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**IDAPA 11
TITLE 04
CHAPTER 04**

IDAHO STATE RACING COMMISSION

11.04.04 - RULES GOVERNING DISCIPLINARY HEARINGS

000. LEGAL AUTHORITY.

The Racing Commission is authorized to create rules governing racing pursuant to Idaho Code Section 54-2507. (3-20-97)

001. EXEMPTION FROM ATTORNEY GENERAL RULES.

01. Findings. In accordance with Section 67-5206(5), Idaho Code, the Racing Commission makes the following findings: (3-20-97)

a. Horse and greyhound racing is a sport requiring racing officials to make immediate binding decisions affecting the races and participants in the races. (3-20-97)

b. A central element of horse and greyhound racing is pari-mutuel betting, and public confidence in the outcome of races is critical to the racing industry and the general public. (3-20-97)

c. Racing seasons at certain locations are often very short and involve preliminary and final races requiring quick action in order for disciplinary action to be effective and in order to permit final races to be run without controversy as to the participants and winners. (3-20-97)

d. Nationwide, participants in racing have become accustomed to, and acknowledge the need for, immediate authoritative decisions and quick disciplinary action. (3-20-97)

02. Idaho Rules of Administrative Procedure Of The Attorney General. Because of the factors described in Subsection 001.01 of these rule, the Racing Commission has adopted IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". Proceedings by the stewards shall be governed exclusively by these rules and shall supersede IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". Proceedings before the Commission shall be governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," insofar as such provisions are not inconsistent with these rules. (3-20-97)

002. APPLICABILITY.

These rules shall apply to all proceedings for disciplinary action of licensees and associated proceedings including disqualification. (3-20-97)

003. DEFINITIONS.

01. Stewards. For the purpose of these rules "stewards" shall included judges as set forth in the Greyhound Racing Rules, IDAPA 11.04.03. (3-20-97)

004. -- 009. (RESERVED).

010. PROCEEDINGS BY STEWARDS.

011. RIGHTS OF THE LICENSEE.

A person who is the subject of a disciplinary hearing conducted by the stewards is entitled to: (3-20-97)

01. Proper Notice Of All Charges. (3-20-97)

02. Confront The Evidence Presented. This includes: (3-20-97)

- a. The right to counsel at the person's expense; (3-20-97)
- b. The right to examine all evidence to be presented against him; (3-20-97)
- c. The right to present a defense; (3-20-97)
- d. The right to call witnesses; and (3-20-97)
- e. The right to cross examine witnesses. (3-20-97)

012. COMPLAINTS.

01. Time For Filing. A complaint must be in writing and filed with the stewards not later than five (5) days after the action that is the subject of the complaint. (3-20-97)

02. Hearing. On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the stewards may conduct an inquiry and disciplinary hearing regarding a licensee's actions. (3-20-97)

013. SUMMARY SUSPENSION.

01. Suspension. If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety or welfare, the stewards may summarily suspend the license pending a hearing. (3-20-97)

02. Entitlement To Hearing. A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three (3) day limit. (3-20-97)

03. Issue At Hearing. The stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling. (3-20-97)

014. NOTICE.

01. Time. Except as provided by these rules regarding summary suspensions, the stewards shall provide written notice at least three (3) days before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to notice by executing a written waiver. (3-20-97)

02. Content of Notice. Notice given under this section must include: (3-20-97)

- a. A statement of the time, place and nature of the hearing; (3-20-97)
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held; (3-20-97)
- c. A reference to the particular sections of the statutes or rules involved; (3-20-97)
- d. A short, plain description of the alleged conduct that has given rise to the disciplinary hearing; (3-20-97)
- e. The possible penalties that may be imposed; and (3-20-97)
- f. A statement summarizing the rights of the licensee as outlined in Subsections 011.02.a. through 011.02.e. (3-20-97)

03. Service Of Notice. If possible, the stewards or their designee shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the 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. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse or greyhound, the stewards shall provide notice of the hearing to the owner, managing owner or lessee of the horse or greyhound in the manner provided by this subsection. (3-20-97)

04. Nonappearance. Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards. The stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent, in compliance with this Subsection. (3-20-97)

015. CONTINUANCES.

01. Request For Continuance. Upon receipt of a notice, a person may request a continuance of the hearing. (3-20-97)

02. Good Cause. The stewards may grant a continuance of any hearing for good cause shown. (3-20-97)

03. Order Of Continuance. The stewards may at any time order a continuance on their own motion. (3-20-97)

016. EVIDENCE.

01. Evidence To Be Taken Under Oath. Each witness at a disciplinary hearing conducted by the stewards must be sworn by the presiding steward. (3-20-97)

02. Rules Of Evidence. The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. The stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The stewards may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards. (3-20-97)

03. Burden Of Proof. The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule. (3-20-97)

04. Record Of Hearing. The stewards shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person. (3-20-97)

017. RULING.

01. Majority Vote. The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reason(s) for the dissent. (3-20-97)

02. Form Of Ruling. A ruling by the stewards must be on a form prescribed by the Commission and include: (3-20-97)

a. 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; (3-20-97)

b. 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; (3-20-97)

c. The date of the hearing and the date the ruling was issued; (3-20-97)

- d. The penalty imposed; (3-20-97)
- e. Any changes in the order of finish or purse distribution; (3-20-97)
- f. Other information required by the Commission. (3-20-97)
- 03. Signing Of Ruling.** A ruling must be signed by a majority of the stewards. (3-20-97)

04. Service Of Ruling. If possible, the stewards or their designee shall hand deliver a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the stewards shall mail the ruling 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. A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse or greyhound, the stewards shall provide a copy of the ruling to the owner of the horse or greyhound, the horsemen's bookkeeper, the appropriate past performance service(s) and the Association of Racing Commissioners International in the manner provided by this subsection. (3-20-97)

05. Notice Of Right Of Appeal. At the time the stewards inform a person who is the subject of the proceeding of the ruling, the stewards shall inform the person of the person's right to appeal the ruling to the Commission. (3-20-97)

06. Time For Payment Of Fines. All fines imposed by the stewards shall be paid to the Commission within seventy-two (72) hours after the ruling is issued, unless otherwise ordered. (3-20-97)

018. EFFECT OF RULINGS.

01. Effect On Other Persons. Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee. (3-20-97)

02. Transfer To Avoid Ruling. The transfer of a horse or greyhound to avoid application of a Commission rule or ruling is prohibited. (3-20-97)

019. APPEALS.

01. Appeal To Commission. A person aggrieved by a ruling of the stewards may appeal to the Commission except as provided in Subsection 019.06 of this rule. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal. (3-20-97)

02. Time. An appeal under this section must be filed with the Commission's executive director not later than five (5) days after the entry of the ruling. If the Commission determines the appeal to be frivolous, the appellant may be subject to a fine. (3-20-97)

03. Form Of Appeal. An appeal must be in writing on a form prescribed by the Commission. The appeal must include: (3-20-97)

- a. The name, address, telephone number and signature of the person making the appeal; and (3-20-97)
- b. A statement of the basis for the appeal. (3-20-97)

04. Record For Appeal. On notification by the Commission that an appeal has been filed, the stewards shall forward to the Commission the record of the proceeding on which the appeal is based. (3-20-97)

05. Payment Of Fines During Appeal. If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules. If the appeal is disposed of in favor of the appellant, the Commission shall refund the amount of the fine. (3-20-97)

06. No Appeal From Disqualification For Interference. A decision by the stewards regarding a disqualification for interference during the running of the race is final and may not be appealed to the Commission. (3-20-97)

020. STAY.

01. Application For Stay. A person who has been disciplined by a ruling of the stewards may apply to the executive director for a stay of the ruling. (3-20-97)

02. Time. An application for a stay must be filed with the Commission's executive director not later than the deadline for filing an appeal. (3-20-97)

03. Form Of Application. An application for a stay must be in writing and include: (3-20-97)

a. The name, address, and telephone number and signature of the person requesting the stay; and (3-20-97)

b. A statement of the justification for the stay. (3-20-97)

04. Grant Or Denial Of Stay. The executive director may grant a stay for cause. The executive director shall notify the person in writing of the decision. The executive director may rescind a stay granted under this subsection for reasonable cause. (3-20-97)

05. Effect Of Stay. The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid. (3-20-97)

021. HEARING ON APPEAL.

01. Nature Of Hearing. The hearing of the Commission on appeal shall be limited to oral argument regarding issues of law and fact as may be found in the record established before the board of stewards, except, the Commission may order a de novo hearing if the Commission determines that exceptional circumstances require it. (3-20-97)

02. Written Arguments. Written arguments and briefs or briefs and motions regarding the appeal shall be allowed under such terms as the Commission may direct in its notice of hearing, which shall be issued at least twenty-eight (28) days prior to the date set for hearing. (3-20-97)

03. Motions. Requests for postponement and other motions shall be filed in writing not later than seven (7) days before the scheduled hearing. The executive director may determine whether good cause is shown for the postponement and may grant or deny the request on behalf of the Commission. (3-20-97)

04. Record Of Proceedings. A verbatim record of the proceedings at hearings before the Commission shall be maintained either by electrical devices or by stenographic means, as the Commission may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of reporting the proceedings. (3-20-97)

05. Final Order. Following the hearing the Commission shall issue a final order as provided by Idaho Code Section 67-5246. If the Commission shall make its decision on the record, the executive director may sign the final order on behalf of the Commission. (3-20-97)

022. -- 029. (RESERVED).

030. PROCEEDINGS BY THE COMMISSION.

De novo hearings and other proceedings before the Commission shall be governed by the Administrative Procedure of the Attorney General insofar as such provisions are not inconsistent with these rules. (3-20-97)

031. -- 049. (RESERVED).

050. EJECTION/EXCLUSION.

01. Ruling Off. The stewards or Commission may order an individual ejected or excluded from all or part of any premises under the regulatory jurisdiction of the Commission if the stewards, executive director or Commission determine that: (3-20-97)

a. The individual may be ejected or excluded under the statutes or rules of this jurisdiction; and (3-20-97)

b. The individual's presence on association grounds is inconsistent with maintaining the honesty and integrity of racing. (3-20-97)

02. Hearing On Exclusion. An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the stewards or Commission. If an exclusion is ordered separately, the excluded individual is entitled to a hearing before the stewards or Commission. A hearing on an exclusion shall be conducted in the same manner as other hearings conducted by the stewards or Commission. (3-20-97)

03. Effect Of Exclusion. If an individual is excluded under this section, a horse or greyhound owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction. (3-20-97)

051. RULINGS IN OTHER JURISDICTIONS.

01. Reciprocity. The stewards shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses or greyhounds. (3-20-97)

02. Appeals Of Reciprocal Rulings. (3-20-97)

a. Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in this jurisdiction. (3-20-97)

b. Any request for such hearing must clearly set forth in writing the reasons for the appeal. (3-20-97)

052. -- 999. (RESERVED).

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