

Readopt with amendments Nat 101.01, effective 3-9-05 (Document #8299), to read as follows:

CHAPTER Nat 100 ORGANIZATION

PART Nat 101 PURPOSE

Nat 101.01 Purpose.

(a) These rules implement the statutory responsibilities of the New Hampshire naturopathic board of examiners.

(b) The board's responsibilities include, but are not limited to:

- (1) The establishment of organizational rules under which the board operates;**
- (2) The granting and issuance of licenses to qualified applicants;**
- (3) The establishment of standards for continuing education;**
- (4) The granting and issuance of renewal licenses;**
- (5) The further defining of the scope of practice of licensees, pursuant to RSA 328-E:10, I (a) and (f);**
- (6) The establishment and enforcement of professional standards of conduct for licensees;**
- (7) The hearing of complaints and the subsequent undertaking of disciplinary proceedings and disciplinary actions against licensees, in accordance with 328-E:14-a and these rules; and**
- (8) The investigation and preparation of reports on any matter within the scope of RSA 328-E.**

Readopt with amendments Nat 102.01, effective 7-22-17 (Document #12337), to read as follows:

Nat 102.01 Terms Used. As used in these rules, the following terms shall have the meanings indicated:

(a) **“Acupuncture” means the insertion of acupuncture needles into specific points on the skin to treat human disease and impairment and to relieve pain. (side note: RSA 328-G defines acp as “the insertion of needles through the skin at certain points on the body, with or without the application of electric current and/or heat, for the purpose of promoting health and balance as defined by the principles of oriental medicine”)**

~~(a)~~ (b) **“Administrative assistant” means any person with delegated authority from the office of professional licensure and certification to perform administrative and clerical functions for the board.**

~~(b)~~ (c) "Board" means "board" as defined in RSA 328-E:2, III, namely, "the naturopathic board of examiners established under RSA 328-E:7."

(d) ~~(e)~~ "Council" means the council on doctors of naturopathic medicine formulary established by RSA 328-E:16.

(e) "Dietary supplements" means a product that contains a dietary ingredient intended to supplement the human diet including vitamins, minerals, herbs or other botanicals, amino acids, probiotics, enzymes, and nutritional extracts.

(f) ~~(d)~~ "Doctor of naturopathic medicine" means "doctor of naturopathic medicine" as defined in RSA 328-E:2, IV, namely, "a person authorized and licensed to practice naturopathic medicine under this chapter."

(g) "Homeopathic preparations" means medicines prepared according to the Homeopathic Pharmacopeia of the United States as defined by RSA 328-E:2 V.

(h) "Minor office procedures" means care incident to superficial lacerations and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eyes. It shall include the use of antiseptics in connection with such procedures but shall not include the alteration or removal of tissue as defined by RSA 328-E:2 VI. Suturing shall only be used in the care incident to superficial lacerations.

(i) "Naturopathic childbirth" means natural childbirth which includes the use of natural obstetrical medicines, ophthalmic antibiotics, obstetrical emergency medicines and minor surgery including episiotomies, but which does not include the use of forceps delivery, general or spinal anesthesia, cesarean section, or induced abortions as defined by RSA 328-E:2, VII.

(j) "Naturopathic dispensary" means an establishment within a clinical setting where natural medicines including nutritional supplements, dietary supplements, herbal medicines, homeopathic remedies, and over-the-counter remedies are made available.

(k) "Naturopathic manipulative therapy" means the manually administered, mechanical treatment of body structures or tissues, in accordance with naturopathic principles, for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body as defined by RSA 328-E:2, VIII.

(l) ~~(e)~~ "Natural medicine" means agents from plant, mineral or animal origins that are naturally occurring substances or manufactured substances that are produced to simulate such naturally occurring substances.

(m) ~~(f)~~ "Naturopathic medicine" means "naturopathic medicine" as defined in RSA 328-E:2, IX, namely, "a system of primary health care practiced by doctors of naturopathic medicine for the prevention, diagnosis, and treatment of human health conditions, injuries, and diseases that uses education, natural medicines and therapies to support and stimulate the individual's intrinsic self-healing processes."

(n) "Naturopathic physical medicine" means the therapeutic use of the physical agents of air, water, heat, cold, sound, light, and electromagnetic non-ionizing radiation and the physical modalities of electrotherapy, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic manipulative therapy, and therapeutic exercise as defined by RSA 328-E:2, X. Naturopathic physical medicine shall also consist of other practices consistent with naturopathic medical training.

(o) “Therapeutic devices” means any material, instrument, apparatus, appliance, or other article for therapeutic purposes that does not achieve its principle intended action in or on the human body by pharmacological, immunological, or metabolic means.

(p) “Topical medicines” means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials as defined by RSA 328-E:2, XI.

Readopt with amendments Nat 103.06, effective 3-9-05 (Document #8299), to read as follows:

Nat 103.06 Quorum and Majority for Decision Making.

(a) A total of [4] 3 members of the board shall constitute a quorum, in accordance with RSA 328-E:7, V, to convene a meeting or conduct a hearing.

(b) Any action shall be taken only by the affirmative vote of a majority of those board members present and voting.

(c) Board members shall inform the administrative assistant or chairperson at the earliest possible time if they will be unable to attend a meeting so that a new meeting time can be scheduled if there will not be a quorum.

Readopt with amendments Nat 203.01, effective 7-22-17 (Document #12337), to read as follows:

Nat 203.01 Procedures for Submission and Processing of Complaints of Misconduct by Licensees.

(a) Persons wishing to complain of licensee misconduct shall submit to the board a written complaint including the information described in (b) below, using mail or any electronic means for which the board is able to maintain security.

(b) The complaint shall include:

- (1) The name and address of the complainant;
- (2) If the complaint is made on behalf of another person, the name of that person and the relationship of that person to the complainant;
- (3) The date of the complaint;
- (4) The name of the licensee complained against;
- (5) If known, the business address and telephone number of the licensee complained against;
- (6) A detailed description of the treatment, action or event complained about;
- (7) The beginning and ending dates of the treatment, action or event being complained about; and
- (8) As attachments, copies, but not originals, of any documents which relate to the complaint, including the record release form relevant to the complaint.

(c) Within 90 calendar days the board shall review the complaint and, if necessary, request additional information to decide whether to dismiss the complaint or to begin an investigation of the allegations in the complaint.

(d) The board shall mail a copy of any complaint it has not dismissed to the licensee complained against.

(e) The licensee shall respond in writing to stated misconduct allegations by responding to each allegation within 30 days. Failure to respond shall be deemed misconduct for which the board may undertake disciplinary proceedings under RSA 328-E:14-a.

(f) ~~(e)~~ The board shall dismiss the complaint in a written notice to the complainant when:

(1) The board has no authority to regulate the actions or omissions complained about; or

(2) There is nothing in the complaint to suggest that the actions or omissions complained of may have constituted misconduct under RSA 328-E, the rules or any order of the board, or any statute within the authority of the board to enforce.

~~[(f) A complainant whose complaint has been dismissed shall have the right to challenge the dismissal through a hearing.]~~

Readopt with amendments Nat 212.08, effective 3-9-05 (Document #8300), to read as follows:

Nat 212.08 Decision After Hearing.

(a) The board shall make a final decision based on:

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

(2) A written proposal for decision meeting the requirements of paragraph (c); or

(3) A hearing held pursuant to paragraph (d)(2).

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

(c) 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 decision containing:

(1) The decision proposed by the presiding officer;

(2) A statement of the reasons for the proposed decision; and

(3) Findings of fact and rulings of law necessary to the proposed decision.

(d) If a proposal for decision submitted pursuant to paragraph (c) is adverse to a party or an intervenor, the board shall:

(1) Serve a copy of the proposal for decision on each party and intervenor; and

(2) Provide an opportunity to file objections and present briefs and oral arguments to the board.

~~[(e) The board shall keep a final decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, 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.]~~

~~[(f) The board shall entertain no requests for rehearing.]~~

Adopt Nat 212.09 – Nat 212.11 to read as follows:

Nat 212.09 Motion for Reconsideration or Rehearing.

(a) An adjudicatory order of the board shall not be final until the date it is served upon the parties and intervenors pursuant to Nat 212.08.

(b) Within 30 days after service of a final adjudicatory order of the board, any party or intervenor may file a motion for reconsideration or rehearing.

(c) A motion for reconsideration shall:

(1) Include any memorandum of law the petitioner wishes to submit;

(2) Identify each error of fact, error of reasoning, or erroneous conclusion contained in the final order that the moving party or intervenor wishes reconsidered; and

(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party or intervenor.

(d) The board shall grant or deny the motion, or any part thereof, on its merits, or treat the motion as a motion for reopening, and grant it pending the receipt of such additional data or additional argument as it considers necessary.

Nat 212.10 Reconsideration on the Board's Own Motion.

(a) Within the time frame specified in Nat 212.08(b), the board may reconsider, revise, reverse or affirm any final action on its own motion.

(b) If reconsideration is based upon the existing record, prior notice shall not be given to the parties and intervenors. If the board believes further argument or data should be considered, an appropriate order providing the parties and intervenors with notice and opportunity to be heard shall be issued before any revision is made in the board's previous action.

Nat 212.11 Stay of Board Orders.

(a) Board actions shall be stayed only in response to a specific motion requesting a stay or by the board acting on its own motion.

(b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Nat 212.08(b), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire superior court.

(c) Filing a motion for reconsideration shall not stay a board order. Combining a motion for stay with a motion for reconsideration shall be permissible, however.

Adopt Nat 218 to read as follows:

PART Nat 218 WAIVER OF SUBSTANTIVE RULES

Nat 218.01 Petitions for Waiver.

(a) Any interested person may request the board to waive or suspend any rule not covered by Nat 204.04 by filing an original and 6 copies of a petition which identifies the rule in question and sets forth specific facts and arguments which support the requested waiver.

(b) Petitions for waivers of substantive rules shall address whether:

- (1) Adherence to the rule would cause the petitioner hardship;
- (2) The requested waiver is necessary because of any neglect or misfeasance on the part of the petitioner;
- (3) Waiver of the rule would be consistent with the statutes administered by the board;
- (4) Waiver of the rule would injure third persons; and
- (5) Other good cause for waiving the rule exists.

(c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the board shall require service of the petition on each such persons and advise each that she or he may file a reply to the petition.

(d) The petitioner shall provide further information or participate in such evidentiary or other proceedings ordered by the board as necessary to complete action on the petition.

(e) A petition for waiver of a rule which does not contain the information required in (b) above shall be denied without further notice or hearing.

(f) The board shall grant petitions for waiver of a rule upon finding that good cause exists to do so based on the information supplied by the petitioner pursuant to Nat 218.01(b).

(g) The board shall, if good cause to do so exists, initiate waiver or suspension of a substantive rule upon its own motion by providing affected parties with notice and an opportunity to be heard, and issuing an order which finds that:

- (1) Adherence to the rule would cause the petitioner undue personal hardship;

- (2) There is no neglect or misfeasance on the part of the petition;
- (3) Waiver of the rule would be consistent with the statutes administered by the board; and
- (4) Waiver of the rule would not injure third persons.

Appendix

Rule	Statute
Nat 101.01	RSA 541-A:16, I(a)
Nat 102.01	RSA 541-A:16, I(a)
Nat 103.06	RSA 328-E:7; RSA 541-A:16, I(b)
Nat 203.01	RSA 541-A:16, I(b)
Nat 212.08	RSA 541-A:16, I(b)(2)
Nat 212.09	RSA 541-A:16, I(b)(2); RSA 541:3; RSA 541-A:4
Nat 212.10	RSA 541-A:16, I(b)(2); RSA 541:3; RSA 541-A:4
Nat 212.11	RSA 541-A:16, I(b)(2)
Nat 218	RSA 541-A:16, I(b) intro.