigation prior to a hearing in a dispute). We believe that in almost every case, there will be a hearing, but before there is a hearing, the NBR Chair has the authority to ask for further materials or begin an investigation if the NBR Chair believes that the materials submitted are insufficient to make an informed decision.

#### L-5

**403.7.4** 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.

**Rationale:** Where the NBR hears an appeal, it will make its decision based on the materials presented to the LMSC Dispute Resolution panel and typically no new materials will be submitted to the NBR. Where the NBR panel does not think that the record is adequate, they have the discretion to make a further investigation, but we are trying to make sure that the parties completely state their case when the dispute is first decided, and that they are not adding new information as they go along in the process.

#### L-6

**403.8.7** ~~...The written decision shall set forth the right of appeal.~~

**Rationale:** The current process already provides for an appeal to the Board (see Rules in Legislative Proposal L-4)

#### L-7

**403.8.10** ~~All Communications between the parties, the National Board of Review, and the hearing panel, and the Chair mailings and other correspondence from the grievant, respondent and any witnesses shall be made as prescribed by the NBR 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 receipt~~ of the National Board of Review's written decision.

**Rationale:** Allow use of electronic communications and media

#### L-8

**403.9.1** ... The petition shall set forth the grounds for appeal, citing specific facts and factual and legal issues in as much detail as possible. ~~The petition shall not include new evidence that was not part of the record from the National Board of Review.~~

**Rationale:** Focus appeals to the BOD on reasons why the appellant believes the NBR decision is in error under USMS Rules.

**L-9**  
**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~~ The board panel may decide in its sole discretion to take new evidence and hear testimony.

**Rationale:** Eliminate contradictory statements.

**L-10**  
**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 in all LMSCs.

**Rationale:** Once a decision is made, it should be observed in all USMS LMSCs.