

Readopt Resp 101, effective 7-16-11 (Document #9955), cited and to read as follows:

CHAPTER Resp 100 ORGANIZATIONAL RULES

PART Resp 101 DEFINITIONS

Resp 101.01 “Board” means “board” as defined in RSA 326-E:1, I, namely, “the governing board of respiratory care practitioners established under RSA 328-F.”

Resp 101.02 “Board of directors” means “board of directors” as defined in RSA 328-F:2, I, namely, “the chairpersons or their appointees of all the governing boards which shall be responsible for the administrative operation of the office of licensed allied health professionals.”

Resp 101.03 Certified Pulmonary function technician (CPFT)" means a person having successfully completed and achieved a passing score on the entry level examination in pulmonary function and maintained the related credential issued by the National Board for Respiratory Care, Inc.

Resp 101.04 “Office of licensed allied health professionals” means “office of licensed allied health professionals” as defined in RSA 328-F:2, IV, namely, “an agency of multiple governing boards in professions of the allied health field.”

Resp 101.05 "Registered Polysomnographic technologist (RPSGT)" means a person having successfully completed and achieved a passing score on the comprehensive registry examination for polysomnographic technologists administered by the Board of Registered Polysomnographic Technologists or its successor organization.

Resp 101.06 "Registered pulmonary function technologist (RPFT)" means a person having successfully completed and achieved a passing score on the advanced level examination in pulmonary function and maintained the related credential issued by the National Board for Respiratory Care, Inc.

Resp 101.07 “Respiratory care” means “respiratory care” as defined in RSA 326-E:1, X, namely, “the treatment, management, diagnostic testing and evaluation of responses to respiratory or medical treatment and care of individuals or groups of individuals either having deficiencies or abnormalities of the cardiopulmonary system or requiring support of the cardiopulmonary system. Respiratory care is given in accordance with the prescription of a physician, nurse practitioner, or physician assistant. Respiratory care includes the implementation of respiratory care strategies and modalities, and the administration of pharmacological, diagnostic, and therapeutic agents necessary to implement a treatment, disease or injury prevention, rehabilitative or diagnostic regimen. Respiratory care includes, but is not limited to: initiating emergency procedures; providing health counseling and teaching; assembly, repair, testing and maintenance of respiratory equipment; and those respiratory care activities that require a substantial amount of scientific knowledge or technical skill.”

Resp 101.08 “Respiratory care practitioner” means “respiratory care practitioner” as defined in RSA 326-E:1, XII, namely, “ a person who is:

(a) Licensed in the practice or performance of respiratory care who has the knowledge and skill necessary to administer the functions defined in paragraph X of this section;

(b) Capable of serving as a resource in relation to the clinical and technical aspects of respiratory care as to the safe and effective methods for administering respiratory care modalities;

(c) Able to function in situations of unsupervised patient contact requiring individual judgment; and

(d) Capable of supervising, directing, and teaching less skilled personnel in the provision of respiratory care services.”

Readopt Resp 102.01 and Resp 102.02, effective 9-11-04 (Document #8166), cited and to read as follows:

PART Resp 102 DESCRIPTION OF THE GOVERNING BOARD OF RESPIRATORY CARE PRACTITIONERS

Resp 102.01 Composition of The Board.

(a) The board is composed of the following 5 members:

(1) A physician knowledgeable in the current practice of respiratory care;

(2) Three licensed respiratory care practitioners who have been actively engaged in the practice of respiratory care within New Hampshire for at least 3 years; and

(3) A public member as set forth in RSA 328-F:4, III.

Resp 102.02 Relationship of the Board to the Office of Licensed Allied Health Professionals. Pursuant to RSA 328-F:3, II, the chairperson of the board or the appointee of the chairperson is a member of the board of directors of the office of licensed allied health professionals.

Repeal Resp 102.03 and Resp 102.04, effective 9-11-04 (Document #8166), as follows:

~~[Resp 102.03 Meetings of the Board.~~

~~—— (a) The presence of a majority of the members of the board to discuss matters of the board shall constitute a quorum.~~

~~—— (b) The board shall:~~

~~(1) Meet at least monthly to carry out its duties; and~~

~~(2) Elect a chair and vice chair annually.~~

~~— (e) Meetings of the board shall be open to the public except as set forth in RSA 91-A:3.~~

~~— (d) Meetings of the board shall be held at the address of the office of licensed allied health professionals set forth in Resp 103.01(a) unless the public is otherwise notified in accordance with RSA 91-A:2, II.~~

~~— Resp 102.04 Duties of Board Officers.~~

~~— (a) The chair and vice chair shall serve for one year.~~

~~— (b) The chair shall preside at all meetings of the board unless the chair is absent.~~

~~— (c) The vice chair shall preside at all meetings in the absence of the chair.~~

~~— (d) The chair shall appoint investigators as necessary and appropriate.~~

~~— (e) The chair or the chair's designee shall preside at all hearings.~~

~~— (f) The chair or the chair's designee shall represent the board on the board of directors.]~~

Readopt with amendment and renumber Resp 102.05, effective 7-16-11 (Document #9955), as Resp 102.03, to read as follows:

Resp 102.053 Duties of the Board. The duties of the board include:

(a) Fully and conditionally licensing respiratory care practitioners~~[-and polysomnographic technologists];~~

(b) Renewing and reinstating the licenses of respiratory care practitioners~~[-and polysomnographic technologists];~~

(c) Approving and setting standards for providers of continuing education programs;

(d) Setting standards for the assembly, delivery, maintenance, repair and testing of respiratory care equipment and supplies;

(e) Regulating the profession of respiratory care~~[-and polysomnography];~~

(f) Setting the scope of practice of polysomnographic technologists;

~~(f)g~~ Investigating complaints of licensee misconduct and taking appropriate disciplinary action; and

([g]h) Advising the board of directors of the office of licensed allied health professionals of matters regarding respiratory care and polysomnography.

Repeal Resp 103, effective 9-11-04 (Document #8166), as follows:

~~[PART Resp103 PUBLIC INFORMATION~~

~~—— Resp 103.01 Office Location and Mailing Address, Telephone Number, Number for TTY/TDD Users and E-Address.~~

~~—— (a) The board's office location and mailing address is:~~

~~Governing Board of Respiratory Care Practitioners
Office of Licensed Allied Health Professionals
Philbrook Building
121 South Fruit Street
Concord, New Hampshire 03301~~

~~—— (b) The board's telephone number is (603) 271-8389 and its fax number is (603)271-6702.~~

~~—— (c) Access for in-state TTY/TDD users is through Relay New Hampshire by dialing 711 or by dialing 1-800-735-2964.~~

~~—— (d) The board's e-address is tina.kelley@NH.gov.~~

~~—— Resp 103.02 Communication with the Board.~~

~~—— (a) Persons wishing to correspond with the board or make submissions to it may:~~

~~(1) Send a letter;~~

~~(2) Send the correspondence or submission by fax, provided that it is printed or typed and that the board's rules do not require it to be sent by mail; or~~

~~(3) Send the correspondence or submission by e-mail, provided that the board's rules do not require it to be sent by mail.~~

~~—— (b) Persons seeking information from the board may do so by:~~

~~(1) Mail, fax or e-mail as set forth in (a) above;~~

~~(2) Telephoning the board; or~~

~~(3) Accessing the board as described in Resp 103.01(c).~~

~~—— Resp 103.03 Public Access to Records.~~

~~—— (a) Pursuant to RSA 91-A:4 members of the public may inspect and copy those records of the board, including meeting minutes, which are public records and not exempt from disclosure under RSA 91-A:5 or other applicable law.~~

~~—— (b) Public records shall be inspected and copied at the board's office during regular business hours.~~

~~—— (c) Persons desiring copies of public records shall reasonably describe the information being sought and pay the actual cost of the copies.~~

~~—— (d) If records are requested which contain both public information and information exempt from disclosure pursuant to RSA 91-A or other law, the administrator of the office of licensed allied health professionals shall, acting for the board, delete the information exempt from disclosure and provide the remaining information.]~~

Adopt Resp 102.04 to read as follows:

Resp 102.04 Other Organizational Rules. The board is part of the Office of Licensed Allied Health Professionals. Information such as the board's office location, address, and telephone number can be found at Ahp Part 104. Information regarding the public's access to minutes and other board records can be found at Ahp 103.05 and Ahp 104.03.

Repeal Resp 201, effective 9-11-04 (Document #8167), cited as follows:

CHAPTER Resp 200 PROCEDURAL RULES

PART Resp 201 DEFINITIONS

~~—— Resp 201.01 Definitions.~~

~~—— (a) “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541-A: 1, I., namely “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A: 36.”~~

~~—— (b) “Appearance” means a written notification to the board that a party, an intervenor or the representative of a party or intervenor intends to actively participate in an adjudicative proceeding.~~

~~—— (c) “Board” means “board” as defined in RSA 326-E:1, I, namely, “the governing board of respiratory care practitioners established under RSA 328-F.”~~

~~—— (d) “Contested case” means “contested case” as defined in RSA 541 A:1, IV, namely, “a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.”~~

~~—— (e) “Declaratory ruling” means “declaratory ruling” as defined in RSA 541 A:1, V, namely, “an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency.”~~

~~—— (f) “Intervenor” means a person without the status of a party but participating in an adjudicative proceeding to the extent permitted by the presiding officer acting pursuant to RSA 541 A:32.~~

~~—— (g) “Motion” means a request to the presiding officer for an order or ruling directing some act to be done in favor of the proponent of the motion, including a statement of justification or reasons for the request.~~

~~—— (h) “Order” means “order” as defined in RSA 541 A:1, XI, namely, “the whole or part of an agency’s final disposition of a matter, other than a rule, but does not include an agency’s decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.”~~

~~—— (i) “Party” means “party” as defined by RSA 541 A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.”~~

~~—— (j) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the board.~~

~~—— (k) “Presiding officer” means “presiding officer” as defined in RSA 541 A:1, XIV, namely, “that individual to whom the agency has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the head of the agency.”~~

~~—— (l) “Proof by a preponderance of the evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probably true than not.~~

~~—— (m) “Public comment hearing” means a proceeding held pursuant to RSA 541 A:11.~~

~~—— (n) “Record” means, in a contested case, the materials set forth in RSA 541 A:31, VI.~~

~~—— (o) “Rulemaking petition” means a petition made pursuant to RSA 541 A:4, I.~~

Repeal Resp 203–Resp 211.02, effective 9-11-04 (Document #8167), as follows:

PART ~~Resp 203~~ CONSTRUCTION OF RULES; RIGHT TO A HEARING

~~—— Resp 203.01 Principles of Construction.~~

~~—— (a) The board shall resolve all disputes about matters which are:~~

~~(1) Within the jurisdiction of its statute;~~

~~(2) Non-criminal; and~~

~~(3) Not related to disciplinary matters.~~

~~—— (b) Resp 203.02 through Resp 212 shall be construed to secure the just, accurate and efficient resolution of all non-disciplinary disputes.~~

~~—— Resp 203.02 Right to a Hearing. Any person having a non-disciplinary dispute with the board shall be entitled to a hearing of the dispute if:~~

~~—— (a) The legal rights, duties or privileges of that person will be determined in the course of deciding the outcome of the dispute; and~~

~~—— (b) Constitutional, statutory or case law requires the board to hold a hearing before determination of those rights, duties or privileges.~~

~~PART Resp 204 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES~~

~~—— Resp 204.01 Presiding Officer.~~

~~—— (a) Hearings shall be conducted by a presiding officer designated by the board.~~

~~—— (b) The presiding officer shall as necessary:~~

~~(1) Regulate and control the course of the hearing;~~

~~(2) Facilitate settlement of the dispute that is the subject of the hearing;~~

~~(3) Administer oaths and affirmations;~~

~~(4) Request that the board issue subpoenas to compel the attendance of witnesses or the production of documents;~~

~~(5) Receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;~~

~~(6) Rule on procedural requests at the request of a party or intervenor or on the presiding officer's own motion;~~

~~(7) Question anyone who testifies to the extent required to make a full and fair record;~~

~~(8) Arrange for recording the hearing as specified in RSA 541-A:31, VII; and~~

~~(9) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.~~

~~—— Resp 204.02 Withdrawal of Presiding Officer.~~

~~—— (a) Upon his or her own initiative or upon the motion of any party or intervenor, the presiding officer shall withdraw from any adjudicative proceeding for good cause.~~

~~—— (b) Good cause shall exist if the presiding officer:~~

~~(1) Has a direct interest in the outcome of the matter, including but not limited to, a financial or family relationship with any party or intervenor;~~

~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of the case; or~~

~~(3) Personally believes that he or she cannot fairly judge the facts of the case.~~

~~—— (c) Mere knowledge of the issues or acquaintance with any party, intervenor or witness shall not constitute good cause for withdrawal.~~

~~—— Resp 204.03 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon the motion of any party or intervenor, or on his or her own initiative, shall suspend or waive any requirement or limitation imposed by this chapter when the suspension or waiver:~~

~~—— (a) Appears to be lawful; and~~

~~—— (b) Is more likely to promote the just, accurate and efficient resolution of the pending dispute than would adherence to a particular rule or procedure.~~

~~PART Resp 205 TIME PERIODS~~

~~—— Resp 205.01 Computation of Time.~~

~~—— (a) Unless otherwise specified, the unit of time for time periods referenced in this chapter shall be calendar days.~~

~~—— (b) Computation of any period of time referred to in this chapter shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.~~

~~—— (c) If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.~~

~~PART Resp 206 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~—— Resp 206.01 Date of Issuance or Filing.~~

~~—— (a) All written documents governed by this chapter shall be rebuttably presumed to have been issued on the date noted on the document.~~

~~—— (b) All written documents governed by this chapter shall be rebuttably presumed to have been filed with the board on the date of receipt, as evidenced by a date placed on the document by the board or its staff in the normal course of business.~~

~~—— Resp 206.02 Format of Documents.~~

~~—— (a) All correspondence, pleadings, motions or other documents filed shall:~~

~~(1) Include the title and docket number of the case, if known;~~

~~(2) Be typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;~~

~~(3) Be signed by the proponent of the document, or, if the proponent appears by a representative, by the representative; and~~

~~(4) Include a statement certifying that a copy of the document has been delivered to all parties and intervenors in compliance with Resp 206.03.~~

~~—— (b) The signature of a party or intervenor or the representative of the party or the intervenor on a document filed with the board shall constitute certification that:~~

~~(1) The signer has read the document;~~

~~(2) The signer is authorized to file it;~~

~~(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and~~

~~(4) The document has not been filed for purposes of delay.~~

~~—— Resp 206.03 Delivery of Documents.~~

~~—— (a) Copies of all motions, exhibits, memoranda, or other documents filed by any party or intervenor shall be delivered by that party or intervenor to the board and to all other parties and intervenors.~~

~~—— (b) All notices, orders, decisions or other documents issued by the presiding officer or the board shall be delivered to all parties and intervenors.~~

~~—— (c) Delivery of documents relating to a proceeding but not issued by the presiding officer or the board shall be made either in hand or by depositing into the United States mail a copy of the document in an envelope bearing:~~

~~(1) The name of the person intended to receive the document;~~

~~(2) The full address, including zip code, last provided to the board by such person; and~~

~~(3) Prepaid first class postage.~~

~~—— (d) Delivery of documents relating to a proceeding and issued by the presiding officer or the board shall be made by mailing them in accordance with (c) above and using certified mail with return receipt requested.~~

~~—— (e) When a party or intervenor appears by a representative, delivery of a document to the party's or intervenor's representative either in hand or at the address stated on the appearance filed by the representative shall constitute delivery to the party or intervenor.~~

~~PART Resp 207 MOTIONS AND OBJECTIONS~~

~~—— Resp 207.01 Motions; Objections to Motions; Ruling on Motions.~~

~~—— (a) Motions shall be in written form and filed with the presiding officer, unless made in response to a matter asserted for the first time at a hearing or based on information that was not received in time to prepare a written motion.~~

~~—— (b) Oral motions and any oral objections to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the proponent to submit the motion in writing and provide supporting information.~~

~~—— (c) Except as otherwise provided in this chapter, objections to written motions shall be filed within 10 days of the date of the motion.~~

~~—— (d) Failure by an opposing party or an intervenor to object to a motion shall not in and of itself constitute grounds for granting the motion.~~

~~—— (e) When necessary to obtain information or clarify an issue relating to the proceedings, the presiding officer shall hold a hearing on the motion.~~

~~—— (f) The presiding officer shall rule upon a motion after full consideration of all objections and applicable law.~~

~~PART Resp 208 COMMENCEMENT OF ADJUDICATIVE PROCEEDINGS; APPEARANCES;
PRE-HEARING CONFERENCES; RECORDING THE HEARING~~

~~—— Resp 208.01 Notice Commencing Adjudicative Proceedings.~~

~~—— (a) An adjudicative proceeding shall be commenced by notice to the parties of the following information:~~

~~(1) The names and addresses of the parties;~~

~~(2) The nature of the hearing;~~

~~(3) The time and place of the hearing and of any pre-hearing conference;~~

~~(4) The legal authority under which the hearing is to be held;~~

~~(5) The applicable statutes and rules;~~

~~(6) In a short and plain statement, the issues presented;~~

~~(7) The fact that each party has the right to have representation by an attorney at the party's own expense;~~

~~(8) The name of the presiding officer, if known; and~~

~~(9) The fact that:~~

~~a. The licensee has the right to have the board provide a certified shorthand court reporter at the licensee's expense; and~~

~~b. The licensee's request for a certified shorthand court reporter shall be submitted in writing at least 10 days before the beginning of the hearing.~~

~~—— (b) The substitution of another individual for the individual identified as presiding officer in the notice of hearing shall not invalidate the notice.~~

~~—— Resp 208.02 Appearances.~~

~~—— (a) An appearance shall be filed by:~~

~~(1) Each party or the party's representative, if any; and~~

~~(2) Each intervenor or the intervenor's representative, if any.~~

~~—— (b) Appearances shall be filed within 15 days of receipt of the notice required by Resp 208.01(a).~~

~~—— (c) The appearance shall contain the following information:~~

~~(1) The docket number assigned by the board or a brief identification of the case;~~

~~(2) The daytime address and telephone number of the person filing the appearance; and~~

~~(3) If applicable, the daytime address and telephone number of the party or intervenor represented by the person filing the appearance.~~

~~—— Resp 208.03 Pre-hearing Conference.~~

~~—— (a) A prehearing conference shall be scheduled on the request of any party or intervenor or on the initiative of the board or the presiding officer if such a conference would facilitate the proceedings or encourage resolution of the dispute.~~

~~—— (b) A prehearing conference shall address one or more of the following:~~

~~(1) Offers of settlement;~~

~~(2) Simplification of the issues;~~

~~(3) Stipulations or admissions as to issues of fact or proof;~~

~~(4) Limitations on the number of witnesses;~~

~~(5) Changes to standard hearing procedures;~~

~~(6) Consolidation of examination of witnesses; and~~

~~(7) Any other matters that advance the efficiency of the proceedings.~~

~~—— Resp 208.04 Recording the Hearing.~~

~~—— (a) The presiding officer shall record the hearing by electronic recording or any other method that will provide a verbatim record.~~

~~—— (b) If any person requests a transcript of the electronic recording of a hearing, the board shall:~~

~~(1) Cause a transcript to be prepared; and~~

~~(2) Upon receipt of payment for the cost of the transcription, provide a copy of the transcript to the person making the request.~~

~~PART Resp 209 INTERVENTION; ROLE OF BOARD STAFF~~

~~—— Resp 209.01 Intervention Procedure:~~

~~—— (a) Petitions for intervention shall:~~

~~(1) Describe in writing the petitioner's interest in the subject matter of the proceedings;~~

~~(2) Be submitted to the presiding officer; and~~

~~(3) Be mailed in copy form to all parties identified in the notice commencing the hearing.~~

~~—— (b) A petition for intervention shall be granted by the presiding officer if the petitioner complied with (a) above at least 3 days before the hearing and the presiding officer determines that:~~

~~(1) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceedings or the petitioner qualifies as an intervenor under law; and~~

~~(2) The intervention sought would not impair the interests of justice and the orderly and prompt conduct of the proceedings.~~

~~—— (c) The presiding officer shall grant a petition for intervention at any time if:~~

~~(1) The petitioner complied with (a) above; and~~

~~(2) The presiding officer determines that the intervention sought would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.~~

~~—— Resp 209.02 Effect of Intervention and Rights of an Intervenor:~~

~~—— (a) Approval of intervention by the presiding officer shall apply only to the proceeding in which the petition for intervention was granted.~~

~~—— (b) Notwithstanding the provisions of this chapter, an intervenor’s right to participate in an adjudicative proceeding shall be subject to any limitations or conditions imposed by the presiding officer pursuant to RSA 541-A:32, III.~~

~~—— (c) An intervenor shall take the proceedings as he or she finds them and no portion of the proceeding shall be repeated because of the fact of intervention.~~

~~—— Resp 209.03 Role of Board Staff. Unless called as witnesses, board staff shall have no role in any hearing.~~

~~PART Resp 210 CONTINUANCES AND FAILURE TO ATTEND HEARING~~

~~—— Resp 210.01 Continuances.~~

~~—— (a) Any party or intervenor may make an oral or written motion that a hearing be delayed or continued to a later date or time.~~

~~—— (b) A motion for a delay or a continuance shall be granted if the presiding officer determines that a delay or continuance would assist in resolving the case fairly.~~

~~—— (c) If the later date, time and place are known when the hearing is being delayed or continued, the information shall be stated on the record. If the later date, time and place are not known at that time, the presiding officer shall as soon as practicable issue a written scheduling order stating the date, time and place of the delayed or continued hearing.~~

~~—— Resp 210.02 Failure of a Party to Attend or Participate in the Hearing.~~

~~—— (a) A party shall be in default if the party:~~

~~(1) Has the overall burden of proof;~~

~~(2) Has been given notice in accordance with Resp 208.01; and~~

~~(3) Fails to attend the hearing.~~

~~—— (b) If a party is in default under (a) above, the case shall be dismissed.~~

~~—— (c) If a party who does not have the overall burden of proof fails to attend a hearing after having been given notice in accordance with Resp 208.01, the testimony and evidence of any other parties or intervenors shall be received and evaluated.~~

~~—— (d) If a party who has the overall burden of proof attends a hearing but fails to participate by presenting evidence or argument, a decision shall be entered against that party.~~

~~—— (e) The board shall not dismiss the case under (b) above if the failure to attend results from circumstances that are beyond the control of the party.~~

~~PART Resp 211 REQUESTS FOR INFORMATION AND DOCUMENTS~~

~~—— Resp 211.01 Voluntary Production of Information.~~

~~—— (a) Each party and intervenor shall attempt in good faith to make complete and timely response to requests for the voluntary production of information and documents relevant to the hearing.~~

~~—— (b) When a dispute arises concerning a request for the voluntary production of information or documents, any party or intervenor may file a motion to compel the production of the requested information or documents.~~

~~—— Resp 211.02 Motions to Compel Production of Information and Documents.~~

~~—— (a) Any party or intervenor may make a motion seeking an order for compliance with an information or document request. The motion shall be filed at least 20 days before the date scheduled for the hearing and in any event as soon as possible after receiving the notice of the hearing and failing in an attempt to obtain the requested information or documents through voluntary production.~~

~~—— (b) The motion to compel shall:~~

~~(1) Set forth in detail those facts which justify the request for information or documents; and~~

~~(2) List with specificity the information or documents being sought.~~

~~—— (c) Objections to motions to compel shall be filed within 10 days of the delivery of the motion.~~

~~—— (d) The presiding officer shall grant the motion to compel if its proponent has demonstrated that an order for compliance is necessary for a full and fair presentation of evidence at the hearing.~~

Repeal Resp 211.03, effective 9-18-12 (Document #10183), as follows:

~~—— Resp 211.03 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits. At least 5 days before the hearing, the parties and intervenors shall provide to the other parties and intervenors:~~

~~—— (a) A list of witnesses intended to be called at the hearing ;~~

~~—— (b) A list of documents and exhibits intended to be offered as evidence at the hearing; and~~

~~—— (c) A copy of each document intended to be offered as evidence at the hearing.~~

Repeal Resp 212 – Resp 216, effective 9-11-04 (Document #8167), as follows:

~~PART Resp 212 HEARING PROCEDURE~~

~~—— Resp 212.01 Standard and Burden of Proof. The party or intervenor asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.~~

~~—— Resp 212.02 Order of Testimony; Cross Examination.~~

~~—— (a) Any individual offering testimony, evidence or arguments shall state for the record his or her name and role in the hearing. If the individual is representing another person, the person being represented shall also be identified.~~

~~—— (b) Testimony on behalf of the parties shall be offered in the following order:~~

~~(1) The testimony of the party or parties bearing the overall burden of proof and such witnesses as such party or parties may call; and~~

~~(2) Thereafter, the testimony of the party or parties opposing the party who bears the overall burden of proof and such witnesses as such party or parties may call.~~

~~—— (c) The testimony of intervenors and such witnesses as such intervenors may be allowed to call shall be offered at the time directed by the presiding officer.~~

~~—— (d) Each party may cross-examine any witnesses offered against that party.~~

~~—— (e) The presiding officer shall call witnesses not called by the parties if their testimony is required for a full and fair adjudication of the issues.~~

~~—— (f) The right of an intervenor to cross-examine witnesses shall be determined by the presiding officer.~~

~~—— (g) Board members may question each witness after the witness has finished testifying.~~

~~—— Resp 212.03 Evidence.~~

~~—— (a) Receipt of evidence shall be governed by the provisions of RSA 541 A:33.~~

~~—— (b) All rules of privilege recognized under the laws of the state of New Hampshire shall apply in proceedings before the board.~~

~~—— (c) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.~~

~~—— (d) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.~~

~~—— (e) Transcripts of testimony as well as documents, materials and objects admitted into evidence shall be public records unless the presiding officer determines that all or part of them is exempt from disclosure under RSA 91-A:5 or applicable case law.~~

~~—— Resp 212.04 Proposed Findings of Fact and Rulings of Law.~~

~~—— (a) Any party or intervenor may submit proposed findings of fact and rulings of law.~~

~~—— (b) The presiding officer shall require the submission of proposed findings of fact and rulings of law and specify a deadline after the close of the hearing for their submission when:~~

~~(1) Any party or intervenor has requested such action;~~

~~(2) The presiding officer is required by Resp 212.07(d)(3) to submit findings of fact and rulings of law to the board; or~~

~~(3) The presiding officer determines that proposed findings of fact and rulings of law would clarify the issues presented at the hearing.~~

~~—— (c) In any case where proposed findings of fact and rulings of law are submitted, the decision shall include rulings on the proposals.~~

~~—— Resp 212.05 Closing the Record. After the conclusion of the hearing and the filing of such post hearing submissions as may be ordered by the presiding officer, the record shall be closed and no additional evidence shall be received into the record except as allowed by Resp 212.06.~~

~~—— Resp 212.06 Reopening the Record.~~

~~—— (a) If no written proposal for decision pursuant to Resp 212.07 (d) or decision pursuant to Resp 212.07 (a) has been issued, any party or intervenor may move to reopen the record for the inclusion in the record of specified evidence or claims of law.~~

~~—— (b) A motion pursuant to (a) above shall be granted if:~~

~~(1) There is no objection from any other party or intervenor;~~

~~(2) The evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted; and~~

~~(3) The presiding officer determines that the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.~~

~~—— (c) If there is an objection from a party or intervenor to a motion made pursuant to (a) above, the hearing shall be reopened for the purpose of receiving evidence, permitting cross-examination and permitting argument on the issue of reopening the record.~~

~~—— (d) The presiding officer shall grant a motion made pursuant to (a) above if, after the reopened hearing described in (c) above, the presiding officer determines that the evidence sought to be included in the record was not available at the time of the hearing or the claim of law was inadvertently omitted and the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.~~

~~—— (e) If the presiding officer permits the reopening of the record for the admission of specified evidence or claim of law, the presiding officer shall extend the hearing reopened pursuant to (c) for the purpose of receiving evidence, permitting cross-examination and permitting argument on the substance of the evidence or on the claim of law.~~

~~—— Resp 212.07 Disposition.~~

~~—— (a) The board shall issue a decision or order, whether or not the record has been reopened pursuant to Resp 212.06, based on:~~

~~(1) A hearing attended by a quorum of the board;~~

~~(2) A written proposal for disposition meeting the requirements of paragraph (d) below; or~~

~~(3) A hearing held pursuant to paragraph (e) (2).~~

~~—— (b) The decision or order shall be in writing and dated.~~

~~—— (c) A board member shall not participate in the board's disposition if he or she has not personally heard all of the testimony in the case, unless the disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.~~

~~—— (d) If a presiding officer has been delegated the authority to conduct the hearing in the absence of a quorum of the board, the presiding officer shall submit to the board a written proposal for disposition containing:~~

- ~~(1) The disposition proposed by the presiding officer;~~
- ~~(2) A statement of the reasons for the proposed disposition; and~~
- ~~(3) Findings of fact and rulings of law necessary to the proposed disposition.~~

~~—— (e) If a proposed disposition submitted pursuant to paragraph (d) is adverse to a party or an intervenor, the board shall:~~

- ~~(1) Serve a copy of it on each party and intervenor; and~~
- ~~(2) Provide an opportunity to file objections and present briefs and oral arguments to the board.~~

~~—— (f) The board shall keep a final decision in its records for at least 5 years following their dates of issuance, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.~~

~~—— Resp 212.08 Rehearing.~~

~~—— (a) Rehearing shall be before a quorum of the board.~~

~~—— (b) Within 30 days of the board's decision or order pursuant to Resp 212.07 any party or person directly affected may request rehearing of any matter determined in the proceeding or covered by the decision or order by submitting a written motion specifying:~~

- ~~(1) The issues to be considered at the rehearing; and~~
- ~~(2) Every ground on which it is claimed that the decision or order is unlawful or unreasonable.~~

~~—— (c) An objection to a motion for rehearing shall be submitted within 5 days of the submission of the motion.~~

~~—— (d) Within 10 days of the submission of the motion for rehearing the board shall:~~

- ~~(1) Grant the motion;~~
- ~~(2) Deny the motion; or~~
- ~~(3) Suspend the board's decision or order pending further consideration.~~

~~—— (e) The board shall grant the motion for rehearing if it determines that, in the original hearing it:~~

- ~~(1) Incorrectly assessed the relevant evidence;~~

~~(2) Incorrectly applied the relevant law; or~~

~~(3) Otherwise failed substantially to comply with this chapter or acted in a manner which was unlawful or unreasonable.~~

~~PART Resp 213 SETTLEMENTS~~

~~—— Resp 213.01 Settlement of Non-Disciplinary Issues.~~

~~—— (a) Any licensee having a dispute with the board over any matter which is not a disciplinary matter shall at any time have the opportunity to settle some or all of the issues if there is no dispute between the licensee and the board about the material facts underlying the issues.~~

~~—— (b) To be effective, an agreement to settle shall be:~~

~~(1) In writing;~~

~~(2) Signed by the licensee; and~~

~~(3) After the signing by the licensee, finalized as an order issued by the board.~~

~~—— (c) The signing by the licensee of an agreement to settle shall constitute a waiver of the licensee's right to a hearing of the issues resolved by the agreement.~~

~~PART Resp 214 RULEMAKING~~

~~—— Resp 214.01 Petitions for Rulemaking.~~

~~—— (a) Any person may seek the adoption, amendment or repeal of a rule by submitting to the board a petition pursuant to RSA 541-A:4.~~

~~—— (b) Each petition for rulemaking shall contain:~~

~~(1) The name and address of the individual petitioner or, if the request is that of an organization or other entity, the identity of such organization or entity and the name and address of the representative authorized by the entity to file the petition;~~

~~(2) A statement of the purpose of the petition, whether the adoption, amendment or repeal of a rule;~~

~~(3) If amendment or adoption of a rule is sought, the text proposed;~~

~~(4) If amendment or repeal of a rule is sought, identification of the current rule sought to be amended or repealed;~~

~~(5) Reference to the statutory provision that authorizes or supports the rulemaking petition; and~~

~~(6) Information or argument useful to the board when deciding whether to begin the rulemaking process.~~

~~—— Resp 214.02 Disposition of Petitions for Rulemaking.~~

~~—— (a) The board shall request additional information or argument from the petitioner for rulemaking or from others if such additional information or argument is required to reach a decision.~~

~~—— (b) The board shall grant the petition for rulemaking if the adoption, amendment or repeal sought would not result in:~~

~~(1) A rule that is not within the rulemaking authority of the board;~~

~~(2) Duplication of a rule or of a statutory provision;~~

~~(3) Inconsistency between the existing rules and the statutory mandate of the board;~~

~~(4) Inconsistency of administrative rules one with another; or~~

~~(5) Excessive burden upon the board in terms of cost or a reduction in efficiency or effectiveness.~~

~~—— (c) Within 30 days of receipt of a sufficient petition the board shall dispose of it in the following manner:~~

~~(1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541 A:4; or~~

~~(2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.~~

~~—— (d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.~~

~~PART Resp 215 PUBLIC COMMENT HEARINGS~~

~~—— Resp 215.01 Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541 A:11.~~

~~—— Resp 215.02 Public Access and Participation.~~

~~—— (a) Public comment hearings shall be attended by a quorum of the board.~~

~~—— (b) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Resp 215.03.~~

~~—— (c) People who wish to testify shall be asked to write on the speaker's list:~~

~~(1) Their full names and addresses; and~~

~~(2) The names and addresses of organizations, entities or other persons whom they represent, if any.~~

~~—— (d) Written comments, which may be submitted in lieu of or in addition to oral testimony, shall be accepted for 10 days after the adjournment of a hearing or after the adjournment of a postponed or continued hearing.~~

~~—— Resp 215.03 Limitations on Public Participation. The board's chair or other person designated by the board to preside over a hearing shall:~~

~~—— (a) Refuse to recognize for speaking or revoke the recognition of any person who:~~

~~(1) Speaks or acts in an abusive or disruptive manner;~~

~~(2) Fails to keep comments relevant to the proposed rules that are the subject matter of the hearing;
or~~

~~(3) Restates more than once what he or she has already stated; and~~

~~—— (b) Limit presentations on behalf of the same organization or entity to no more than 3, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.~~

~~—— Resp 215.04 Media Access. Public comment hearings shall be open to print and electronic media, subject to the following limitations when such limitations are necessary to allow a hearing to go forward:~~

~~—— (a) Limitation of the number of media representatives when their number together with the number of members of the public present exceeds the capacity of the hearing room;~~

~~—— (b) Limitation on the placement of cameras to specific locations within the hearing room; or~~

~~—— (c) Prohibition of interviews conducted within the hearing room before or during the hearing.~~

~~—— Resp 215.05 Conduct of Public Comment Hearings.~~

~~—— (a) Public comment hearings shall be presided over by the board chair or a board member knowledgeable in the subject area of the proposed rules who has been designated by the board to preside over the hearing.~~

~~—— (b) The chair or other person presiding over a hearing shall:~~

~~(1) Call the hearing to order;~~

~~(2) Identify the proposed rules that are the subject matter of the hearing and provide copies of them upon request;~~

~~(3) Cause a recording of the hearing to be made;~~

~~(4) Recognize those who wish to be heard;~~

~~(5) If necessary, establish limits pursuant to Resp 215.03 and Resp 215.04;~~

~~(6) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;~~

~~(7) If necessary, postpone or move the hearing; and~~

~~(8) Adjourn or continue the hearing.~~

~~—— (c) A hearing shall be postponed in accordance with RSA 541 A:11, IV when:~~

~~(1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing will be unable to do so;~~

~~(2) The board chair or other person designated by the board to preside over the hearing is ill or unavoidably absent; or~~

~~(3) Postponement will facilitate greater participation by the public.~~

~~—— (d) A hearing shall be moved to another location in accordance with RSA 541 A:11, V when the original location is not able to accommodate the number of people who wish to attend the hearing.~~

~~—— (e) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541 A:11, III when:~~

~~(1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or~~

~~(2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend and it is not possible to move the hearing to another location.~~

~~PART Resp 216 DECLARATORY RULINGS~~

~~—— Resp 216.01 Requests for Declaratory Rulings.~~

~~—— (a) Any individual or entity may request a declaratory ruling by the board if that individual or entity is directly affected by the applicable statute or by any administrative rule.~~

~~—— (b) A request for a declaratory ruling shall be in a writing containing:~~

~~(1) The name and address of the individual or entity making the request;~~

~~(2) The text of the ruling being requested;~~

~~(3) The reasons for the request; and~~

~~(4) The following declaration signed by the individual making the request, the authorized representative of such individual, or the authorized representative of the entity making the request:~~

~~“I declare that I have examined the request for a declaratory ruling, including the accompanying documents, and state that, to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct and complete.”~~

~~—— Resp 216.02 Documents Required to Support Requests for Declaratory Rulings.~~

~~—— (a) A request for a declaratory ruling shall be accompanied by:~~

~~(1) A statement citing the statutory law, regulatory law and orders believed to support the ruling being requested;~~

~~(2) A statement of the facts believed to support the ruling being requested; and~~

~~(3) Supplementary material necessary to establish or clarify the facts set forth in the statement of facts.~~

~~—— (b) A request for a declaratory ruling may be accompanied by additional material chosen by the person making the request.~~

~~—— Resp 216.03 Processing Requests for Declaratory Rulings.~~

~~—— (a) Within 30 days of receiving a request for a declaratory ruling the board shall advise the individual or entity requesting it if the ruling will be delayed by the need for additional information or the complexity of the issues presented.~~

~~—— (b) If additional information should be needed, the board shall specify the additional information required and request that it be provided in a statement of additional information that includes the declaration specified in Resp 216.01(b)(4) and is accompanied by any material necessary to establish or clarify the facts set forth in the statement.~~

~~—— Resp 216.04 Issuance and Publication of Declaratory Rulings.~~

~~—— (a) When facts sufficient to support a declaratory ruling have been established, the board shall issue a written declaratory ruling which applies all relevant law to the established facts.~~

~~—— (b) When the established facts show that the board lacks subject matter or personal jurisdiction to issue a declaratory ruling, the board shall issue a written decision stating that it lacks jurisdiction to issue a declaratory ruling and identifying the lack of jurisdiction.~~

~~—— (c) Declaratory rulings shall be filed on the day of issuance with the director of legislative services in accordance with RSA 541-A:16, II (b).~~

~~—— Resp 216.05 Effect of Declaratory Rulings. A declaratory ruling shall apply only to the board and to the individual or entity requesting it and shall be confined to the facts presented pursuant to Resp 216.02 (a)(2) through (a)(3) and in response to a request of the board made pursuant to Resp 216.03 (b).~~

Repeal Resp 217 – Resp 218, effective 9-11-04 (Document #8168), as follows:

~~PART Resp 217 EXPLANATION OF ADOPTED RULES~~

~~—— Resp 217.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the board including:~~

~~—— (a) The name and address of the individual making the request; or~~

~~—— (b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.~~

~~—— Resp 217.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Resp 217.01, provide a written response which:~~

- ~~—— (a) Concisely states the meaning of the rule adopted;~~
- ~~—— (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and~~
- ~~—— (c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.~~

~~PART Resp 218 VOLUNTARY SURRENDER OF LICENSE~~

~~—— Resp 218.01 Procedures for, and Effect of, Voluntary Surrender of License. Pursuant to RSA 328-F:13, I, the procedures for, and effect of, the voluntary surrender of a license shall be governed by Ahp 219.~~

Adopt Resp 201.01 to read as follows:

Resp 201.01 Rules of Practice and Procedure. The Ahp 200 rules shall govern with regards to all procedures for:

- (a) the receipt of misconduct complaints;
- (b) the conduct of disciplinary proceedings;
- (c) rulemaking petitions and disposition of rulemaking petitions;
- (d) public comment hearings;
- (e) declaratory rulings;
- (f) explanation of adopted rules; and
- (g) voluntary surrender of licenses.

Appendix

| Rule | Statute |
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| Resp 101.01 | RSA 326-E:1, I; RSA 541-A:7 |
| Resp 101.02 | RSA 328-F:2, I; RSA 541-A:7 |
| Resp 101.03 | RSA 326-E:1, II; RSA 541-A:7 |
| Resp 101.04 | RSA 328-F:2, IV; RSA 541-A:7 |
| Resp 101.05 | RSA 326-E:1, VIII; RSA 541-A:7 |
| Resp 101.06 | RSA 326-E:1, IX; RSA 541-A:7 |
| Resp 101.07 | RSA 326-E:1, X; RSA 541-A:7 |
| Resp 101.08 | RSA 326-E:1, XII; RSA 541-A:7 |
| Resp 102.01(a)(1) and (2) | RSA 328-F:4, VII |
| Resp 102.01(a)(3) | RSA 328-F:4, III and VII |
| Resp 102.02 | RSA 328-F:3, II |
| Resp 102.03(a) and (b) (formerly Resp 102.05(a) and (b)) | RSA 328-F:5, I |
| Resp 102.03(c) (formerly Resp 102.05(c)) | RSA 326-E:2, IV and RSA 326-E:11, II, III, IV |
| Resp 102.03(d) (formerly Resp 102.05(d)) | RSA 326-E:9 |
| Resp 102.03(e) (formerly Resp 102.05(e)) | RSA 328-F:1 |
| Resp 102.05(f) | RSA 328-E:2, I |
| Resp 102.03(g) (formerly Resp 102.05(f)) | RSA 328-F:5, II |
| Resp 102.03(h) (formerly Resp 102.05(g)) | RSA 326-E:5, II(d) |
| Resp 102.03(a) and (b)(1) (repealed) | RSA 541-A:16, I(a) |
| Resp 102.03 (b)(2) (repealed) | RSA 541-A:16, I(a) and RSA 326-E:5, II (a) |
| Resp 102.03 (c) (repealed) | RSA 541-A:16, I(a); RSA 91-A:2 and RSA 91-A:3 |
| Resp 102.03 (d) (repealed) | RSA 541-A:16, I(a) |
| Resp 102.04 | RSA 91-A:2, II; RSA 541-A:16(b); RSA 328-F:13 |
| Resp 102.04(a) through (e) (repealed) | RSA 541-A:16, I(a) |
| Resp 102.04 (f) (repealed) | RSA 328-F:2, I |
| Resp 103.01 and 103.02 (repealed) | RSA 541-A:16, I(a) |
| Resp 103.03 (repealed) | RSA 91-A:4 and RSA 541-A:16, I(a) |
| Resp 201.01 | RSA 328-F:13 |
| Resp 201 (repealed) | RSA 541-A:7 |
| Resp 203.01 and 203.02 (repealed) | RSA 541-A:16, I (b)(2) |
| Resp 203.02 (repealed) | RSA 541-A:31, I |
| Resp 204.01 (repealed) | RSA 541-A:16, I (b)(2) |
| Resp 204.02 (repealed) | RSA 541-A:30-a, III(k) |
| Resp 204.03 (repealed) | RSA 541-A:30-a, III(j) |
| Resp 205 (repealed) | RSA 541-A:30-a, III(f) |
| Resp 206 (repealed) | RSA 541-A:30-a, III(a) |
| Resp 207 (repealed) | RSA 541-A:16, I (b)(2) |

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| Resp 208.01 (repealed) | RSA 541-A:31; RSA 541-A:16, I(b)(2) |
| Resp 208.02 (repealed) | RSA 541-A:30-a, III (b) |
| Resp 208.03 (repealed) | RSA 541-A:31, V (b), (c) and (d); RSA 541-A:16, I(b)(2) |
| Resp 208.04 (repealed) | RSA 541-A:31, VII |
| Resp 209.01 and 209.02 (repealed) | RSA 541-A:32, I, II and III; RSA 541-A:16, I(b)(2) |
| Resp 209.03 (repealed) | RSA 541-A:16, I(b)(2) |
| Resp 210.01 (repealed) | RSA 541-A:30-a, III(h) |
| Resp 210.02 (repealed) | RSA 541-A:16, I(b)(2) |
| Resp 211 (repealed) | RSA 541-A:30-a, III(h) |
| Resp 212.01 (repealed) | RSA 541-A:30-a, III(d) and (e) |
| Resp 212.02 (repealed) | RSA 541-A:31, IV |
| Resp 212.03(a) (repealed) | RSA 541-A:33 |
| Resp 212.03(b),(c),(d), and (e) (repealed) | RSA 541-A:16, I(b)(2) |
| Resp 212.04 and 212.05 (repealed) | RSA 541-A:16, I(b)(2) |
| Resp 212.06 (repealed) | RSA 541-A:30-a, III(i) |
| Resp 212.07(a)-(e) (repealed) | RSA 541-A:16, I(b)(2) |
| Resp 212.07(f) (repealed) | RSA 541-A:30-a, III(l) |
| Resp 214 (repealed) | RSA 541-A:4; RSA 541-A:16, I(c) |
| Resp 215 (repealed) | RSA 541-A:11; RSA 541-A:16, I(b)(3) |
| Resp 216 (repealed) | RSA 541-A:16, I(d) |
| Resp 217 (repealed) | RSA 541-A:11, VII |
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