

Adopt Sep 200 to read as follows:

CHAPTER Sep 200 PROCEDURAL RULES

PART Sep 201 DEFINITIONS

Sep 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 intervener, or the representative of a party or intervener intends to actively participate in an adjudicative proceeding.

(c) “Board” means the board of septic system evaluators, pursuant to RSA 310-A:206.

(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) "Intervener" 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.

PART Sep 202 PROCEDURES FOR THE RECEIPT OF MISCONDUCT COMPLAINTS AND THE CONDUCT OF DISCIPLINARY HEARING

Sep 202.01 Procedures for the Receipt of Misconduct Complaints.

(a) Persons wishing to complain of licensee misconduct shall:

(1) 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; or

(2) Submit a complaint by telephone and thereafter confirm the complaint by:

- a. Reviewing a summary of the telephone conversation made by the board's staff;
- b. Correcting the summary as necessary and signing it; and
- c. Returning the signed summary to the board.

(b) A written complaint submitted pursuant to (a)(1) above 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 name of the licensee complained against;

(4) If known, the business address and telephone number of the licensee complained against;

(5) A detailed description of the treatment or event being complained about;

(6) The beginning and ending dates of the treatment being complained about;

(7) The name and, if known, the business address and telephone number of any caregiver who was consulted about the actions which are complained about; and

(8) As attachments, copies, but not originals, of any documents which relate to the complaint.

(c) Within 60 days the board shall confirm receipt of the complaint and request any further information necessary to act pursuant to Sep 202.02.

Sept 202.02 Board Response to Misconduct Complaints.

(a) After receiving a complaint filed pursuant to Sep 202.01, the board shall:

- (1) Provide a copy of the complaint to the licensee named in the complaint; and
- (2) Request a response to the allegations from the licensee.

(b) The board shall dismiss a complaint of misconduct with or without investigation if it determines that the allegations described in the complaint, if taken as true, do not fall within the board’s authority to adjudicate because:

(1) The complaint does not allege any misconduct on the part of a person licensed by the board;

(2) The acts giving rise to the complaint fall outside the statute of limitations identified in RSA 541-A:31; or

(3) The alleged conduct given rise to the complaint, if taken as true, does not rise to the level of misconduct sufficient to support further investigation or adjudication.

(c) If, after receiving a complaint and response, the board determines that the actions giving rise to such complaint, if taken as true, would constitute misconduct in violation of RSA 310-A:216 or the board’s administrative rules, the board shall refer the complaint to a board appointed investigator for investigation.

(d) Investigations commenced under (c) above shall:

(1) Be commenced within 120 days of receipt of any additional information requested under Sep 202.01(c); and

(2) Include all techniques and methods for gathering information which are appropriate to the circumstances of the case, including:

- a. Requests for additional information from the complainant;
- b. Face-to-face meetings with potential witnesses and interested persons; and
- c. Requests for release of relevant records belonging to or under the control of the licensee under investigation.

PART Sep 203 CONSTRUCTION OF RULES; RIGHT TO A HEARING

Sep 203.01 Principles of Construction.

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

- (1) Within the jurisdiction of its statute; and
- (2) Non-criminal.

(b) Sep 203.02 through Sep 213 shall be construed to secure the just, accurate, and efficient resolution of all non-disciplinary disputes.

Sep 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 Sep 204 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES

Sep 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.

Sep 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.

Sep 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 Sep 205 TIME PERIODS

Sep 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 Sep 206 FILING, FORMAT, AND DELIVERY OF DOCUMENTS

Sep 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.

Sep 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 Sep 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.

Sep 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 Sep 207 MOTIONS AND OBJECTIONS

Sep 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 Sep 208 COMMENCEMENT OF ADJUDICATIVE PROCEEDINGS; EMERGENCY SUSPENSION PROCEDURES; APPEARANCES; PRE-HEARING CONFERENCES; RECORDING THE HEARING

Sep 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 and shall include an address to which the bill for such shorthand court reporter shall be sent.

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

Sep 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.

Sep 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 Sep 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.

Sep 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.

Sep 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, provided that such recording shall be in addition to any shorthand reporter requested pursuant to Sep 208.01(a)(9)b..

(b) If any person requests a transcript of the electronic recording of a hearing described in (a) above, 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 Sep 209 INTERVENTION; ROLE OF BOARD STAFF

Sep 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.

Sep 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.

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

Sep 209.04 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the board about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.

PART Sep 210 CONTINUANCES

Sep 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 Sep 211 FAILURE TO PARTICIPATE IN THE HEARING

Sep 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 Sep 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.

Sep 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 Sep 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 Sep 212 REQUESTS FOR INFORMATION AND DOCUMENTS

Sep 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.

Sep 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.

Sep 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.

PART Sep 213 HEARING PROCEDURE

Sep 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.

Sep 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.

Sep 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 governmental 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.

Sep 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 Sep 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.

Sep 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 Sep 213.06.

Sep 213.06 Reopening the Record.

(a) If no written proposal for decision pursuant to Sep 213.07(d) or decision pursuant to Sep 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 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.

Sep 213.07 Disposition.

(a) The board shall issue a decision or order, whether or not the record has been reopened pursuant to Sep 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.

Sep 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 Sep 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.

PART Sep 214 SETTLEMENTS

Sep 214.01 Settlement of Non-Disciplinary Issues.

(a) Any licensee or applicant for a license having a dispute with the board over issues not related to a disciplinary matter shall have the opportunity to settle some or all of the issues if there is no dispute about the underlying material facts.

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

- (1) In writing;
- (2) Signed by the licensee or applicant for a license; and
- (3) Finalized as an order issued by the board.

(c) The signing of the agreement to settle shall constitute a waiver of the right to a hearing of the issues resolved by the agreement.

PART Sep 215 RULEMAKING

Sep 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.

Sep 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) A rule that does not assist the board with the regulation of the profession.

(c) Within 30 days of the board's next scheduled meeting 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 Sep 216 PUBLIC COMMENT HEARINGS

Sep 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.

Sep 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 Sep 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 until the close of the public hearing if stated in the rulemaking notice.

Sep 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.

Sep 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 on the placement of cameras to specific locations within the hearing room; and

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

Sep 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 Sep 216.03 and Sep 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 Sep 217 DECLARATORY RULINGS

Sep 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."

Sep 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.

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

Sep 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).

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

PART Sep 218 EXPLANATION OF ADOPTED RULES

Sep 218.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the board including:

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

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

Sep 218.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Sep 218.01, provide a written response which:

(a) Concisely states the meaning of the rule adopted;

(b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and

(c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.

PART Sep 219 WAIVER OF SUBSTANTIVE RULES

Sep 219.01 Petitions for Waiver.

- (a) Any interested person may request the board to waive any rule not covered by Sep 204.03 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; and
 - (4) Waiver of the rule would injure third persons.
- (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 person 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 as 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 Sep 219.01(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 petitioner;
 - (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	Specific State or Federal Statutes Which the Rule Implements
Sep 201.01	RSA 541-A:16, I(b) intro.
Sep 202.01	RSA 541-A:16, I(b) intro.; RSA 541-A:7
Sep 202.02	RSA 541-A:16, I(b) intro.; RSA 541-A:7
Sep 203.01	RSA 541-A:7; RSA 541-A:16, I(b) intro.
Sep 203.02	RSA 541-A:7; RSA 541-A:16, I(b) intro.; RSA 541-A:30, II; RSA 541-A:31, I
Sep 204.01	RSA 541-A:16, I(b)(2)
Sep 204.02	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(k)
Sep 204.03	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(j)
Sep 205.01	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(f)
Sep 206.01	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(a)
Sep 206.02	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(a)
Sep 206.03	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(a)
Sep 207.01	RSA 541-A:16, I(b)(2)
Sep 208.01	RSA 541-A:16, I(b)(2); RSA 541-A:31, III
Sep 208.02	RSA 541-A:16, I(b)(2); RSA 541-A:30, III
Sep 208.03	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(b)
Sep 208.04	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(c); RSA 541-A:31, V
Sep 208.05	RSA 541-A:16, I(b)(2); RSA 541-A:31, VII and VII-a
Sep 209.01	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(g); RSA 541-A:32
Sep 209.02	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(g); RSA 541-A:32
Sep 209.03	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(g)
Sep 209.04	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(g)
Sep 210.01	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(h)
Sep 211.01	RSA 541-A:16, I(b)(2)
Sep 211.02	RSA 541-A:16, I(b)(2)
Sep 212.01	RSA 541-A:16, I(b)(2)
Sep 212.02	RSA 541-A:16, I(b)(2)
Sep 212.03	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(a)
Sep 213.01	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(d) and (e)
Sep 213.02	RSA 541-A:16, I(b)(2); RSA 541-A:32, I-IV

Rule	Specific State or Federal Statutes Which the Rule Implements
Sep 213.03	RSA 541-A:16, I(b)(2); RSA 541-A:33
Sep 213.04	RSA 541-A:16, I(b)(2); RSA 541-A:34
Sep 213.05	RSA 541-A:16, I(b)(2)
Sep 213.06	RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(i)
Sep 213.07	RSA 541-A:16, I(b)(2); RSA 541-A:35
Sep 213.08	RSA 541-A:16, I(b)(2)
Sep 214.01	RSA 541-A:16, I(b)(2); RSA 541-A:38
Sep 215.01	RSA 541-A:16, I(c); RSA 541-A:4
Sep 215.02	RSA 541-A:16, I(c); RSA 541-A:4
Sep 216.01	RSA 541-A:16, I(c); RSA 541-A:11, I
Sep 216.02	RSA 541-A:16, I(c); RSA 541-A:11, I
Sep 216.03	RSA 541-A:16, I(c); RSA 541-A:11, I
Sep 216.04	RSA 541-A:16, I(c); RSA 541-A:11, I
Sep 216.05	RSA 541-A:16, I(c); RSA 541-A:11, I
Sep 217.01	RSA 541-A:16, I(d)
Sep 217.02	RSA 541-A:16, I(d)
Sep 217.03	RSA 541-A:16, I(d); RSA 541-A:16, II
Sep 217.04	RSA 541-A:16, I(d)
Sep 217.05	RSA 541-A:16, I(d)
Sep 218.01	RSA 541-A:16, I(b) intro.; RSA 541-A:11, VII
Sep 218.02	RSA 541-A:16, I(b) intro.; RSA 541-A:11, VII
Sep 219.01	RSA 541-A:16, I(b) intro.; RSA 541-A:22, IV