Adopt Plc 100 and Plc 200 to read as follows:

CHAPTER Plc 100 ORGANIZATIONAL RULES

PART Plc 101 DEFINITIONS

Plc 101.01 "Executive director" means the executive director of the office of professional licensure and certification.

Plc 101.02 “Office” means the New Hampshire office of professional licensure and certification.

PART Plc 102 DESCRIPTION OF OFFICE

Plc 102.01 Office of Professional Licensure and Certification.

(a) The executive director of the OPLC has supervision and control of all business activities, functions, and employees of the agency pursuant to RSA 310-A:1-d.

(b) The office’s mission is to safeguard the public health, safety, welfare, environment and the public trust of the citizens of the State of New Hampshire.

Plc 102.02 Executive Director.

(a) The executive director's general powers are described in RSA 310-A:1-d.

(b) The director shall, pursuant to RSA 310-A:1-d, have supervision and control of all administrative, business processing functions, and employees of the office.

(c) Every classified or unclassified state employee position authorized in the boards, councils, and commissions under RSA 310-A:1-a are subject to the supervisory authority of the executive director pursuant to RSA 310-A:1-c, II.

(d) The executive director has rulemaking authority as granted in various statutes in Title XXX.

Plc 102.03 Office Hours, Office Location, Mailing Address and Telephone.

(a) The OPLC is located at the Philbrook Building, 121 South Fruit Street, Concord, N.H. and shall be open to the public weekdays, excluding holidays, from 8:00 a.m. to 4:00 p.m.

(b) Correspondence shall be addressed to the executive director at:

New Hampshire Office of Professional Licensure and Certification
121 South Fruit Street
Concord, NH 03301
The OLPC’s administrative division telephone number shall be (603)-271-3800.

The office is made up of 3 divisions, described in Plc 102.04 – Plc 102.06.

The executive director is responsible for the administrative, clerical, and business processing functions of the boards, commissions and councils of the OPLC.

The executive director determines costs for the services provided by the OPLC, with such costs allocated equitably, determined by the executive director in accordance with RSA 310-A:1-e, II.

Plc 102.04 Division of Technical Professions.

(a) The division of technical professions consists of the individual licensing, certification boards, commissions, and councils listed in RSA 310-A:1-a, I.

(b) The boards, commissions, and councils of the division of technical professions are separate and distinct for the purpose of regulating various professions and protecting the public health, safety, welfare, environment, and the public trust.

Plc 102.05 Division of Health Professions.

(a) The division of health professions consists of the individual licensing, certification, and registration boards, commissions, and councils listed in RSA 310-A:1-a, II.

(b) The boards, commissions, and councils of the division of health professions are separate and distinct for the purpose of regulating various professions and protecting the public health, safety, and welfare.

Plc 102.06 The Division of Administration. The division of administration is responsible for the following:

(a) Human resource functions;

(b) Supervision of the purchase of all equipment, materials, supplies, and services;

(c) Management of the agency’s fleet vehicles;

(d) All business administration and accounting functions; and

(e) Maintenance of the office’s equipment and consumable inventory.

PART Plc 103 INFORMATION REQUESTS

Plc 103.01 Requests for Information.
(a) Requests for information pursuant to RSA 91-A:4 shall be made directly to the executive director at the address specified in Plc 102.03(b).

(b) Requests for other information may be addressed to the executive director, or addressed directly to a specific division which is responsible for the program for which the information is being requested.

(c) The primary telephone numbers are listed in Table 100.1 below:

<table>
<thead>
<tr>
<th>Division</th>
<th>Telephone #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>603-271-3800</td>
</tr>
<tr>
<td>Technical Professions</td>
<td>603-271-2219</td>
</tr>
<tr>
<td>Health Profession</td>
<td>603-271-2152</td>
</tr>
</tbody>
</table>

(d) The fee for copies made by office staff shall be $0.20 per page, payable before such copies are provided to the requestor.
CHAPTER Plc 200  PRACTICE AND PROCEDURE

PART Plc 201  PURPOSE AND SCOPE

Plc 201.01  Purpose. The office conducts various proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction, including decisions on applications for licensure and communications of alleged misconduct filed against licensees. The purpose of these rules shall be construed to secure the just, efficient and accurate resolution of all office action.

Plc 201.02  Applicability. This chapter shall apply to the following boards and professions:

(a) Massage therapy;
(b) Body art;
(c) Electrology;
(d) Reflexology, structural integration, and Asian bodywork therapy; and
(e) Ophthalmic dispensing.

PART Plc 202  DEFINITIONS

Plc 202.01  Definitions.

(a) "Adjudicative proceeding" means “adjudicative proceeding” as defined as in RSA 541-A:1 (I).

(b) “Appearance” means a written notification to the office that a party or a party’s representative intends to actively participate in a hearing.

(c) "Complaint" means a communication of alleged misconduct containing information that, as the office shall determine, if true, could violate ethical codes, administrative rules, or the law.

(d) "Data" means all information relevant to the investigation, included but not limited to:

(1) Oral or written descriptions;
(2) Reports;
(3) Maps;
(4) Charts;
(5) Drawings;
(6) Photographs;
(7) Audio or video recordings;
(8) Computer programs; or

(9) Computer printouts.

e) “Disciplinary proceeding” means an adjudicative proceeding commenced by the office for the purpose of examining a complaint against a licensee.

(f) "File" means to place a document in the actual possession of the office.

(g) “Hearing counsel” means an individual appointed by the office to prosecute licensee misconduct allegations and denials of applications for licensure.

(h) “Investigation” means a gathering of data by the office concerning matters within its jurisdiction.

(i) “Confidential Letter of concern” means a written letter from the office drawing the licensee’s attention to specific acts or omissions that could place the licensee at risk of future disciplinary action. A confidential letter of concern is non-disciplinary, is confidential, and is sent to the licensee following a communication of alleged misconduct, complaint or investigation.

(j) "Motion" means any request by a party to an existing proceeding for an order or relief relating to that proceeding.

(k) “Office” means the New Hampshire office of professional licensure and certification as described in Plc 102.

(l) “Office investigator” means an office employee who is responsible for overseeing the activities of the professional conduct investigators.

(m) "Order" means a document issued by the executive director:

   (1) Establishing procedures to be followed in an adjudicative or nonadjudicative proceeding;

   (2) Granting or denying a petition or motion;

   (3) Requiring a person to do, or to abstain from doing, something; or

   (4) Determining a person's rights to a license or other privilege established by law.

(n) "Petition" means any request to the office seeking an order or any other action for relief, but does not include a license application or a motion.

(o) "Presiding officer" means the executive director, office employee, or other individual, designated as such by the executive director, to whom the office has delegated authority to preside over some or all aspects of an adjudicative or other proceeding.

(p) “Report of Investigation (ROI)” means report of information, facts, and data gathered for the office.

(q) "Rulemaking" means the statutory procedures for formulating office rules set forth in RSA 541-A:3.
“(r) “Settlement agreement” means a written order of the office acknowledging consent of the licensee to enter stipulated facts and imposing disciplinary actions consented to by the licensee to resolve certain allegations of licensee misconduct.

PART Plc 203  PRESIDING OFFICER, WITHDRAWAL, AND WAIVER OF RULES

Plc 203.01  Presiding Officer, Appointment: Authority.

(a) All hearings shall be conducted for the office by either the executive director, sitting as presiding officer, or another person appointed or authorized by the executive director to serve as a presiding officer.

(b) A presiding officer shall as necessary:

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

(2) Facilitate an informal resolution of the subject matter of the hearing;

(3) Administer oaths and affirmations;

(4) Request the office to issue subpoenas to compel the attendance of witnesses at hearings or the production of documents, if so authorized by law;

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

(6) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer’s own motion;

(7) Question any person who testifies;

(8) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, III (f); 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.

Plc 203.02  Withdrawal of Presiding Officer.

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

(b) Good cause shall exist if a presiding officer:

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

(2) Has made statements or engaged in behavior, other than voting upon matters relevant to the case, which objectively demonstrates that he or she has prejudged the facts of a case; or
(3) Personally believes that he or she cannot fairly judge the facts of a case.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.

Plc 203.03 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate, and efficient resolution of issues pending before the office than would adherence to a particular rule or procedure.

PART Plc 204 FILING AND SERVICE OF DOCUMENTS

Plc 204.01 Filing of Documents with the Office.

(a) A document shall be considered filed when it is actually received at the office in Concord and facially conforms to the office’s rules.

(b) A document, which facially violates the office’s rules, shall not be accepted for filing. Such submissions shall be returned to the sender without prejudice to subsequent acceptance if the deficiencies are corrected and the document is refiled within any applicable time period.

(c) All correspondence, filings, or communications intended for the office shall be addressed to the office in care of its administrative assistant.

(d) All petitions, motions, exhibits, memoranda, or other documents filed in connection with a request for office action shall be filed with an original and 5 copies.

(e) Notwithstanding (d) above, only a single copy shall be filed of:

(1) Transmittal letters;

(2) Requests for public information;

(3) License applications; and

(4) A communication of alleged misconduct against licensees.

Plc 204.02 Subscription and Veracity of Documents.

(a) All communications of alleged misconduct, petitions, motions, and replies filed with the office shall be signed and dated by the proponent of the document or, if the party appears by a representative, by the representative.

(b) Licensure applications shall be signed only by the applicant.

(c) The signature on a document filed with the office shall constitute a 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 grounds to support it; and

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

(d) With respect to communications of alleged misconduct, the signer shall indicate whether the conduct complained of is alleged to have occurred as a result of or in connection with litigation and whether the litigation is still pending.

Plc 204.03 Service of Documents.

(a) Individuals wishing to file an official complaint against a licensee shall do so by completing and submitting a written complaint with the office.

(b) The office shall notify the licensee of said filing unless such information would jeopardize:

   (1) The safety of a party; or

   (2) The process of a criminal investigation.

(c) Applications, petitions for rulemaking, and petitions for declaratory rulings shall be filed with the office without service upon other persons.

(d) All objections, motions, replies, memoranda, exhibits, or other documents filed in connection with a request for office action shall be served by the proponent upon all parties or persons who have filed appearances with the office to be heard on a matter by:

   (1) Depositing a copy of the document in the United States Mail, first class postage prepaid, addressed to the last address given to the office by the person being served, no later than the day the document is filed with the office; or

   (2) Delivering a copy of the document in hand on or before the date it is filed with the office.

(e) Notices, orders, decisions, or other documents issued by the office in connection with requests for office action shall be served by the office upon all parties or their representatives on a matter by:

   (1) Depositing a copy of the document, first class postage prepaid, in the United States Mail, addressed to the most recent address given to the office by the party being served; or

   (2) Delivering a copy of the document in hand to the party.

(f) When a party’s representative has filed an appearance, service shall be upon the representative.
(g) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the office shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service and the persons served.

PART Plc 205  TIME PERIODS

Plc 205.01  Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules 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 legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

PART Plc 206  MOTIONS AND OBJECTIONS

Plc 206.01  Motions and Objections.

(a) Motions and objections shall be in writing unless the nature of the relief requested requires oral presentation upon short notice.

(b) All motions shall state clearly and concisely in separately numbered paragraphs:

(1) The purpose of the motion;

(2) The relief sought by the motion;

(3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion;

(4) The facts claimed to constitute grounds for the relief requested by the motion; and

(5) The signature and date required by Plc 204.02(a).

(c) Objections to motions shall state clearly and concisely:

(1) The objection or defense of the party filing the objection to any fact or request in the motion, set forth in separate paragraphs numbered identically to the paragraphs in the original motion;

(2) The action which the party filing the objection wishes the office to take on the motion;

(3) The statutes, rules, orders, or other authority relief upon in defense of the motion;

(4) Any facts which are additional to or different from the facts stated in the motion; and

(5) The signature and date required by Plc 204.02(a).
(d) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.

(e) Objections to motions shall be filed within 10 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

PART Plc 207 INVESTIGATIONS

Plc 207.01 Investigations.

(a) The executive director shall conduct such investigations as he or she deems necessary to examine acts of possible misconduct that come to his or her attention through complaints or other means.

(b) Investigations shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a licensee.

(c) When an investigation occurs, an investigator designated by the executive director shall contact such persons and examine such records and other documents as are reasonably necessary to make a recommendation as to whether further action should be taken on the allegations in question.

(d) Investigations, including those based upon allegations in a complaint shall be conducted on an ex parte basis.

(e) Following the investigation, the investigator shall make a written report and recommendation to the executive director as to whether there is reasonable basis to conclude that the complaint concerns facts that constitute misconduct.

(f) Investigatory reports and all information gathered by an investigator shall be confidential except provided as follows:

(1) The investigator's report shall be made available to the parties and intervenors in any adjudicatory proceeding resulting therefrom; and

(2) The executive director shall provide, upon request, the nonconfidential information gathered in disciplinary investigations to:

   a. Law enforcement agencies;
   
   b. Boards or agencies relating to this practice in other jurisdictions;
   
   c. Board investigators or prosecutors;
   
   d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; or
   
   e. Persons to whom the licensee has given a release.

PART Plc 208 ADJUDICATIVE PROCEEDINGS

Plc 208.01 Commencement of Proceedings.
(a) The executive director shall commence an adjudicative proceeding by issuing a notice of hearing to the parties at least 15 days before the first scheduled hearing date or first prehearing conference.

(b) The adjudicatory proceeding shall be held by either the executive director alone or, if the executive director decides it necessary, by a panel consisting of the executive director and a minimum of two advisory board members.

(c) The notice commencing an adjudicative proceeding shall:

1. Specify the time, place, and nature of any hearing;
2. Summarize the subject matter of the proceeding and identify the issues to be resolved;
3. Specify the legislative authority for the proposed action and identify any applicable agency rules;
4. Specify the date by which, and the address where, appearances or motions by parties or representatives shall be filed;
5. Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;
6. Identify the presiding officer for the proceeding if other than the chairperson of the agency;
7. Identify any special procedures to be followed;
8. Identify any confidentiality requirements applicable to the proceeding;
9. Specify that each party has the right to have an attorney represent him or her at the party’s own expense;
10. Contain such other information or attachments as are warranted by the circumstances of the case, including, but not limited to:
   a. Orders consolidating or severing issues in the proceeding with other proceedings; and
   b. Orders directing the production or exchange of documents; and

(d) A recording of the hearing shall be taken and preserved.

Ple 208.02 Methods of Proceeding - Generally.

(a) If the parties agree, the office shall proceed as follows:

1. Where facts material to the subject matter of the proceeding are in dispute, but personal observation of the witnesses or the immediate opportunity for cross-examination of witnesses is not required, the proceeding shall, to that extent, consist of the submission of affidavits and memoranda; and
(2) Where no facts material to the subject matter of the proceeding are in dispute the proceeding shall, to that extent, be limited to the submission of memoranda which argue the conclusions the parties wish the agency to draw from the undisputed facts.

(b) If the parties do not agree to one of the methods of proceeding in (a) above, the matter shall proceed to an adjudicatory hearing.

(c) The presiding officer may schedule supplemental argument or hearing, or to otherwise reopen the record, at any time prior to the issuance of a final order in a proceeding.

Plc 208.03 **Appearances and Representation.**

(a) A party or the party’s representative shall file an appearance that includes the following information:

(2) A brief identification of the matter;

(3) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire; and

(4) The party or representative’s daytime address and telephone number.

(b) Any changes to the information in (a) above shall be timely filed with the office, in writing.

(c) The office shall, after providing notice and opportunity for hearing, prohibit an individual from acting as a representative upon a finding that the individual has repeatedly violated rules or orders of the office, willfully disrupted office proceedings, or made material misrepresentations to the office or a party in an office proceeding.

(d) Any prohibition issued under (c), above, shall apply only to the office’s proceedings.

(e) Nothing in this section shall be construed to permit the unauthorized practice of law.

Plc 208.04 **Role of Complainants in Adjudicatory Proceedings.** Unless called as a witness or granted intervenor status, a person who initiates an adjudicative proceeding by complaining to the office about the conduct of the person who becomes a party shall have no role in any adjudicatory proceeding.

Plc 208.05 **Role of Office Staff in Adjudicatory Proceedings.** Unless called as a witness, office staff shall have no role in any adjudicatory proceeding.

Plc 208.06 **Intervention.**

(a) Motions to intervene shall state with particularity:

(1) The petitioner's interest in the subject matter of the hearing;
(2) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and

(3) Any other reasons why the petitioner should be permitted to intervene.

(b) Motions to intervene shall be granted if the agency finds the petitioner has a substantial interest in the proceeding, the petitioner requested intervention in accordance with these rules, and if granting intervention will not prejudice a party or unduly delay the agency’s proceedings.

(c) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

Plc 208.07 Consolidation. Adjudicative proceedings which involve the same or substantially related issues shall be consolidated for hearing or decision, or both, when fairness, accuracy, and efficiency would be served by such an action. Consolidation shall be ordered in response to a timely motion from a party or on the agency’s own initiative.

Plc 208.08 Severance. Upon timely motion from a party or on the executive director’s own initiative, the executive director shall sever one or more issues from a proceeding and dispose of those issues in another proceeding if it finds doing so would materially promote the fairness, accuracy, and efficiency of the proceeding.

Plc 208.09 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 there is good cause to do so.

(c) Good cause shall include:

(1) The unavailability of parties, intervenors, representatives of parties or intervenors, or witnesses necessary to conduct the hearing;

(2) The likelihood that a settlement will make the hearing or its continuation unnecessary; and

(3) Any other circumstances that demonstrate that a delay or continuance would assist in resolving the case fairly.

(d) 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.

Plc 208.10 Prehearing Conferences.
(a) At any time following the commencement of an adjudicative proceeding, the presiding officer, upon motion, or upon his or her own initiative, shall request the parties to attend one or more prehearing conference when such a conference would aid in the disposition of the proceeding.

(b) Matters which can be addressed at a prehearing conference shall include:

(1) The distribution of exhibits and written testimony, if any, to the parties;

(2) Opportunities and procedures for simplification of the issues;

(3) Possible amendments to the pleadings;

(4) Opportunities and procedures for settlement;

(5) Possible admissions of fact and authentication of documents to avoid unnecessary proof;

(6) Possible limitations on the number of witnesses and possible limitations on the scheduling of witnesses;

(7) Possible changes to the standard procedures which would otherwise govern the proceeding; and

(8) Other matters which might contribute to the prompt and orderly conduct of the proceeding.

Plc 208.11 Discovery and Disclosure.

(a) The office shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the office, which is reasonably related to the subject matter of the proceeding.

(b) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts prove unsuccessful, a party wishing to initiate discovery against another party, shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.

(c) Discovery shall be ordered when the parties cannot adequately address specific relevant factual issues at the time fixed for the presentation of evidence, and addressing these issues at a subsequent time would place the requesting party at a material disadvantage.

(d) At least 14 days before the hearing the parties and any intervenor shall provide to the other parties and intervenors:

(1) A list of all witnesses to be called at the hearing together with a brief summary of their testimony;

(2) A list of all documents and exhibits to be offered as evidence at the hearing; and

(3) A copy of each document or exhibit.
Plc 208.12  Subpoenas.

(a) Subpoenas for the attendance of witnesses or the production of evidence in investigations or adjudicative proceedings shall be issued upon the order of the executive director.

(b) In adjudicative proceedings, a party requesting the executive director to authorize a subpoena shall attach a copy of the proposed subpoena to its motion. If the motion is granted, the requesting party shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.

(c) Motions to quash or modify a subpoena shall be entertained from the person to whom the subpoena is directed, if filed within 7 days after service of the subpoena, or one day before the date specified in the subpoena for compliance therewith, whichever is later. If the executive director denies the motion to quash or modify, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena or any modification thereof, within the balance of time prescribed in the subpoena or within 3 days from the date of the agency’s order, whichever is later, unless the executive director expressly provides additional time to comply.

(d) The executive director shall grant a motion for a subpoena or quash a subpoena providing there is a preponderance of evidence to support the motion.

(e) Should a person fail to comply with a subpoena issued pursuant to this section, the executive director shall take one or more of the following actions:

   (1) If the person is a licensee, such noncompliance shall constitute misconduct, for which the executive director may:

      (a) Impose sanctions specific to any pending proceeding or investigation, including, but not limited to, entry of a default judgment as to some or all of the pending issues which is adverse to the noncompliant party; or

      (b) Institute a separate investigation against any non-compliant individual who is subject to the agency’s jurisdiction;

   (2) For all such persons, the executive director may:

      (a) Continue with the proceeding and defer all, or part, of the subpoena enforcement issues;

      (b) Seek judicial relief; or

      (c) Determine there was just cause for the failure to comply with the subpoena. Just cause shall include:

         a. Illness;

         b. Accident;

         c. Death of a family member; and

         d. Other circumstances beyond the control of the party; or
Plc 208.13 Evidence.

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

(b) All data which will reasonably assist the office arrive at the truth shall be admissible.

(c) Oral testimony shall be allowed unless the office, upon a finding that written evidence would be more efficient and would not result in material prejudice, orders that some or all of the evidence be submitted in written form.

(d) Witnesses appearing before the office shall testify under oath or affirmation.

Plc 208.14 Inquiry by Presiding Officer or Panel Members. The presiding officer shall make such inquiry of witnesses, parties or counsel, as he or she believes necessary to develop a sound record for decision. If the adjudicatory hearing is being held by a panel pursuant to Plc 208.01(b), the advisory board members on the panel may likewise make such inquiries.

Plc 208.15 Burden of Proof.

(d) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(e) Without limiting the generality of paragraph (a) above, all moving parties and all petitioners shall have the burden of persuading the agency that their motion or petition should be granted.

Plc 208.16 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 Plc 208.01 (a); and

(3) Fails to attend the hearing.

(b) If a party is in default under (a) above, the matter shall be dismissed unless there is just cause shown for failure to attend. Just cause shall include illness, accident, the death of a family member, or other circumstance beyond the control of the party.

(c) If a party who does not have the overall burden of proof fails to attend the hearing after having been given notice in accordance with Plc 207.01(a), the testimony and evidence of any other parties or intervenors shall be received and evaluated.

Plc 208.17 Proposed Findings of Fact and Conclusions of Law.
(a) Parties may submit proposed findings of fact or conclusions of law which shall be set forth in separately numbered paragraphs.

(b) The presiding officer shall direct any party to submit proposed findings of fact or conclusions of law if the presiding officer finds such a submission will clarify the pertinent facts or identify the applicable law.

Plc 208.18 Deliberations and Decisions.

(a) If the adjudicatory hearing was held by a panel pursuant to Plc 208.01(b), the advisory board members on the panel may sit for deliberations with the executive director and offer recommendations for the final disposition of the case or any pending motions.

(b) Notwithstanding (a) above, the executive director shall have sole and exclusive authority to decide on the final disposition of the case.

(c) Final adjudicative orders of the agency, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date they are served upon the parties pursuant to Plc 204.03 (d).

Plc 208.19 Motion for Reconsideration or Rehearing.

(a) Motions for reconsideration or rehearing shall be filed within 30 days after service of a final adjudicative order. The motion shall state, with particular clarity, points of law or fact that the agency has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present.

(b) No answer to a motion for reconsideration shall be required, but any answer or objection filed shall be delivered to the office within 5 days following notification of the motion to reconsider.

(c) The filing of a motion for reconsideration shall not stay any order of the office unless, upon specific written request, the agency has ordered such a stay.

Plc 208.20 Records of Decisions. The office shall keep a final decision in its records for at least 5 years following its dates of issuance, unless the director of the division of records management of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Plc 208.21 Stay of Office Orders.

(a) Office actions shall be stayed only in response to a specific motion requesting a stay or by the agency 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 Plc 208.16 (b), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire Superior Court.
A stay of office action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.

PART Plc 209 RULEMAKING

Plc 209.01 Procedure For Adopting Rules. An office rule, or any amendment or repeal thereof, shall be governed by RSA 541-A.

Plc 209.02 Petition for Rulemaking. A request for the commencement of a proceeding to adopt, amend, or repeal a rule shall be submitted to the executive director in the form of a petition which contains the following information:

(a) A statement of the petitioner's interest in the proposed rulemaking action;

(b) The text of the proposed rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed rule;

(c) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed; and

(d) Any data or argument the petitioner believes would be useful to the executive director in deciding whether to commence a rulemaking proceeding.

Plc 209.03 Disposition of Petition for Rulemaking.

(a) Within 30 days of the submission of a petition, the executive director shall either deny the petition by written order, stating its reasons for the denial, or shall initiate rulemaking proceedings, by written order, in response to the petition and in accordance with Plc 210.04.

(b) Any denial shall be based upon a finding by the executive director that:

   (1) The petition for rule or amendment or repeal of an existing rule would not be consistent with established standards of practice of the agency;

   (2) The executive director lacks rulemaking authority over the issues in the petition; or

   (3) The petition is contrary to legislative intent.

Plc 209.04 Commencement of Rulemaking Proceeding. The executive director shall commence a rulemaking proceeding by following the procedures set forth in RSA 541-A:3 et seq.

PART Plc 210 PUBLIC COMMENT HEARINGS
Plc 210.01  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.

Plc 210.02  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 Plc 211.03.

(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.

Plc 210.03  Limitations on Public Participation. The office’s chair or other person designated by the presiding officer 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.

Plc 210.04  Conduct of Public Comment Hearings.

(a) Public comment hearings shall be attended by the executive director, or his or her designee.

(b) Public comment hearings shall be presided over by the executive director, or his or her designee knowledgeable in the subject area of the proposed rules.

(c) The 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 Plc 211.03;

(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 executive director or other person designated by the executive director to preside over the hearing is ill or unavoidably absent;

   (3) Postponement will facilitate greater participation by the public; or

   (4) The executive director or other person designated by the executive director to preside over the hearing finds there is other good cause to do so.

(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 Plc 211 DECLARATORY RULINGS

Plc 211.01 Petitions for Declaratory Rulings.

(a) Any interested person may request a declaratory ruling from the office on how a statute, rule or order applies to a specific situation.

(b) The request pursuant to (a) above shall be made by filing a petition with the executive director, which contains:

   (1) The exact ruling being requested;
(2) Each statutory and factual basis for the ruling, set forth in separately numbered paragraphs, including

(3) Any supporting affidavits or memoranda of law; and

(4) The name and address of the petitioner.

Plc 211.02 Action on Petitions for Declaratory Rulings.

(a) The executive director shall issue a declaratory ruling, in writing, within 60 days of receipt of a petition.

(b) A copy of each declaratory ruling shall be:

(1) Filed with the director of legislative services;

(2) Sent to the petitioner by first class mail; and

(3) Filed with the office.

(c) In ruling on a petition for a declaratory ruling, the executive director may consult with the advisory board.

PART Plc 212 WAIVER OF SUBSTANTIVE RULES

Plc 212.01 Petitions for Waiver.

(a) The executive director shall entertain petitions to waive or suspend any rule upon the filing of a request for a waiver which clearly 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:

(1) Whether adherence to the rule would cause the petitioner hardship;

(2) Whether the requested waiver is necessary because of any neglect or misfeasance on the part of the petitioner;

(3) Whether waiver of the rule would injure third persons; and

(4) Other good cause for waiving the rule.

(c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the agency shall require service of the petition on such persons and advise them of their right to reply to the petition.

(d) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as shall be ordered by the agency after reviewing the petition and any replies received.
(c) The executive director shall waive a substantive rule upon his or her own motion by providing affected parties with notice and an opportunity to be heard, and after issuing an order which finds that good cause has been shown.

(f) For the purposes of this section, good cause shall be deemed to exist if, at a minimum, the petitioner has demonstrated that:

1. Adherence to the rule would cause the petitioner hardship;
2. Waiver of the rule would be consistent with the statutes and rules of the agency;
3. Waiver of the rule would not injure third persons; and
4. Waiver is necessary due to factors outside the control of the petitioner.

(g) In ruling on a petition for a waiver, the executive director may consult with the advisory board.

PART Plc 213 EXPLANATION OF ADOPTED RULES

Plc 213.01 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 executive director including:

1. The name and address of the individual making the request: or
2. 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.

Plc 213.02 Contents of Explanation.

1. The executive director shall, within 90 days of receiving a request in accordance with Plc 214.01, provide a written response which:
   1. Concisely states the meaning of the rule adopted;
   2. Concisely states the principal reasons for and against the adoption of the rule in its final form; and
   3. States, if the executive director did so, why the executive director overruled any arguments and considerations presented against the rule.

2. In ruling on a petition for a declaratory ruling, the executive director may consult with the advisory board.
## APPENDIX

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