

BEFORE THE NEW MEXICO ATHLETIC COMMISSION

IN THE MATTER OF:

**AUSTIN M. WOURMS,
MIXED MARTIAL ARTS ,
License No. 08862**

**Case No. AC 15-08-08 COM
and AC-16-09 COM**

Respondent.

DEFAULT ORDER

THIS MATTER came before a quorum of the New Mexico Athletic Commission (hereafter “the Commission”), at a regular meeting held on February 14, 2017, with a quorum present and all commissioners voting in the affirmative in the above-referenced matter, the Commission finds as follows:

FINDINGS OF FACT

1. On January 24, 2017, the Commission issued a Notice of Contemplated Action (“NCA”) against Respondent Austin M. Wourms, stating the Commission found sufficient evidence to take disciplinary action which may include suspending or revoking of Respondent’s license and/or imposing fees, penalties and/or fines based on alleged violations of the Professional Athletic Competition Act (“PACA”), NMSA 1978, §§60-2A-1 to -33, more specifically, NMSA 1978, §60-2A-14(A)-(B), NMSA 1978, §60-2A-14(A)(4) and NMAC 15.6.15.12.

2. Pursuant to NMAC 15.6.16.1-19 and NMSA 1978, Section 60-2A-14, Respondent was advised under the NCA that should he fail to respond within the time and

manner prescribed by law, the Commission would take the contemplated action and this action would be final.

3. The Commission mailed Respondent the NCA in case number AC 15-08-08 COM and AC 16-09 COM via certified mail (no. 9171969009350078264394), return receipt requested, to Respondent's at 5507 Southfork Rd, Carlsbad, NM 88220, his last known address of record on file with the New Mexico Athletic Commission.

4. Respondent failed to respond to the NCA and did not request a hearing on the matter within the timeframe prescribed by law.

CONCLUSIONS OF LAW

Based on the above findings of fact, the Commission reaches the following conclusions:

1. The Commission has jurisdiction over Respondent and the subject matter of this proceeding pursuant to the Professional Athletic Competition Act ("PACA"), NMSA 1978, §§ 60-2A-1 to -33, NMAC 15.6.16.1 to-19 and NMAC 15.6.15.1- to 20.
2. Respondent was properly served with the NCA.
3. The Commission considers the matter and disposes of it on the basis of the evidence before it if Respondent fails to respond, as contemplated by NMSA 1978, Section 60-2A-14, NMAC 15.6.16.1 to-19 and NMAC 15.6.15.1- to 20.
4. Respondent did not request a hearing by February 18, 2017 as such, Respondent failed to respond in the time and manner prescribed by law.

5. The Commission has complied with all notice and other procedural requirements of the "PACA," NMAC 15.6.16.1 to-19 and NMAC 15.6.15.1- to 20.
6. The Commission may revoke a license by default action if an individual chooses not to contest a NCA and appear before the Board in a disciplinary proceeding.
7. The Commission, having reviewed the allegations and evidence on record, finds that there is sufficient evidence to justify the Commission in taking action against Respondent as contemplated in the NCA.

ORDER

Based on these findings and conclusions **IT IS THEREFORE ORDERED** that:

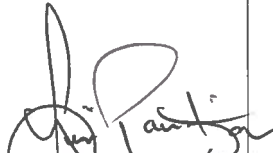
1. Respondent's license is hereby **SUSPENDED** for a period of one hundred-eighty (180) days effective November 14, 2016 (date when immediate suspension was imposed);
2. Respondent shall appear in front of the Commission before his license may be reinstated;
3. Respondent shall submit to drug testing at Respondent's expense at his next three (3) unarmed combat contests after his license is reinstated; and

4. Should any drug test come back positive, it shall be deemed a third violation/occurrence under the Professional Athletic Competition Act ("PACA"), NMSA 1978, §§ 60-2A-1 to -33 and/or rules and regulations adopted pursuant thereto.

IT IS SO ORDERED.

3/14/17

DATE



GAVIN PANTOJA, Chairman
NEW MEXICO ATHLETIC COMMISSION

JUDICIAL REVIEW


This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of NMSA 1978, Section 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of filing of the final decision.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Default Order was mailed by certified mail to:

Austin M. Wourms
5507 Southfork Rd.
Carlsbad, NM 88220

Certified Mail No. 9171 9690 0935 0078 2622 08
Return Receipt requested

By:  3/23/17
Laura Romero Halama, Compliance Liaison,
New Mexico Athletic Commission
P.O. Box 25101
Santa Fe, NM 87504

BEFORE THE NEW MEXICO ATHLETIC COMMISSION

**IN THE MATTER OF:
AUSTIN M. WOURMS,
MIXED MARTIAL ARTS, License No. 08862**

**Case No. AC 15-08-08 COM
AC 16-09 COM**

Respondent.

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Athletic Commission (hereinafter referred to as “the Commission”) has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Commission in taking disciplinary action against AUSTIN M. WOURMS (hereinafter “Respondent”), which may include further suspension or revocation of your licenses, and/or the imposition of fees, penalties and/or fines pursuant to the Professional Athletic Competition Act and/or rules and regulations adopted pursuant thereto.

APPLICABLE LAW

This action arises under the Professional Athletic Competition Act (“PACA”), NMSA 1978, §§ 60-2A-1 to-33 NMSA. Respondent is licensed pursuant to PACA and as such, is subject to the jurisdiction of the Commission. The Commission has sufficient evidence which, if not rebutted or explained, will justify the Commission in suspending or revoking Respondent’s license and/or imposing discipline pursuant to NMSA 1978, §§ 60-2A-14(A)-(B) “Suspension; Revocation of Licenses” and pursuant to NMSA 1978, §§ 60-2A-8 “Jurisdiction Over Professional Contests”, which provide in pertinent part:

NMSA § 60-2A-14. Suspension; Revocation of Licenses.

- A. The commission may suspend or revoke any license when in its judgment the licensee:
- (1) participated in any sham or fake professional contest;
 - (2) is guilty of a failure to give his best efforts in a professional contest;
 - (3) is guilty of any foul or unsportsmanlike conduct in connection with a professional contest; or
 - (4) is guilty of participating in an event while under the influence of illegal drugs.
- B. Before revocation of a license, the commission shall afford the licensee opportunity for a hearing, and upon request of the licensee and after reasonable notice, the commission shall conduct a hearing on the revocation, permitting the licensee to appear personally and by counsel, introduce evidence and examine and cross-examine witnesses.

NMSA § 60-2A-8. Jurisdiction of Commission over Professional Contests.

The commission shall have sole direction, management, control and jurisdiction over all professional contests to be conducted, held or given within New Mexico, and no professional contest shall be conducted, held or given in this state except in accordance with the provisions of the Professional Athletic Competition Act.

Evidence indicates that Respondent may have violated the above cited statutes and more specifically the following statutory and regulatory provisions which provide, in pertinent part:

NMSA § 60-2A-14. Suspension; Revocation of Licenses.

- A. The commission may suspend or revoke any license when in its judgment the licensee:
- (4) is guilty of participating in an event while under the influence of illegal drugs.

15.6.15.7 NMAC (DEFINITIONS):

E. "Drugs" include the following five types of controlled substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, metabolites of previously identified drugs; or non-prescription substances containing previously identified drugs.

15.6.15.12 NMAC (PROHIBITED USE OF DRUGS OR FOREIGN SUBSTANCES):

A. It is expressly prohibited for any event contestant licensed by the commission to use or be under the influence, at any time, of any drug, stimulant, or foreign substance designed to be ingested that would unfairly increase or decrease his performance; or impair his or the physician's ability to recognize a potentially serious injury or physical condition.

SUMMARY OF THE EVIDENCE AGAINST RESPONDENT

1. On or about July 18, 2015, Respondent AUSTIN M. WOURMS participated in an Elite Promotions, a mixed martial arts event at the Las Cruces Convention Center, located in Las Cruces, New Mexico.

2. On information and belief, Respondent was notified that he would be required to submit to a random urinalysis drug test, at the request of the New Mexico Athletic Commission.

3. On information and belief, the requested drug test was conducted by Laura Hernandez, employed by Medical Las Cruces and the results from the sample submitted by Respondent were positive for Tetrahydrocannabinol (THC) most commonly found in marijuana.

4. On or about November 26, 2016, Respondent AUSTIN M. WOURMS participated in King of the Cage Promotions, a mixed martial arts event at the Embassy Suites, located in Albuquerque, New Mexico.

5. On information and belief, Respondent was notified that he would be required to submit to a random urinalysis drug test, at the request of the New Mexico Athletic Commission.

6. On information and belief, the requested drug test was conducted by Duana Chavez, employed Bernard Bio Lab and the results from the sample submitted by Respondent were positive for Tetrahydrocannabinol (THC) most commonly found in marijuana.

7. By engaging in the above-referenced conduct, Respondent violated the general provisions of the Professional Athletic Competition Act (PACA) NMSA 1978, § 60-2A-14(A)-(B), NMSA 1978, § 60-2A-8 and more specifically NMSA 1978, § 60-2A-14(A)(4) and 15.6.15.12 NMAC.


IF YOU WOULD LIKE THE OPPORTUNITY FOR A FORMAL HEARING ON THIS MATTER, YOU MUST RESPOND TO THIS NOTICE WITH A REQUEST FOR A HEARING WITHIN TWENTY (20) DAYS. The response must be sent to the Commission in writing, by certified return receipt mail requested to the address below. Failure to respond will result in the Commission taking the contemplated action, and this action will be final. Please send your response to:

Laura Romero-Halama
Compliance Officer, Team Leader
Boards & Commissions Division
Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87504

The formal hearing, if requested, will be conducted pursuant to the New Mexico Athletic Commission provision **15.6.16.11 NMAC**. The licensee is specifically advised as follows:

15.6.16.11 NMAC RIGHTS OF PERSON ENTITLED TO HEARING. A Respondent entitled to be heard under 15.6.16.11 Athletic Commission provisions has the following rights: They may represent themselves before the Commission or its duly appointed hearing officer; Respondent also has the right to be represented by counsel; present all relevant evidence by means of witnesses and books, papers, documents and other evidence; and to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued for the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request to the Commission. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Commission as outlined in NMSA 1978, § 60-2A-15.

DATE: January 24, 2017



Gavin Pantoja
Commission Chair
New Mexico Athletic Commission

Prepared by:

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(505) 827-6021
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CERTIFICATE OF SERVICE

A true copy of this Notice of Contemplated Action was sent to Respondent AUSTIN M. WOURMS by certified mail, return receipt requested, on this 24th day of January, 2017.

AUSTIN M. WOURMS
5507 Southfork Rd.
Carlsbad, NM 88220

Certified Mail No. 9171969009350078264394
Return Receipt Requested

By:



Laura Romero Halama
Compliance Officer, Team Leader
New Mexico Athletic Commission
P.O. Box 25101
Santa Fe, NM 87504