

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)\
3 DE Admin. Code 501

FINAL

ORDER

Pursuant to 29 Del. C. § 10118 and 3 Del. C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on November 3, 2009, the Commission makes the following findings and conclusions:

Summary of the Evidence

The Commission posted public notice of the proposed amendments to DHRC Rule 10 in the April 1, 2009 *Register of Regulations* (Volume 13, Issue 3) and for two consecutive weeks in September in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 10 in its entirety after Rules Committee review.

The Commission received no written comments. The Commission held a public hearing on December 1, 2009, in which no public comments were made.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2010.

IT IS SO ORDERED this 12th day of January, 2010.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

10.1 General Provisions

This chapter contains the rules of procedure for ~~State Steward and~~ judges' hearings, and for Commission proceedings.

10.2 Proceedings by ~~State Steward~~ Presiding Judge or Judges

10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the ~~State Steward or judges~~ is entitled to:

- 10.2.1.1 Proper notice of all charges;
- 10.2.1.2 Confront the evidence presented, including:
 - 10.2.1.2.1 the right to counsel at the person's expense;
 - 10.2.1.2.2 the right to examine all evidence to be presented against him;
 - 10.2.1.2.3 the right to present a defense;
 - 10.2.1.2.4 the right to call witnesses; and
 - 10.2.1.2.5 the right to cross examine witnesses.
- 10.2.1.3 Waive any of the above rights.

10.2.2 Complaints

- 10.2.2.1 A complaint must be in writing and filed with the ~~State Steward~~ Presiding Judge or judges within 30 days after the action that is the subject of the complaint.
- 10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the ~~State Steward~~ Presiding Judge or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

10.2.3 Summary Suspension

- 10.2.3.1 If the ~~State Steward or judges~~ Board of Judges determines that a licensee's actions, other than those of a licensed ~~a~~ Association, constitute an immediate danger to the public health, safety or welfare, the ~~State Steward or judges~~ Board of Judges the Commission Investigator, may summarily suspend the license pending a hearing.
- 10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three-day limit.
- 10.2.3.3 The ~~State Steward or judges~~ Board of Judges shall conduct a hearing on a 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.

10.2.4 Notice

- 10.2.4.1 Except as provided by these rules regarding summary suspensions, the ~~State Steward or judges~~ Board of Judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to 24-hour notice by executing a written waiver.
- 10.2.4.2 Notice given under this section must include:
 - 10.2.4.2.1 a statement of the time, place and nature of the hearing;
 - 10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and
 - 10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.
- 10.2.4.3 If possible, the ~~State Steward or his designee, or the judges~~ Board of Judges 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 ~~State Steward or judges~~ Board of Judges 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, the ~~State Steward~~ Board of Judges shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the ~~State Steward~~ Board of Judges that such notice was given the person who is the subject of the hearing.

- 10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the ~~State Steward or judges~~ Board of Judges. The ~~State Steward or judges~~ Board of Judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

10.2.5 Continuances

- 10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.
- 10.2.5.2 The ~~State Steward or judges~~ Board of Judges may grant a continuance of any hearing for good cause shown.
- 10.2.5.3 The ~~State Steward or judges~~ Board of Judges may at any time order a continuance on their own motion.

10.2.6 Evidence

- 10.2.6.1 Each witness at a disciplinary hearing conducted by the ~~State Steward or judges~~ Board of Judges must be sworn by the ~~State Steward or~~ presiding judge.
- 10.2.6.2 The ~~State Steward or judges~~ Board of Judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the ~~State Steward or judges~~ Board of Judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The ~~State Steward or judges~~ Board of Judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The ~~State Steward or judges~~ Board of Judges may admit hearsay evidence if the ~~State Steward or judges~~ it determines the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the ~~State Steward or judges~~ Board of Judges.
- 10.2.6.3 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.
- 10.2.6.4 The ~~State Steward or judges~~ Board of Judges 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.

10.2.7 Ruling

- 10.2.7.1 The issues at a disciplinary hearing shall be decided by ~~the State Steward or by~~ a majority vote of the Board of Judges.
- 10.2.7.2 A ruling by the ~~State Steward or judges~~ Board of Judges must be on a form prescribed by the Commission and include:
- 10.2.7.2.1 the full name, ~~social security number, year~~ date of birth, ~~last record address, and~~ license type and license number of the person who is the subject of the hearing;
- 10.2.7.2.2 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;
- 10.2.7.2.3 the date of the hearing and the date the ruling was issued;
- 10.2.7.2.4 the penalty imposed;
- 10.2.7.2.5 any changes in the order of finish or purse distribution;
- 10.2.7.2.6 other information required by the Commission; and
- 10.2.7.2.7 the right to appeal to the Commission.
- 10.2.7.3 A ruling must be signed by the ~~State Steward or Presiding Judge on behalf of the Board of Judges. by a majority of the judges, as the case may be.~~
- 10.2.7.4 Upon request, the ~~State Steward or his designee, or the judges~~ Board of Judges or their designee shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the ~~State Steward or judges~~ Board of Judges 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, the ~~State Steward or judges~~ Board of Judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.

10.2.7.5 At the time the ~~State Steward or judges~~ Board of Judges informs a person who is the subject of the proceeding of the ruling, ~~the State Steward or judges~~ it shall inform the person of the person's right to appeal the ruling to the Commission.

10.2.7.6 All fines imposed by the ~~State Steward or judges~~ Board of Judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

10.2.8 Effect of Rulings

10.2.8.1 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.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

10.2.8.3 The horses of a trainer issued a full suspension (or under appeal of a full suspension) shall not be transferred for the purposes of training to a spouse, family member, assistant, current employee/employer, or household member. All trainer and owner transfers of horses from parties under a full suspension (or parties under appeal of a full suspension) to other owners or trainers must be approved by the DHRC judges or the DHRC Administrator. (See also 5.2.1.6 - 5.3.3.6.)

10.2.9 Appeals

10.2.9.1 A person aggrieved by a ruling of the ~~State Steward, judges~~ Board of Judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.

10.2.9.2 An appeal under this section must be filed with the ~~State Steward~~ Presiding Judge not later than 48 hours after the publishing of the ruling. The appeal must be accompanied by a deposit in the amount of ~~\$250, \$400, or an amount as determined by the Commission from time to time,~~ plus an amount to be determined from time to time by the Commission for the cost of the court reporter's fee's and attendance plus the costs for providing notice of the appeal. ~~Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant. In no event shall the advance payment of the court reporters fee deposit for the appeal be refunded.~~

10.2.9.3 An appeal must be in writing on a form prescribed by the Commission. The appeal must include:

10.2.9.3.1 the name, address, telephone number and signature of the person making the appeal; and

10.2.9.3.2 a statement of the basis for the appeal.

10.2.9.4 On notification by the Commission that an appeal has been filed, the ~~State Steward or judges~~ Board of Judges shall forward to the Commission the record of the proceeding on which the appeal is based.

- 10.2.9.5 If a person against whom a fine has been assessed timely files an appeal of the ruling that assesses the fine, the person need not immediately pay the fine in accordance with these rules.
- 10.2.9.6 A notice of appeal filed with the Commission pursuant to these rules may be accompanied by a request for a stay pending a final decision by the Commission. In his discretion the ~~State Steward~~ Presiding Judge may approve such stay requests unless he determines that granting the stay would be adverse to the best interests of racing or inimical to the integrity of the sport. If the ~~State Steward~~ Presiding Judge denies a stay request, the appellant may submit a written request to the Commission, in which case the Chairman of the Commission in his discretion may grant or deny the request.

10.3 Proceedings by the Commission

10.3.1 Party Designations

- 10.3.1.1 A person who is the subject of a disciplinary hearing, who filed an appeal from a ~~State Steward's or judges' Board of Judges's~~ ruling, or who otherwise seeks relief from the Commission, is a party to that proceeding.
- 10.3.1.2 A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.
- 10.3.1.3 A party summoned to appear at a hearing must appear unless he is excused by the Commission presiding officer. Parties may appear with counsel licensed to practice law in Delaware, or, with the Commission's approval, counsel licensed to practice law in another jurisdiction provided that such out-of-state counsel associates with a Delaware attorney.
- 10.3.1.4 A non-party to a proceeding who wishes to appear in a contested case pending before the Commission must prove that he has an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

10.3.2 Notice

- 10.3.2.1 Not less than seven (7) days before the date set for a hearing, the Commission shall serve written or oral notice on each party of record to the proceeding. The person may waive his right to said notice by executing a written waiver. Oral notice shall suffice upon attestation by the ~~State Steward~~ Presiding Judge or other process server that he personally gave such notice to the person who is the subject of the hearing.
- 10.3.2.2 If hand delivery or oral notice by the ~~State Steward~~ Presiding Judge is not possible, the Commission shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by personal service or certified mail, return receipt requested.
- 10.3.2.3 A notice of the hearing must include:
 - 10.3.2.3.1 a statement of time, place and nature of the hearing;
 - 10.3.2.3.2 a reference to the particular sections of the statutes and rules involved; and
 - 10.3.2.3.3 a short, plain statement of the matters asserted.
- 10.3.2.4 If the Commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the Commission shall issue a revised notice.
- 10.3.2.5 A party to a proceeding may move to postpone the proceeding. Unless waived by the Commission, the motion must be in writing, set forth the specific grounds on which it is sought and be filed with the Commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the Commission shall cause new notice to be issued.
- 10.3.2.6 After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

10.3.3 Subpoenas

- 10.3.3.1 A member of the Commission, the ~~Director of Poultry and Animal Health Administrator of Racing~~, the ~~State Steward or judges Board of Judges~~, the Commission Investigator, or the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.
- 10.3.3.2 The presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.
- 10.3.3.3 Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by Delaware law.
- 10.3.3.4 On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.
- 10.3.4 Conferences
 - 10.3.4.1 On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:
 - 10.3.4.1.1 simplifying issues;
 - 10.3.4.1.2 amending the pleadings;
 - 10.3.4.1.3 making admissions of fact or stipulations to avoid the unnecessary introduction of proof;
 - 10.3.4.1.4 designating parties;
 - 10.3.4.1.5 setting the order of procedure at a hearing;
 - 10.3.4.1.6 identifying and limiting the number of witnesses;
 - 10.3.4.1.7 resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute; and
 - 10.3.4.1.8 identifying provisions and mandates of statute or rules relating to the issues.
 - 10.3.4.2 The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.
 - 10.3.4.3 During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.
- 10.3.5 Reporters and Transcripts
 - 10.3.5.1 If necessary, the Commission shall engage a court reporter to make a stenographic record of a hearing. If there are multiple parties, the Commission may allocate the cost of the reporter and transcript among the parties.
 - 10.3.5.2 If a person requests a transcript of the stenographic record, the Commission may assess the cost of preparing the transcript to the person.
 - 10.3.5.3 A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the Commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed

corrections are not objected to before the tenth day after the date the corrections were filed with the Commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

10.3.6 Nature of Hearings

- 10.3.6.1 An appeal from a decision of the ~~State Steward or judges~~ Board of Judges shall be de novo.
- 10.3.6.2 A hearing in a Commission proceeding is open to the public, provided, however, that witnesses may be sequestered.
- 10.3.6.3 Unless precluded by law or objected to by a party, the Commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default.

10.3.7 Presiding Officers

- 10.3.7.1 A member of the Commission, the ~~Director of Poultry and Animal Health~~ Administrator of Racing, or a Commission appointee may serve as the presiding officer for a Commission proceeding.
- 10.3.7.2 The presiding officer may:
 - 10.3.7.2.1 issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
 - 10.3.7.2.2 administer oaths;
 - 10.3.7.2.3 receive evidence;
 - 10.3.7.2.4 rule on the admissibility of evidence;
 - 10.3.7.2.5 examine witnesses;
 - 10.3.7.2.6 set reasonable times within which a party may present evidence and within which a witness may testify;
 - 10.3.7.2.7 permit and limit oral argument;
 - 10.3.7.2.8 issue interim orders;
 - 10.3.7.2.9 recess a hearing from day to day and place to place;
 - 10.3.7.2.10 request briefs before or after the presiding officer files a report or proposal for decision;
 - 10.3.7.2.11 propose findings of fact and conclusions of law;
 - 10.3.7.2.12 propose orders and decisions; and
 - 10.3.7.2.13 perform other duties necessary to a fair and proper hearing.
- 10.3.7.3 A person serving as the presiding officer of a proceeding must be a disinterested party to the proceeding.

10.3.8 Order of Hearing

- 10.3.8.1 The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.
- 10.3.8.2 When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.
- 10.3.8.3 Each appearance by a party, a party's representative or a person who may testify must be entered on the record.
- 10.3.8.4 The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.
- 10.3.8.5 Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the Commission or if several proceedings are heard on a consolidated record.

- 10.3.8.6 After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.
- 10.3.8.7 After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross examination.
- 10.3.8.8 The members of the Commission and/or the presiding officer may examine any witnesses.
- 10.3.8.9 At the conclusion of all evidence and cross examination, the presiding officer shall allow closing statements.
- 10.3.8.10 Before issuing a decision, the Commission or the presiding officer may call on a party for further relevant and material evidence on a issue. The Commission or the presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

10.3.9 Behavior

- 10.3.9.1 Each party, witness, attorney or other representative shall behave in all Commission proceedings with dignity, courtesy and respect for the Commission, the presiding officer and all other parties and participants.
- 10.3.9.2 An individual who violates this section may be excluded from a hearing by the presiding officer.

10.3.10 Evidence

- 10.3.10.1 All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial or unduly repetitious evidence.
- 10.3.10.2 The presiding officer is not bound by the Rules of Evidence, but the rules of privilege recognized by law in Delaware apply in Commission proceedings.
- 10.3.10.3 A party may object to offered evidence and the objection shall be noted in the record. A party, at the time an objection is made or sought, shall make known to the presiding officer the action the party desires. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary.
- 10.3.10.4 When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.
- 10.3.10.5 The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the Commission's specialized knowledge. The Commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.
- 10.3.10.6 The special skills and knowledge of the Commission, the Commission staff, and the officials of the Commission may be used in evaluating the evidence.
- 10.3.10.7 The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.

- 10.3.10.8 The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the Commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.
- 10.3.10.9 The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.
- 10.3.10.10 The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.
- 10.3.11 Findings of Fact and Conclusions of Law
- 10.3.11.1 The presiding officer may direct any party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision. The presiding officer may limit the request for proposed findings to a particular issue of fact.
- 10.3.11.2 Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.
- 10.3.11.3 Only if the presiding officer requires the filing of proposed findings of fact or a proposal for decision is the Commission required to rule on the proposed findings of fact. If a party is permitted but not required to submit proposed findings or a proposal for decision, the Commission is not required to rule on the party's proposed findings.
- 10.3.12 Dismissal
- On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:
- 10.3.12.1 failure to timely pay all required fees to the Commission;
- 10.3.12.2 unnecessary duplication of proceedings;
- 10.3.12.3 withdrawal;
- 10.3.12.4 moot questions or obsolete petitions; and
- 10.3.12.5 lack of jurisdiction.
- 10.3.13 Orders
- 10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than **[thirty sixty]** days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of

law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.

10.3.13.2 The Commission staff shall mail or deliver a copy of the order to each party or the party's representative.

10.3.13.3 A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order.

10.3.13.4 If the Commission finds that an imminent peril to the public health, safety or welfare requires an immediate final order in a proceeding, the Commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

10.3.14 Ex Parte Communications

10.3.14.1 No Commission member may discuss the merits of a matter which is pending before the Commission prior to a formal hearing, or between the hearing and announcement of the Commission's final decision.

10.3.14.2 The Administrative Procedure Act, Title 29 of the **Delaware Code**, Section 10129, pertaining to ex parte communications, is hereby incorporated by reference.

10.3.15 Appeals

Within fifteen (15) days after service of a final adjudication or order of the Commission, or the imposing of a monetary fine, or of an order of the Commission refusing a petition for rehearing or reconsideration, or of an order following a rehearing or reconsideration, any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.

10.4 Rulings in Other Jurisdictions

10.4.1 Reciprocity

The ~~State Steward or judges~~ Board of Judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

10.4.2 Appeals of Reciprocal Rulings

10.4.2.1 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 Delaware.

10.4.2.2 Any request for such hearing must clearly set forth in writing the reasons for the appeal.

10.5 Attorneys and Pro hac vice admission

10.5.1 Only active members of the Delaware Bar and attorneys admitted pro hac vice pursuant to Rule 10.5.2 may represent any person or otherwise provide legal advice or services at any location licensed by the Commission with respect to matters involving the judges or Commission. Representing a person or otherwise providing legal advice or services means providing any legal service for any other person, firm or corporation, with or without compensation, or providing professional legal advice or services where there is a client relationship of trust or reliance, including acting as an advocate in a representative capacity; drafting pleadings or other documents; or performing any act in such capacity in connection with a prospective or pending proceeding before the judges, any employee of the Commission or Commission.

10.5.2 Members of the bar of any other state, district or territory of the United States may be admitted to practice pro hac vice, in compliance with Delaware Supreme Court Rule 72. The out-of-state attorney must have the admission pro hac vice granted by the Commission prior to representing a person or otherwise providing legal advice or services as contemplated by these rules.

10.5.3 Admission pro hac vice under this rule is discretionary with the Commission. The Commission is not obligated to admit an applicant pro hac vice nor is the Commission bound by a prior decision to admit an applicant pro hac vice. Admission pro hac vice may be revoked by the Commission in accordance with Delaware Supreme Court Rule 62. Admission pro hac vice will be denied or, if granted, will be revoked if the Commission determines that the process is being used to

circumvent the normal requirements for the admission of attorneys to the practice of law in Delaware. Absent good cause shown, the Commission has determined that more than one appearance within a 365-day period indicates that the non-Delaware attorney is engaging in a regular practice of law in Delaware and admission pro hac vice will be denied to prevent such situations.

10.5.4 An out-of-state attorney rendering services in Delaware in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits. Nothing in this rule authorizes out-of-state attorneys to solicit, advertise, or otherwise hold themselves out in publications directed solely to this state as available to assist in litigation in Delaware.

1 DE Reg. 507 (11/01/97)

2 DE Reg. 1243 (01/01/99)

5 DE Reg. 1903 (4/1/02)

12 DE Reg. 1074 (02/01/09)

12 DE Reg. 1064 (02/01/10) (Final)