

**CHAPTER 179. RULES OF ADMINISTRATIVE PRACTICE AND
PROCEDURE—TEMPORARY REGULATIONS**

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Cross References

This chapter cited in 7 Pa. Code § 175.4 (relating to subpoena powers); 7 Pa. Code § 177.4 (relating to subpoena powers); 7 Pa. Code § 305.32 (relating to power of the Stewards); 7 Pa. Code § 307.4 (relating to appeals); and 7 Pa. Code § 401.41 (relating to determination of positive test results).

Subchapter A. GENERAL PROVISIONS

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§ 179.1. Generally.

This chapter governs the practice and procedure before the Commission, its Bureau Directors or other Commission staff authorized to take necessary and appropriate licensing action and is intended to supersede specific provisions of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 179.2. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Adjudication—An order, decree, decision, determination or ruling by the Commission affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Complaint—A written statement of verified allegations submitted by a Bureau Director, Commission staff or other licensed person setting forth the violation of law or of rules and regulations promulgated thereunder.

Documentary evidence—Any document or paper which is presented and accepted as evidence in a proceeding.

Documentary hearing—A proceeding limited to a review of documentary evidence submitted by the parties, including pleadings, documents, affidavits and transcripts.

Electronic mail—A means of dispatching or receiving a submittal in relation to a Commission matter through electronic means.

Formal investigation—A matter initiated by the Commission, the Bureau Directors or Commission staff which results in a formal review of possible violations of the act or the rules and regulations promulgated by the Commission. An investigation may be initiated through or arising from written complaints, oral allegations, anonymous tips, video tape surveillance or other information collected or presented to the Commission.

Hearing—A proceeding, documentary or oral, initiated by the filing of a complaint, petition, motion, ruling of the Board of Judges or Board of Stewards or by order of the Commission.

Hearing Notice—A notice of the time and place of a hearing.

Intervener—A person who petitioned to intervene in a proceeding and has properly demonstrated an effected interest sufficient to create standing in the matter and who has been admitted by the Commission as a participant to the proceeding.

Oral hearing—A proceeding wherein the parties may present sworn testimony, documents or other evidence and of which a verbatim record is made.

Party—A person who is named in or admitted to a proceeding before the Commission and who has a direct interest in the subject matter of the proceeding.

Prehearing conference—A proceeding to establish a schedule, discuss offers of settlement and identify other issues the Commission, the Bureau Directors or presiding officer may direct.

Presiding officer—

(i) A member of the Commission or other person designated by the Commission to conduct a proceeding.

(ii) This definition supersedes 1 Pa. Code § 31.3 (relating to the definitions).

Proceeding—A matter intended to produce a formal record.

Respondent—A person subject to the jurisdiction of the Commission to whom an order or notice is issued by the Commission or Bureau Directors instituting a proceeding or investigation.

Subpoena—

(i) *Administrative subpoena*. An order of the Commission or designee directing a licensee or other person or witness to attend and present testimony and documents at a particular time, place and proceeding;

(ii) *Investigatory subpoena (Duces Tecum)* An order of the Commission or designee compelling a licensee to produce certain records, documents or other things related to an investigation which may be in the possession, custody or control of that person. (This definition supersedes 1 Pa. Code § 35.142 (relating to subpoenas).)

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 179.3. Filings and appeals.

(a) *Initial Appeals*. Appeals from an action of the Judges or Stewards, Bureau Directors or other Commission staff, must comply with the provisions set forth in § 179.7 (relating to request for hearing by applicant or licensee), within the prescribed 10-day time period for appeals and must be physically received and date-stamped by the Commission's Executive Office by first-class mail or in person at:

State Horse Racing Commission
Docket Clerk
Department of Agriculture Building
Room 301
2301 North Cameron Street
Harrisburg, PA 17110

(1) Whether an appeal is considered timely shall be determined by the date of receipt by the Commission at the previous address and not the date of deposit in the mail system.

(2) No initial appeals shall be accepted by e-mail or facsimile.

(3) The Commission or the Bureau Directors may order redundant, immaterial, impertinent or scandalous matters stricken from documents filed with it.

(b) *Acceptance of Appeal or Stay, or both*. The Bureau Directors or the Commission's staff shall review the initial appeal request for compliance with § 179.7. A formal ruling granting or denying the appeal or the stay, or both, if properly requested shall be issued under signature of the Bureau Directors as soon as practicable.

(c) *Subsequent Filings*. Once an appeal has been granted and a matter is pending before the Commission, hearing notices shall be generated by and issued

from the Hearings and Appeals Clerk, Office of Chief Counsel. All subsequent correspondence, filings, pleadings or briefs relating to the proceeding filed by the parties shall be filed with the Hearings and Appeals Docket Clerk at the following address in one of the following methods:

(1) *First class mail.* Service may be made by mailing a copy to each party, properly addressed with postage prepaid.

(2) *Personal.* Service may be made personally.

(3) *Electronic.* With the specific authorization of the Commission or the presiding officer and if expedited relief is required, service may be made by either electronic mail or telefacsimile. In either manner, the parties shall specifically identify the type of document, the docket number and a brief description of the document.

Hearings and Appeals Docket Clerk

Office of Chief Counsel

Department of Agriculture Building

Room 201

2301 North Cameron Street

Harrisburg, PA 17110

(d) If a hearing officer has been assigned, all subsequent motions, pleadings, correspondence or requests for continuances shall be filed with the hearing officer and served upon the parties to the proceedings as determined by the hearing officer.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 31.5 (relating to communications and filings generally) and 1 Pa. Code § 31.11 (relating to timely filing required).

Cross References

This section cited in 7 Pa. Code § 175.5 (relating to date of filing appeals); 7 Pa. Code § 177.5 (relating to date of filing appeals); 7 Pa. Code § 179.7 (relating to request for hearing by applicant or licensee); 7 Pa. Code § 179.9 (relating to service by the Commission); 7 Pa. Code § 179.17 (relating to intervention); 7 Pa. Code § 179.18 (relating to offers of settlement); 7 Pa. Code § 179.41 (relating to review and appeal); and 7 Pa. Code § 179.51 (relating to generally).

§ 179.4. Computation of time.

(a) In computing a period of time prescribed or allowed by the act or this part, the day of the event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

§ 179.5. Investigation and special procedures.

(a) The Commission, its Bureau Directors or Commission staff shall have the right at any time to initiate, conduct and convene investigatory meetings, interviews or hearings as deemed necessary and appropriate to oversee and regulate the proper administration of the act and the horse racing industry. Notice of the general scope of the inquiry or investigation may be given to the person(s) in the investigatory meetings, interviews or hearings, if disclosure will not compromise the investigative process.

(b) Except for racing disqualifications and non-disqualifications matters, the Commission shall have the right to supersede the decisions or rulings of the Bureau Directors, its Judges or Stewards or other Commission staff at any time either, upon its own motion or upon written request. The action may be upon an interim or final basis and the Commission may make a partial adjudication and remand the remaining issues to the Bureau Directors, Judges, Stewards and Commission staff or the Commission may assume full and complete jurisdiction for all further purposes as it alone may deem appropriate and necessary.

(c) Where administrative action is to be taken on a license application, or a previously issued license, the Commission, the Bureau Directors, or Commission staff, may take the necessary action either without a prior hearing being conducted under § 179.6 (relating to Commission action without prior hearing) or with a prior hearing being conducted under § 179.7 (relating to request for hearing by applicant or licensee).

§ 179.6. Commission action without prior hearing.

(a) *New License.* When an application for an occupational license is to be refused by the Bureau Director(s) or Commission staff, the same may be done without prior hearing. Notice of the denial and the specific grounds for the denial, as set forth in section 9323(g) and (g.1) of the act (relating to occupational licenses for individuals), shall be given to the applicant or applicant's attorney, if applicable, at the address set forth in the license application.

(b) *Temporary License.* When a temporary license is to be suspended or revoked by the Bureau Director(s) or Commission staff, after issuance, the same may be done without a prior hearing, provided that the temporary license holder is given notice of the decision immediately and the licensee may demand, within 10 days of the notice, either an oral hearing to be conducted before the Judges/Stewards or a documentary hearing before the specific Bureau Director in accordance with provisions of Subchapter E (relating to documentary hearings).

(c) *Conditional License.* When a licensee, who has entered into a conditional license agreement with the Commission, has engaged in behavior or conduct which is expressly prohibited by the agreement and is of a nature that would warrant an immediate suspension or revocation, the Commission or its Bureau Director shall issue a Rule to Show Cause to the licensee.

- (1) Within 10 days from the date of service of the Rule to Show Cause, the person against whom it is directed shall file a verified answer responding to the allegations, showing good cause why the occupational license should not be immediately suspended or revoked based solely upon the provisions of the fully executed conditional license agreement and setting forth whether a hearing is desired.
- (2) Averments set forth in the Rule to Show Cause, which are not specifically denied by way of verified answer shall be deemed to have been admitted. Failure to file a proper and timely answer shall constitute a sufficient basis for the entry of a default order.
- (3) If the matter proceeds to a hearing on the Rule to Show Cause, the Commission or duly appointed presiding officer will issue a written adjudication and order solely based upon the record.
- (d) *Emergency action.* In emergency circumstances or in matters involving the clear and present danger to the integrity of racing, the health, safety and welfare of a racing participant or the health and welfare of a horse, the privilege of a permanent occupational license may be temporarily suspended or revoked by the Bureau Director or Commission staff without a prior hearing. Except that, the licensee shall be immediately notified, in writing, of the reasons supporting the emergency license suspension or revocation. In the event of a revocation, the licensee shall, if timely and appropriately requested, receive a hearing within 10 days of the temporary revocation in accordance with section 9323(i) and (j) of the act.
- (e) *Content of Notices.* A written notice or Commission ruling relating to action taken without a prior hearing, including a license denial, refusal, conditional license suspension or and emergency suspension or revocation shall include sufficient detail of the underlying facts as to reasonably inform the applicant or licensee of the basis for the action taken. The notice or ruling shall specifically advise the applicant or licensee of the right to appeal the matter to the Commission. The written notice or ruling shall be served upon the applicant or licensee in accordance with § 179.9 (relating to service by the Commission), except that if service is made by certified mail, the date of mailing will be deemed to be the date of service.
- (f) *Failure to use license.* If a person holding a duly issued occupational license shall cease to actively pursue that occupation for a period in excess of 90 days, the license may be temporarily suspended by the Bureau Directors or licensing staff until the holder of the license submits satisfactory evidence of the anticipated resumption of active participation in racing. Instead of providing the information, a licensee may, at any time, surrender any or all occupational licenses previously issued by the Commission.
- (g) *Finality.* In the event an applicant or licensee shall not timely or appropriately request a hearing, the matter shall be deemed final and unappealable to the Commission.

(h) Subsections (a)—(g) supersede 1 Pa. Code § 31.13 (relating to issuance of agency orders).

Cross References

This section cited in 7 Pa. Code § 179.5 (relating to investigation and special procedures).

§ 179.7. Request for hearing by applicant or licensee.

(a) *Request for hearing.* A person aggrieved by actions taken by the Bureau Directors, Commission staff without a prior hearing or the actions of the Board of Judges or Board of Stewards, may appeal the action to the Commission. The appeal and request for a hearing must be made in writing to the respective Bureau Director and must be filed in accordance with the provisions of § 179.3(a) (relating to filings and appeals). A request for a hearing not properly filed shall be denied.

(1) The written request shall be sworn to before a notary public and shall set forth in numbered paragraphs a concise statement of all the factual and legal grounds upon which the hearing is requested.

(2) The hearing, if granted, shall be limited to matters or issues expressly set forth in the written appeal. All matters not expressly set forth in the initial appeal request shall be deemed waived.

(b) *Timeliness.* A request for a hearing, to be considered timely, must actually be received in the Commission's Administrative Office in Harrisburg and date-stamped within 10 days from the written or oral notice of the decision or ruling, license denial, suspension or revocation in accordance with § 179.3. Any appeal not filed in accordance with these provisions may be deemed incomplete, untimely or improperly filed and shall be denied.

(c) *Appeal bond.*

(1) *Purpose.* The posting of an appeal bond is designed to ensure that appellants engage in a thoughtful and accurate assessment of the underlying merits of their matter prior to requesting an administrative hearing before the Commission. The Commission finds that many appellants file appeals simply to delay the imposition of the ultimate penalty and, in many instances, withdraw their respective appeals at the very last minute or fail to appear at a duly scheduled hearing after the Commission has undertaken expenses associated with scheduling and conducting the hearing.

(2) *Amount.* In addition to all other requirements to timely and properly appeal decisions, determinations and rulings by the Board of Judges or Board of Stewards, Bureau Directors or Commission staff, all appellants must submit an appeal bond in the amount of \$750, in the form of a check or money order, along with their written request for a hearing or stay, or both. The amount of the appeal bond may be modified by the Commission and published in the *Pennsylvania Bulletin*.

- (i) No appeal or request for a hearing shall be considered without the submission of the applicable appeal bond.
 - (ii) The appeal or request for a hearing shall be rescinded if the check upon which the appeal bond is written is dishonored.
 - (iii) No cash may be used as the appeal bond.
- (3) *Forfeiture of bond.* The Bureau Directors or the Commission may withhold the appeal bond, either in whole or in part, if:
- (i) The Commission expressly makes a finding and determination in its written adjudication that the underlying appeal was frivolous or without any factual or legal foundation.
 - (ii) Appellant fails (without due cause shown) to appear at the duly scheduled hearing, notwithstanding receipt of proper notice of the hearing.
 - (iii) Appellant withdraws or settles the appeal 3 days prior to the scheduled hearing date.
- (d) *Payment of fines.* An appeal or request for a hearing from an underlying action or ruling shall not relieve the person of the requirement to pay the issued fine. If the appeal is disposed of in favor of the appellant, the Commission shall refund the amount of the fine.
- (e) *Request for stay.* The underlying action or ruling to deny a license, suspend or revoke a license shall remain in full force and effect pending the final determination on the hearing demanded unless a party has requested and received a stay. Applications for a stay shall conform to the standards set forth in §§ 175.6 and 177.6 (relating to contents of petition for stay) of the Commission's regulations.
- (1) If the underlying actions or determinations were taken by the Bureau Director, the request for a stay shall be ruled upon by the Commission or designee under the applicable standards for granting the relief.
 - (2) If the underlying actions were taken by Commission staff, the request for a stay shall be ruled upon by the respective Bureau Director, who for good cause shown, may grant a stay of the action or ruling until the final determination by the Commission in accordance with the applicable standards for granting the relief requested.
 - (3) The decision to grant or refuse a request for a stay shall be based upon a balancing of the pertinent facts sworn to by applicant and upon the sound discretion of the specific Bureau Director to whom the application is addressed.

Cross References

This section cited in 7 Pa. Code § 175.5 (relating to date of filing appeals); 7 Pa. Code § 175.6 (relating to contents of petition for stay); 7 Pa. Code § 177.5 (relating to date of filing appeals); 7 Pa. Code § 177.6 (relating to contents of petition for stay); 7 Pa. Code § 179.3 (relating to filings and appeals); 7 Pa. Code § 179.5 (relating to investigation and special procedures); 7 Pa. Code § 179.8 (relating to Commission original action with prior hearing); 7 Pa. Code § 179.41 (relating to review and appeal); and 7 Pa. Code § 179.56 (relating to failure to attend hearing).

§ 179.8. Commission original action with prior hearing.

(a) Upon receipt of a complaint filed under § 179.13 (relating to complaints and other pleadings) or upon its independent investigation or any other information the Commission may deem sufficient, the Commission may begin original action against a licensee. Prior to the original action taking effect, the Commission shall provide the licensee a written Notice of Violation and Proposed Administrative Penalties setting forth the applicable violations of the rules of racing, the applicable findings of fact and underlying administrative authority. The Notice of Violation shall also inform the licensee of the opportunity to request a hearing in the matter. A request for a hearing shall comply with § 179.7 (relating to request for hearing by applicant or licensee).

(b) Where a hearing is to be scheduled under any section of this chapter, the notice of hearing shall be served upon the parties at least 10 days prior to the date of the hearing unless the Commission, for cause stated, shall specify a lesser period, or the respondents shall agree to a lesser period or another section of this chapter shall explicitly provide for a hearing upon shorter notice. The notice of hearing shall provide:

(1) The time, place and nature of the hearing.

(2) The legal authority and jurisdiction under which the hearing is to be held with specific designation of the statutory or regulatory provisions alleged to have been violated.

(3) A clear and concise factual statement sufficient to inform each party with reasonable definitiveness of the type of acts or practices alleged to be in violation of the act or regulations promulgated thereunder.

§ 179.9. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice, complaint or other similar document originating from the Commission, except when the Commission specifically requires a different form of service.

(b) *Forms of Service.*

(1) *Registered or certified mail.* Service may be made by registered or certified mail, return receipt requested, to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business.

(2) *First Class Mail.* If time is of the essence, instead of registered or certified mail, service may be made by regular first-class mail, postage prepaid, to the last known address previously provided by the party to the Commission.

(3) *Personal.* Service may be made personally by anyone authorized by the Commission. Service will be made by personally delivering a copy:

(i) Directly to the person named in the notice, pleading or order or to an attorney representing said person.

(ii) At the residence of the person named in the notice, pleading or order, or to an adult member of the family with whom the person named resides. If no adult member of the family is found, then to an adult person in charge of the residence.

(iii) At the licensed facility at which the person named is stabled, employed, licensed in connection therewith or routinely participates in racing at the facility.

(4) *Trainer of Record.* Service may be made upon the trainer of record as agent for and on behalf of the owner of a horse, who shall be solely responsible to notify the owner(s) of any notice, pleading or order. Service upon the trainer of record shall be deemed adequate and reasonable notice to the listed owner.

(5) *Service upon attorneys.* When an attorney enters an appearance under § 179.63 (relating to representation before the Commission) service must be directed to the attorney in the same manner as prescribed for the client. Service upon the attorney shall be deemed service upon the party.

(c) *Proof of service.* Proof of service shall be evidenced by a return of service filed with the Hearing and Appeals Docket Clerk as set forth in § 179.3 (relating to filings and appeals).

(d) *Subsequent service.* Service of any subsequent document or correspondence in a proceeding may be made by electronic mail or first-class mail, or both, to the last known address previously provided by the party to the Commission.

(e) *Change of address.* It is the duty of a party to apprise the Commission of changes to the party's current address. Failure of a party to maintain an updated address with the Commission shall not be a basis for an allegation of lack of service.

(f) Subsections (a)—(c) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

Cross References

This section cited in 7 Pa. Code § 179.6 (relating to Commission action without prior hearing); 7 Pa. Code § 179.10 (relating to subpoena powers and procedures); 7 Pa. Code § 179.13 (relating to complaints and other pleadings); and 7 Pa. Code § 179.55 (relating to hearing notices).

§ 179.10. Subpoena powers and procedures.

(a) *Authority.* In accordance with the provisions of the act, the Commission is vested with exclusive jurisdiction and authority to regulate the horse-racing industry, including the operations of horse racing, the conduct of pari-mutuel wagering activities and all licensed persons engaged in pari-mutuel horse racing activities within this Commonwealth. A properly issued investigatory or administrative subpoena issued under the authority of the act is considered an order of the Commission and shall have the same effect of any properly issued order,

which may be enforced by the Commission by and through the licensing and enforcement provisions set forth in section 9323 of the act (relating to occupational licenses for individuals).

(b) *Investigatory Subpoena (Duces Tecum)*. To effectuate its statutory authority and in furtherance of racing related investigations, the Commission, its Bureau Directors or Commission staff, under section 9312(4) of the act (relating to additional powers of commission), shall have the power to issue investigatory subpoenas necessary for the inspection, investigation and proper review of suspected or actual racing violations and other racing related matters.

(1) The production of documents, records, books, financial records and other documentary information sought by the investigatory subpoena shall be sufficiently limited in scope and purpose to not be unreasonably burdensome and shall be related to the initiation of an investigation or the furtherance of an ongoing investigation regarding suspected or actual violations of the rules of racing and pari-mutuel racing activities within this Commonwealth.

(2) Probable cause is not necessary for the issuance of the investigatory subpoena.

(3) Investigatory subpoenas shall be served in accordance with the provisions set forth in § 179.9 (relating to service by the Commission).

(4) The Commission, Bureau Directors or Commission staff, in the course of an investigation or racing matter, may conduct personal interviews of licensees and take written witness statements under oath from the licensees. They may administer oaths, take testimony and record the proceeding as necessary for the proper conduct of the investigation.

(c) *Form of investigatory subpoena*. The subpoena shall include all of the following:

(1) A brief written statement of the general relevance relating to the initial or ongoing racing-related investigation, the scope of the documentary evidence sought and specify, as nearly as possible, the documents desired and time period associated with the particular investigation.

(2) A notice that a response or objection to the subpoena must be filed with the Commission or the Bureau Director within 20 days of service of the subpoena.

(3) A notice advising the licensee of potential licensing consequences for failure to timely respond, object or produce the requested documents.

(4) A certificate of service.

(d) *Refusal to comply with investigatory subpoena*. All licensees shall fully comply with a properly issued and served subpoena in accordance with the previous provisions. The Commission, Bureau Director or other designee shall make every reasonable effort to coordinate with the licensee the production and receipt of the required documents. The Commission and the subpoenaed parties may agree to provide documents on an ongoing basis which may be deemed substantial compliance. Any party failing to timely object, respond or produce the

requested documents may be subject to a fine, license suspension or any other penalty provided for in the act.

(1) *Show Cause.* If a licensee fails or refuses to comply with the investigatory subpoena, the Commission or Bureau Directors shall issue a Rule to Show Cause directed to the licensee to show good cause for failing or refusing to comply with the properly issued subpoena. The Show Cause hearing shall be conducted in accordance with the hearing provisions set forth in Subchapter C (relating to Commission hearings).

(2) *Penalty.* The Commission shall issue an adjudication and order. Any subsequent licensing action taken by the Commission for failure or refusal to comply with the subpoena, after the show cause hearing, shall be based upon its authority to enforce racing related orders as set forth in section 9323(g.1) of the act.

(3) Subsection (d) supersedes 1 Pa. Code §§ 35.14 (relating to orders to show cause).

(e) *Administrative Subpoena (Ad Testificandum).* Under section 9311(d)(3)(vii) of the act (relating to State Horse Racing Commission), the Bureau Director or presiding officer shall have the power to issue an administrative subpoena to compel the attendance of witnesses and production of relevant, material reports, books, papers, documents, correspondence and other similar evidence at a hearing.

(1) Administrative subpoenas, authorized under the act and this section shall be signed and issued over the seal of the Commission to any party, upon proper written application to the Commission or presiding officer at least 10 days prior to the hearing or proceeding. The written application, shall be set forth in numbered paragraphs, the general relevance, materiality and scope of the testimony of the witness and the documentary evidence sought. Failure to provide adequate grounds for the necessity of the subpoena shall be sufficient reason for the denial of the subpoena. Each party shall be responsible for the service of the requested subpoena.

(2) Witness and mileage fees shall be paid to the witness subpoenaed to appear at a proceeding before the Commission or the presiding officer and shall be paid by the party at whose instance the witness is called at the rate specified by the courts of common pleas.

(3) A proposed subpoena must be attached to the written application for said subpoena addressed to the presiding officer.

(f) *Duty of licensee.* The issuance of a subpoena under this part will not be required to secure the cooperation of a person who is an applicant for or the holder of a license issued by the Commission or to secure the voluntary cooperation of any person.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

§ 179.11. Computation of time.

(a) In computing a period of time involving the date of the issuance of a ruling or order by the Commission, the Bureau Directors or other Commission staff authorized to issue orders, the day of issuance of an order will be the date the ruling or order is entered. An order will not be made public prior to its entry, except when, in the Commission's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Commission.

(b) The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Commission action.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 179.12. Extensions of time and continuances.

(a) Extensions of time will be governed by the following:

(1) When an act is otherwise required to be done at a specified time or within a specified time, the date or period of time prescribed may be extended by the Commission, for good cause, upon a motion made before expiration of the period originally prescribed. An extension for time to comply with the specified time period after the expiration date shall be at the sole discretion of the Commission.

(2) Written requests for an extension of time in which to file motions, briefs or other pleadings within a proceeding shall be filed at least 5 days before the time fixed for filing the documents unless the Commission or presiding officer, for good cause shown allows a shorter time. Concurrence or denial of extension of time shall be reported to the presiding officer in the request.

(3) Requests for a continuance of a hearing shall be made in writing at least 96 hours prior to the time fixed for hearing to the presiding officer, specifically setting forth the facts upon which the request for continuance rests. An application received by the presiding office within the 96-hour period will not be granted, except upon extreme cause. A verification of the facts shall accompany the written request for continuance. No more than two continuances may be approved to any party.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

§ 179.13. Complaints and other pleadings.

(a) *Pleadings*. Only the following pleadings shall be permitted:

- (1) Complaints.
- (2) Petitions.

- (3) Motions.
- (4) Applications for licensure.
- (5) Answers to pleadings.

(b) *Fees.* Fees for copies and other administrative requests, if any, will be in accordance with a fee schedule adopted by the Commission published in the *Pennsylvania Bulletin* and posted on the Commission's web site.

(c) *Complaints.* A person complaining of an act done or failed to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of the statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.

(1) Complaints may be filed by the Bureau and other persons authorized by the Commission.

(2) With respect to complaints filed against the Commission, no answer need be filed. The issues in the proceeding may be determined by prehearing conference memoranda or as specified by the presiding officer.

(3) Complaints will be served in accordance with § 179.9 (relating to service by the Commission).

(d) *Content of formal complaint.* A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, telefacsimile number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

(3) The name, mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

(4) The interest of the complainant in the subject matter—for example, trainer, owner, licensed racing entity, and the like.

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

(6) A clear and concise statement of the relief sought.

(7) Except for the documents referenced within this section, a document or the material part thereof, must be attached when a claim is based upon that particular document, the material part thereof. A copy of the document or the material part thereof shall be attached to the pleading.

(e) This section supplements 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints).

Cross References

This section cited in 7 Pa. Code § 179.8 (relating to Commission original action with prior hearing).

§ 179.14. Answers to complaints, petitions, motions and other filings requiring a response.

(a) Answers to complaints, petitions, motions and other filings requiring a response and are subject to a proceeding, shall be filed with the Commission or its presiding officer, if applicable, and a copy shall be filed with the Hearings and Appeals Docket Clerk and served upon all other parties within 30 days after the date of service of the complaint, petition, motion or other pleading, unless a different time is prescribed elsewhere in the Commission's regulations.

(b) Failure to file a timely answer to a complaint or petition will constitute an admission of all matters and facts contained in the filing and may result in the waiver of the right to a hearing. This subsection shall not apply to petitions or motions made to the Commission.

(c) Answers may contain the following:

- (1) Admissions of the matter complained of and the alleged facts, in whole or in part.
- (2) New matter or explanation by way of defense.
- (3) Legal objections.
- (4) Affirmative defenses.
- (5) A request for a hearing.

(d) Answers shall be in writing and shall specifically and in detail admit or deny each allegation in the pleading.

(e) Sections (a)—(d) supersede 1 Pa. Code §§ 35.35—35.40 (relating to answers).

§ 179.15. Motions to protect confidential information.

(a) A party or individual may designate information as confidential under § 173.8 (relating to confidential information) in any papers filed with the Commission by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

- (1) Set forth the specific reasons why the information should be deemed to be confidential information and, therefore, protected.
- (2) Label as confidential all documents or portions of documents in the filing containing the confidential information that the party or individual is seeking to protect.

(c) Upon the filing of the Motion to Protect Confidential Information, the Bureau Director or presiding officer, if one has been assigned, will review the motion and accompanying filings and, upon determining that a substantial basis exists, shall issue an interim order to protect the information, whether in the motion or the accompanying filings, from disclosure until the Commission con-

siders the final matter in accordance with 65 Pa.C.S. §§ 701—716 (relating to open meetings). At all times during the pendency of the motion, the information in the motion and the accompanying filings shall be treated as confidential.

§ 179.16. Limited discovery.

(a) The ability to obtain discovery in an administrative proceeding before the Commission or presiding officer is committed to the discretion of the Commission or presiding officer and unless otherwise privileged or unavailable, discovery may be granted but limited to the following:

(1) Production of documents previously introduced at a Judges/Stewards hearing, if applicable.

(2) Production of documents or things to be introduced at the proceeding or hearing, including a list of witnesses.

(b) Requests for the limited discovery above, shall be in writing and shall set forth, with particularity, the information, documents and names of witnesses sought. The written request shall be filed with the presiding officer, if appointed and served upon the Commission's attorney or the opposing party in sufficient time to allow completion of discovery prior to the hearing.

(c) The Commission or presiding officer may grant the limited request for discovery if the request will serve to facilitate the efficient and expeditious hearing process, and will not unduly prejudice or burden the responding party.

(d) Discovery is not permitted which is sought in bad faith, would cause unreasonable delay, annoyance, embarrassment, burden or expense to the Commission or opposing party.

(e) Each party shall attempt to determine the witnesses they intend to call at the hearing and the names shall be exchanged between parties no later than 3 work days in advance of the hearing. Calling a witness whose name does not appear on the list may be permitted at the discretion of the Commission or presiding officer.

(f) Confidential information, as determined by the Commission, which is furnished to or obtained by the Commission from any source will not be discoverable under this subsection.

(g) Notwithstanding subsections (a)—(f), the parties to the proceeding are encouraged and may, by agreement, and informal basis provide or exchange, or both, the applicable documentation before the proceeding.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ 179.17. Intervention.

(a) *Generally.* The decision to grant a petition to intervene in a proceeding before the Commission or a presiding officer is within the sole discretion of the Commission or presiding officer.

(b) *Petition.* Petitions to intervene must be in writing and set forth, in numbered paragraphs, the specific facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds for the proposed intervention and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Commission of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition, complaint or application initiating the proceeding and citing by appropriate reference provisions or other authority relied upon. The petition to intervene shall be filed with the Commission and served upon the named parties to the underlying proceeding in accordance with § 179.3 (relating to filings and appeals).

(c) *Determination.* The Commission or the presiding officer, if appointed, will issue a decision on the petition to intervene as soon as practicable, after the expiration of the time for filing answers to the petition, if it is determined that:

- (1) The person has an interest in the proceeding which is substantial, direct and immediate.
- (2) The interest is not adequately represented by a party to the proceeding.
- (3) The person may be bound by the action of the Commission in the proceeding.

(d) *Notice of matters subject to intervention.* The Commission shall publish in the *Pennsylvania Bulletin*, on its web site or announce at a regularly scheduled public meeting receipt of a timely, complete and properly filed application, petition or complaint submitted to the Commission for authorization or permission to engage in certain licensed racing activities under the act. Applications or petitions for authorization or permission to do any of the following shall be noticed as set forth above:

- (1) Application for a license to conduct horse race meetings.
- (2) Petition to transfer a license of a licensed racing entity.
- (3) Petition to change ownership of a licensed racing entity.
- (4) Petition to engage in or operate an electronic wagering system or otherwise offer electronic wagering to individuals within this Commonwealth regarding to a SPMO.
- (5) Application for a license to operate as a totalisator system or racing vendor.

(e) *Timing.* Petitions to intervene may be filed no later than 30 days after due notice by the Commission as set forth above, unless in extraordinary circumstances and for good cause shown, the Commission authorizes a later filing. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object thereto.

(f) *Answer to petition.* A party, including the Commission's representatives, may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition to intervene.

Answers shall be filed within 10 days after the date of filing of the petition to intervene, unless for cause the Commission prescribes a different time.

(g) *Participation of intervenor.* Except when the Commission determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of verified written statements attested to under oath. At the discretion of the Commission, the written statements may become part of the evidentiary record.

(1) Where there are two or more intervenors having substantially like interests and positions, the Commission or presiding officer may, to expedite the hearing, set appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of the intervenors.

(h) Sections (a)—(g) supersede 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

§ 179.18. Offers of settlement.

(a) It is the policy of the Commission to encourage settlements or resolutions of underlying matters pending before the Bureau Directors, the Commission or a presiding officer.

(b) Nothing contained in this chapter shall preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals for resolution to the Bureau Directors.

(c) If the parties settle or resolve a matter prior to the issuance of a Commission adjudication and order, the appellant shall submit a written withdrawal of the appeal to the Hearings and Appeals Docket Clerk as set forth in § 179.3 (relating to filings and appeals) and Commission staff shall issue a modified ruling or order, as applicable.

(d) Appeals withdrawn and matters settled between the appellants and the Bureau Directors are final and not appealable to the Commission.

(e) Offers of settlement, of adjustment or resolution not agreed to by the parties, will not be admissible in evidence against the party claiming the privilege.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

Subchapter B. JUDGES AND STEWARDS HEARINGS

Sec.	
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179.22.	General power of the Judges and Stewards.
179.23.	Jurisdiction of Judges and Stewards.
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179.25.	Notice required.

- 179.26. Contents of notice.
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- 179.31. Hearing.
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- 179.35. Records.
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- 179.37. Original record.
- 179.38. Ruling.
- 179.39. Effective date of decisions.
- 179.40. Summary suspension available.
- 179.41. Review and appeal.
- 179.42. Request for stay.
- 179.43. Non-disqualifications not appealable.

Cross References

This subchapter cited in 7 Pa. Code § 179.52 (relating to nature of Commission hearings); and 7 Pa. Code § 205.32 (powers of the Judges).

§ 179.21. Scope.

(a) This subchapter governs the practice and procedures before the respective Board of Judges and the Board of Stewards of the Commission.

(b) This subchapter shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. Judges and Stewards may disregard an error or defect of procedure which does not affect the substantive rights of the parties, especially when the proceeding is related to a pro se licensee.

(c) This subchapter is intended to supersede the applicability of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to practice and procedures before the Judges/Stewards.

(d) Subsection (b) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 179.22. General power of the Judges and Stewards.

The Board of Judges and the Board of Stewards shall have the power to enforce the breed-specific rules and procedures of Standardbred racing or Thoroughbred racing, and otherwise resolve conflicts, disputes and impose penalties for violations of the rules and regulations of the Commission. The Judges and Stewards, in the best interests of racing, shall also have the power and jurisdiction over racing matters which are not expressly covered by this chapter. In all cases, the Judges and Stewards shall render their respective determinations in

accordance with the generally accepted customs and usages of racing in conformity with equitable standards of justice.

§ 179.23. Jurisdiction of Judges and Stewards.

(a) Jurisdiction and powers of the Judges and Stewards shall begin at the time when entries are taken for the first day of a racing meeting and shall terminate with the completion of their official business pertaining to the meeting. If a dispute or matter is unresolved at the time of completion of the meet, it may be heard later or disposed of by other Judges or Stewards or referred to the Commission. This section does not limit the power of the Judges or Stewards to impose sanctions continuing beyond the end of the race meeting. If there are succeeding meets at a racetrack facility, the power of the Judges and Stewards is deemed to be continuing and sustaining.

(b) On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the Judges/Stewards may conduct a preliminary inquiry into a suspected violation of the rules of racing, but thereafter, shall refer the matter to Commission investigators for final investigation and disciplinary proceedings.

(c) A matter coming before the Judges or Stewards shall be decided within 15 days of the first formal action taken thereon, unless continued by agreement of the Judges or Stewards. No matter may be continued for more than an additional 15 days.

§ 179.24. Rights of the licensee.

A person who is the subject of an evidentiary hearing conducted by the Judges or Stewards is entitled to proper notice of all charges, entitled to confront the evidence presented at the hearing and shall be afforded the following:

- (1) the right to counsel at the person's expense;
- (2) the right to examine all evidence to be presented against him/her;
- (3) the right to present a defense;
- (4) the right to call witnesses;
- (5) the right to cross examine witnesses; and
- (6) the right to waive any of the previous rights.

§ 179.25. Notice required.

(a) Before any penalty may be imposed by the Judges or Stewards under the provisions of the act and this part, written notice must be given to the party to be charged with a violation. Unless the matter is an emergency, before holding the disciplinary hearing, the Judges or Stewards shall provide written notice to the party to be charged with a violation at least 5 days before the hearing.

(b) If possible, the Judges or Stewards or Commission investigators shall hand deliver the written notice previously mentioned in subsection (a) to the person who is the subject of the disciplinary hearing. If hand delivery is not possible,

the Judges or Stewards shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested.

(c) If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of the horse, notice of the hearing provided to the trainer of record, as set forth above, shall also be deemed adequate and reasonable notice to owner of the horse. It shall be the trainer's sole responsibility, as agent of the owner, to notify the owner of the medication hearing. The owner of the horse may attend and participate in the hearing to the extent the underlying matter may affect the interest of the horse.

(d) The failure of the summoned person to appear, after proper notice, shall be construed as a waiver of the right to a hearing before the Judges or Stewards and the Judges or Stewards shall issue a ruling as a default. The Judges or Stewards may impose an additional fine or suspension to the person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent.

Cross References

This section cited in 7 Pa. Code § 179.26 (relating to contents of notice).

§ 179.26. Contents of notice.

The written notice required by § 179.25 (relating to notice required) shall:

(a) Informally and generally describe the nature of the infraction or violation charged.

(b) A reference to the particular provisions of the statutes or rules potentially involved.

(c) State the time and place of hearing.

(d) Notify the party of his right to have counsel or an observer of his choice and that he bears the sole responsibility for securing and insuring the presence of the same.

(e) Provide for the right to waive transcription of testimony at the hearing.

§ 179.27. Continuances.

Upon receipt of a hearing notice, a person may request a continuance of the hearing from the Judges or Stewards, who may, in their sole discretion, grant a continuance for good cause shown. The Judges or Stewards may at any time order a continuance on their own motion.

§ 179.28. Power to subpoena witnesses.

The Judges and Stewards may require, by subpoena, the personal attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents relevant to the proceeding before them.

§ 179.29. Presence of Judges and Stewards at hearing.

At least the Presiding Judge or Presiding Steward and one Associate Judge or Associate Steward shall be present at all times throughout the hearing.

§ 179.30. Testimony.

Testimony at a hearing shall be given under affirmation or oath and a record shall be made of the hearing, either by use of a tape recorder or by the transcript of the court reporter. Except that: Judges or Stewards shall not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race. The party may request a viewing of the film in the presence of the Judges or Stewards at the hearing and be given an opportunity to state his own interpretation of the same.

§ 179.31. Hearing.

(a) *Hearing.* No final determination may be made by the Judges or Stewards until the hearing is completed and the evidence has been received and the party charged has been given the opportunity to hear the evidence presented and the opportunity to defend. If a subpoenaed or noticed party fails to appear, an order or ruling may be entered by default.

(b) *Order of Hearing.* Judges and Stewards shall have the discretion to conduct the hearing in accordance with the following:

(1) The Judges or Stewards shall open the hearing by indicating the date and time, make a concise statement of its scope and purposes and announce that a record of the hearing is being made. All witnesses shall be sworn by the Judges or Stewards.

(2) When a hearing has begun, a party or a party's representative may make an opening statement only if necessary or permitted by the Judges/Steward.

(3) A party, a party's representative or any other person or witness who may testify at the hearing shall be identified on the record.

(4) The Judges or Stewards may receive and review any preliminary relevant motions and afford each party of record the opportunity to submit a subsequent written motion. They may render a decision on the motion immediately or take that matter under consideration.

(5) The Commission investigators shall have the burden of proceeding in the matter first. At the discretion of the Judges or Stewards, they may change the order of testimony of the party or witness. A party who asserts a particular fact or issue shall have the burden of proof of that matter.

(6) The Judges or Stewards shall afford each party the opportunity to present the party's direct case and witnesses. Each party, as well as the Judges or Stewards may cross examine each witness.

(7) In the course of the hearing, the Judges or Stewards may receive all relevant documentary evidence, including investigative reports, video tapes, lab reports or other similar records.

(8) At the conclusion of all evidence and cross examination, at the discretion of the Judges or Stewards, closing statements may be allowed and the evidentiary record shall be closed.

(c) *Behavior.* Each party, witness, attorney or other representative shall, at all times, behave in the Judge or Steward's proceedings with dignity, courtesy and respect for the Judges or Stewards and all other parties and participants. An individual who violates this section may be excluded from a hearing by the Judges or Stewards.

§ 179.32. Evidence.

The Judges or Stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Judges or Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. They shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence or testimony, or both. The Judges or Stewards may admit hearsay evidence if in the opinion of the Judges or Stewards it is the type of evidence that is commonly relied on by reasonably prudent people.

§ 179.33. Duty to testify.

It shall be the duty of all persons to make full and complete disclosure to the Judges or Stewards of a fact or knowledge the person may possess regarding violations or possible violations of a rule of racing or of the law. No person may refuse to testify before the Judges or Stewards on a relevant matter except upon proper exercise of a legal privilege, nor may a person testify falsely or incompletely to the Judges or Stewards. If a person refuses to testify or falsely testifies as set forth, that matter may be referred to the Commission for a licensing action.

§ 179.34. Votes of Judges or Stewards.

The Judges or Stewards shall decide all matters coming before them by majority vote. Should a Judge or Steward vote in the minority, that Judge or Stewards shall immediately make full report thereof to the Commission. Judges or Stewards so voting shall have the right to file a separate opinion thereof to the Commission. The ruling of the Judges or Stewards shall be generally in the form approved by the Commission. All rulings must be signed by the majority of the Judges or Stewards.

Cross References

This section cited in 7 Pa. Code § 179.96 (relating to conduct of hearing).

§ 179.35. Records.

A written report concerning formal orders, rulings and other matters coming before the Judges or Stewards shall be kept by them and copies of the same shall be transmitted to the Commission.

§ 179.36. Matters referred to the Commission.

Judges or Stewards shall have the power to refer a matter within their jurisdiction or powers directly to the Commission either before or after holding a hearing thereon. The Judges or Stewards may refer a matter for initial hearing to the Commission whenever it is deemed by them to be impossible or impracticable to hold the initial hearings, or because of the ending of a meet or for other good and substantial reason.

§ 179.37. Original record.

Upon request by the Commission or the Bureau Directors, the original record of the hearing of the Judges or Stewards shall be delivered by them to the Commission. The record shall properly reflect whether the notice of the penalty, order, ruling or determination has been issued orally or in writing. If oral notice was given, the record shall reflect the date, time and place when it was given. If written notice was given, the record shall reflect the date and manner that written notice thereof was given.

§ 179.38. Ruling.

(a) In cases involving a penalty, fine, suspension or sanction of any nature, the ruling of the same shall be given in writing to the adversely affected party, in the format adopted and approved by the Commission and must include the following:

- (1) the full name, Social Security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;
- (2) a statement of the charges against the person, including a reference to the specific section of the act or rules of the Commission that the licensee is found to have violated;
- (3) the date of the hearing and the date the ruling was issued;
- (4) the penalty imposed;
- (5) any changes in the order of finish or purse distribution; and
- (6) other information required by the Commission.

(b) At the time the Judges or Stewards inform a person who is the subject of the proceeding of the ruling, the Judges or Stewards shall inform the person of the person's right to appeal the ruling to the Commission.

(c) All fines imposed by the Judges or Stewards shall be paid to the Commission within 10 days after the issuance of the ruling, unless otherwise ordered by the Judges or Stewards.

§ 179.39. Effective date of decisions.

A decision rendered by the Judges or Stewards shall only become effective 10 days after the ruling is served personally on the affected party or 10 days after the ruling has been sent by certified mail to the address given by the affected party in his license application, unless the Judges or Stewards find the delay to be contrary to the public interest. An affected party shall have the right to waive the delay in the effective date of the ruling and may, by writing, consent to immediate imposition of the sanction or order.

§ 179.40. Summary suspension available.

(a) If the Judges or Stewards determine that a licensee's actions constitute an immediate danger to the public health, safety or welfare or the health and safety of a horse, the Judges or Stewards may summarily suspend the license pending an emergency hearing.

(b) A licensee whose license has been summarily suspended is entitled to an emergency hearing on the summary suspension within 3 days after the license was summarily suspended. The licensee may waive the right to an emergency hearing on the summary suspension.

(c) The Judges or Stewards shall conduct the emergency hearing on the summary suspension in the same manner as other disciplinary hearings. At an emergency hearing on a summary suspension, the sole issue is whether the person's license should remain suspended pending a final disciplinary hearing and ruling.

§ 179.41. Review and appeal.

A person aggrieved by a ruling of the Judges or Stewards may appeal the matter to the Commission, except as provided in § 179.43 (relating to non-disqualifications not appealable) of this part. The appeal from the decision of Judges or Stewards must be made in writing and must conform to all the requirements set forth in § 179.3 (relating to filings and appeals). All appeals shall also be accompanied by an appeal bond made payable to the Commission in the amount as determined by the Commission as set forth in § 179.7 (relating to request for hearing by applicant or licensee).

§ 179.42. Request for stay.

(a) The final determination or ruling by Judges or Stewards shall remain in full force and effect pending the final determination on the hearing, if granted. An aggrieved party, in addition to the written requirements set forth above for an appeal, may separately request a stay of the Judges' or Stewards' ruling or decision pending a final determination by the Commission. In accordance with

§ 175.6 or § 177.6 (relating to contents of petition for stay), the Bureau Director may, for good cause shown, grant a stay of the Judges'/Stewards' ruling until the final determination by the Commission provided that sufficient facts are presented by affidavit to warrant the stay.

(b) Applications for a stay shall conform to the standards set forth in § 175.6 and § 177.6 of the Commission's regulations. The decision to grant or refuse a request for a stay shall be based upon a balancing of the pertinent facts sworn to by applicant but shall be based upon the sound discretion of the Bureau Director to whom the application is addressed.

§ 179.43. Non-disqualifications not appealable.

The decision by the Judges or Stewards not to disqualify a horse after the running of a race has been declared official is final and may not be appealed to the Commission. This subsection is not applicable to disqualifications of horses resulting from medication or drug violations.

Cross References

This section cited in 7 Pa. Code § 179.41 (relating to review and appeal).

Subchapter C. COMMISSION HEARINGS

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179.51.	Generally.
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179.54.	Scheduling of hearing.
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179.66.	Briefs and oral argument.
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179.70.	Commission decisions.
179.71.	Reopening of record.
179.72.	Rehearing or reconsideration.
179.73.	Appeals.

Cross References

This subchapter cited in 7 Pa. Code § 179.10 (relating to subpoena powers and procedures); 7 Pa. Code § 179.101 (relating to expedited documentary hearing); 7 Pa. Code § 179.102 (relating to election of documentary hearing); and 7 Pa. Code § 307.4 (relating to appeals).

§ 179.51. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Hearings and Appeals Docket Clerk as set forth in § 179.3(b) (relating to filings and appeals) and will be in order of assignment as far as practicable. All matters will be heard before the Commission in Harrisburg, Pennsylvania.

(b) The Commission may designate a Commissioner or other qualified person to serve as presiding officer in a particular matter or proceeding. The Commissioner, presiding officer or other duly appointed person shall conduct the proceeding in an impartial manner. All appearances will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Commission participating, if any, including accountants and other experts who are assisting in the investigation of the matter.

(c) In oral hearings, neither the Commission, nor the presiding officer will be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.102, 35.123 and 35.124 (relating to hearing calendar; conduct of hearings; and appearances).

§ 179.52. Nature of Commission hearings.

(a) *Appeals from Judges or Stewards.* An appeal to the Commission from a decision or ruling of the Board of Judges or the Board of Stewards, as set forth in Subchapter B (relating to Judges and Stewards hearings), shall be limited to the underlying evidentiary record created by the parties and Commission investigators at the hearing before the Judges or Stewards and shall not be considered a hearing de novo.

(1) The Commission's review of the Judges' or Stewards' rulings shall be limited to a review for errors of law and whether the findings or conclusions set forth by the Judges or Stewards are supported by appropriate evidence contained in the hearing record.

(2) Issues not raised by appellant in the notice of appeal will be deemed waived.

(b) *Original action.* An appeal from a determination, decision or ruling by the Bureau Directors, the Commission's licensing or investigative staff, or a matter specifically referred to the Commission by the Board of Judges or Board of Stewards shall be a de novo hearing.

(c) Subsection (b) supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

Cross References

This section cited in 7 Pa. Code § 179.53 (relating to Commission hearings).

§ 179.53. Commission hearings.

(a) Unless the Commission hears the matter directly, all matters shall be assigned to a presiding officer or other duly qualified person to serve as a presiding officer in the particular proceeding.

(b) Hearings will be public unless a party invokes protection afforded to the party under § 173.8 (relating to confidential information).

(c) Matters proceeding under the provisions of § 179.52(b) (relating to nature of Commission hearings) may provide for:

(1) Receipt of sworn testimony, including testimony from the original matter before the Bureau Director or Commission staff.

(2) Receipt of all relevant oral or documentary evidence used in the original determination or decision.

(3) Opportunity to be heard.

(4) A complete evidentiary record, including other pleadings, motions or briefs submitted.

(d) Unless required by this part or authorized by law, a party may not engage in an ex parte communication with the Commission or the presiding officer.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.121—35.126 (relating to hearing).

§ 179.54. Scheduling of hearing.

(a) On behalf of the Commission, the Hearings and Appeals Docket Clerk, will schedule the appropriate hearing in chronological order of receipt and will maintain a hearing calendar of all proceedings, with assigned docket numbers set for hearing.

(b) Proceedings pending on the hearing calendar will be heard so far as practicable, in their order of assignment to the calendar at the times and places fixed in the hearing notices, giving due regard to the convenience and necessity of the parties and their attorneys, where possible.

(c) The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone proceedings on the hearing calendar with notice to the parties.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 179.55. Hearing notices.

(a) *Notices.* Notice of a hearing will be provided to the appellant or counsel in writing and issued by the Hearings and Appeals Docket Clerk, by any of the

following methods: certified mail (return receipt requested), first class mail, personal service or by e-mail, if agreed upon by the parties and their counsel as set forth in § 179.9 (relating to service by the Commission).

(b) The written hearing notice to appellant shall include, the time, date and location of the hearing and indicate the method of service used. The notice shall also contain a general factual statement of the underlying matter and grounds for appeal.

(c) Notices may also provide information relating to:

- (1) Applicable regulations and conduct of the hearing;
- (2) The grant or denial of Supersedeas;
- (3) Representation and continuances; and
- (4) The procedure for interpreters (if requested).

(d) *Notice to persons other than appellant.* Service of the written hearing notice upon the horse owner, corporation, partnership, limited liability company or other entity who has an interest in the horse, shall be deemed proper and complete when service of the written hearing notice is made upon the licensed trainer of record. In accordance with all other duties and obligations of a licensed trainer, it shall be the sole duty, responsibility and obligation of the licensed trainer to inform or otherwise notify the horse's owner or ownership entity, as applicable, regarding an upcoming proceeding in which the owner or ownership entity interests in the horse in question may be impacted.

§ 179.56. Failure to attend hearing.

(a) If, at the time and place scheduled for hearing, parties who have received due notice are not in attendance, whether in person or by counsel, the appeal shall be dismissed and the underlying decision shall be entered by and upon default.

(b) In accordance with § 179.7(c) (relating to request for hearing by applicant or licensee), to offset administrative costs associated with the proceeding, the Commission may retain a portion or all of the appeal bond posted by the appellant for failure to appear.

§ 179.57. Waiver of hearing.

A party to a proceeding may waive the right to a hearing before the Commission by filing with the Bureau Directors and the Hearings and Appeals Docket Clerk a written Notice of Waiver of Hearing, with copies to the presiding officer and other parties. A waiver shall constitute an admission of all the underlying charges or matters contained in the ruling or determination appealed from and shall be deemed an acceptance of the underlying action. The Hearing and Appeals Docket Clerk shall cancel the proceeding and close out the matter on the hearing calendar. This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

§ 179.58. Consolidation.

(a) The Commission, the Hearings and Appeals Docket Clerk or the presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) The section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 179.59. Presiding officers.

(a) When evidence is to be taken in a hearing, the Commission's duly appointed presiding officer may conduct the hearing in the absence of the Commission itself. A person presiding at a hearing may not consult a party on any fact in issue unless upon notice and opportunity for all parties to participate.

(b) A presiding officer shall have the power and authority to:

(1) Regulate the course and conduct of hearings, including the scheduling of continuances thereof, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Commission.

(2) Administer oaths and affirmations and compel the attendance of witnesses.

(3) Issue subpoenas authorized by law.

(4) Rule upon the admissibility of evidence, offers of proof and receive evidence.

(5) Schedule and conduct pre-hearing conferences as set forth in § 179.60 (relating to prehearing and other conferences).

(6) Dispose of preliminary procedural matters.

(7) Examine witnesses.

(8) Submit proposed findings of facts and conclusions of law to the Commission in accordance with this subpart.

(9) Take other action appropriate to the discharge of their duties as may be designated by the Commission and authorized by the act.

(c) Presiding officers will conduct fair and impartial hearings and maintain order.

(d) If parties or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may take action as set forth in § 179.64 (relating to contemptuous conduct).

(e) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

§ 179.60. Prehearing and other conferences.

(a) A prehearing conference may be scheduled at the sole discretion of the Commission or the presiding officer, if in the opinion of the Commission or the presiding officer, the matter warrants a conference. The Commission or a presiding officer may, upon petition, also schedule a prehearing conference at the request of one party and by agreement of the parties.

(b) When the Commission or the presiding officer directs that a prehearing conference be held, all parties shall appear at the time and place designated. Notice of the time and place of the conference will be given to all parties. If time is of the essence, a prehearing conference may be conducted by means of telephone conference call.

(c) Any of the following matters may be considered at a prehearing conference:

- (1) Discuss the possibilities for settlement of the underlying matter or proceeding, or both.
- (2) The amount of hearing time which will be required to dispose of the proceeding.
- (3) Designating parties.
- (4) Setting the order of procedure at a hearing.
- (5) Resolve procedural matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of the public interest.

(d) Failure of a party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the order, ruling or underlying matter appealed.

(e) The presiding officer shall record the action taken at the prehearing conference and commit to writing the agreed upon disposition of the previous matters.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

Cross References

This section cited in 7 Pa. Code § 179.59 (relating to presiding officers).

§ 179.61. Hearing procedure.

(a) *Order of hearing.* In a proceeding, the party having the burden of proof shall generally go forward, open and close, unless otherwise directed by the presiding officer. The order of testimony may be modified at the discretion of the hearing officer. In determining this order, the presiding officer shall take into consideration the right of the respective party to present the case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct a cross-examination as may be required for a full and true disclosure of the facts.

(1) In proceedings when the evidence is peculiarly within the knowledge or control of another party, the order of presentation set forth in subsection (a) may be varied by the presiding officer.

(2) Intervenors shall follow the party on whose behalf the intervention is made. If the intervention is not in support of an original party, the presiding officer will designate at what stage the intervenor will be heard.

(3) The presiding officer may direct the order of parties for purposes of cross-examination. Subsection (a) supersedes 1 Pa. Code § 35.125 (relating to order of procedure).

(b) *Burden of proof.* Preponderance of the evidence shall be the standard and shall mean that the evidence demonstrates a fact is more likely to be true than not. Proponents of any issue shall have the burden of proof thereof.

(c) *Evidence.* Neither the Commission, nor the presiding officer will be bound by the technical rules of evidence and all relevant, material and competent evidence may be received in either oral or documentary form, provided, that the Commission or the presiding officer acting hereunder may exclude evidence if:

- (1) It is repetitious or cumulative.
- (2) Its probative value is outweighed by:
 - (i) The danger of unfair prejudice;
 - (ii) Confusion of the issues; or
 - (iii) Considerations of undue delay or waste of time.
- (3) It is hearsay evidence.

(d) *Hearsay evidence.* Hearsay evidence properly objected to is not competent evidence to support a finding of the Commission. However, hearsay evidence admitted without objection will be given its natural probative effect and may support a finding by the Commission, if it is corroborated by other competent evidence in the record.

(e) *Commission public documents or business records.* Tape recordings of Judges' or Stewards' hearings, as well as of recordings of investigative interviews or similar proceedings may be received in evidence, if the recordings were made a part of the underlying Judges' or Stewards' evidentiary record and are relevant and material to the appeal. Investigative reports of Commission investigative or licensing staff, racetrack security personnel or of authorized agents of the Thoroughbred Racing Protective Bureau shall be received by the presiding officer and deemed to be a part of the official records of the Commission in a relevant proceeding, but the affected party shall have the right to examine the same insofar as they may pertain to matters directly and immediately in issue.

(f) *Control of evidence.* The Commission or the presiding officer shall have all necessary authority to control the receipt of evidence, including ruling on the admissibility of evidence, confining the evidence to the issues in the proceedings and impose, where appropriate, limitations to the number of witnesses to be heard, the time and scope of direct and cross-examinations and the production of further evidence.

(g) *Motion and objections.* Motions and objections made during a hearing shall be stated orally and shall be included in the stenographic record of the hearing.

(h) *Cross-examination.* Parties shall be entitled to cross-examine and to present rebuttal evidence as may be necessary for a full and fair hearing, but shall be limited to matters on direct and at the discretion of the Commission or presiding officer.

(i) Subsection (c) supersedes 1 Pa. Code § 35.161 (relating to form and admissibility of evidence); Subsection (e) supersedes 1 Pa. Code §§ 35.165 and 35.166 (relating to public documents; and prepared expert testimony); Subsection (f) supersedes 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

§ 179.62. Commission official notice.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer on its own or upon request by a party, but only if the party supplies the necessary information.

(b) The Commission or the presiding officer may notice a fact that is not subject to reasonable dispute because it:

- (1) Is generally known by the Commission or is within its jurisdiction; or
- (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) The Commission or the presiding officer may take official or judicial notice at any stage of the proceeding.

(d) On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

Cross References

This section cited in 7 Pa. Code § 179.69 (relating to proposed adjudication of the presiding officer).

§ 179.63. Representation before the Commission.

(a) *Appearance in person.* An individual who is a party in a proceeding before the Commission or presiding officer may represent himself. Attendance at the proceeding without an attorney will be deemed a waiver of this privilege.

(1) A party, other than an individual appearing on his own behalf, in an adversarial proceeding before the Commission shall be represented by an attorney authorized to appear before the Commission in accordance with subsection (b).

(2) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

(b) *Appearance by attorney.* A party in a proceeding before the Commission or presiding officer who elects to be represented by an attorney or is otherwise required to be represented by an attorney in the proceeding, shall be represented by:

(1) An attorney at law admitted to practice before the Pennsylvania Supreme Court.

(2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies.

(3) An attorney authorized in accordance with subsection (c) to appear in connection with the proceeding.

(c) *Admission Pro Hac Vice.* An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Commission or the presiding officer, be authorized to appear in connection with a particular proceeding. The Commission or the presiding officer will determine whether to grant the authorization upon the filing of a motion by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing with the Court, which contains the information required to satisfy the written notice provision of Pa.B.A.R. 301 (relating to admission pro hac vice) and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(d) Subsections (b) and (c) supersede 1 Pa. Code § 31.22 (relating to appearance by attorney).

(e) *Other representation prohibited at hearings.* Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Commission or presiding officer except, as provided in subsections (b) and (c) or as otherwise permitted by the Commission in a specific case.

(f) Subsection (e) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

Cross References

This section cited in 7 Pa. Code § 179.9 (relating to service by the Commission).

§ 179.64. Contemptuous conduct.

(a) Contemptuous conduct by any person at a hearing before the Commission or a presiding officer will be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing. Further action may be taken by the Commission imposing a temporary or permanent denial of the privilege of appearing or practicing before the Commission.

(b) Subsection (a) supplements 1 Pa. Code § 31.27 (relating to contemptuous conduct).

Cross References

This section cited in 7 Pa. Code § 179.59 (relating to presiding officers).

§ 179.65. Suspension and disbarment.

(a) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to a person who is found by the Commission, after notice and opportunity for hearing on the matter, to have done one or more of the following:

- (1) Lacked the requisite qualifications to represent others.
- (2) Engaged in unethical, contemptuous, disruptive or improper conduct before the Commission or presiding officer.
- (3) Repeatedly failed to follow Commission directives or orders.
- (4) Repeatedly failed to follow Commission rules and regulations in the representation of the client before the Commission or presiding officer.

(b) For the purposes of subsection (a), practicing before the Commission includes the following:

- (1) Transacting business on behalf of licensees with the Commission.
- (2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Commission in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.
- (3) Appearances at a hearing or other proceeding or public meeting before the Commission.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.28 (relating to suspension and disbarment).

§ 179.66. Briefs and oral argument.

(a) *Briefs.* Unless waived by the parties, at the close of the taking of testimony in the hearing, the presiding officer shall provide the parties with the opportunity to submit briefs. The presiding officer shall fix the time for the filing and service of briefs, giving due consideration to the nature of the proceeding, the parties involved, the magnitude of the record and the complexity of the issues involved. Copies of the brief shall be served with the presiding officer, the Appeals and Hearings Clerk and upon the respective parties.

(b) *Content and form of briefs.* Briefs shall contain the following:

- (1) A concise statement of the case.
- (2) Reference to the exact pages of the record or exhibits where the evidence relied upon by the filing party appear.
- (3) An argument preceded by a summary. The argument shall, to the extent possible, address all issues raised by the relief sought and the evidence adduced at the hearing.
- (4) As directed by the presiding officer, the brief shall also contain:
 - (i) A statement of the questions involved.

- (ii) Proposed findings of fact with references to the transcript pages or exhibits where evidence appears, together with proposed conclusions of law.
- (iii) Proposed paragraphs identifying the relief sought.
- (c) *Untimely briefs.* Briefs not filed and served on or before the date fixed by the presiding officer will not be accepted for review or consideration by the presiding officer or the Commission.
- (d) *Oral Argument.* No oral argument shall be heard by the Commission or presiding officer at any time.
- (e) *No exceptions to be filed.* No party shall be entitled to file exceptions to a proposed adjudication and order of the Commission or of the presiding officer. This subsection supersedes 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).
- (f) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs).

§ 179.67. Transcript.

Hearings shall be stenographically recorded and a verbatim transcript of the record will be prepared as soon as practicable after the hearing. The parties may obtain a copy of the transcript directly from the court reporting service. This section supersedes 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts).

§ 179.68. Contents and close of the record.

- (a) The record shall be considered closed upon receipt of the transcript of the record and briefs, if any, and the hearing shall be deemed concluded at that time. After the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.
- (b) The Commission's record shall consist of a transcript of the testimony and exhibits of record, the party's briefs, if submitted, together with any other the papers, written motions and requests filed in the proceedings and relevant official records.
- (c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

§ 179.69. Proposed adjudication of the presiding officer.

- (a) The presiding officer or other Commission designated person shall prepare a proposed adjudication and order as a decision of the Commission. The proposed written adjudication shall include:
 - (1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief or denial thereof.

(3) Facts officially noticed under § 179.62 (relating to Commission official notice) relied upon in the decision.

(4) Previous adjudications or matters which the Commission relies upon as precedent.

(b) The presiding officer or designated person shall transmit the proposed adjudication to the Hearings and Appeals Docket Clerk as soon as practicable, unless directed to expedite the matter by the Commission.

(c) The proposed written adjudication and order shall not be made available to the parties, including Commission counsel or intervenors until the Commission has reviewed, considered and properly voted upon the adjudication under § 179.70 (relating to Commission decisions).

§ 179.70. Commission decisions.

(a) *Decisions.* The Commission shall consider and vote upon a proposed adjudication and order at its public meeting in accordance with the voting provisions of the act and Chapter 173 (relating to Commission operations and organization—temporary regulations) of the regulations. The final order and adjudication shall be based solely upon a review and consideration of the entire record and shall be supported by reliable, probative evidence contained in the record. The Commission may adopt, modify or reject some or all of the proposed adjudication, remand all or part of the matter to the presiding officer for the taking of additional evidence or clarification of issues.

(b) *Single signature.* A final adjudication and order may be signed by the Chairman of the Commission or by any other delegated Commissioner on behalf of the entire Commission. Minority opinions regarding the final adjudication may be submitted and these shall become part of the record.

(c) The final adjudication and order shall be served upon the all parties and intervenors or their counsel personally, by regular United States mail or by certified mail by the Hearings and Appeals Docket Clerk. If service is made by mail, the date of mailing will be the date of service for purposes of a subsequent appeal.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.226 (relating to final orders).

Cross References

This section cited in 7 Pa. Code § 179.69 (relating to proposed adjudication of the presiding officer).

§ 179.71. Reopening of record.

(a) *Petition to reopen.* At any time after the record is closed, but before a final decision is issued, a party may file a petition with the Commission or the

presiding officer for the purpose of taking additional evidence. A petition to reopen must set forth clearly the fact claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Responses.* Within 10 days following the service of the petition, another party may file an answer thereto.

(c) *Action of petition.* As soon as practicable after the filing or responses to the petition, the presiding officer or the Commission shall grant or deny the petition based upon a review of the averments set forth in the petition.

(d) The Commission may, at any time, in its discretion and upon its own motion reopen a hearing upon due notice to the parties.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 179.72. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a petition within 15 days after the final order of the Commission.

(b) Filing a petition for rehearing or reconsideration does not toll or stay the 30-day appeal period.

(c) The petition must state concisely the alleged errors in the adjudication or other order of the Commission. If a final order or other order of the Commission is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

(d) Answers to petitions for rehearing or reconsideration will not be entertained by the Commission. If the Commission grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(e) If the Commission does not act upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 179.73. Appeals.

(a) Within 30 days after the receipt of a written adjudication or the entry of a final order or decision of the Commission, a party shall have the right to appeal therefrom to the Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

(b) The filing of an appeal with the Commonwealth Court will not stay enforcement of the decision or final order of the Commission unless a separate stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure or the Commission grants a stay prior to the filing of the appeal upon request.

Subchapter D. EJECTION MATTERS EXPEDITED HEARING PROCEDURES

Sec.	
179.91.	General purpose.
179.92.	Definitions.
179.93.	Written ejection notices.
179.94.	Request for a hearing.
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179.97.	Appeals to Commonwealth Court.
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§ 179.91. General purpose.

The sections set forth below are intended to govern the expedited practice and procedures before the Commission solely regarding the ejection from or the refusal of admission to a licensed racetrack facility or a racetrack enclosure. An ejection or refusal of admission are governed by section 9326(a) of the act (relating to admission to racetrack). The following sections are intended to supersede the applicability of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to practice and procedure before the Commission.

§ 179.92. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adjudication—The written order, decree, decision, determination or ruling by the Commission affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Commissioner or Presiding Officer—A member of the Commission or other person designated by the Commission to conduct the proceeding.

Decision—The determination from the bench by the Commission affirming, reversing or modifying the ejection or refusal, or both, of admission action immediately upon the closing of the evidentiary record of the proceeding.

Ejectee—An individual ejected from or refused admission to, or both, the racetrack enclosure under section 9326 of the act.

Ejection or Refusal of Admission—The action taken by a licensed racing entity to refuse admission to the grounds of the racetrack enclosure or the physical removal of a licensee from the grounds of the racetrack enclosure as provided by section 9326 of the act (relating to admission to racetrack).

Ejection Notice—Written notification issued by a licensed racing entity to an individual licensed by the Commission of the ejection or refusal, or both, of admission of that individual from the racetrack enclosure, the enumerated reasons for this action and the term of ejection.

Licensed Racing Entity—A person that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from the Commission.

Party—A person who is named in or admitted to the proceeding and who has a direct interest in the subject matter of the proceeding.

Term of ejection—The specific period of time set forth by the licensed racing entity in the written notice of ejection/denial of admission for which the ejectee is prohibited from entering the licensed racetrack facility.

§ 179.93. Written ejection notices.

(a) A licensed racing entity may refuse admission to or eject, or both, from the racetrack enclosure operated by the licensed racing entity, any person licensed by the Commission and employed at an occupation at the racetrack, if the person's presence is deemed detrimental to the best interests of horse racing and after citing the reasons for the determination in writing.

(b) The written notice shall also advise the ejectee of that person's right to request a hearing before the Commission no later than 48 hours following receipt of the written ejection notice. The written ejection notice shall include the address of the Commission and the address of the licensed racing entity.

(c) Failure by the licensed racing entity to provide written notice of the refusal of admission or ejection of the licensed individual shall be grounds for the Commission to issue a show cause order requiring a response and justification by the licensed racing entity.

§ 179.94. Request for a hearing.

(a) The person ejected or refused admission to the racetrack enclosure may request a hearing before the Commission, if the request:

(1) Is in writing;

(2) Is received by the Bureau Director in the Executive Office of the Commission (Office of the Clerk) within 48 hours of receipt of the written notice of ejection or refusal of admission, or both; and

(3) Sets forth a concise statement of all grounds upon which a hearing is requested.

(b) Each Bureau Director shall review the timeliness and appropriateness of the request for a hearing. Any appeal deemed untimely shall be dismissed.

(c) A request for a stay, if any, shall be granted by the respective Bureau Director, unless the Bureau Director finds that the stay is not in the best interest of racing or presents a threat to public safety. Any stay granted shall continue until the time that the Commission renders a final written decision in the matter.

(1) An ejectee who requests a stay must provide notice of the request to the licensed racing entity that issued the notice of ejection/refusal of admission and provide proof of service of the notice to the respective Bureau Director. No stay request may be granted until 24 hours after the Bureau Director's receipt of proof of service under this paragraph.

(2) The licensed racing entity may submit a written answer and supporting documentation in opposition to the request for a stay to the Bureau Director.

(3) All written notices, proof of service or answers to stay referenced in this subsection may be electronically filed with the Bureau Director after the initial appeal request.

(d) No appeal shall be granted or heard regarding the purported denial of horse entries by a licensed racing entity.

§ 179.95. Notice and location of hearing.

(a) All ejection or refusal of admission hearings shall be scheduled for and conducted at the next duly scheduled public meeting of the Commission subject to the notice provision under subsection (b). The hearing shall take place at the location of the Commission's public meeting. If scheduling the hearing for the next duly scheduled public meeting of the Commission does not afford the appropriate notice, the hearing shall be scheduled for the following duly scheduled public meeting.

(b) The parties to the proceedings shall be provided at least 5 days written notice of the specific location, date and time of the Commission public meeting at which the ejection hearing will take place.

(c) Hearings will not be continued except for compelling reasons, as determined by the Commission, in its sole discretion. Any request for a continuance must be submitted in writing setting forth the compelling reasons to the Commission.

§ 179.96. Conduct of hearing.

(a) The Commission shall preside over the course and conduct of the matter directly. The Commission may, however, in its discretion, designate or appoint a Commissioner or other qualified person to serve as the presiding officer in the particular matter.

(b) Hearings may provide for:

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant oral or documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.

(c) The Commissioners or the presiding officer, or both, shall have the power and authority to do the following:

- (1) Regulate the course of the hearing, including recessing, reconvening or adjournment thereof.
- (2) Administer oaths and affirmations.
- (3) Issue subpoenas.
- (4) Rule upon offers of proof and receive evidence.
- (5) Dispose of motions made during the hearing to dismiss the proceedings or other motions which involve the final determination of the proceedings.
- (6) Take any other action necessary and appropriate to discharge their duties as may be designated by the Commission.
- (7) Affirm, reverse or modify the term of ejection based upon the underlying factors for the ejection and the evidence of record.

(d) All ejection/refusal of admission hearings shall be stenographically recorded.

(e) Given the expedited nature of the proceeding and limited duration of a stay, if applicable, the parties shall not be afforded the opportunity to submit written briefs, except upon extraordinary circumstances presented and in the Commissioners' sole discretion.

(f) An oral decision and order shall be made and entered immediately by the Commission upon the closing of the evidentiary record as introduced at the hearing.

(g) Within 15 days from the issuance of the Commission's oral decision and receipt of the hearing transcript, a written adjudication supporting its decision and order shall be issued to the parties. The Commission's evidentiary record will be closed upon the receipt of the hearing transcript.

(h) Any stay of enforcement previously granted by the Commission under § 179.34(c) (relating to votes of Judges or Stewards) shall terminate upon the issuance of the Commission's written adjudication.

(i) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers) and 1 Pa. Code Chapter 35, Subchapter B (relating to hearings and conferences).

§ 179.97. Appeals to Commonwealth Court.

(a) A party may appeal the final order and written adjudication of the Commission to the Commonwealth Court within 30 days of the receipt of the written determination in accordance with the provisions of Rules of Appellate Procedure.

(b) The filing of a Petition for Review with the Commonwealth Court will not automatically stay enforcement of the decision or final order of the Commission unless a separate stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure.

Cross References

This section cited in 7 Pa. Code § 179.98 (relating to disinterested party status on appeal to Commonwealth Court).

§ 179.98. Disinterested party status on appeal to Commonwealth Court.

The Commission is not an aggrieved party as contemplated by 2 Pa.C.S. § 702 (relating to Administrative Agency Law) and shall be deemed a disinterested party in ejection or refusal of admission matters subsequently appealed, by either party, to the Commonwealth Court under § 179.97(a) (relating to appeals to Commonwealth Court). In accordance with Pa.R.A.P. 1513(a), as a disinterested party, the Commission shall not be named in the caption or listed as the Respondent on Appellant's Petition for Review.

Subchapter E. DOCUMENTARY HEARINGS

Sec.

- 179.101. Expedited documentary hearing.
- 179.102. Election of documentary hearing.
- 179.103. Waiver of oral hearing.
- 179.104. Documentary hearing procedures.
- 179.105. Evidentiary documents.
- 179.106. Verification.

Cross References

This subchapter cited in 7 Pa. Code § 175.8 (relating to waiver of hearings); 7 Pa. Code § 177.8 (relating to waiver of hearings); and 7 Pa. Code § 179.6 (relating to Commission action without prior hearing).

§ 179.101. Expedited documentary hearing.

(a) *Purpose.* To control administrative costs for all parties, to expedite and streamline the formal hearing process and to promote judicial economy, an individual who appeals a decision of the Judges or Stewards regarding certain racing matters may waive the right to an oral hearing as provided in Subchapter C (relating to Commission hearings) and elect to have the matter proceed under the expedited process and resolved solely by the submission of documents.

(b) *Matters for documentary hearing.* Among other racing related matters, the expedited documentary hearing may be utilized by an appellant or party when time is of the essence or where the health, safety and welfare of a horse is involved, including but not limited to claiming disputes, horse transfers and other similar matters.

§ 179.102. Election of documentary hearing.

(a) An individual who elects to proceed under the expedited documentary hearing process, instead of a formal oral hearing, must provide written notice to the Bureau Directors of the individual's decision to proceed under the expedited

hearing process within 2 days of the approval of the initial appeal request. A written waiver of oral hearing, in accordance with § 179.103 (relating to waiver of oral hearing), must be submitted along with the individual's notification of election to proceed under the expedited documentary hearing procedure.

(b) If there is more than one party in the matter, all parties must agree to proceed under the expedited documentary hearing process and must provide the necessary waiver form. If there is no agreement by the parties, the matter will proceed under the Commission's oral hearing process set forth in Subchapter C (relating to Commission hearings).

§ 179.103. Waiver of oral hearing.

(a) The appellant and other parties, if applicable, shall execute a written waiver specifically acknowledging that:

(1) They are knowingly and voluntarily proceeding under the expedited documentary hearing process;

(2) They will timely submit all necessary documents or records properly sworn to or affirmed and based upon personal knowledge; and

(3) That as a condition of proceeding through the expedited documentary hearing process, they will abide by the decision of the Bureau Director and no appeal will be taken to the Commission or to a subsequent court.

(b) The appellant and other parties must promptly submit the fully executed waiver form to the respective Bureau Director.

(c) Subsections (a)—(b) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

Cross References

This section cited in 7 Pa. Code § 179.102 (relating to election of documentary hearing).

§ 179.104. Documentary hearing procedures.

(a) The appellant and other parties, if applicable, shall submit to the Bureau Director a complete package of documents setting forth the factual or legal, or both, basis to support their position, including, but not limited to records, pleadings, witness affidavits, supporting briefs and legal argument.

(b) The Bureau Director's review of the underlying issues shall be limited solely to a review of the documentary evidence submitted by the parties to the hearing and the underlying determination by the Judges/Stewards. No in-person testimony or depositions shall be taken in these proceedings.

(c) Once the supporting documentation has been submitted to the Bureau Director, an appellant or a party may not communicate directly or indirectly, with the Bureau Director in connection with any issue of law or any matter of fact relating to the matter in dispute.

(d) The Bureau Director shall issue a limited written decision in the form of a ruling within 5 days of the receipt of the documents from the appellant or par-

AFFIDAVIT

I, _____, being duly sworn do hereby affirm according to law, depose and say that the facts above set forth are true and correct to the best of my knowledge, information and belief.

(Signature of affiant)

Sworn and subscribed before me this _____
day of _____, 20 ____.

(Notary Public)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Bureau Director or Commission shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

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