

I. Amendments to comply with mandated USA Swimming move of Board of Review procedures to the USA Swimming Rulebook – Part Four

602.1 MEMBERS - The membership of MA shall consist of the following:

- .3 Membership A Privilege Not A Right - Membership in MA and USA Swimming is a privilege and shall not be interpreted as a right. Membership (including a Life Membership) may be terminated by the Board of Review or the National Board of Review for any violation of a member's responsibilities under Section 602.2, for any of the reasons set forth in [Article 410 of the USA Swimming Rules and Regulations](#)~~Section 610.4.7.C~~ or for any other reason determined by the Board of Review or National Board of Review to be in the best interests of the sport of swimming, USA Swimming or MA.

604.4 DUTIES AND POWERS - The House of Delegates shall oversee the management of the affairs of MA and the establishment of policies, procedures and programs. In addition to the duties and powers prescribed in the USA Swimming Rules & Regulations or elsewhere in these Bylaws, the House of Delegates shall:

- .10 Remove from office any Board Members, members of the Board of Review, committee chairmen or members or coordinators who have failed to attend to their official duties or member responsibilities or have done so improperly, or who would be subject to penalty by the Board of Review for any of the reasons set forth in [Article 410 of the USA Swimming Rules and Regulations](#)~~Section 610.4.7.C~~. However, no Board Member, Board of Review member or elected committee chair or coordinator may be removed except upon not less than thirty (30) days written notice by the Secretary or other officer designated by the House of Delegates specifying the alleged deficiency in the performance of member responsibilities or specific official duties or other reason. All notices and proceedings under this section shall be prepared, served and processed utilizing the procedures for a formal hearing pursuant to [Article 406 of the USA Swimming Rules and Regulations](#) ~~Section 610.6.1~~ to the extent applicable. Should the Board Member, Board of Review member or elected committee chair or coordinator contest the alleged deficiency or other reason alleged in the notice, the House of Delegates shall hold a hearing at which the defendant shall have the same rights as if the hearing were to be conducted by the Board of Review pursuant to [Part Four of the USA Swimming Rules and Regulations](#)~~Article 610~~.

605.6 DUTIES AND POWERS - The Board of Directors shall act for MA and the House of Delegates during the intervals between meetings of the House of Delegates, subject to the exercise by the House of Delegates of its powers of ratification or prospective modification or rescission, except that it shall not remove a Board Member, a Board of Review member or other person elected by the House of Delegates or amend these Bylaws. In addition to the powers and duties prescribed in the USA Swimming Rules & Regulations or elsewhere in these Bylaws, the Board of Directors shall have the power and it shall be its duty to:

- .11 Remove from office any officers, committee chairmen, committee members or coordinators of MA who were not elected by the House of Delegates and who have failed to attend to their official duties or member responsibilities or have done so improperly, or who would be subject to penalty by the Board of Review for any of the reasons set forth in [Article 410 of the USA Swimming Rules and Regulations](#)~~Section 610.4.7.C~~. No officer, committee chair or coordinator may be removed without receiving the thirty (30) days written notice specifying the alleged deficiency in the performance of the member's responsibilities under these Bylaws, the member's official duties or other reasons. All notices and proceedings under this section shall be prepared, served and processed utilizing the procedures for a formal hearing pursuant to [Article 406 of the USA Swimming Rules and Regulations](#) ~~Section 610.6.1~~ to the extent applicable. Should the officer, committee chair, committee member or coordinator contest the alleged deficiency or other reason set forth in the notice, the Board of Directors shall hold a hearing at which the member shall have the same procedural rights as if the hearing were to be conducted by the Board of Review pursuant to [Part Four of the USA Swimming Rules and Regulations](#)~~Article 610~~.

ARTICLE 610 BOARD OF REVIEW, HEARINGS AND RIGHT OF APPEAL

610.1 INTRODUCTION - USA Swimming was organized as the National Governing Body for the sport of swimming under the Amateur Sports Act of 1978, as amended by the Ted Stevens Olympic and Amateur Sports Act of 1998, a both federal laws. ~~That-These~~ laws requires USA Swimming to establish and maintain provisions for the swift and equitable resolution of all disputes involving any of its members. This Article, together with Section 602.2 and Article 609, and the USA Swimming ~~Code of Ethics~~Rules and Regulations are intended to provide a clear statement of member responsibilities, liabilities for infractions thereof and a mechanism for resolving in an orderly and fair way all manner and kinds of disputes that may arise among its members in connection with the sport of swimming. Accordingly, MA has established the Board of Review (the "Board") to hear complaints, protests and appeals regarding the administration and conduct (including acts and failures to act) of the sport of swimming in the Territory, conduct that may violate the USA Swimming Code of ~~Ethics~~Conduct or otherwise violate the policies, procedures, rules and regulations adopted by USA Swimming or MA, or conduct that may bring USA Swimming, MA or the sport of swimming into disrepute. This Article, together with Part Four of the USA Swimming Rules and Regulations, is intended to provide a uniform method of appeal from any decision, act or failure to act to which a member of MA or, where the conduct occurred in the Territory, another LSC takes exception, and to provide an opportunity for a fair hearing before a group of independent and impartial people. This Article and Part Four of the USA Swimming Rules and Regulations shall be construed accordingly.

610.2 - DEFINITIONS FOR ARTICLE 610 -

This prior section 610.2 deleted in its entirety.

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610.32 BOARD OF REVIEW ORGANIZATION -

- .1 Establishment - The Board of Review of MA shall be independent and impartial.
- .2 Members - The Board of Review shall have at least five (5) regular members and at least three (3) alternate members. The Board of Review, and any panel hearing a case, shall have a sufficient number of athlete members to constitute at least 20% of its membership. The House of Delegates may increase the number of regular or alternate members by resolution but subsequent to the adoption of these Bylaws may only decrease the number of regular or alternate members upon the expiration of the term of office of any incumbent members. When a matter is being heard by less than the full Board of Review, the panel hearing the case shall include a sufficient number of athlete members so as to constitute at least 20% of the hearing panel. No hearing shall proceed without the required athlete representation.
- .3 Election; Term of Office; Eligibility -
 - A Election - The House of Delegates shall annually elect regular and alternate members of the Board of Review: Two regular and two alternate members shall be elected in even-numbered years and three regular and one alternate members in odd-numbered years.
 - B Term of Office - The term of office shall be two years. Each member and alternate member shall assume office on July 1 of the year in which elected, and shall serve until a successor takes office.
 - C Eligibility - Each regular and alternate member of the Board of Review shall be a Individual Member of MA and USA Swimming. In no case shall elected members of the Board of Directors constitute a majority of the Board of Review.
- .4 Chair Elected by Board; Other Officers - The Chair of the Board of Review (the "Chair"), who must be a regular member, shall be elected annually by a majority vote of the regular members of the Board of Review. The Chair shall annually appoint a Vice-chair and a

- Secretary of the Board of Review, each of whom must be regular members. The Chair may appoint a Presiding Officer, who must be a regular member of the Board, to preside over one or more pending cases.
- .5 Meetings - The Board of Review shall meet for administrative purposes ~~at least once annually~~ as necessary to elect the Chair, to adopt rules and procedures and to conduct other business as may be helpful or necessary to achieve the purposes of the Board of Review and efficiently exercise its duties and powers. Other meetings may be called by the Chair or any three regular members. When meeting for administrative purposes, those provisions of Article 607 that are specified in Section 607.20 shall apply to the Board of Review.
 - .6 Participation Through Communications Equipment - Members of the Board of Review may participate in a meeting or hearing of the Board of Review, and any hearing may be conducted, in whole or in part, through conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at such a meeting or hearing.
 - .7 Quorum - A quorum for any administrative meeting of the Board of Review shall be fifty percent (50%) of its regular members, including athlete members. ~~(The rule prescribed in Section 610.5.1.C governs the quorum for hearings and rehearings conducted by the Board of Review.)~~
 - .8 Resignations - Any regular or alternate member of the Board of Review may resign by orally advising the Chair or by submitting a written resignation to the Chair, the General Chair or the Board of Directors specifying an effective date of the resignation. In the absence of a specified effective date, any such resignation shall take effect upon the appointment or election of a successor.
 - .9 Incapacities and Vacancies ~~—~~ Determination of Vacancy or Incapacity -
~~A~~ Office of Chair—In the event of a vacancy in the office of the Chair, a Presiding Officer of any panel or other members of the Board of Review, the LSC shall have in place reasonable written and published rules consistent with the laws of the state of incorporation of the LSC to determine when such membership on the Board of Review becomes vacant or a Chair, Presiding Officer or member becomes incapacitated. The determination as to when the Chair is temporarily incapacitated shall be made, where the circumstances permit, by the Chair and otherwise shall be with the discretion of the Board of Review, subject to any subsequent action of the House of Delegates, or of the Chair's temporary or permanent incapacity, the Vice-chair shall become the Acting Chair until an election can be held at a meeting of the Board of Review to fill the remaining term, if any, of the former Chair, or until the Chair ceases to suffer from any temporary incapacity. If the Chair is going to be absent from the Territory, the Chair may, but is not obligated to, designate the Vice-chair as Acting Chair for the duration of the absence.
- The remaining sections of 610.2.9 are DELETED in entirety.
- .10 Substitutions for Members - In the event that a member of the Board of Review or a Presiding Officer is unable or unwilling to promptly act for any reason, recuses herself or himself or is disqualified in any particular circumstance, the Chair (or, if the person so unable or unwilling to act or recused or disqualified is the Chair, the Vice-chair; or failing that, the General Chair) shall appoint another regular member or one of the alternate members or, if none of the alternate or regular members is available, a disinterested Individual Member to act in the member's place and stead in respect of that circumstance.
 - ~~.11 Extensions of Time - The time by which any act is required to be taken pursuant to this Article 610 may be extended or foreshortened by the Chair, or the Presiding Officer for a particular hearing, for good cause. (A single exception to this rule is provided in Section~~

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~~610.6.4.) A party's request for an extension of time prior to the time established without regard to the requested extension will be accorded greater deference than a request made later. The time, date and location of any hearing may be changed by the Chair or the Presiding Officer for a particular hearing on his or her own initiative, as required by the interests of the Board of Review or in the interests of justice.~~

~~.1211~~ Advice: Attorney as Presiding Officer -

- A Legal and Other Advice - Where appropriate or helpful, the Chair or Presiding Officer may consult the USA Swimming General Counsel, ~~any member of the USA Swimming Counselors Committee, the Chairmen-Chair~~ of the USA Swimming Rules and Regulations or Officials Committees ~~or of the Bylaws Subcommittee~~ or an attorney (who need not be a member of MA, USA Swimming or the Board of Review) retained by the Board of Review or the Chair regarding any issue raised by a proceeding.
- B Attorney as Presiding Officer - The Board of Review or the Chair may retain an attorney (who need not be a member of MA, USA Swimming or the Board of Review) to act as Presiding Officer at any hearing where it is appropriate or helpful. A Presiding Officer who is not a Board of Review member may ~~not~~ participate in the deliberations of the Board of Review or the designated panel ~~but shall not be counted in determining the existence of a quorum and shall not~~ have a vote.
- C Attorney's Fees and Expenses - Prior to retaining an attorney on any basis requiring the payment of fees to the attorney (the payment of expenses to an attorney providing services at no charge (*pro bono publico*) shall not be considered as a payment of fees for this purpose), the Chair or the Presiding Officer shall consult with the General Chair and the USA Swimming General Counsel. The Treasurer is authorized and directed to pay any fee and expenses charged by the attorney and approved by the Chair.

~~.13~~ Code of Conduct for Members of Board of Review: Recusal

~~All of Section 610.2.13 DELETED in its entirety.~~

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~~610.43~~ GENERAL JURISDICTION

- .1 Administrative Powers - The Board of Review shall have the powers and the duty to:
 - A administer and conduct the affairs and achieve the purposes of the Board of Review,
 - B establish policies, procedures and guidelines,
 - C elect the Chair in accordance with Section 610.3.4,
 - D elect or provide for the appointment of other officers, agents, committees or coordinators to hold office for terms, and to have the powers and duties, specified,
 - E call regular or special meetings of the Board of Review,
 - F retain attorneys, agents and independent contractors and employ those persons which the Board of Review may determine are appropriate, necessary or helpful in the administration and conduct of its affairs (~~see 610.2.11C~~) and
 - G ~~take such other action~~ as may ~~otherwise~~ be appropriate, necessary or helpful in the administration and conduct of its affairs, the achievement of its purposes and the efficient exercise of its duties and powers.
- .2 Rule Making Powers - The Board of Review shall have the power and the duty to promulgate reasonable rules and procedures consistent with the corporation laws of the state of incorporation of the LSC with respect to any matter within its jurisdiction or appropriate, necessary or helpful in the administration and conduct of its affairs. ~~The Such~~ rules and procedures ~~adopted by the Board of Review~~ shall have the same force and effect as if they had been adopted as part of these Bylaws.

~~.3 Investigative and Judicial Powers - The Board of Review may investigate and conduct hearings, make and publish decisions and orders with regard to any matter affecting MA, its status or conduct as a Local Swimming Committee or the administration of the sport of swimming in the Territory which involves:~~

~~A MA and (1) a member or members of MA or (2) a member or members of another LSC solely with respect to conduct or events occurring within the Territory or a combination of persons described in clauses (1) and (2), or~~

~~B only a member or members of MA, or~~

~~C with respect to conduct or events occurring outside the Territory, (1) MA and a member or members of MA or (2) only a member or members of MA.~~

~~The jurisdiction of the Board of Review is limited in the case of matters described in sections 401.1, 403.1 and 403.2.1 of the USA Swimming Rules & Regulations (with regard to the original and exclusive jurisdiction of the National Board of Review) and may be further limited to the extent provided in an order issued pursuant to section 403.2.2 of the USA Swimming Rules & Regulations (pertaining to certain discretionary jurisdiction of the National Board of Review).~~

.43 Exercise of Powers and Decisions - Except for authority and power granted to the Chair or the Presiding Officer, the exercise of the authority and powers of the Board of Review and the decision of matters which are the subject of a hearing shall be decided by a majority vote of the panel, the rehearing panel or the regular membership of the Board of Review. The views of any dissenters shall be included in the record of the proceeding if requested by the dissenters. The exercise of the Board of Review's authority and power shall lie solely in its discretion and the interests of justice and the sport of swimming. However, the Board of Review shall exercise its power in response to a timely ProtestPetition filed with it, subject, in appropriate circumstances, to the power and discretion of the Chair or Presiding Officer to dismiss a ProtestPetition with permission to refile for a stated period. In connection with any preliminary investigation, the Chair or Presiding Officer may offer the services of a Board of Review member to act as a mediator or similar positions under other alternative dispute resolution mechanisms.

.54 Timeliness of ProtestPetition - The Board of Review need not exercise its jurisdiction with respect to a ProtestPetition the subject matter of which occurred, or concerns or is founded on events which occurred, more than ninety (90) days prior to the date the ProtestPetition is received (as determined under Section 610.10), or in the case of subject matter that relates to a conviction, or actions which could be the basis of a conviction, for a crime (including felony, misdemeanor and lesser crimes) involving sexual misconduct, child abuse, violation of a law specifically designed to protect minors or similar offenses, more than five (5) years prior to that date. A determination not to exercise its jurisdiction as a result of the untimeliness of a ProtestPetition may be made by the Chair alone and may be the subject of a request for rehearing and, thereafter, appeal to the National Board of Review pursuant to Section 610.9 Article 408 of the USA Swimming Rules and Regulations.

.65 Filing Fees - The Board of Directors or the House of Delegates may impose a schedule of generally applicable fees to be collected at the time a ProtestPetition, Request for a Rehearing or Request for Formal Hearing following an Emergency Hearing is filed with the Board of Review. If, on its own initiative or upon written request, the Board of Review determines it to be in the interest of justice and the sport of swimming, the filing fee may be waived on a case-by-case basis.

All remaining sections of Article 610 are DELETED (i.e., 610.7 thru 610.10.3).

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