

205 CMR 101.00: M.G.L. c. 23K ADJUDICATORY PROCEEDINGS

Section

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101.01: Hearings Before the Commission

- (1) Hearings held before the full commission pursuant to 205 CMR 101.01 shall be adjudicatory proceedings pursuant to 801 CMR 1.01: *Formal Rules*.
- (2) The following types of adjudicatory hearings shall be held by the commission:
  - (a) Suitability hearings before the commission pursuant to M.G.L. c. 23K, § 17(f), concerning any findings of fact, recommendations and/or recommended conditions by the bureau relative to the suitability of the applicant for an initial gaming license or renewal of a gaming license, including without limitation, recommendations and recommended conditions resulting from the RFA-1 or new qualifier process pursuant to 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determinations, Standards and Procedures*.
  - (b) Hearings regarding the termination, revocation or suspension of a category 1 or category 2 gaming license issued by the commission pursuant to M.G.L. c. 23K or the termination, revocation or suspension of a license to conduct a horse racing meeting pursuant to M.G.L. c. 128A.
  - (c) Hearings regarding the transfer of a category 1 or category 2 gaming license or the transfer of a license to conduct a horse racing meeting.
- (3) Standing. No person other than an aggrieved applicant and/or gaming licensee shall have standing to challenge Phase 1 or new qualifier findings of fact and recommendations or a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license.
- (4) Only the aggrieved applicant and the gaming licensee or the horse racing meeting licensee shall have the right to participate in the hearing under 205 CMR 101.01(2)(a), (b) or (c) unless otherwise ordered by the commission.
- (5) Pursuant to M.G.L. c. 23K, § 3(h), the chair may direct that all of the commissioners participate in the hearing and decision of the matter before the commission. In the alternative, pursuant to M.G.L. c. 23K, § 3(h), the chair with the concurrence of one other commissioner may appoint a presiding officer to preside over the hearing. The notice scheduling the time and place for the pre-hearing conference shall specify whether the commission or a designated individual shall act as presiding officer in the particular case.
- (6) Burden of Proof. The applicant shall have the affirmative obligation to establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure. In the case of a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license, or a license to conduct a horse racing meeting, the bureau or the racing division, as appropriate, shall have the affirmative obligation to establish by substantial evidence why the commission should terminate, revoke or suspend the licensee's category 1 or category 2 gaming license or the licensee's license to conduct a horse racing meeting.
- (7) Decisions. Upon completion of the hearing, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the commission shall be the final decision of the commission.
- (8) No Appeal from Commission's Determination of Suitability. Pursuant to M.G.L. c. 23K, § 17(g), the applicant and/or the gaming licensee shall not be entitled to any further review from the commission's determination of suitability.

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(9) Decisions by the commission concerning the termination, revocation or suspension of a category 1 or category 2 gaming license or the termination, revocation or suspension of a license to conduct a horse racing meeting may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A

101.02: Orders Issued by the Bureau or the Racing Division

(1) Pursuant to M.G.L. c. 23K the bureau may issue orders or fines, or may revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 23K except for category 1 or category 2 gaming. Such orders or fines are subject to commission review pursuant to 205 CMR 101.03 and 101.04 and include, but are not limited to:

- (a) an order to cease any activity which violates the provisions of M.G.L. c. 23K, 205 CMR 101.00 or any other law related to gaming;
- (b) an order for the imposition of civil administrative penalties in support of an order to cease and desist, or as part of an order to deny, revoke, suspend or terminate a license or as a penalty for failure to comply with any provision of M.G.L. c. 23K, 205 CMR 101.00 or any law related to gaming;
- (c) an order requiring the placement of a person on the exclusion list;
- (d) an order denying, revoking, suspending or conditioning a key gaming employee license; a gaming employee standard license; a gaming employee license; a gaming service employee license; gaming employee registration; a gaming vendor license; or a gaming vendor qualifier or other similar license issued under 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.
- (e) an order denying, revoking, suspending or conditioning a gaming beverage license or an order denying the transfer of a gaming beverage license.
- (f) any other order or fine as may be issued pursuant to M.G.L. c. 23K or 205 CMR 101.00.

(2) Pursuant to M.G.L. c. 128A and 128C judges or stewards may issue orders or fines, or may deny, revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 128A or 128C except for a license to conduct a horse racing meeting. Such orders or fines include, but are not limited to:

- (a) an order or fine issued for violation of the rules and regulations of racing as provided in 205 CMR 3.00 through 14.00;
- (b) an order denying, revoking, suspending, terminating or conditioning an occupational license.
- (c) an order ejecting an individual from the grounds of the race meeting.
- (d) any other order or fine as may be provided pursuant to M.G.L. c. 128A, c. 128C or 205 CMR 3.00 through 14.00.

(3) Each order or fine issued by the bureau or by the judges or stewards of the racing division shall be in writing and shall include a description of the basis for the order or fine, including the time, date and place of the activity which constitutes the basis for the order or fine, the statutory basis for the issuance of the order or fine, the amount of the fine or penalty assessed and any other the remedial action required. Each order shall further state in clear and concise language that the party subject to the order or the fine may request review of the order or fine and the process for requesting such review. The order shall also state that the review of the order shall be held pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and 205 CMR 101.03 and 101.04.

101.03: Review of Orders Issued by the Bureau or the Racing Division

(1) A request for review of an order or fine issued by the bureau or the judges or stewards shall be filed with the clerk of the commission on a form provided by the clerk. A request for review shall not operate as a stay of the order or fine issued by the bureau or the judges or stewards unless the request for review includes a request for a stay and such stay is granted by the hearing officer.

101.03: continued

(2) The request for review of a civil administrative penalty issued by the bureau pursuant to M.G.L. c. 23K § 36 shall be filed not later than 21 days after the date of the bureau's notice of issuance of the civil administrative penalty. All other requests for review must be filed not later than 30 days from the date of the order or fine issued by the bureau or the judges or stewards. Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the hearing officer for review.

(3) The request for review shall include:

- (a) the name, address and contact information, including telephone number and email, if any, of the party requesting review;
- (b) the name and address of counsel representing the party requesting review, if any, and
- (c) a brief description of the basis for the request for review.

(4) Each request for review shall include a copy of the order or fine that is the subject of the request for review.

(5) When the request for review is received by the clerk, the clerk will docket the request for review. The clerk shall assign the request for review to a hearing officer and schedule the hearing on the request for review. Such hearing shall not occur sooner than 30 days after the request for review is filed with the clerk unless upon the request of a party and for good cause shown the hearing officer orders an accelerated hearing.

(6) The clerk shall request each party to file a brief stating why the order or fine should or should not be upheld and the relief requested. Such brief shall be no longer than ten pages and shall be due no later than ten days prior to the date of the hearing.

(7) A party may request permission to file a brief longer than ten pages. Such request shall be filed with the clerk who will forward it to the hearing officer for review. The request must be in writing and state the number of additional pages requested. It shall be up to the discretion of the hearing officer as to whether to grant such request. If the hearing officer grants a request for additional pages, the clerk shall forward the order of the hearing officer to all parties and all parties shall have the right to file such additional number of pages. Along with the submission of the brief, each party shall submit a copy of all written evidence to be considered by the hearing officer as well as a list of witnesses that the party wishes to present at the hearing.

(8) All requests for extensions of time to file a brief or to reschedule a hearing date shall be made in writing and filed with the clerk. The clerk shall forward the request for extension of time or to reschedule the hearing date to the hearing officer and the hearing officer may provide an extension of time to file a brief or reschedule a hearing date in the hearing officer's discretion and for good cause shown. The clerk shall send the hearing officer's order granting an extension of time to file a brief or the rescheduling of a hearing date to all the parties. Any order shall include the amount of days granted for the extension of time or the new date for the rescheduled hearing.

(9) All hearings shall be heard by a hearing officer appointed by the commission. All hearings under 205 CMR 101.03 and 101.04 shall be adjudicatory proceedings held pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and 205 CMR 101.03 through 101.05 unless a party to the hearing requests that the hearing be held pursuant to 801 CMR 1.01: *Formal Rules* and the hearing officer, after review of the request, grants the request to hold the hearing pursuant to 801 CMR 1.01: *Formal Rules*. If the hearing officer grants a request that a hearing be held pursuant to 801 CMR 1.01: *Formal Rules*, the provisions of 801 CMR 1.01(1) through (3), (5) through (8), (11) and (14) shall not apply and the provisions of 205 CMR 101.03 through 101.05 shall govern.

(10) There shall be no motions or discovery allowed in hearings under 205 CMR 101.03 and 101.04 unless upon the request of a party and for good cause shown, the hearing officer orders such motions or discovery.

(11) A written transcript shall be created of each hearing and all witnesses presenting testimony shall be sworn to testify under oath.

101.03: continued

(12) In addition to the duties and powers of the hearing officer under 801 CMR 1.02(10)(f), the hearing officer shall determine if the party requesting review has standing to request review. The hearing officer may ask questions of a party or a witness at the hearing. The hearing officer shall determine the credibility of all witnesses providing testimony at the hearing. The hearing officer can request additional information from any party and may recess or continue the hearing to a later date. The hearing officer may request a post hearing brief from the parties and shall determine the page limit for such brief and the time by which it must be submitted.

(13) The standard of review of an order or fine issued by the bureau or the racing division shall be the substantial evidence standard unless a different standard is required by M.G.L. c. 23K or c. 128A or c.128C. The hearing officer shall determine whether the order or fine issued by the bureau or the racing division is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.

(14) The hearing officer shall issue a written decision as soon as administratively feasible after the close of the hearing. The written decision shall include findings of fact and conclusions of law and shall clearly state the basis for the hearing officer's decision. The hearing officer shall file its decision with the clerk. The decision of the hearing officer shall be the final decision of the commission unless a request for review by the commission is filed by a party to the proceeding within 30 days of the date of the hearing officer's decision.

(15) The clerk shall send a copy of the decision to all parties and shall include with the decision a letter stating that a party may request review of the hearing officer's decision to the commission and describing the process for requesting a review by the commission.

101.04: Review by the Commission of Decisions of the Hearing Officer

(1) A request for review of the decision issued by a hearing officer shall be filed with the clerk of the commission on a form provided by the clerk. A request for review shall not operate as a stay of the decision of the hearing officer, unless, along with the filing of a request for review, the party requesting review includes a request for a stay of the decision and such stay is granted by the commission.

(2) The request for review must be filed not later than 30 days from the date of the decision issued by the hearing officer. Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the commission for review. Orders regarding requests for review filed later than 30 days from the date of the order or fine issued by the judges may be issued by a single commissioner appointed by the chairman to issue such orders.

(3) The request for review shall include:

- (a) the name, address and contact information, including telephone number and email, if any, of the party requesting review;
- (b) the name and address of counsel representing the party requesting review, if any, and
- (c) a brief description of the basis for the request for review.

(4) Each request for review shall include a copy of the decision of the hearing officer that is the basis for the request for review.

(5) Upon receipt of the request for review by the commission, the clerk shall docket the request and request a copy of the written record of the hearing from the hearing officer. The hearing officer shall provide a copy of the written record to the clerk no later than ten days after the clerk's request. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The clerk shall provide a copy of the written record to all parties involved in the matter to be reviewed by the commission.

101.04: continued

(6) The clerk shall schedule a date for review by the commission. The clerk shall request that each party file a brief stating why the decision of the hearing officer be affirmed, vacated or modified and the relief requested. Such brief shall be no longer than ten pages and shall be due no later than 15 days prior to the date of review by the commission. The briefs shall be filed with the clerk. Each party shall serve a copy of its brief on the other party(ies) to the hearing.

(7) The clerk shall provide copies of the briefs and a copy of the written record to the commission.

(8) A party may request permission to file a brief longer than ten pages. Such request must be in writing. The clerk shall forward the request to the commission. It shall be up to the discretion of the commission as to whether to grant such request. If the commission grants a request for additional pages, the clerk shall forward a copy of the commission's order to all parties to the hearing and all parties shall have the right to file such additional number of pages. Requests to file a brief longer than ten pages may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

(9) All requests for extensions of time to file a brief shall be made in writing to the clerk. The clerk shall forward the request for an extension of time to file a brief to the commission. It shall be up to the discretion of the commission as to whether to grant the request for an extension of time to file a brief. If the commission grants the request for an extension of time to file a brief, the clerk shall forward a copy of the commission's order to the parties and all parties shall have the extension of time to file a brief. Requests for an extension of time to file a brief may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

(10) The commission's review of the decision of the hearing officer shall be on the written record submitted by the parties. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The commission, in its sole discretion and upon its own motion, may request oral argument on the request to review the decision of the hearing officer.

(11) Issues not raised before the hearing officer shall not be raised in the briefs to the commission or otherwise considered by the commission. The commission shall not accept as part of the request for review additional or new evidence not submitted to the hearing officer and not already included in the written record.

(12) The standard of review of a decision by the hearing officer shall be a substantial evidence standard unless a different standard is required by M.G.L. c. 23K or c. 128A or c.128C. The commission shall determine whether the decision of the hearing officer is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.

(13) The commission shall conduct a review of the decision of the hearing officer based upon the entire record submitted to the hearing officer, provided however, that findings made by the hearing officer regarding credibility of witnesses shall not be reviewed by the commission.

(14) The commission may affirm the decision of the hearing officer, vacate the decision of the hearing officer, modify the decision of the hearing officer or remand the matter back to the hearing officer for further action in accordance with the commission's decision. The commission may affirm, vacate or modify the decision of the hearing officer in whole or in part. In making its decision, the commission may rely on any evidence contained in the record and is not limited to the evidence cited by the hearing officer in support of hearing officer's decision.

(15) The Commission shall issue a written decision as soon as administratively feasible and file it with the clerk. The clerk will provide a copy of the commission's decision to all parties.

205 CMR: MASSACHUSETTS GAMING COMMISSION

101.05: Review of a Commission Decision

Decisions by the commission pursuant to 205 CMR 101.00 may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A and M.G.L. c. 23K

REGULATORY AUTHORITY

205 CMR 101.00: M.G.L. c. 7, § 4H; c. 23K, §§ 3(h); 4(15), (28), (29), (37); 5; 13; 17(f), (g); 30(g); 31; 35(g); 36(c), (d), (f); and c. 30A.