WEST VIRGINIA CODE: §19-23-16

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

(a) Whenever the Racing Commission shall deny an application for a license or a permit or shall suspend or revoke a license or a permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant, licensee or permit holder, as the case may be, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken, and, in the case of an order of suspension or revocation, shall state the effective date of such suspension or revocation.

(b) Whenever a majority of the stewards or judges at any horse or dog race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards or judges shall, as soon as thereafter practicable, make and enter an order to that effect and serve a copy thereof on the permit holder, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

(c) Any person adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service of a copy thereof if served in any manner in which a summons may be served as aforesaid or within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the Racing Commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate automatically to stay or suspend the execution of any order suspending or revoking a permit. Upon the written request of any permit holder who has been adversely affected by an order of the stewards or judges, a stay may be granted by the Racing Commission, its chairman, or by a member of the commission designated by the chairman. A request for a stay must be filed with the Racing Commission's executive director no later than the deadline for filing a written demand for a hearing before the commission. If a stay is granted, it is not a presumption that the order of the stewards or judges is invalid. The Racing Commission may require the person demanding a hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the Racing Commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any hearing may be continued by the Racing Commission or its appointed hearing examiner for good cause shown.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall

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apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the Racing Commission or by a hearing examiner appointed by the Racing Commission who is licensed to practice law in the State of West Virginia. For the purpose of conducting any such hearing, any member of the Racing Commission or its appointed hearing examiner has the power and authority to issue subpoenas and subpoenas duces tecum as provided in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the Racing Commission, it shall be represented at any such hearing by the Attorney General or his or her assistants without additional compensation. The Racing Commission, with the written approval of the Attorney General, may employ special counsel to represent the Racing Commission at any such hearing.

(h) After any such hearing and consideration of all of the testimony, evidence and record in the case, the Racing Commission shall render its decision in writing. The written decision of the Racing Commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his or her attorney of record, if any. If a hearing is conducted by a hearing examiner appointed by the Racing Commission, he or she shall prepare a written recommended decision for the commission's consideration. The Racing Commission, in its discretion, may accept the recommendation in its entirety, modify it, or reject it. If the Racing Commission modifies or rejects a recommended decision of an appointed hearing examiner, either in whole or in part, it shall issue a reasoned, articulate explanation and a recitation of the underlying evidence or other matters upon which it bases its decision, including findings of fact and conclusions of law.

(i) The decision of the Racing Commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

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