

SUBPART C - DISCIPLINARY PROCEEDINGS AND COMPLAINTS

Article 70 - Disciplinary Proceedings and Complaints

470.1 Authority for disciplinary proceedings and complaints

(a) As hereinafter set forth, USA Diving may censure, suspend for a definite or indefinite period of time, fine, or expel any member of USA Diving, including any athlete, coach, manager, official or member of any committee, or any other person participating in any capacity whatsoever in the affairs of USA Diving, who has contravened in any of its rules or regulations or who has acted in a manner which brings disrepute upon USA Diving. The USA Diving Board of Directors or the Board of Review may also place a member on probation or suspend a member from the rights and benefits of membership upon such terms as may be determined.

(b) Members of USA Diving or the Corporation may file a complaint regarding matters as set forth in 470.3.

470.2 Reviews by a Local Diving Committee (LDC or Association).

(a) For those matters requiring disciplinary action or procedural review solely within the territorial jurisdiction of an LDC (i.e., between members of a single Association or at an Association championship or invitational meet), the Local Diving Committee of that Association has original jurisdiction.

(b) Each LDC shall provide in its bylaws for the composition of a Local Board of Review, which shall consist of not less than three persons and not less than 20 percent athlete membership. If the LDC bylaws fail to provide for a Local Board of Review or if the LDC lacks bylaws, then a member desiring to raise a disciplinary matter or other complaint may proceed in accordance with Section 470.3. The procedures provided in the LDC bylaws shall be consistent with the provisions of Section 470.3

(c) The decision of the Local Board of Review shall be final in all cases, subject only to appeal to the National Board of Review. An appeal to the National Board of Review must be filed with the Chief Executive Officer of the Corporation within 30 days after mailing of written notice of the decision of the Local Board of Review. Any person representing a real party in interest may appeal. Upon timely petition to the Chair of the Board of Review, and upon showing of good cause, the time of appeal may be extended if application is made before the expiration of said 30-day period. Such appeal will be considered to be the filing of a complaint in accordance with section 470.3.

(d) No person involved in the original matter being considered, or in case of appeals, involved in any decision-making process of an earlier hearing, shall participate as a decision-maker in any hearing, whether original or appellate in nature. Compliance with the Corporation's conflict-of-interest rule is mandatory for the selection of persons to sit on all hearing panels. Nothing herein shall be construed to prohibit any person from serving in an advocacy position, giving testimony or otherwise providing information to a properly established hearing panel.

(e) For purposes of appeal, the failure of the LDC to commence and/or complete disciplinary action or procedural review within the time frames provided herein shall be deemed to be a denial of the complaint and then shall be appealable to the National Board of Review pursuant to section 470.3.

470.3 Original Jurisdiction of the Corporation.

(a) **Designation of Complaints.** The following kinds of complaints may be filed with USA Diving:

(1) *Administrative Grievance.* USA Diving or any member of USA Diving may file a complaint pertaining any alleged violation or grievance of:

- (i) Any USA Diving technical diving rule,
- (ii) Any provision of USA Diving's *Code*,
- (iii) Any provision of the *Ted Stevens Olympic and Amateur Sports Act*, as such law may be amended, relating to USA Diving's recognition as a national governing body, or
- (iv) Any appeal from the decision of an LDC board of review.

(2) **Right to Compete.** Any athlete, coach, trainer, manager, administrator or official may file a complaint pertaining to any alleged denial of, or alleged threat to deny, that individual's opportunity to compete in a USA Diving-sanctioned or international competition.

(b) **Jurisdiction.**

(1) Any member of USA Diving, by reason of membership, agrees to be subject to these complaint procedures and agrees to be bound by any decision rendered pursuant to these complaint procedures.

(2) A decision on a doping violation adjudicated by the independent anti-doping organization designated by the U.S. Olympic Committee to conduct drug testing (currently the U.S. Anti-Doping Agency) may not be reviewed under these procedures.

(3) Any matter determined in a prior arbitration under the USOC may not be reviewed under these procedures.

(c) **Manner of Filing.** The complainant shall file a signed complaint with the Board of Review that clearly sets forth:

- (1) The alleged violation, grievance, denial or threat to deny, or LDC board of review decision being appealed, and
- (2) The remedy requested.

(d) **Filing Fee.** A filing fee of \$250 from an individual or \$500 from an organization must accompany the complaint. USA Diving is not required to pay a filing fee. The Board of Review may reduce or waive the filing fee in case of financial hardship.

(e) **Statute of Limitations.** A complaint filed under this section must be filed within 180 days of the alleged violation, grievance, denial or threat to deny.

(f) **Field-of-Play Decisions.** The final decision of a referee made during competition may not be reviewed under these procedures unless the decision is:

- (1) Outside the authority of the referee, or
- (2) The product of fraud, corruption, partiality or other misconduct of the referee. For purposes of this section, "referee" includes anyone with discretion to make field-of-play decisions.

(g) **Administration.** The Board of Review shall generally administer and oversee all administrative grievances and right-to-compete matters filed with USA Diving. The Board of Review shall be responsible to ensure that all complaints are heard in a timely, fair and impartial manner. The Board of Review may set additional procedures to effectively administer complaints filed with USA Diving.

(h) **Hearing Panel.** When a complaint is filed, the Chair of the Board of Review, after consultation with the other Board of Review members, shall appoint a three-member hearing panel and a non-voting chair to hear the complaint. At least one member of the hearing panel shall be an athlete. Members of the panel need not be members of USA Diving or involved in the sport of diving but may be members of the Board of Review. A party may challenge the selection of a panel member for cause, and any other party may state his/her position on such a challenge. The challenge shall be decided by the National Board of Review under criteria generally applicable to the challenge of judicial officers in the State of Indiana.

(j) **Procedures.**

(1) The hearing panel shall rule on all motions and other matters raised in the proceeding. It may dismiss a complaint on its merits without hearing on an appropriate basis, including, but not limited to, (i) if the allegations fail to state a claim, (ii) the matter is moot, (iii) the complainant has failed to exhaust remedies, (iv) the limitation period expired

prior to the filing of the complaint or (v) the panel is without jurisdiction to hear the complaint. If the complaint is not dismissed, the hearing panel shall hold a hearing on the complaint. The hearing panel shall set such time lines and other rules regarding the proceeding and the conduct of the hearing as it deems necessary. The hearing shall be informal, except that testimony shall be taken under oath.

(2) The hearing may be conducted by teleconference. Each party shall have the right to appear personally or through a legal representative. All parties shall be given a reasonable opportunity to present and examine evidence, cross-examine witnesses and to present argument. Members of the hearing panel shall have the right to question witnesses or the parties to the proceedings at any time.

(3) Any party may have a record made of the hearing. A court reporter may be present at the hearing at the request of a party. The party requesting the court reporter shall compensate the court reporter or, if mutually agreed, the cost may be equally divided. The party requesting the transcript shall cover the cost of any transcript.

(k) **Expedited Procedures.** If necessary to address a matter relating to a pending or ongoing competition, the Board of Review may hear and decide a complaint within 48 hours of the filing, provided that any expedited procedures followed are fair to all parties involved.

(l) **Complaints involving selection to participate in competition.**

(1) When a complaint involves selection of an individual to participate in a competition, the complainant shall submit with the complaint a list of all other individuals, with their contact information, who might be adversely affected by a decision. The adverse party to the complaint must also submit a list of individuals, with their contact information, that might be adversely affected by a decision rendered on the complaint.

(2) The hearing panel shall determine who must receive notice of the complaint and the complainant must provide appropriate notice to those individuals.

(3) Any individual so notified may participate in the proceedings as a party. Individuals notified of the complaint are bound by the decision of the hearing panel even though they chose not to participate.

(m) **Decision.** A decision shall be determined by a majority of the hearing panel. The hearing panel's decision shall be in writing and shall be distributed to all parties.

(n) **Appeals.** Any party may appeal a decision of the hearing panel to the American Arbitration Association. The arbitrator appointed by the American Arbitration Association shall have the authority to hear the matter anew, or if requested by a party, to render a decision on a more limited review. Either party may submit the decision of the hearing panel to the arbitrator for the arbitrator's consideration. The arbitrator may give whatever weight or authority to the hearing panel's decision as the arbitrator deems appropriate.

470.4 The National Board of Review.

(a) The National Board of Review shall consist of five members. The General Counsel of the Corporation shall be the Chair of the Board of Review. Other members of the Board of Review are the Immediate Past Chair of the Board, the Coach Director, one member appointed by the Chair of the Board and an Athlete Representative.

470.5 Authority.

(a) A hearing panel of the Board of Review has the authority, including but not limited to:

- (1) Impose and enforce penalties for any violation of the rules and regulations, administrative or technical, of the Corporation;
- (2) Determine the eligibility and right to compete of any athlete;
- (3) Vacate, modify, sustain, or reverse any decision or order properly submitted for review, or remand the matter for further action;
- (4) Investigate any election impropriety or cause for removal of a national committee member or Director and take corrective action. In the case of election impropriety, any

corrective action implemented by the Board of Review remains in effect only until a special election can be held by the USA Diving General Assembly;

(5) Interpret any provision of the Corporation's *Code* with the exception of the *Competitive and Technical Rules* (Part I);

(6) Review any revocation, suspension, or reinstatement of membership to assure due process;

(7) Reinstate any athlete to amateur status, subject to ratification by no less than 2/3 vote of the Board of Directors of the Corporation;

(8) Review determinations of the *Code* made by the Governance Committee as provided in 245.6(c)(3);

(9) Review determinations of the *Competitive and Technical Rules* made by the Rules Committee or Junior Rules Subcommittee in accordance with 245.3(e)(2)(i)(B) or (f)(2)(i)(B);

(10) Review the action of any board or committee of the Corporation or action of the Board of Directors of an LDC with regard to procedural propriety and substantive authority. The Board of Review may uphold the decision, reverse the decision, or uphold in part and reverse in part. In the event of a reversal, in whole or in part, the Board of Review may determine to remand all or a part of the matter back to the original board or committee for further deliberation consistent with the Board of Review's decision; and

(11) When appropriate, direct the payment or repayment of monies paid by or due to USA Diving or a member and set the terms and conditions of such payment or repayment.

Article 71 - Athletes' Rights

[Rescinded Sept. 17, 2005, effective October 1, 2005]