

Change the Chapter heading for Alc 200 to read as follows:

CHAPTER Alc 200 RULES OF PRACTICE AND PROCEDURE

Repeal Alc 201, effective 3/14/09 (Document #9418), as follows:

~~[PART Alc 201 DEFINITIONS~~

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- ~~— Alc 201.01 Definitions.~~
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- ~~— (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.”~~
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- ~~— (b) “Appearance” means a written notification to the board that a party, an intervenor or the representative of a party or intervenor intends to actively participate in an adjudicative proceeding.~~
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- ~~— (c) “Board” means “board” as defined in RSA 330 C:2, III, namely, “the board of licensing for alcohol and other drug use professionals.”~~
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- ~~— (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.”~~
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- ~~— (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.”~~
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- ~~— (f) “Intervenor” means a person without the status of a party but participating in an adjudicative proceeding to the extent permitted by the presiding officer acting pursuant to RSA 541 A:32.~~
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- ~~— (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.~~
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- ~~— (h) “Order” means, pursuant to RSA 541 A:1, XI, the whole or part of the board’s final disposition of a matter other than a rule, but not including the board’s decision to initiate, postpone, investigate or process any matter, or to issue a complaint or citation.~~
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- ~~— (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.”~~
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- ~~— (j) “Person” means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the board.~~
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- ~~— (k) “Presiding officer” means that individual to whom the board has delegated in accordance with RSA 330 C:29, I the authority to preside over a proceeding, if any; otherwise it means the chair of the board.~~
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- ~~— (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.~~

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— (m) “Public comment hearing” means a proceeding held pursuant to RSA 541 A:11.
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— (n) “Record” means, in a contested case, the materials set forth in RSA 541 A:31, VI.
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— (o) “Rulemaking petition” means a petition made pursuant to RSA 541 A:4, I.]

Repeal Alc 202, effective 9/21/04 (Document #8170), as follows:

~~[PART Alc 202 DISPUTE RESOLUTION AND CONSTRUCTION OF RULES~~

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— ~~Alc 202.01 Principles of Dispute Resolution. The board shall resolve by agreement or by a decision all disputes about non criminal matters within the scope of RSA 330 C and the administrative rules implementing that statute.~~
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— ~~Alc 202.02 Construction of Rules. Parts Alc 204—Alc 213 shall be construed to secure the just, accurate and efficient resolution of all disputes.~~
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— ~~Alc 202.03 Right to A Hearing. Any person having a dispute with the board shall be entitled to a hearing of the dispute if:~~
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— ~~(a) The legal rights, duties or privileges of that person will be determined in the course of deciding the outcome of the dispute; and~~
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— ~~(b) Constitutional, statutory or case law requires the board to hold a hearing before determination of those rights, duties or privileges.]~~

Repeal Alc 203 through Alc 204.01, effective 3/14/09 (Document #9419), as follows:

~~[PART Alc 203 COMPLAINTS OF MISCONDUCT~~

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— ~~Alc 203.01 Procedures for Submission and Processing of Complaints of Misconduct by Licensees and Certificate Holders.~~
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— ~~(a) Persons wishing to complain of misconduct by a licensee or certificate holder shall submit to the board a written complaint including the information described in (b) below, using mail or any electronic means for which the board is able to maintain security.~~
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— ~~(b) The complaint shall include:~~
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~~(1) The name and address of the complainant;~~
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~~(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;~~
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~~(3) The date of the complaint;~~
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~~(4) The name of the licensee or certificate holder complained against;~~
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~~(5) If known, the business address and telephone number of the licensee or certificate holder complained against;~~

~~(6) A brief description of the treatment, action or event complained about;~~

~~(7) The beginning and ending dates of the treatment, action or event being complained about; and~~

~~(8) If desired by the complainant, copies, but not originals, of any documents which relate to the complaint.~~

~~— (c) The board shall investigate complaints of misconduct as directed by RSA 330 C:28, I through VII and in accordance with (d) below.~~

~~— (d) If in the course of its investigation the board receives, in response to a subpoena or otherwise, the medical record of any individual who is not the licensee or certificate holder under investigation or receives any other material protected as confidential by RSA 91 A:5, IV, the board shall protect the confidentiality of such record or material by:~~

~~(1) Attempting to obtain from the individual described in the record or other material a waiver of objection to the production of the record or other material;~~

~~(2) Giving the person or entity responding to the subpoena or request for the record or other material a written promise of non re disclosure of the confidential information;~~

~~(3) Redacting information which identifies the individual described in the record or other material, if such redaction does not negate its usefulness in the investigation; and~~

~~(4) Returning the record or other material when the board has completed its investigation or any adjudicative hearing to which the record or other material is germane.~~

~~PART 1c 204 CONDUCT OF HEARINGS BY PRESIDING OFFICER; WAIVER OF RULES; APPEARANCES~~

~~— 1c 204.01 Presiding Officer.~~

~~— (a) Hearings shall be conducted by a presiding officer designated by the board in accordance with RSA 330 C:29, I.~~

~~— (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 and serve subpoenas under the circumstances permitted by and complying with RSA 330 C:28, IV and V to compel the attendance of witnesses or the production of documents or things;~~

~~(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.]~~

Repeal Alc 204.01 through Alc 204.03, effective 9/21/04 (Document #8170), as follows:

~~[Alc 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.~~

~~— Alc 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 the particular requirement or procedure.]~~

Repeal Alc 204.04, effective 3/14/09 (Document #9420), as follows:

~~[Alc 204.04 Appearances.~~

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

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

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- ~~(2) Each intervenor or the intervenor's representative, if any.~~
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- ~~(b) Appearances shall be filed:~~
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- ~~(1) In the case of a hearing not related to the board's emergency suspension of a license, within 15 days of receipt of the notice required by Alc 208.01(a); and~~
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- ~~(2) In the case of a hearing related to the board's emergency suspension of a license, within 5 days of receipt of such notice.~~
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- ~~(c) The appearance shall contain the following information:~~
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- ~~(1) The docket number assigned by the board or a brief identification of the case;~~
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- ~~(2) The daytime address and telephone number of the person filing the appearance; and~~
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- ~~(3) If applicable, the daytime address and telephone number of the party or intervenor represented by the person filing the appearance.]~~

Repeal Alc 205 through Alc 207, effective 9/21/04 (Document #8170), as follows:

~~[PART Alc 205 TIME PERIODS~~

~~Alc 205.01 Computation of Time.~~

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- ~~(a) Unless otherwise specified, the unit of time for time periods referenced in this chapter shall be calendar days.~~
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- ~~(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.~~
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- ~~(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 Alc 206 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~Alc 206.01 Date of Issuance or Filing.~~

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- ~~(a) All written documents governed by this chapter shall be rebuttably presumed to have been issued on the date noted on the document.~~
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- ~~(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 stamp placed on the document by the board or its staff in the normal course of business.~~

~~Alc 206.02 Format of Documents.~~

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- ~~(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 Ale 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.~~

~~— Ale 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 by mailing them in accordance with (c) above and also by mailing them 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 Ale 207 MOTIONS AND OBJECTIONS~~

~~Alc 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 calendar 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.]~~

Repeal Alc 208.01 through Alc 208.02, effective 3/14/09 (Document #9418), as follows:

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

~~Alc 208.01 Commencement of Adjudicative Proceedings.~~

~~(a) An adjudicative proceeding shall be commenced by:~~

~~(1) The board's issuance of the notice described in (b) below:~~

~~a. To all parties and to the individual, if any, whose written complaint to the board about misconduct initiated the proceeding;~~

~~b. By certified mail, return receipt requested; and~~

~~c. At least 15 days before the hearing; and~~

~~(2) In the case of a proceeding relating to the board's emergency suspension of a license or certificate, the board's issuance of the notice specified in (b) below together with the order issued pursuant to Alc 208.02 (a).~~

~~(b) The notice of hearing shall contain:~~

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

~~(2) A statement of the nature of the hearing;~~

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- ~~(3) The time and place of the hearing and of any pre-hearing conference;~~
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- ~~(4) A statement of the legal authority under which the hearing is to be held;~~
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- ~~(5) A reference to the applicable statutes and rules;~~
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- ~~(6) A short and plain statement of the issues presented;~~
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- ~~(7) A statement that each party has the right to have representation by an attorney at the party's own expense;~~
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- ~~(8) The name of the presiding officer, if known;~~
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- ~~(9) In the case of a disciplinary hearing, a statement indicating whether the proceeding has been initiated by a written complaint about misconduct, on the board's own initiative or both;~~
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- ~~(10) In the case of a disciplinary hearing initiated by a written complaint about misconduct, a statement that the complainant has the right to petition to intervene in the proceeding;~~
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- ~~(11) In the case of a hearing not related to the board's emergency suspension of a license or certificate, the statement that:~~
 - ~~a. The licensee or certificate holder has the right to have the board provide a certified shorthand court reporter at the expense of the licensee or certificate holder; and~~
 - ~~b. The request for a certified shorthand court reporter shall be submitted in writing at least 10 days before the beginning of the hearing; and~~
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- ~~(12) In the case of a hearing related to the board's emergency suspension of a license or certificate pursuant to Ale 208.02, the statement that the board shall provide a certified shorthand court reporter at the board's expense.~~

Source: #8170, eff 9-21-04; ss by #9418, eff 3-14-09

~~— Ale 208.02 Procedure for Emergency Suspension of Licenses and Certificates. Pursuant to RSA 541 A:30, III, the board shall use the following procedures when suspending licenses and certificates on an emergency basis:~~

~~— (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 or certificate 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 suspension;~~

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

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

Repeal Alc 208.03 and Alc 208.04, effective 9/21/04 (Document #8170), as follows:

~~[Alc 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) 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.~~

~~— Alc 208.04 Pre hearing Conference.~~

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

~~— (b) A pre hearing 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.]~~

Repeal Alc 208.05, effective 3/14/09 (Document #8170), as follows:

~~[Alc 208.05 Recording the Hearing.~~

~~— (a) Except in the circumstances described in (b) below, the presiding officer shall record the hearing by electronic recording or any other method that will provide a verbatim record.~~

~~— (b) A hearing on the immediate suspension of a license or certificate pursuant to RSA 541-A:30, III shall be recorded by a certified shorthand court reporter provided by the board.~~

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

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

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

Repeal Alc 209 and Alc 212.02, effective 9/21/04 (Document #8170), as follows:

~~[PART Alc 209 INTERVENTION; ROLES OF COMPLAINANTS AND BOARD STAFF~~

~~Alc 209.01 Intervention Procedure.~~

~~(a) Petitions for intervention in a hearing shall:~~

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

~~(2) Be submitted in writing to the presiding officer.~~

~~— (b) A copy of a petition submitted pursuant to (a) above shall be mailed to the board and to all persons identified in the notice commencing the adjudicative proceeding.~~

~~— (c) A petition for intervention shall be granted by the presiding officer if:~~

~~(1) The petitioner complied with (a) and (b) above at least 3 days before the hearing and the presiding officer determines that:~~

~~a. 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~~

~~b. The intervention sought would not impair the interests of justice and the orderly and prompt conduct of the proceedings; or~~

~~(2) The petitioner complied with (a) and (b) above at any time and 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.~~

~~Alc 209.02 Effect of Intervention and Rights of an Intervenor.~~

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

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~~— (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.~~

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

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~~— Ale 209.03 Role of Complainants in Disciplinary Hearings. A complainant complying with Ale 203.01 shall have no role in the disciplinary hearing of the licensee complained against other than that of witness unless the complainant petitions for, and is granted, the right to intervene.~~

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~~— Ale 209.04 Role of Board Staff in Hearings. Unless called as witnesses, board staff shall have no role in hearings.~~

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

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~~— Ale 210.01 Continuances.~~

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~~— (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.~~

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~~— (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.~~

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~~— (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.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~— (b) When a dispute arises concerning a request for the voluntary production of information or documents, any party or intervenor may file a motion under Ale 211.02 to compel the production of the requested information or documents.~~

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

~~— (a) Any party or intervenor may make a motion seeking an order for compliance with an information or document request. The motion shall be filed at least 30 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of the hearing if such notice is issued less than 30 days in advance of the hearing.~~

~~— (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) The party or intervenor challenging the information or document request may object to the motion to compel.~~

~~— (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.~~

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

~~— (a) A list of all witnesses to be called at the hearing containing the names of the witnesses, their addresses and their telephone numbers;~~

~~— (b) Brief summaries of the testimony of the witnesses to be called;~~

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

~~— (d) A copy of each document to be offered as evidence at the hearing; and~~

~~— (e) An offer to allow the inspection of non documentary exhibits to be offered as evidence at the hearing at times and places of convenience to the parties and intervenors.~~

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~~PART Ale 212 HEARING PROCEDURE~~

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

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~~Alc 212.02 Order of Testimony; Cross Examination.~~

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~~(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.~~

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

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~~(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~~

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~~(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.~~

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~~(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.~~

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

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~~(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.~~

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

Repeal Alc 212.03 and Alc 212.04, effective 3/14/09 (Document #9418), as follows:

~~[Alc 212.03 Evidence.~~

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

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

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~~(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.~~

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~~(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.~~

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~~(e) The presiding officer shall exclude from evidence testimony and documents about the medical history or status of any individual who is not the subject of the hearing, and all other testimony and documents about matters protected as confidential by RSA 91 A:5, IV, unless the presiding officer determines that:~~

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~~(1) Their receipt into evidence is necessary for the determination of the issues;~~

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~~(2) Their confidentiality can be protected by one or more of the following methods:~~

~~a. With respect to a document:~~

- ~~1. Ordering redaction of personally identifying information in the document;~~
- ~~2. Obtaining from the individual described in the document a waiver of objection to its admission into evidence; and~~
- ~~3. If the hearing is attended solely by hearing participants, admitting the document into evidence and ordering the hearing participants to sign non-re-disclosure agreements with respect to the confidential information contained in it; and~~

~~b. With respect to testimony:~~

- ~~1. Before receiving the testimony, ordering that those intending to testify not include personally identifying information;~~
- ~~2. Before receiving the testimony, obtaining from the individual whose confidential information will be testified about a waiver of objection to the testimony; and~~
- ~~3. Closing part of the hearing to everyone except the person testifying, the individual who is the subject of the hearing and anyone who has entered an appearance for that individual, and ordering the participants in the closed part of the hearing to sign non-re-disclosure agreements with respect to the confidential information; and~~

~~(3) Due process of law will not be denied to any party by the exclusion of the testimony and documents or by their protection as set forth in (2) above.~~

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

~~Alc 212.04 Proposed Findings of Fact and Conclusions of Law.~~

~~(a) Any party or intervenor may submit proposed findings of fact and conclusions 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 Alc 212.07(d)(3) to submit findings of fact and rulings of law to the board; or~~

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

Repeal Alc 212.05 and Alc 212.06, effective 9/21/04 (Document #8170), as follows:

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

~~— Alc 212.06 Reopening the Record.~~

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

~~— (b) A motion pursuant to (a) above shall be granted if there no objection from any other party or intervenor and:~~

~~(1) 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~~

~~(2) The presiding officer determines that the evidence or claim of law is relevant, material and non-duplicative and its inclusion in the record is necessary to a full and fair consideration of the issues to be decided.~~

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

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

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

Repeal Alc 212.07, effective 3/14/09 (Document #9418), as follows:

~~[Alc 212.07 Disposition.~~

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

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

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

~~(3) A hearing held pursuant to (c)(2) below.~~

~~— (b) The board's order or decision:~~

-
- (1) ~~Shall:~~
-
- a. ~~Be in writing and dated; and~~
-
- b. ~~Include findings of fact and rulings of law; and~~
-
- (2) ~~Shall not include references to information exempt from disclosure under RSA 91-A:5, IV.~~
-
- ~~(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:~~
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- (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 (d) above 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 archives and records management of the department of state sets a different retention period.]~~

Repeal Alc 212.08, effective 9/21/04 (Document #8170), as follows:

~~[Alc 212.08 Rehearing.~~

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- ~~(a) Within 30 calendar days of a decision or order 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:~~
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- (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.~~
-
- ~~(b) The board shall mail a copy of the motion for rehearing to all parties and intervenors.~~
-
- ~~(c) An objection to a motion for rehearing shall be submitted within 20 calendar days of the date of submission of the motion.~~

~~— (d) Within 10 calendar days of submission of the motion for rehearing, the board, if it has received either an objection or a notice of no objection, shall employ the standards in (g) below to grant or deny the motion for rehearing.~~

~~— (e) Within 10 calendar days of submission of the motion for rehearing, if it has not received an objection or notice of no objection, the board shall, pending the denial of the motion for rehearing or the completion of the rehearing, suspend the decision or order complained of.~~

~~— (f) When the time specified in (e) above for submitting an objection has expired, the board shall employ the standards in (g) below to either grant or deny the motion for rehearing.~~

~~— (g) 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) Failed substantially to comply with this chapter.]~~

Repeal Alc 213, effective 3/14/09 (Document #9419), as follows:

~~[PART Alc 213 SETTLEMENTS~~

~~Alc 213.01 Settlement of Some or All Issues in a Dispute.~~

~~(a) Any licensee or certificate holder who has a disciplinary or other dispute with the board shall have the opportunity at any time to reach an agreement to settle some or all of the issues if there are no material facts in dispute.~~

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

~~(1) In writing;~~

~~(2) Signed by the licensee or certificate holder; and~~

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

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

Repeal Alc 214 and Alc 215.04, effective 9/21/04 (Document #8170), as follows:

~~[PART Alc 214 RULEMAKING~~

~~Alc 214.01 Petitions for Rulemaking.~~

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

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

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~~(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;~~

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~~(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;~~

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~~(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~~

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

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

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~~— (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.~~

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

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

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

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

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

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

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

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

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

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

~~PART Alc 215 PUBLIC COMMENT HEARINGS~~

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

~~— Alc 215.02 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 Alc 215.03.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Repeal Alc 215.05 through Alc 217, effective 3/14/09 (Document #9419), as follows:

~~[Ale 215.05 Conduct of Rulemaking Public Comment Hearings.~~

- ~~— (a) Rulemaking public comment hearings shall be attended by a quorum of the board.~~
- ~~— (b) Rulemaking 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 to Ale 215.03 and Ale 215.04;~~
 - ~~(6) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;~~
 - ~~(7) If necessary, postpone or move the hearing; and~~
 - ~~(8) Adjourn or continue the hearing.~~
- ~~— (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 Alc 216 DECLARATORY RULINGS~~

~~Alc 216.01 Requests for Declaratory Rulings.~~

~~(a) Any person directly affected by RSA 330-C or by any rule of the board may request a declaratory ruling concerning the applicability of a provision of RSA 330-C or a rule of the board to a specific set of circumstances.~~

~~(b) The request shall:~~

~~(1) Be addressed to the board and signed by the person making the request;~~

~~(2) Describe the specific set of circumstances to which the law inquired about might be applicable;~~

~~(3) Quote the law inquired about; and~~

~~(4) Explain why its applicability is unclear to the described specific set of circumstances.~~

~~Alc 216.02 Issuance of Declaratory Rulings.~~

~~(a) The board shall respond within 120 days to a request for a declaratory ruling in a letter signed by a board member stating:~~

~~(1) That the law inquired about applies to the specific set of circumstances described and how it applies;~~

~~(2) That the law inquired about does not apply to the specific set of circumstances described and why it does not; or~~

~~(3) That the board does not have jurisdiction over the law inquired about.~~

~~(b) A declaratory ruling shall have no value as a precedent in any case heard by the board, including any case involving the person requesting the declaratory ruling or involving circumstances like those described in the request.~~

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

Repeal Alc 217, effective 9/21/04 (Document #8170) and expired 9/21/12, as follows:

~~[PART Alc 217 EXPLANATION OF ADOPTED RULES~~

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

- ~~— (a) The name and address of the person 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.~~
- ~~— Alc 217.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Alc 217.01, provide a written response which:~~
 - ~~— (a) Concisely states the meaning of the rule adopted;~~
 - ~~— (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and~~
 - ~~— (c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.]~~

Adopt Alc 201.01 to read as follows:

Alc 201.01 Applicability of Plc 200. The Plc 200 rules shall govern with regards to all procedures for:

- (a) Adjudicatory proceedings;
- (b) Rulemaking submissions, considerations, and dispositions of rule making petitions;
- (c) Public comment hearings;
- (d) Declaratory rulings;
- (e) All statements of policy and interpretation;
- (f) Explanation of adopted rules; and
- (g) Voluntary surrender of licenses.

Rule	Statute
Alc 201 (repeal)	RSA 541-A:7
Alc 202.01 and Alc 202.02 (repeal)	RSA 541-A:16, I(b)(2)
Alc 202.03 (repeal)	RSA 541-A:31, I
Alc 203.01 (repeal)	RSA 330-C:28, I. and III.; RSA 541-A:16, I(b)
Alc 204.01 (repeal)	RSA 541-A:16, I(b)(2)
Alc 204.02 (repeal)	RSA 541-A:30-a, III(k)
Alc 204.03 (repeal)	RSA 541-A:30-a, III(j)
Alc 204.04 (repeal)	RSA 541-A:30-a, III(b)
Alc 205 (repeal)	RSA 541-A:30-a, III(f)
Alc 206 (repeal)	RSA 541-A:30-a, III(a)
Alc 207 (repeal)	RSA 541-A:16, I(b)(2)

Alc 201.01 (repeal)	RSA 541-A:7
Alc 208.01(a)(1) (repeal)	RSA 330-C: 29, II; RSA 541-A:16, I(b)(2); RSA 541-A:31
Alc 208.01(a)(2) (repeal)	RSA 541-A:16, I(b)(2); RSA 541-A:31
Alc 208.01(b) (repeal)	RSA 330-C: 29, II; RSA 541-A:16, I(b)(2); RSA 541-A:31
Alc 208.02 (repeal)	RSA 541-A:30, III
Alc 208.03 (repeal)	RSA 541-A:30-a, III(b)
Alc 208.04 (repeal)	RSA 541-A:31, V(b), (c) and (d); RSA 541-A:16, I(b)(2)
Alc 208.05(a) and (c) (repeal)	RSA 541-A:31, VII
Alc 208.05(b) (repeal)	RSA 541-A:30, III
Alc 208.05(a) and (c) (repeal)	RSA 541-A:31, VII
Alc 209.01 and 209.02 (repeal)	RSA 541-A:32, I, II and III; RSA 541-A:16, I(b)(2)
Alc 209.03 and Alc 209.04 (repeal)	RSA 541-A:16, I(b)(2)
Alc 210.01 (repeal)	RSA 541-A:30-a, III(h)
Alc 210.02 (repeal)	RSA 541-A:16, I(b)(2)
Alc 211 (repeal)	RSA 541-A:30-a, III(c)
Alc 212.01 (repeal)	RSA 541-A:30-a, III(d) and (e)
Alc 212.02 (repeal)	RSA 541-A:31, IV
Alc 212.03(a) (repeal)	RSA 541-A:33
Alc 212.03(b) through (f) (repeal)	RSA 541-A:16, I(b)(2)
Alc 212.04 and 212.05 (repeal)	RSA 541-A:16, I(b)(2)
Alc 212.06 (repeal)	RSA 541-A:30-a, III(i)
Alc 212.07(a) (repeal)	RSA 541-A:16, I(b)(2)
Alc 212.07(b)(1) (repeal)	RSA 541-A:35
Alc 212.07(b)(2) and (c) through (e) (repeal)	RSA 541-A:16, I(b)(2)
Alc 212.07(f) (repeal)	RSA 541-A:30-a, III(l)
Alc 212.08 (repeal)	RSA 541-A:16, I(b)(2)
Alc 213.01(a) (repeal)	RSA 330-C:28, VI
Alc 213.01(b) and (c) (repeal)	RSA 541-A:16, I(b)
Alc 214 (repeal)	RSA 541-A:4; RSA 541-A:16, I(c)
Alc 215 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Alc 215.05 (repeal)	RSA 541-A:11; RSA 541-A:16, I(b)(3)
Alc 216 (repeal)	RSA 541-A:16, I(d)
Alc 203.01 (repeal)	RSA 330-C:13, II; RSA 541-A:16, I(b)
Alc 213.01 (repeal)	RSA 541-A:31, V(a); RSA 541-A:38; RSA 541-A:16, I(b)
Alc 217.01 (repeal)	RSA 541-A:11, VII
Alc 217.02 (repeal)	RSA 541-A:11, VII
Alc 201.01	RSA 310:6, II