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## Administrative Action and Hearings Process

- **Who does the hearings process apply to?**

The hearings process applies to any person or organization whose rights and privileges have been affected by a decision of the New Hampshire Lottery Commission.

- **I made a complaint against a Games of Chance facility, and I was notified that my complaint was unfounded or unsubstantiated. Can I file an appeal through the Lottery Commission?**

No. The hearings process is for individuals and organizations who are adversely affected by administrative actions of the Lottery Commission. The venue for those who have filed a complaint with the Lottery Commission which has been determined to be either unfounded or unsubstantiated, is through the civil court system.

- **What happens if an investigation determines that a violation of the gaming regulations has been committed?**

The Lottery Commission may initiate administrative actions which may include imposing fines, and/or revoking or suspending a license.

- **How does a licensee know if administrative action is being taken against them?**

The licensee will be notified with a Notice of Administrative Action. This document will include:

- The licensee’s name
- The docket number for the case
- The date the notice is sent
- The facts and law which the Lottery Commission has relied upon to take administrative action
- Lists the imposed fine or administrative action being taken
- Informs the licensee that they must respond within 30 days by returning an attachment indicating their desire to either accept the terms of the administrative action or request a hearing

- **I have been sent a Notice of Administrative Action. What do I have to do next?**

If you receive a Notice of Administrative Action, you have 30 days from the date of the Notice to respond to the letter and elect to either pay the fine or penalty imposed, or request a hearing. A form to indicate your response and return to the Lottery Commission is included with the Notice of Administrative Action.

Upon receipt of the form, the Lottery Commission will schedule the matter for a hearing. The licensee will be notified at least 15 days prior to the hearing of the hearing’s date, unless a license was suspended or revoked, in which case the hearing will be scheduled to occur within 10 days.



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- **Who presides over the hearings?**

The New Hampshire Lottery Commission uses the services of a Hearings Examiner to preside over hearings. The Hearings Examiner is a neutral and detached party whom the Lottery Commission has delegated the authority to preside over a proceeding. Their responsibilities include:

- regulating the course of a hearing
- facilitating an informal resolution to an appeal
- administer oaths and affirmations
- receive relevant evidence and exclude irrelevant, immaterial, or repetitious evidence at the hearing
- rule on procedural requests, including motions, or requests for continuance
- question any person who testifies

- **Can I contact the Hearings Examiner directly to discuss the case?**

No. Ex-parte communication with the Hearings Examiner is not allowed. This is to ensure that the only information that the Hearings Examiner relies on to make their ruling is presented as evidence during the hearing. Any correspondence made to the Hearings Examiner must include the other party as well. In practice, the Enforcement Unit is typically the liaison between the Hearings Examiner and licensees facing administrative action. This is because the Enforcement unit is usually the initiator of the administrative action, and therefore would be subject to be notified of any information. Typically, the only communication between the Enforcement Unit and the Hearings Examiner prior to the hearing is scheduling of the hearing, and providing the Hearings Examiner the Notice of Administrative Action to initiate the Hearings process. Any other communication that is necessary is subject to the same notification of the other party.

- **Am I allowed to have an attorney at the hearing?**

Yes. Parties may have an attorney represent them at their own expense, but are not required to. If a respondent hires an attorney, the attorney is required to submit a notice of appearance as soon as practicable with the Hearings Examiner.

- **Do I have to do anything prior to the hearing?**

At least 5 days before the hearing, the Lottery Commission and respondent or representative, shall exchange a list of all witnesses to be called at the hearing with a brief summary of their expected testimony, a list of all documents or exhibits to be offered as evidence, and a copy of each document or exhibit. Formal rules of evidence do not apply at the hearing, but each item that is entered as evidence should be sequentially numbered and identified. Respondent exhibits will be labeled as Respondent 1, 2, etc. The Lottery exhibits will be labeled as Lottery 1, 2 etc.

- **Can I attempt to settle this without having to go through a hearing?**

Yes. You may request a pre-hearing conference to determine if an informal resolution can be made. The licensee or representative is not precluded from speaking with the Lottery Commission prior to the hearing and may attempt to negotiate an alternative settlement. The right to have a hearing is not affected if the settlement negotiation is not successful.

- **What is the burden of proof that the Lottery Commission has to meet to find the allegation true?**

The burden of proof for administrative hearings is preponderance of the evidence. This means that the Lottery Commission must demonstrate through the totality of admissible evidence that the allegation is more probable than not to be true or to have occurred.



- **Are these hearings recorded?**

Yes. The hearings are recorded, and the recordings can be provided to licensees for transcription at their expense. The licensee has the option of having a certified court reporter at the actual hearing at their expense. If a licensee wants a court reporter at the hearing, they are required to notify the Lottery Commission at least 10 days prior to the hearing date.

- **This sounds a lot like court. Do I need to worry about court decorum I have seen on TV?**

Hearings are in some ways similar to a court trial. The petitioner, the Lottery Commission, bears the burden of proof by having to demonstrate through testimony and evidence that a preponderance of the evidence exists by showing the allegations more than likely occurred. On the other side, licensees or respondents may attempt to demonstrate through evidence and testimony that the burden of proof has not been met. Live witness testimony is taken under oath or affirmation. Again the formal rules of evidence do not apply. There is a structure to the hearings to maintain decorum and the proper flow of evidence, but attempts are made to make them informal and more comfortable to participate in than court.

- **What is the procedure during a hearing?**

- The Lottery Commission makes an opening statement and/or presents witnesses, testimony, or other evidence. The respondent may cross examine any witnesses. The Lottery Commission may then re-examine any witness.
- The respondent makes an opening statement and/or presents witnesses, testimony, or other evidence. The Lottery Commission may cross examine any witnesses. The respondent may then re-examine any witness.
- The Lottery Commission may summarize their case with a closing statement.
- The respondent may summarize their case with a closing statement.

- **How do I find out the result of the hearing?**

Within 30 days from the hearing, the Hearings Examiner will issue a final order on the hearing. The final order will be sent to all involved parties within 10 days of reaching the final order. The decision shall be binding on all parties unless such decision is overturned on appeal.

- **I do not agree with the hearing result. What are my options?**

There are two options for appeal which licensees may attempt. The first is the aggrieved party may request a rehearing within 30 days of the final order. A rehearing may be granted if the respondent demonstrates that the commission's decision is unlawful, unjust or unreasonable. This is done by filing a motion with the Hearings Examiner. The motion for rehearing shall:

- Identify errors of fact, errors of reasoning, or error of law which the moving party wishes to have reconsidered
- Describe how each error causes the commission's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary unreasonable or capricious
- State concisely the factual findings, reasoning or legal conclusion proposed by the moving party
- Include any argument or memorandum of law the moving party wishes to file

The hearings officer shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 10 days of the filing of the motion for rehearing.



The second option is aggrieved parties may choose to petition the superior court of the county of jurisdiction within 10 days of the final decision. This would be the county where the violation was alleged to have occurred, most likely the business address of the licensee. The petition shall specify the grounds upon which the decision is claimed to be unreasonable or unlawful. Findings and decisions by the Lottery Commission shall be deemed to be prima facie lawful and reasonable, and shall not be set aside on appeal unless found to be arbitrary, capricious, unreasonable, or unlawful.

- **Who do I contact at the Lottery Commission for further hearing information, to attempt to settle an administrative action prior to hearing, or to provide required hearing information to?**

The Administrator of Gaming Operations is the supervisor of the Enforcement Unit and the liaison between those subject to administrative action and the Hearings Examiner. The Administrator can be reached at the Lottery at **603-271-3391**

- **Where are hearings conducted?**

Hearings are held at the New Hampshire Lottery Commission's headquarters located at **14 Integra Drive, Concord, NH 03301**



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