

**Readopt with amendments Phy 100, effective 11-28-07 (Document #9039), to read as follows:**

CHAPTER Phy 100 ORGANIZATIONAL RULES

PART Phy 101 PURPOSE

Phy 101.01 Purpose. This chapter sets forth the organization and statutory responsibilities of the physical therapy governing board and the manner of communication with the board.

PART Phy 102 DEFINITIONS

Phy 102.01 "Board" means "board" as defined in RSA 328-A:2, I, namely, "the physical therapy governing board established in RSA 328-F."

Phy 102.02 "Physical therapist" means "physical therapist" as defined in RSA 328-A:2, VII, namely, "a person who is licensed pursuant to this chapter to practice physical therapy in this state."

Phy 102.03 "Physical therapy" means "physical therapy" as defined in RSA 328-A:2, IX, namely, "the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter."

Phy 102.04 "Physical therapist assistant (PTA)" means "physical therapist assistant" as defined in RSA 328-A:2, VIII, namely, "a person who meets the requirements of this chapter for licensure and who assists the physical therapist in selected components of physical therapy intervention."

PART Phy 103 DESCRIPTION OF THE BOARD AND BOARD MEETINGS

Phy 103.01 Composition of the Board. The board consists of 5 members appointed as specified in RSA 328-F:4, VI. The members include 2 licensed physical therapists, one physical therapist assistant, and 2 public members.

~~[Phy 103.02 Officers. Each January the board elects officers for terms of one year.]~~

Phy 103.0[3]2 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.

Phy 103.0[4]3 Responsibilities of the Board. The board has the responsibility to:

(a) Issue initial, conditional, renewal, and reinstated licenses to persons who meet the requirements of RSA 328-A, RSA 328-F, and the rules of the board;

(b) Investigate instances of possible professional misconduct by licensees, initiate disciplinary proceedings when necessary and impose sanctions for proven misconduct;

(c) Regulate the practice of physical therapy by interpreting and enforcing RSA 328-A; and

(d) Maintain a current list of licensees, including each licensee's name, current business and residential address, telephone numbers and license number.

Phy 103.0[5]4 Board Meetings and Quorum.

(a) Pursuant to RSA 328-F:8 the board meets monthly or more often as its business requires.

(b) A majority of the board constitutes a quorum.

Phy 103.0[6]5 Attendance at Meetings By Members of the Public. Pursuant to RSA 91-A:2, II, members of the public may attend and record board meetings, except for those parts of the meetings which are nonpublic sessions as defined in RSA 91-A:3.

~~[Phy 103.07 Notice of Meetings.~~

~~—— (a) Notice of the time and place of board meetings, excluding emergency meetings, shall be given in accordance with RSA 91-A:2, II.~~

~~—— (b) Information about the time and place of board meetings shall also be available by telephone at the number stated in Phy 104.01(b) and by TTY/TDD through the number stated in Phy 104.01(c).~~

~~—— Phy 103.08 Minutes of Board Meetings.~~

~~—— (a) Minutes shall be kept of board meetings and of official actions taken by the board.~~

~~—— (b) Such minutes shall:~~

~~(1) Record the members participating in each vote; and~~

~~(2) Separately record the position of members who dissent, abstain or concur.]~~

~~[PART Phy 104 PUBLIC INFORMATION~~

~~—— Phy 104.01 Office Location and Mailing Address, Telephone Number, Number for TTY/TDD Users and E Mail Address.~~

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

~~Physical Therapy Governing Board  
e/o 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-mail address is tina.kelley@nh.gov.~~

~~—— Phy 104.02 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 Phy 104.01(c).~~

~~—— Phy 104.03 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:~~

~~(1) RSA 91-A:5;~~

~~(2) RSA 328-F:24, II;~~

~~(3) RSA 328-A:15, II;~~

~~(4) RSA 328-A:15, VIII; or~~

~~(5) Other applicable federal or state law.~~

~~—— (b) Public records shall be inspected and copied during regular business hours at the office of the board at the location stated in Phy 104.01(a).~~

~~—— (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 (a) above, the board shall delete the information exempt from disclosure and provide the remaining information.]~~

***Phy 103.06 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.***

## CHAPTER Phy 200 PROCEDURAL RULES

**Repeal Phy 201.01, effective 11-28-07 (Document #9040), as follows:**

### PART Phy 201 DEFINITIONS

~~—— Phy 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 A:2, I, namely, “the physical therapy governing board established in 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 Phy 203 through Phy 212.02, effective 11-28-07 (Document #9040), as follows:**

**PART ~~Phy 203 CONSTRUCTION OF RULES; RIGHT TO A HEARING~~**

~~—— Phy 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) Phy 203.02 through Phy 213 shall be construed to secure the just, accurate and efficient resolution of all non-disciplinary disputes.~~

~~Phy 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 Phy 204 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES~~

~~Phy 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.~~

~~Phy 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.~~

~~—— Phy 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 Phy 205 TIME PERIODS~~

~~—— Phy 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 Phy 206 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~—— Phy 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.~~

~~Phy 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 Phy 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.~~

~~Phy 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 Phy 207 MOTIONS AND OBJECTIONS~~

~~—— Phy 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 Phy 208 – COMMENCEMENT OF ADJUDICATIVE PROCEEDINGS; EMERGENCY  
SUSPENSION PROCEDURES; APPEARANCES; PRE HEARING  
CONFERENCES; RECORDING THE HEARING~~

~~Phy 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.~~

~~Phy 208.02 Procedure for Emergency Suspension of Licenses.~~

~~(a) Upon a finding that public health, safety or welfare requires emergency action, the board shall immediately and prior to a hearing suspend a license by issuing a written order of suspension incorporating the finding.~~

~~(b) The board shall commence a hearing no later than 10 working days after the issuance of an order pursuant to (a) above.~~

~~(c) Unless the 10-day deadline in (b) above is expressly waived by the licensee, the failure of the board to meet the deadline shall result in the automatic vacating of the order of license suspension.~~

~~(d) After the vacating of the order pursuant to (c) above, the board shall not again suspend the license on the basis of the same conduct which formed the basis for the vacated order without giving the licensee prior notice and the opportunity for a hearing.~~

~~(e) The recording of a hearing on the emergency suspension of a license shall be made by a certified shorthand court reporter provided and paid for by the board.~~

~~Phy 208.03 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 Phy 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.~~

~~Phy 208.04 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.~~

~~Phy 208.05 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 Phy 209 INTERVENTION; ROLE OF BOARD STAFF~~

~~Phy 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.~~

~~—— Phy 209.02 Effect of Intervention and Rights of an Intervenor.~~

~~—— (a) Approval of intervention by the presiding officer shall apply only to the proceedings 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 proceedings shall be repeated because of the fact of intervention.~~

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

#### ~~PART Phy 210 CONTINUANCES~~

~~—— Phy 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.~~

#### ~~PART Phy 211 FAILURE TO PARTICIPATE IN THE HEARING~~

~~Phy 211.01 Failure of the Party Having the Overall Burden of Proof to Participate in the Hearing.~~

~~(a) The board shall dismiss the case if the party having the overall burden of proof, having been given notice in accordance with Phy 208.01:~~

~~(1) Failed to move for a delay in, or continuance of, the hearing date; and~~

~~(2) Failed to participate in the hearing.~~

~~(b) The board shall re-open the case and schedule a new hearing date on the motion of the party having the overall burden of proof if:~~

~~(1) The motion to re-open the case is submitted within 7 days of the original hearing date; and~~

~~(2) The board determines that the failure to participate in the hearing on the originally scheduled date was the result of accident, injury, illness, death of a family member or other circumstance beyond the party's control.~~

~~Phy 211.02 Failure of a Party Not Having the Overall Burden of Proof to Participate in the Hearing.~~

~~(a) The board shall receive and evaluate the testimony and other evidence of all other parties and intervenors if a party who does not have the overall burden of proof, having been given notice in accordance with Phy 208.01:~~

~~(1) Failed to move for a delay in, or continuance of, the hearing date; and~~

~~(2) Failed to participate in the hearing.~~

~~(b) The board shall accept testimony and other evidence on the motion of such a party if:~~

~~(1) The motion for acceptance of testimony or other evidence is submitted within 7 days of the original hearing date; and~~

~~(2) The board determines that the failure to participate in the hearing on the originally scheduled date was the result of accident, injury, illness, death of a family member or other circumstance beyond the party's control.~~

~~PART Phy 212 REQUESTS FOR INFORMATION AND DOCUMENTS~~

~~Phy 212.01 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.~~

~~— Phy 212.02 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 Phy 212.03, effective 10-19-12 (Document #10201), as follows:**

~~Phy 212.03 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 Phy 213, effective 11-28-07 (Document #9040), as follows:**

~~PART Phy 213 HEARING PROCEDURE~~

~~Phy 213.01 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.~~

~~Phy 213.02 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.~~

~~Phy 213.03 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.~~

~~—— Phy 213.04 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 Phy 213.07(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.~~

~~—— Phy 213.05 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 Phy 213.06.~~

~~—— Phy 213.06 Reopening the Record.~~

~~—— (a) If no written proposal for decision pursuant to Phy 213.07(d) or decision pursuant to Phy 213.07 (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 is 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) above for the purpose of receiving evidence, permitting cross-examination and permitting argument on the substance of the evidence or on the claim of law.~~

~~—— Phy 213.07 Disposition.~~

~~—— (a) The board shall issue a decision or order, whether or not the record has been reopened pursuant to Phy 213.06, 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) below.~~

~~—— (b) The decision or order shall:~~

- ~~(1) Be in writing and dated; and~~
- ~~(2) Include findings of fact and rulings of law.~~

~~—— (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 (c) 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 its date 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.~~
- ~~—— Phy 213.08 Rehearing.~~
- ~~—— (a) Rehearing shall be before a quorum of the board.~~
- ~~—— (b) Within 30 days of the board's decision or order pursuant to Phy 213.07 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.~~

**Repeal Phy 215 through Phy 217, effective 11-28-07 (Document # 9040), as follows:**

~~PART Phy 215 RULEMAKING~~

~~Phy 215.01 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.~~

~~Phy 215.02 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 between 2 administrative rules; 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 Phy 216 PUBLIC COMMENT HEARINGS~~

~~— Phy 216.01 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.~~

~~— Phy 216.02 Public Access and Participation.~~

~~— (a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Phy 216.03.~~

~~— (b) 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.~~

~~— (c) 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.~~

~~— Phy 216.03 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.~~

~~Phy 216.04 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 other 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; and~~

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

~~Phy 216.05 Conduct of Public Comment Hearings.~~

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

~~(b) 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.~~

~~(c) 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 Phy 216.03 and Phy 216.04;~~
  - ~~(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.~~
- ~~—— (d) 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.~~
- ~~—— (e) 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.~~
- ~~—— (f) 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 Phy 217 DECLARATORY RULINGS~~

##### ~~—— Phy 217.01 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."~~

~~Phy 217.02 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.~~

~~Phy 217.03 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 Phy 217.01(b)(4) and is accompanied by any material necessary to establish or clarify the facts set forth in the statement.~~

~~Phy 217.04 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).~~

~~— Phy 217.05 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 Phy 217.02 (a)(2) through (a)(3) and in response to a request of the board made pursuant to Phy 217.03 (b).~~

#### PART Phy 201 APPLICABILITY OF Ahp 200

##### **Adopt Phy 201.01 to read as follows:**

Phy 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**

<b>Rule</b>	<b>Statute</b>
Phy 101 and Phy 102	RSA 541-A:7
Phy 103.01	RSA 328-F:4, VI
Phy 103.02 (deleted)	RSA 328-A: 3, VI; RSA 541-A:16, I(b)
Phy 103.02 (formerly Phy 103.03)	RSA 328-F:3, II
Phy 103.03(a) (formerly Phy 103.04(a))	RSA 328-A:3, II; RSA 328-F:5, I
Phy 103.03(b) (formerly Phy 103.04(b))	RSA 328-F:5, II; RSA 328-F:23
Phy 103.03(c) (formerly Phy 103.04(c))	RSA 328-A:3, III
Phy 103.03(d) (formerly Phy 103.04(d))	RSA 328-A:3, VIII
Phy 103.04(a) (formerly Phy 103.05(a))	RSA 328-F:8
Phy 103.04(b) (formerly Phy 103.05(b))	RSA 541-A:16(b)
Phy 103.05 (formerly Phy 103.06)	RSA 91-A:2, II
Phy 103.06	RSA 91-A:2, II; RSA 541-A:16(b); RSA 328-F:13
Phy 103.07(a) (repealed)	RSA 91-A:2, II
Phy 103.07(b) (repealed)	RSA 541-A:16, I(b)
Phy 103.08(a) (repealed)	RSA 91-A:2, II
Phy 103.08(b) (repealed)	RSA 541-A:16, I(b)
Phy 104.01 and Phy 104.02 (repealed)	RSA 541-A:16, I(a)
Phy 104.03 (repealed)	RSA 91-A:4; RSA 541-A:16, I(a)
Phy 201.01	RSA 328-F:13
Phy 201 (repealed)	RSA 541-A:7
Phy 203.01 and Phy 203.02 (repealed)	RSA 541-A:16, I(b)(2)
Phy 203.02 (repealed)	RSA 541-A:31, I
Phy 204.01 (repealed)	RSA 541-A:16, I(b)(2)
Phy 204.02 (repealed)	RSA 541-A:30-a, III(k)
Phy 204.03 (repealed)	RSA 541-A:30-a, III(j)
Phy 205 (repealed)	RSA 541-A:30-a, III(f)
Phy 206 (repealed)	RSA 541-A:30-a, III(a)
Phy 207 (repealed)	RSA 541-A:16, I(b)(2)
Phy 208.01 (repealed)	RSA 541-A:31; RSA 541-A:16, I(b)(2)
Phy 208.02 (repealed)	RSA 541-A:30, III
Phy 208.03 (repealed)	RSA 541-A:30-a, III(b)
Phy 208.04 (repealed)	RSA 541-A:31, V(b), (c) and (d); RSA 541-A:16, I(b)(2)
Phy 208.05 (repealed)	RSA 541-A:31, VII
Phy 209.01 and Phy 209.02 (repealed)	RSA 541-A:32, I, II and III; RSA 541-A:16, I(b)(2)
Phy 210.01 (repealed)	RSA 541-A:30-a, III(h)
Phy 211 (repealed)	RSA 541-A:16, I(b)(2)
Phy 212 (repealed)	RSA 541-A:30-a, III(h)
Phy 213.01 (repealed)	RSA 541-A:30-a, III(d) and (e)
Phy 213.02 (repealed)	RSA 541-A:31, IV
Phy 213.03(a) (repealed)	RSA 541-A:33
Phy 213.03(b), (c), (d), and (e) (repealed)	RSA 541-A:16, I(b)(2)
Phy 213.04 and Phy 212.05 (repealed)	RSA 541-A:16, I(b)(2)
Phy 213.06 (repealed)	RSA 541-A:30-a, III(i)

Phy 213.07(a)-(e) (repealed)	RSA 541-A:16, I(b)(2)
Phy 213.07(f) (repealed)	RSA 541-A:30-a, III(l)
Phy 213.08 (repealed)	RSA 541-A:16, I(b)
Phy 215 (repealed)	RSA 541-A:4; RSA 541-A:16, I(c)
Phy 216 (repealed)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Phy 217 (repealed)	RSA 541-A:16, I(d)