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## 25.0 National Board of Review

Date of adoption / Last revision: *Revised June 30, 2022*

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As a voluntary membership organization, where membership is a privilege and not a right, USA Swimming may censure, enjoin, place on probation, suspend for a definite or indefinite period of time with or without terms of probation, fine or expel any member of USA Swimming, including any athlete, coach, manager, official and member of any committee, as well as any person participating in any capacity in the affairs and/or attending activities of USA Swimming, the Zones or Local Swimming Committees (“LSC”). This ability exists regardless of whether such person is a member of USA Swimming (a “Participating Non-Member”), who has violated any of its rules or regulations, or who aids, abets and encourages another to violate any of its rules or regulations, or who has acted in a manner which brings disrepute upon USA Swimming, the Zone, the LSC or the sport of swimming.

### National Board of Review (“NBOR”) Membership

The National Board of Review Committee shall consist of such number of members as the Board Chair may deem appropriate from time to time; such non-athlete members shall be appointed by the Board Chair, with the advice of the Secretary & General Counsel, who shall serve as a non-voting Ex-officio member. At least one third (33.3%) of the voting membership of the National Board of Review Committee shall be eligible athlete representatives who are approved by the Board athlete representatives. The Chair and Vice-Chair(s) of the National Board of Review shall serve as the Chair and Vice-Chair(s), respectively, of the National Board of Review Committee. A member of the National Board of Review Committee may serve up to five (5) consecutive two-year terms and may be reappointed following a lapse of one (1) year.

The Chair of the NBOR (the “NBOR Chair”) and one or more Vice Chair(s) of the NBOR shall be appointed by the Board Chair, with the advice of the Secretary & General Counsel. The term of the Chair and Vice Chair(s) shall be two years with a limit of five (5) full terms each may serve.

### Jurisdiction of the NBOR

The NBOR has original and exclusive jurisdiction to hear:

- a. Any complaint involving athletes or other members of USA Swimming and/or one or more Participating Non-Members or other USA Swimming member(s); or
- b. Any complaint involving athletes or other members, or Participating Non-Members, during a national or international event; or
- c. Any complaint under Article 301.1 of the USA Swimming Rules & Regulations against any individual or organizational member of USA Swimming or organization affiliated with USA Swimming alleging the denial (or a threat to deny) any eligible swimmer, coach, trainer, manager, official or administrator the opportunity to participate.
- d. Any complaint under Articles 304.3.1 through 304.3.12 of the USA Swimming Rules & Regulations against any member of USA Swimming, including any athlete, coach, manager, official, member of any committee, or a Participating Non-Member; or
- e. Any complaint initiated by USA Swimming, which shall be prosecuted by and may be appealed by the President & CEO; or
- f. Any complaint under Article 304.3.14 of the USA Swimming Rules & Regulations that is not heard pursuant to the U.S. Center for SafeSport’s SafeSport Code for the Olympic and Paralympic Movement.

- g. Any appeal initiated pursuant to adverse action taken by the USA Swimming Board of Directors against an LSC for alleged violations of an LSC Affiliation Agreement.
- h. Any appeal initiated pursuant to an adverse action taken against an athlete for alleged violations of the applicable USA Swimming Honor Code.
- i. Any complaint under USA Swimming's Whistleblower and Anti-Retaliation Policy, initiated by the USA Swimming Ethics Committee pursuant to that Policy, or any complaint of retaliation initiated by the complaining party if the Ethics Committee determines that it will not initiate a complaint in its own name.
- j. To determine whether a member or prospective member who fails to meet the automatic qualification criteria of USA Swimming's Background Check Policy is eligible for membership and if so under what conditions.
- k. Any complaint involving a member, former member or prospective member found by the U.S. Olympic & Paralympic Committee (the "USOPC") to have violated its rules, policies and/or procedures, or the Ted Stevens Olympic and Amateur Sports Act.
- l. Any complaint filed against USA Swimming regarding USA Swimming's alleged violation of or noncompliance with USOPC rules, policies and/or procedures, or the Ted Stevens Olympic and Amateur Sports Act.
- m. To determine whether any member, former member or prospective member found by a state or federal jurisdiction to have violated a state or federal law is eligible for membership and if so under what conditions.

#### Discretionary Jurisdiction

- a. Upon a majority vote of the Board of Directors, the NBOR may be assigned exclusive and immediate jurisdiction at any stage of any matter within the purview of Article 403 of the Rules & Regulations when, in its sole discretion, the best interests of USA Swimming shall be served thereby, or when compliance with regular USA Swimming or Zone procedures would not be likely to produce a sufficiently early decision or do justice to the affected parties.
- b. If discretionary jurisdiction is so assigned, the NBOR shall comply in every instance with all requirements of procedural due process as set forth in these Procedures. The NBOR may set such procedural time limitations as it may deem necessary in order to reach a decision, which shall do justice to the affected parties under particular circumstances.
- c. The NBOR may assess fees and costs against any party other than USA Swimming or any Committee thereof.

#### Authority of the NBOR

The NBOR shall have the power and authority to do the following:

- a. Impose and enforce penalties for any violation of the Rules & Regulations, administrative or technical, or USA Swimming;
- b. Determine the eligibility and right to compete of any athlete;
- c. Vacate, modify, sustain, reverse or stay any decision or order properly submitted on appeal, or remand the matter for further action;
- d. Investigate any election impropriety (other than allegations of violations of the campaigning rules in Corporate Bylaw 6.3.3(D), which will be referred to the USA Swimming Ethics Committee) or cause for removal of a national officer or national committee member and take corrective action;
- e. Interpret any provision of the Rules & Regulations of USA Swimming with the exception of the technical rules (Parts One and Seven);
- f. Review any revocation, suspension, reinstatement of membership or challenge the granting or denial of membership; and
- g. Issue such orders, prohibitory or mandatory in nature, as may be necessary pending a

final decision of the NBOR.

#### Filing of Complaints, Initial Inquiry and Investigation

a. Filing of Complaints

All complaints within the exclusive jurisdiction of the NBOR as set forth above shall set forth the allegations and shall be filed in writing with the President & CEO (or their designee, collectively, the “CEO”), the Secretary & General Counsel, and the Chair of the Board of Directors (the “Board Chair”).

A complaint may be filed online via USA Swimming’s online reporting tool at: <https://fs22.formsite.com/usaswimming/ViolationReportingForm/index.html>.

A copy of reports filed online will be sent to the CEO, the Secretary & General Counsel, and the Board Chair.

b. Initial Inquiry

Upon receipt of a filed complaint, the CEO shall promptly perform an initial inquiry and, as appropriate, initiate an investigation of the matter. The initial inquiry is intended to determine whether the complaint satisfies the personal and subject matter jurisdiction of the NBOR. It is anticipated that the initial inquiry will take no longer than ten business days.

c. Investigation of Complaints

After a complaint survives initial inquiry, the CEO shall initiate an investigation, anticipated to take no longer than six weeks, of the matter as follows:

- In those matters occurring during the course of an international meet, the National Team Steering Chair (or their designee) shall make the investigation and report.
- In those matters occurring during the course of a national or regional event, the Program & Events Coordinator (or their designee) shall make the investigation and report.
- In those matters involving allegations of physical abuse of an athlete by a coach, a committee of three coaches appointed by the Board Chair shall make a determination with such investigative assistance by the CEO as the committee may request and report as to whether the coach’s conduct is outside the customary and acceptable bounds of coaching. In the event such matters are referred to the U.S. Center for SafeSport, the SafeSport Code or the Olympic and Paralympic Movement shall apply.
- In those matters involving allegations under USA Swimming’s Whistleblower and Anti-Retaliation Policy, the Ethics Committee shall make the investigation and report.

In all other matters, the CEO shall make the investigation and report.

#### Disposition After Investigation

After the initial inquiry and investigation has been completed, the CEO may attempt to settle the matter with the opposing party or decide to initiate a complaint in the name of USA Swimming by filing the complaint with the NBOR Chair and requesting a hearing.

Any decision by the CEO not to forward a complaint following an initial inquiry to the NBOR shall be reviewed by the Board Chair for a final decision.

If the CEO does not decide to initiate a complaint, then the CEO may:

- a. Cause further investigation to be conducted into the alleged violations;
- b. Seek to mediate or settle the complaint; or
- c. Advise the complaining party that while USA Swimming will not initiate a complaint in its own name, the complaining party may request USA Swimming assist with mediating the complaint or the complaining party may file their complaint directly with the NBOR Chair by submitting a petition directly to the NBOR Chair.

If the initial investigation is conducted by the Ethics Committee under USA Swimming's Whistleblower and Anti-Retaliation Policy, after the initial investigation is complete, the Ethics Committee may decide to initiate a complaint in the name of the Ethics Committee by filing a petition with the NBOR Chair and requesting a hearing. If the Ethics Committee does not decide to file a petition with the NBOR Chair, it may advise the complaining party that, while the Ethics Committee will not initiate a complaint in its own name, the complaining party may still file their petition with the NBOR Chair.

#### Settlement Agreements

Any settlement agreement between the parties must be memorialized in writing and submitted to the NBOR Chair. The NBOR Chair may then decide whether to accept or reject the settlement agreement.

#### Emergency Hearing

After the initial inquiry, the CEO or other petitioning party may seek an emergency hearing. Upon such request, the NBOR Chair may order an emergency hearing before the NBOR to determine if the member should be suspended pending the outcome of a full hearing before the NBOR. If an emergency hearing is ordered, the NBOR shall conduct the hearing and publish its results within twenty-one (21) days. Until the NBOR makes a decision, all proceedings shall be confidential and not subject to disclosure to anyone other than the parties to the review and witnesses.

The Ethics Committee may also seek an emergency hearing.

#### Pre-Hearing Matters

##### a. Petition

For matters initiated in the name of USA Swimming, the CEO shall send a petition together with the results of the investigation to the NBOR Chair. For matters not initiated in the name of USA Swimming, a complaining party may submit a petition directly to the NBOR Chair.

Once a petition is submitted, the NBOR Chair shall have 14 days, unless there is just cause for a delay, to decide whether to assign the matter for a hearing or dismiss the complaint. If the NBOR Chair decides to assign the matter for a hearing, the NBOR Chair will empanel a hearing body and issue a Notice of Hearing.

##### b. Hearing Panel Composition

Each case submitted to the NBOR shall be assigned by the NBOR Chair to a panel consisting of members of the NBOR Committee, unless conflicts or other reasons require

panel members who are not members of such Committee. The appointment of any member to a hearing panel who is not a member of the NBOR Committee shall be confirmed by the Board Chair and the Secretary & General Counsel.

Each hearing panel shall consist of not fewer than three members and not more than five members, with a sufficient number of eligible athlete representatives so as to satisfy the requirement that such athletes constitute one-third of the hearing panel, to hear and decide the case. Any time the content of a matter before the NBOR involves governance, finance or elite athletes, the panel must be comprised of one-third 10-Year Athlete representatives. Each hearing panel will have a hearing panel Chair who shall be the NBOR Chair or a Vice Chair of the NBOR.

Conflict of interest disclosure forms will be distributed to each member of the NBOR Committee annually. Additionally, when empaneling a hearing panel, the NBOR Chair will distribute a conflict of interest form to each potential panel member and the Secretary & General Counsel will review the conflict of interest disclosure forms prior to empaneling members for a hearing. An alleged failure to disclose a conflict of interest will be submitted to the Ethics Committee for review under the USA Swimming Statement of Ethics and Conflict of Interest Policy.

Hearing panel members and Board of Directors appeal panels shall:

- Uphold the integrity and independence of the respective hearing panel;
- Avoid an impropriety or the appearance of impropriety in connection with service as a hearing panel member and swimming-related activities generally; and
- Perform the duties of a hearing panel member impartially and diligently.

Hearing panel members shall recuse themselves from participating in any matter pending before their respective hearing panel:

- In which their impartiality might be reasonably questioned;
- Where they have a personal bias or prejudice concerning a party in the pending matter or have personal knowledge of disputed evidentiary facts concerning the pending matter (other than knowledge obtained as a hearing panel member or known generally to a substantial portion of the membership of the respective LSC or USA Swimming);
- Where they or a member of their family are a party or are likely to be a material witness in the pending matter;
- Where they or a member of their family are a party or are likely to be a material witness in the pending matter;
- Where they or a member of their family have an interest that could be substantially affected by the outcome of the proceeding; or
- Where they or a member of their family have served or are serving as counsel in the pending matter or are members of a law firm that served or is serving as counsel in the pending matter.

Hearing panel members shall recuse themselves as soon as they become aware of facts that give rise to the duty to do so by giving notice to the NBOR Chair, or in the case of the NBOR Chair or Board of Directors appeal panel members, to the Secretary & General Counsel, as applicable.

By written notice to the chair of hearing panel or to Secretary & General Counsel, in the case of Board of Directors appeal panel members (respectively, the "Review Board Chair"), any party may request that a panel member recuse themselves or be disqualified from serving on the pending matter stating the reasons for recusal or disqualification with specificity. Such notice shall be given at least 14 days prior to the scheduled date of the hearing on such matter, or, if the party sustains the burden of proving good cause for the lateness of the notice, as soon as reasonably possible after discovery of the reason for the need for recusal. The named hearing panel member shall reach a decision on the matter and notify the Review Board Chair of that decision within seven days of receipt of the party's notice. If the member's decision is not in favor of recusal, then the Review Board Chair may, if appropriate, disqualify the member from participation in the pending matter. If there is no disqualification, the hearing shall be conducted as scheduled and, unless it is a hearing before the Board of Directors, the party giving the notice may appeal the disqualification decision, together with the hearing decision.

In the event of a recusal or disqualification, a substitute hearing panel member shall be appointed in the same manner as the original hearing panel members were appointed.

c. Notice of Hearing

The NBOR Chair shall set a hearing date, which shall be not less than forty-five (45) nor more than sixty (60) days from the date of issuance of the Notice of Hearing. The Notice of Hearing shall include the following:

- The name of the Respondent(s).
- A statement of charge, which shall be set forth in sufficient detail to give the Respondent(s) reasonable notice of the charges and the facts supporting the charges, which shall include the Petition.
- The name of the Petitioner(s).
- The date the Response is due.
- The date, time and place (or the fact that the hearing shall be conducted by conference call) of the hearing<sup>1</sup>.
- The names of the members of the NBOR Panel.
- The possible penalties.
- The right of appeal and the time limit to file for an appeal.
- Any other general information, including the right to be represented by counsel, to have witnesses testify, and to submit any and all evidence which is relevant to the issues.

The NBOR Chair shall deliver the Notice of Hearing, together with a copy of the Petition received by the CEO to the Respondent(s) and a copy of the Notice of Hearing to the Petitioner(s).

d. Response

The Respondent(s) shall have thirty days from the date of issuance to submit a written Response to the charges which may include a request for dismissal based on a lack of jurisdiction or failure to state a claim on which relief can be granted. The Response shall be delivered to the NBOR Chair, the CEO and the Petitioner(s) or its counsel.

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<sup>1</sup> In the event that either party provides advanced written notice that they are unavailable to attend the hearing at the scheduled time, the NBOR Chair shall reschedule the hearing to such date and time that all parties are available to attend.

- e. Reply  
The Petitioner(s) shall have ten days from the date of delivery of the Response to submit a written Reply. The Reply shall be delivered to the NBOR Chair, the CEO and the Respondent(s).
- f. Time Limits  
Upon showing of good cause, the NBOR Chair may decrease or increase the time limits for any of the foregoing.
- g. Pre-Hearing Matters  
The NBOR Chair is empowered to rule on all pre-hearing discovery motions; issue scheduling orders regarding briefs, witness lists (and reasonable limits on the number of witnesses that may be called at the hearing), exchange of hearing exhibits and similar pre-hearing matters, and otherwise make all procedural (including, without limitation, a request for a continuance), evidentiary and technical decisions and rulings with respect to hearings (unless such matters arise during the hearing, in which case the hearing panel chair may make such decisions and rulings as they deem appropriate).

#### Hearing

For hearings conducted other than through the receipt of written statements, the NBOR shall cause a recording or transcription to be made of the proceedings.

The hearing may proceed in the absence of any party who fails to be available at the appointed time and judgement shall not be reached merely because of the person's absence. If the NBOR determines that the hearing cannot proceed without the absent party, the NBOR may adjourn the hearing and reschedule it for such time as the absent party can be present.

The hearing shall be opened by the recording of the place, time and date of the hearing, and the presence of the NBOR panel members, parties, counsel, if any, and any other witnesses or observers.

Each party may then present an opening statement setting forth generally the party's view of the issues in dispute, the relief sought and what they hope to prove by the presentation of evidence.

Petitioner may then present their claims, proofs, and witnesses, who shall be subject to cross-examination by the other party. Respondent may then present their claims, proofs, and witnesses, who shall also be subject to cross-examination by the other party.

Petitioner(s) may then be allowed an opportunity to rebut any testimony or evidence presented by the Respondent(s) after the presentation of Respondent(s).

For matters in which the Petitioner is seeking a lifetime ban, each party should receive 90 minutes to present its evidence. For matters in which the Petitioner is seeking a suspension for a period of years, each party should receive 60 minutes to present its evidence. In an uncontested matter (where a Respondent chooses not to participate), the Petitioner should receive 30 minutes to present a condensed version of its case. Additional time may be provided at the discretion of the hearing panel chair.

The NBOR panel may question any person at any time. The NBOR panel has the discretion to vary these procedures but shall afford all parties a full and equal opportunity to present any material or relevant evidence.

#### Decision

A decision may be rendered by the NBOR panel at the time of the hearing and reduced to writing within five days in which event a written decision shall be delivered to the parties within seven days after the hearing. Otherwise, the NBOR panel shall reach a decision as soon as administratively practicable (but not more than twenty-one days after the conclusion of the hearing) and shall deliver the written decision within seven days thereafter.

The written decision shall set forth the right of appeal under this policy to the Board of Directors.

#### Stay

The NBOR shall have the authority to stay the enforcement of its decision during the time allowed for an appeal, with the decision going into effect automatically if no appeal is perfected during the allowable period.

#### Delivery

The delivery of all Notices of Hearing to Respondent(s) and all final Decisions to the non-prevailing party(ies) shall be overnight express delivery. Delivery of all other pleadings, orders and communications may be by electronic mail or other means, as directed by the Chair of the NBOR.

#### Appeal

Any real party in interest, including any officer of USA Swimming or the CEO, may appeal matters heard by the NBOR pursuant to its original jurisdiction, heard de novo or heard pursuant to its discretionary jurisdiction, may be appealed to the Board of Directors within thirty days of the date of the issuing of its written decision. Decisions of the Ethics Committee, under USA Swimming's Statement of Ethics and Conflict of Interest Policy, may be appealed to the Board of Directors within thirty (30) days of the date of the issue of a written decision.

The Petition on appeal is to be served upon the CEO, as well as the other party(ies) to the NBOR proceeding, and shall be accompanied by a \$250 filing fee payable to USA Swimming. The Petition shall set forth the grounds for appeal, including both factual and legal allegations of error in any earlier proceeding.

Unless the Board of Directors by majority vote decides otherwise, the review by the Board of Directors shall be on the basis of the record and written briefs and shall not be a de novo hearing. The Secretary & General Counsel may establish a hearing panel consisting of at least five members (all of whom must be members of the Board of Directors and at least one-third (33.3%) of whom must be 10-Year Athlete representatives) to hear any appeal, including appeals heard as de novo hearings. The decision of the hearing panel shall be final with the same force and effect as if the full Board of Directors heard the matter.

The Board of Directors may assess fees and costs against the losing party.

For matters involving the opportunity of any amateur athlete, coach, trainer, manager, administrator or official to participate in amateur athletic competition, upon demand of USA Swimming or any aggrieved amateur athlete, coach, trainer, manager, administrator or official, the matter may be submitted to binding arbitration through the American Arbitration Association after an appeal is heard by the Board of Directors and the Board of Directors renders its decision.



### Confidentiality

Hearings conducted before the NBOR or the Board of Directors regarding alleged Code of Conduct violations shall be closed to the public.

All investigations conducted by the CEO regarding alleged Code of Conduct violations and all proceedings before the NBOR and the Board of Directors regarding alleged Code of Conduct violations shall be and remain confidential until the NBOR, or Board of Directors if an appeal is filed, has rendered its final decision, except:

- a. Information that is necessary to disclose in the course of an investigation to witnesses and other appropriate parties;
- b. Information disclosed pursuant to a subpoena or court order;
- c. Information disclosed to complaining parties or victims;
- d. Information disclosed by USA Swimming in response to disclosures by other parties or witnesses in the proceeding; and
- e. Information disclosed to law enforcement.

For the purposes of this section, a decision shall be considered final when either: (1) the NBOR has rendered its final decision and the 30-day appeal period has run without an appeal being filed; or (2) a party has appealed the decision of the NBOR to the Board of Directors and the Board of Directors has rendered its final decision on such appeal.

USA Swimming shall also disclose information, including, but not limited to, the initiation of an NBOR proceeding and its outcome, to a member club, LSC or Zone where an employee or volunteer of such club, LSC or Zone has been alleged in a complaint to have violated the Code of Conduct.

A redacted summary of each final decision of the NBOR and Board of Directors that includes a finding of a violation of the Code of Conduct may be published at the discretion of USA Swimming.

### Full Faith and Credit

Except as otherwise provided in Article Nine of the Constitution of the USOPC and in its Bylaws with respect to binding arbitration in disputes involving the rights of certain individuals to participate in competition, the final decision of the NBOR shall be final in all cases, subject to the right to appeal to the Board of Directors.

Final decisions rendered by the NBOR and the U.S. Center for SafeSport shall, when applicable, be recognized and fully enforced in all Zones and LSCs of USA Swimming.

## **USA Swimming National Board of Review Special Panel Procedures**

USA Swimming has instituted background screening for coaches and other non-athlete members. The background screening process is designed to flag criminal background information that constitutes a violation of USA Swimming's Code of Conduct, or otherwise fails to meet the automatic qualification criteria of USA Swimming's Safe Sport Program.

USA Swimming membership is a privilege. As is set forth in Article 304.1 of the USA Swimming Rules & Regulations, the privilege of membership may be withdrawn or denied by USA Swimming at any time where USA Swimming determines that a member or prospective member's conduct is inconsistent with the mission of the organization or the best interest of the sport and those who participate in it.

The USA Swimming background check report will return a "Review – Eligible for Dispute," "Review – Eligible for Appeal" or "Pass" score. A "Review – Eligible for Dispute" score is an automatic disqualifier for membership and can only be appealed on the grounds that the negative information in the subject's report is incorrect. A "Review – Eligible for Appeal" score indicates that the report includes public record information that, if correct, may not meet membership criteria. However, such a score is not an automatic ban to membership. Instead, the applicant is required to go through the NBOR special panel hearing process and an NBOR special panel will determine if membership is appropriate and if so under what conditions.

### **Pre-Adverse Action Letter**

An individual whose background screen report returns a score of "Review – Eligible for Appeal" will receive a pre-adverse action letter that provides two options:

Option #1 - The individual can challenge the accuracy of the information.

Option #2 - The individual can acknowledge the accuracy of the report and appeal the negative membership decision. In order to request an appeal, the individual should contact USA Swimming by sending an email to [backgroundcheck@usaswimming.org](mailto:backgroundcheck@usaswimming.org). The request should include the applicant's full name, date of birth, and the Request ID in the applicant information section of the background check report.

Individuals have 15 business days to respond to the pre-adverse action letter. If the individual fails to respond to the letter within 15 business days, USA Swimming will assume that there is nothing in the background check that the individual disputes.

In all cases, USA Swimming reserves the right to bring a NBOR hearing on the basis of background check report information, even if an applicant withdraws from the membership process.

### **Appeal Hearings – Scheduling**

USA Swimming will schedule a background check appeal hearing before the NBOR Special Panel as soon as is practical.

### **Appeal Hearings – Hearing Panel Composition**

Each hearing panel shall consist of three members with a sufficient number of eligible athlete representatives so as to satisfy the requirement that such athletes constitute one-third of the hearing panel, to hear and decide the case. Any time the content of a matter before the NBOR involves elite athletes, the panel must be comprised of 10-Year Athlete representatives. Each

hearing panel will have a hearing panel Chair who shall be the Chair of the NBOR or a Vice Chair of the NBOR.

When empaneling a hearing panel, the NBOR Chair will distribute a conflict of interest form to each potential panel member and the Secretary & General Counsel will review the conflict of interest disclosure forms prior to empaneling members for a hearing. An alleged failure to disclose a conflict of interest will be submitted to the Ethics Committee for review under the USA Swimming Statement of Ethics and Conflict of Interest Policy.

#### Appeal Hearings – Case Disposition Information

A background check appeal hearing will not be scheduled unless and until the individual provides the USA Swimming Background Check Coordinator with any and all available documentation regarding the criminal matter's final disposition, including all documents related to any sentence, fine or conditions of probation imposed by the court.

#### Appeal Hearings – Notice of Hearing

The USA Swimming Background Check Coordinator shall set a hearing date, which shall be not more than sixty days from the date the individual requests an appeal hearing. The USA Swimming Background Check Coordinator shall prepare and distribute a Notice of Hearing shall include the following:

- The name of the Respondent(s).
- A statement of charge, which shall be set forth in sufficient detail to give the Respondent(s) reasonable notice of the charge(s) to be addressed.
- The date, time and conference call access information for the hearing.
- The names of the members of the NBOR Special Panel.
- Any other general information, including the right to be represented by counsel, to have witnesses testify, and to submit any and all evidence which is relevant to the issues.

The USA Swimming Background Check Coordinator shall deliver the Notice of Hearing, together with Hearing Packet to the hearing panel, the individual and USA Swimming's designee. The Hearing Packet will contain, at a minimum, a copy individual's member record, a copy of the individual's background screen report and a copy of available documentation regarding the criminal matter's final disposition, including all documents related to any sentence, fine or conditions of probation imposed by the court, along with any additional information submitted by the individual.

#### Appeal Hearing

The NBOR special panel shall cause a recording or transcription to be made of the proceedings.

The hearing will not proceed in the absence of the individual or in the absence of USA Swimming. The hearing may proceed in the absence of a hearing panel member only in the event the individual agrees to do so. The recording from the hearing will be provided to the absent panel members for review. If the individual does not agree to do so, or if either the individual or USA Swimming is not present, the chair of the special panel will adjourn the hearing and reschedule it for such time as the absent party can be present.

The hearing shall be opened by the recording of the time and date of the hearing, and the presence of the NBOR special panel members, parties, counsel, if any, and any other witnesses or observers.

USA Swimming may then present an opening statement setting forth generally USA Swimming's view of the charges to be addressed.

The NBOR special panel chair will begin by ensuring all participants are aware the hearing is being recorded, swearing in the membership applicant and proceeding to questioning the individual. Following completion of the chair's questioning, the other panel members will be afforded the opportunity to question the individual. USA Swimming will also be afforded the opportunity to question the individual. Following the completion of questioning, the individual will be allowed to present its witnesses and make any other pertinent statements.

USA Swimming will close by providing its recommendation to the panel. At that time, USA Swimming the individual, along with the individual's counsel and any witnesses, will be dismissed so that the panel may deliberate.

#### Appeal Hearing – Decision

The chair of the NBOR special panel will draft a written decision. The written decision will generally be rendered within seven business days of the hearing and will be distributed to all parties.

### **Additional Resources**

The USOPC Office of the Athlete Ombuds offers independent, confidential advice to elite athletes regarding their rights and responsibilities in the Olympic and Paralympic Movement, and assists athletes with a broad range of questions, disputes, complaints and concerns.

#### Athlete Ombuds Confidentiality and Privacy Policy

(A) In general.—The Office of the Athlete Ombuds shall maintain as confidential any information communicated or provided to the Office of the Athlete Ombuds in confidence in any matter involving the exercise of the official duties of the Office of the Athlete Ombuds.

(B) Exception.—The Office of the Athlete Ombuds may disclose information described in subparagraph (A) as necessary to resolve or mediate a dispute, with the permission of the parties involved.

(C) Judicial and administrative proceedings.—(i) In general.—The ombudsman and the staff of the Office of the Athlete Ombuds shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the duties of the Office of the Athlete Ombuds. (ii) Work product.—Any memorandum, work product, notes, or case file of the Office of the Athlete Ombuds—(I) shall be confidential; and(II) shall not be—(aa) subject to discovery, subpoena, or any other means of legal compulsion; or (bb) admissible as evidence in a judicial or administrative proceeding.

(D) Applicability.—The confidentiality requirements under this paragraph shall not apply to information relating to—(i) applicable federally mandated reporting requirements; (ii) a felony personally witnessed by a member of the Office of the Athlete Ombuds;(iii) a situation, communicated to the Office of the Athlete Ombuds, in which an individual is at imminent risk of serious harm; or (iv) a congressional subpoena.

#### Contact Information:

Phone:719-866-5000

Email: [ombudsman@usathlete.org](mailto:ombudsman@usathlete.org)

Website: [usathlete.org](http://usathlete.org)

## **Banned for Life Penalty Policy**

1. Membership is a privilege, not a right, and members who demonstrate that they are not able to interact with children appropriately sacrifice that privilege.
2. USA Swimming cannot be put in a position where it is required to develop, coordinate, monitor, or evaluate any type of 'rehabilitation' program for members who have demonstrated that they are not able to interact with minors appropriately. NBOR panels that consider putting "rehabilitative" requirements on a member are putting an unreasonable strain on USA Swimming's time and resources, and present potential liability issues for USA Swimming should members who have been sanctioned with any kind of "rehabilitative" requirement by a Board of Review re-offend once they return to membership. As a result, such "rehabilitative" requirements or conditions must be avoided by NBOR panels.
3. The most severe penalty USA Swimming can assign is to permanently expel a member and add their name to the public list of individuals permanently suspended or ineligible. USA Swimming recognizes that sanctions imposed on members or former members cannot exceed restrictions on privileges tied to membership. For instance, USA Swimming cannot prohibit an expelled member from coaching for a non-member organization, giving private lessons, or running an unaffiliated swim camp, etc.
4. An individual cannot be banned for life in a specific membership category for life must be across all membership categories.
5. A ban for life is a permanent expulsion from membership. Individuals who have been banned for life and have exhausted or waived appeal opportunities do not have any recourse to subsequently request that their name be removed from the list, or request to be re-admitted for membership.

## **Time Limits for National Board of Review Hearings**

1. For matters in which the Petitioner (is seeking a lifetime ban, each party should receive 90 minutes to present its evidence.
2. For matters in which the Petitioner is seeking a suspension for a period of years, each party should receive 60 minutes to present its evidence.
3. In an uncontested matter (where a Respondent chooses not to participate), the Petitioner should receive 30 minutes to present a condensed version of its case.
4. Additional time may be provided at the discretion of the hearing panel chair.