

**Change the chapter heading for Den 200 to read as follows:**

Chapter Den 200 **RULES OF PRACTICE AND PROCEDURE**

**Repeal Den 201 through Den 206.02, effective 5/17/07 (Document #8884-A), as follows:**

~~[PART Den 201 PURPOSE AND SCOPE~~

~~— Den 201.01 Purpose. The board shall conduct various proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction, including decisions on applications for licensure and complaints filed against licensees.~~

~~— Den 201.02 Scope. These rules shall be construed to secure the just, efficient and accurate resolution of all board proceedings.~~

~~PART Den 202 DEFINITIONS~~

~~— Den 202.01 Definitions. Except where the context makes another meaning manifest, the following words have the meanings indicated when used in this chapter:~~

~~— (a) “Adjudicative proceeding” means the procedure to be followed in contested cases, as set forth in RSA 541 A:31 through RSA 541 A:36.~~

~~— (b) “Complaint” means a written allegation of professional misconduct against a licensee of the board.~~

~~— (c) “Data” means all information other than argument, including oral or written descriptions, reports, maps, charts, drawings, photographs, audio or video recordings, computer programs, or computer printouts.~~

~~— (d) “Disciplinary proceeding” means an adjudicatory process to determine what discipline is appropriate for violating RSA 317 A or its implementing rules.~~

~~— (e) “File” means to place a document in the actual possession of the board.~~

~~— (f) “Hearing” means the receipt and consideration by the board of data or argument, or both, by methods which are appropriate to the nature and scope of the issues being decided by the board.~~

~~— (g) “Hearing counsel” means an individual appointed by the Board under Den 208.15(d) or Den 212.03 to prosecute or investigate misconduct allegations in the public interest.~~

~~— (h) “Investigation” means a formal or informal search by the board for data concerning matters within its jurisdiction, the result of which is other than a final determination of a person’s rights, duties or privileges.~~

~~— (i) “Motion” means any request by a party to an existing proceeding for an order or relief relating to that proceeding.~~

~~— (j) “Order” means a document issued by the board.~~

- ~~(1) Establishing procedures to be followed in an adjudicative or nonadjudicative proceeding;~~
- ~~(2) Granting or denying a petition or motion;~~
- ~~(3) Requiring a person to do, or to abstain from doing, something; or~~
- ~~(4) Determining a person's rights to a license or other privilege established by RSA 317-A or the rules of this chapter.~~
- ~~— (k) “Petition” means an initial request to the board seeking action or relief, but does not include a license application, a complaint against a licensee, or a motion.~~
- ~~— (l) “Presiding officer” means the board member or other individual to whom the board has delegated authority to preside over some or all aspects of an adjudicative or other proceeding.~~
- ~~— (m) “Proposed decision” means an initial or recommended decision made by a presiding officer pursuant to Den 209.04 which is subject to review by the entire board.~~
- ~~— (n) “Rulemaking” means the procedures for formulating agency rules set forth in RSA 541-A:3.~~

#### ~~PART Den 203 COMPLIANCE WITH PROCEDURAL RULES OR ORDERS~~

- ~~— Den 203.01 Failure to Comply with Procedural Rules or Orders.~~
- ~~— (a) Failure to comply with the rules of this chapter shall be grounds for:~~
  - ~~(1) Refusing to accept or admit a noncompliant document for filing or refusing to consider a noncompliant oral petition or motion; or~~
  - ~~(2) Accepting or admitting a noncompliant application, petition, motion, or exhibit on the condition that conformity with specific procedural requirements be achieved by a specified date.~~
- ~~— (b) When a noncompliant pleading or other tendered information is not accepted or admitted by the board, or when conditions for the acceptance or admission of noncompliant information are not met, the board shall make a decision on the pending matter without considering the noncompliant information, unless the board notifies the parties that it has waived the rule in accordance with Den 203.02.~~
- ~~— Den 203.02 Waiver or Suspension of Procedural Rules Or Orders. The board, upon its own initiative or upon the motion of any interested person, shall suspend or waive any procedural requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues properly pending before the board than would adherence to a particular procedural rule or requirement. A motion for waiver or suspension of a procedural rule or order shall fully set forth the reasons for the requested relief.~~

#### ~~PART Den 204 APPEARANCES BEFORE THE AGENCY~~

- ~~— Den 204.01 Representatives.~~
- ~~— (a) A person appearing before the board shall represent or be represented by a person who:~~

~~(1) Is an attorney holding a current and active New Hampshire license and has filed a written appearance with the board containing his or her business address and telephone number; or~~

~~(2) Is not a New Hampshire licensed attorney and has not been convicted of a felony under the law of any state.~~

~~— (b) Motions for leave to appear before the board shall:~~

~~(1) Briefly describe the proposed representative's professional and character qualifications to ensure the representation does not constitute the unauthorized practice of law; and~~

~~(2) Provide the proposed representative's daytime address and telephone number; and~~

~~(3) Be signed by both the proposed representative and the party who would be represented.~~

~~— (c) Corporations, partnerships and other legal entities which are not natural persons shall be represented by:~~

~~(1) An attorney licensed in New Hampshire; or~~

~~(2) An officer, director, or managing partner with express and unqualified written authority to act on behalf of the entity concerning the matter in question who has not been convicted of a felony in any state.~~

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

~~— (e) The board shall, after notice and opportunity for hearing, prohibit or restrict an individual from acting as a representative upon a finding that the individual has engaged in conduct relating to representation before the board which would be sanctioned by a court if committed by an attorney appearing before the court.~~

#### ~~PART Den 205 TIME PERIODS~~

~~— Den 205.01 Computation of Time. Any time period specified in this chapter shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or state legal holiday. When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.~~

~~— Den 205.02 Change in Allowed Times. Except where a time period is fixed by statute, the board shall, upon motion or upon its own initiative, enlarge or shorten the time provided for the filing of any document, or advance or postpone the time set for any oral hearing, prehearing conference, or other activity, upon a finding that:~~

~~— (a) The moving party did not comply with the time period due to accident, mistake, or misfortune; and~~

~~— (b) The probable injury to the moving party outweighs any detriment likely to be suffered by any other party or the public interest responsibilities of the board.~~

~~— Den 205.03 Limitations. A motion to change time shall not be filed within 3 business days of the event in question.~~

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~~PART Den 206 FILING AND SERVICE OF DOCUMENTS~~

~~— Den 206.01 Filing Documents with the Board.~~

~~— (a) A document shall be considered filed when it is actually received at the board's office in Concord and conforms to the requirements of this chapter.~~

~~— (b) A document tendered for filing which is patently and facially in violation of the board's rules shall not be accepted for filing. Such submissions shall be returned to the sender without prejudice to subsequent acceptance if the deficiencies are corrected and the document is refiled within any applicable time period.~~

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

~~— (d) All petitions, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed with an original and one copy unless the board directs otherwise.~~

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

~~(1) Transmittal letters, requests for public information, or other routine correspondence not directed at formal board action;~~

~~(2) License applications; and~~

~~(3) Complaints against licensees.~~

~~— (f) Failure to furnish the required number of copies shall result in a tendered document being returned as unacceptable for filing.~~

~~— Den 206.02 Subscription and Veracity of Documents.~~

~~— (a) All complaints, petitions, motions, and replies filed with the board shall be signed and dated by the proponent of the document or, if the party appears by a representative, by the representative.~~

~~— (b) The signature on a document filed with the board shall constitute a certification that:~~

~~(1) The signer has read the document;~~

~~(2) The signer is authorized to file it;~~

~~(3) To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and~~

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

~~— (c) A willful violation of the representations contained in (b), above, shall, to the extent consistent with justice and the statutes administered by the board, be grounds for entering an order adverse to the party committing the violation.]~~

**Repeal Den 206.03, effective 12/9/15 (Document #10990), as follows:**

~~[Den 206.03 Service of Documents.~~

~~— (a) Complaints against licensees shall be filed with the board without service upon the licensee against whom the allegations are made.~~

~~— (b) Applications, petitions for rulemaking and petitions for declaratory rulings shall be filed with the board without service upon other persons. Provided, however, that when the relief sought by a petition for rulemaking or a petition for declaratory ruling would clearly and directly affect the interests of a person or group of persons, the board shall, by order, require service upon the affected person or persons.~~

~~— (c) All objections, motions, replies, memoranda, exhibits, or other documents filed in connection with a request for board action shall be served by the proponent upon all interested parties by:~~

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

~~(2) Delivering a copy of the document in hand on or before the date it is filed with the board; or~~

~~(3) In addition to one of the above, when appropriate for the efficiency of the process, the board shall order that service be rendered electronically, by facsimile or other expedited means.~~

~~— (d) Notices, orders, decisions or other documents issued by the board in connection with requests for board action shall be served by the board upon all interested parties by either:~~

~~(1) Depositing a copy of the document, first class postage prepaid, in the United States mail, addressed to the last address given to the board by the party being served;~~

~~(2) Delivering a copy of the document in hand to the party; or~~

~~(3) With the consent of the party, providing a copy of the document electronically.~~

~~— (e) When a party has appeared by a representative, service shall be upon the representative. Provided, however, that the board shall order additional service upon a finding that such service would facilitate the fair and efficient conduct of the proceeding.~~

~~— (f) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, and required to be served upon the parties to an adjudicative proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.]~~

**Repeal Den 207.01, effective 3/10/09 (Document #9408-A), cited as follows:**

~~[PART Den 207 PLEADINGS, COMPLAINTS AND MOTIONS~~

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~~— Den 207.01 Pleadings.~~

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~~— (a) The only pleadings permitted shall be petitions and motions. Complaints against licensees and applications for licenses shall not be considered pleadings.~~

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~~— (b) Petitions shall contain:~~

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~~- (1) The name and address of the petitioner;~~

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~~- (2) The name and address of the petitioner's representative, if any;~~

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~~- (3) A concise statement of the facts which warrant the relief requested from the board;~~

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~~- (4) The description of the action which the petitioner wishes the board to take;~~

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~~- (5) A citation to any statutes, rules, orders, or other authority which entitles the petition to the relief requested; and~~

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~~- (6) The signature and date required by Den 206.02(a).]~~

**Repeal Den 207.02, effective 10/7/14 (Document #8884-A), as follows:**

~~[Den 207.02 Complaints of Licensee Misconduct.~~

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~~— (a) Complaints alleging misconduct by licensees in violation of RSA 317-A:17 or Den 500 shall be in writing and filed at the board's offices in Concord, New Hampshire.~~

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~~— (b) A complaint shall contain the following information:~~

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~~- (1) The name and address of the complainant;~~

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~~- (2) The name and business address of the licensee against whom the complaint is directed; and~~

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~~- (3) The specific facts and circumstances which are believed to constitute professional misconduct.~~

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~~— (c) A complaint shall be treated as an ex parte request for the initiation of disciplinary proceedings by the board and shall be a confidential document subject to public disclosure only as provided by Den 212.04 (f).~~

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~~— (d) A complaint shall be dismissed at any time upon a determination that it:~~

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~~- (1) Fails to state a cause of action;~~

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~~- (2) Alleges a time barred cause of action; or~~

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- ~~(3) The complainant has unreasonably failed to respond to a request for further information or has otherwise failed to cooperate with a board investigation or hearing.~~
- ~~— (e) The dismissal or withdrawal of a complaint shall not preclude the board from independently pursuing some or all of the allegations of misconduct alleged by the complainant.~~
- ~~— (f) Replies to complaints shall contain:~~
- ~~(1) The name and address of the respondent;~~
- ~~(2) The name and address of the representative of the respondent, if any;~~
- ~~(3) A statement admitting or denying each fact alleged in the complaint pursuant to Den 205.01(b)(3);~~
- ~~(4) A concise statement of any additional or different facts which warrant the board acting in the manner requested by the respondent;~~
- ~~(5) A citation to any statutes, rules, orders or other authority, not identified in the complaint, having a bearing upon the subject matter of the complaint;~~
- ~~(6) A description of the action which the respondent wishes the board to take; and~~
- ~~(7) The signature and date required by Den 206.02 (a).~~
- ~~— (g) Replies shall be filed within 20 days from the date the complaint was received by the respondent unless otherwise ordered by the board.~~
- ~~— (h) Any fact contained in the complaint which is not denied in the reply, shall be deemed admitted by the respondent. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The complainant shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.~~
- ~~— (i) A dental record submitted with a reply to a complaint shall be:~~
- ~~(1) A copy of the original record~~
- ~~(2) Accompanied by:~~
- ~~a. A typed rendition of the handwritten parts of the original record; and~~
- ~~b. Dated radiographs of diagnostic quality, if part of the original record.~~
- ~~— (j) At any stage of the board's evaluation of the allegations in a complaint, the board shall, subject to (k) below, and with the consent of the licensee, issue a final settlement decree or consent order which imposes discipline upon the licensee and terminates further disciplinary action in whole or in part.~~
- ~~— (k) Action under (j) above, shall not be taken unless:~~
- ~~(1) The complainant receives notice and an opportunity to submit written comments concerning the proposed settlement or consent decree;~~

- ~~(2) There are no material facts in dispute between the licensee and the complainant;~~
- ~~(3) The complainant's view of the facts, if true, would not, in the discretion of the board, result in the imposition of a greater disciplinary sanction against the licensee than that imposed by the proposed settlement or consent decree; and~~
- ~~(4) The board determines that the interests of justice do not require a hearing.~~
- ~~(l) At any time during the board's evaluation of the allegations in a complaint, the board shall elect to defer further disciplinary action if the licensee and the complainant participate in confidential mediation on a timely and good faith basis with a qualified mediator who is not affiliated with the board.~~
- ~~(m) When mediation is conducted under (l), above, the mediator shall attempt informal resolution of the dispute between the complainant and the licensee, and, within 60 days from the issuance of a mediation order, submit a written report to the board which contains either:~~
  - ~~(1) A written settlement agreed to by the parties; or~~
  - ~~(2) A report of the circumstances which appear to prevent settlement of the issues between the parties.~~
- ~~(n) Upon receiving the mediator's report, the board shall discontinue its investigation or proceed with adjudicatory proceedings.~~
- ~~(o) Information concerning the substantive misconduct issues alleged by the complainant which either party discloses to the mediator during good faith mediation shall be accorded the same privilege available to settlement negotiations under NH Rule of Evidence 408 notwithstanding Den 208.09.~~
- ~~(p) Unless previously dismissed or settled, a complaint shall be granted, denied, or deferred, in whole or in part, by the board based upon the board's confidential evaluation of the information available to it and the value of potential disciplinary sanctions.~~
- ~~(q) A complaint which raises issues of professional misconduct which might warrant disciplinary sanctions shall be granted by incorporating those issues into a notice of hearing which commences an adjudicatory hearing pursuant to Den 201.01. In which case, disciplinary action against the licensee shall be taken or not taken based upon the board's evaluation of the evidence of professional misconduct submitted during the hearing.~~
- ~~(r) A complainant shall not be a party to a disciplinary hearing, but may petition the board to intervene. When some or all of the allegations in a complaint are the subject of a disciplinary hearing, the notice of hearing shall inform the complainant that he or she may intervene in the proceeding subject to appropriate conditions or shall include findings demonstrating that the complainant has forfeited this right by failing to cooperate with previous board orders or investigatory requests.~~
- ~~(s) Anonymous complaints shall be pursued by the board pursuant to RSA 317-A:18 I and III, when it believes:~~
  - ~~(1) The allegations have merit;~~
  - ~~(2) The public welfare may be at risk; and~~



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- ~~(3) The complainant has legitimate reasons for acting anonymously.~~
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- ~~(t) Pursuant to Den 203.02, the board shall waive or suspend procedural rules in Den 207.02 (s) that require the name and address of the complainant.~~
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- ~~(u) Complaints shall be retained in the board's files as follows:~~
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- ~~(1) Complaints which result in discipline shall be retained in perpetuity; and~~
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- ~~(2) All other complaints shall be retained for 10 years, or longer if they are part of a developing pattern of behavior that might constitute professional misconduct pursuant to RSA 317-A:17 II(d).]~~

**Repeal Den 207.03 and Den 207.04, effective 5/17/07 (Document #8884-A), as follows:**

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- ~~[Den 207.03 Motions and Objections Thereto:~~
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- ~~(a) Motions and objections shall be in writing unless the nature of the relief requested requires oral presentation upon short notice.~~
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- ~~(b) Motions shall state clearly and concisely:~~
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- ~~(1) The purpose of the motion;~~
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- ~~(2) The relief sought by the motion;~~
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- ~~(3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion;~~
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- ~~(4) The facts claimed to constitute grounds for the relief requested by the motion; and~~
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- ~~(5) The signature and date required by Den 206.02(a).~~
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- ~~(c) Objections to motions shall state clearly and concisely:~~
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- ~~(1) The defense of the party filing the objection;~~
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- ~~(2) The action which the party filing the objection wishes the board to take on the motion;~~
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- ~~(3) The statutes, rules, orders, or other authority relief upon in defense of the motion; and~~
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- ~~(4) Any facts which are additional to or different from the facts stated in the motion; and~~
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- ~~(5) The signature and date required by Den 206.02(a).~~
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- ~~(d) An objection shall specifically admit or deny each fact contained in the motion. Failure to deny a fact shall constitute the admission of that fact for the purposes of the motion. In the event a party filing an objection lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.~~
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~~— (e) Unless otherwise ordered by the board, motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.~~

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~~— (f) Unless otherwise ordered by the board, objections to motions shall be filed within 5 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.~~

~~Den 207.04 Suspension Pending Completion of Disciplinary Proceedings. Whenever in the judgment of the board the public health and safety shall so require, the board shall suspend or restrict the license of any licensee subject to proceedings before the board pending the completion of the disciplinary hearing. No order or suspension made under this section shall be effective for more than 60 days and the board shall expedite all disciplinary proceedings upon such a suspension. Upon any such suspension, the board shall provide a written basis for the finding of the suspension and the licensee shall be entitled to be heard before the board to challenge any such suspension.]~~

**Repeal Den 207.05, effective 3/7/15 (Document #10793-B), as follows:**

~~[Den 207.05 Voluntary Surrender by Licensees Under Disciplinary Investigation. A licensee who is the subject of a complaint or an investigation into the allegations of misconduct on his or her part may, as part of a consent decree resolving the issues of the complaint or investigation, voluntarily surrender his/her license by delivering it to the board and stating in writing that:~~

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~~— (a) The surrender is freely rendered;~~

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~~— (b) The licensee is not being subjected to coercion or duress;~~

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~~— (c) The licensee is fully aware of the implications of surrendering his or her license;~~

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~~— (d) The licensee is aware that there is presently pending an investigation, the nature of which the licensee shall specifically set forth; and~~

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~~— (e) The licensee acknowledges that the material facts upon which the complaint is predicated are true.]~~

**Repeal Den 207.06 through Den 208.02, effective 5/17/07 (Document #8884-A), as follows:**

~~[Den 207.06 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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~~PART Den 208 ADJUDICATIVE PROCEEDINGS~~

~~— Den 208.01 Applicability. This part shall govern all proceedings conducted by the board except rulemaking and nonadjudicative investigations.~~

~~— Den 208.02 Commencement of Proceedings.~~

~~— (a) The board shall commence an adjudicative proceeding by issuing a notice to the parties at least 15 days before the first scheduled hearing date or first prehearing conference.~~

~~— (b) The notice commencing an adjudicative proceeding shall:~~

~~(1) Identify the parties to the proceeding as of the date of the order and specify a deadline for the submission of petitions to intervene;~~

~~(2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;~~

~~(3) Specify the legislative authority for the proposed action, and identify any applicable board rules;~~

~~(4) Specify the date by which, and the address where, appearances or motions by representatives shall be filed;~~

~~(5) Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;~~

~~(6) Identify the presiding officer for the proceeding, if other than the chairman of the board;~~

~~(7) Identify any special procedures to be followed;~~

~~(8) Identify any confidentiality requirements applicable to the proceeding;~~

~~(9) Contain such other information or attachments as are warranted by the circumstances of the case, including, but not limited to, orders consolidating or severing issues in the proceeding with other proceedings, and orders directing the production or exchange of documents;~~

~~(10) Have a statement that each party has the right to have an attorney present to represent the party at the party's expense; and~~

~~(11) For proceedings before an agency responsible for occupational licensing as provided in paragraph VII a, have a statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceedings.]~~

**Repeal Den 208.03, effective 12/9/15 (Document #10990), as follows:**

~~[Den 208.03 Docketing, Service of Notice, Public Notice.~~

~~— (a) The board shall assign each adjudicative proceeding a docket number, and serve the hearing notice upon all parties to the proceeding and the board's legal counsel in the civil bureau, department of justice. The hearing notice shall be served upon the respondent, and the complainant, if any, by means of certified mail.~~

~~— (b) Service of all subsequent orders, decisions and notices issued by the board, including any amendments to the hearing notice, shall be served upon the parties, including any intervenors, by regular mail or, with the consent of the party or intervenor, by electronic means.~~

~~— (c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office except to the extent that confidentiality has been otherwise provided for by law.]~~

**Repeal Den 208.04 through Den 208.14, effective 5/17/07 (Document #8884-A), as follows:**

~~[Den 208.04 Intervention.~~

~~— (a) Petitions for intervention shall state with particularity:~~

~~(1) The petitioner's interest in the subject matter of the hearing;~~

~~(2) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and~~

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

~~— (b) Petitions for intervention shall be granted if:~~

~~(1) The petitioner has a substantial interest in the proceeding;~~

~~(2) The petitioner has exercised due diligence with respect to requesting intervention;~~

~~(3) Granting the petition is in the interest of justice; and~~

~~(4) If granting intervention will not unduly delay the board's proceeding.~~

~~— (c) Petitions for intervention shall be granted subject to appropriate conditions or limitations which shall be subject to modification by the presiding officer any time during the proceeding.~~

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

~~— Den 208.05 Right to Counsel. Any party in an adjudicative proceeding may be represented by counsel, but an attorney appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practical. Requests for appointment of counsel shall not be entertained, and the board shall have no responsibility for the legal expenses of any licensee, applicant, intervenor or witness.~~

~~— Den 208.06 Prehearing and Other Informal Conferences.~~

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

~~— (b) The parties at a prehearing conference shall address:~~

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

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

~~(3) Possible amendments to the pleadings;~~

~~(4) Opportunities and procedures for settlement;~~

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

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

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

~~(8) Other matters which might contribute to the orderly, prompt and fair resolution of the proceeding.~~

~~— (c) The board shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.~~

~~— Den 208.07 Discovery and Disclosure.~~

~~— (a) The board shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the board, which is reasonably related to the subject matter of the proceeding. Neither the board nor any officer or employee thereof, shall be subject to further discovery.~~

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

~~— (c) Discovery shall be permitted against a party when:~~

~~(1) The parties cannot adequately address specific relevant factual issues at the time fixed for the presentation of evidence, and addressing these issues at a subsequent time would place the requesting party at a material disadvantage;~~

~~(2) The requested method of discovery is reasonable, and the requested discovery would not cause material unfairness or unreasonable expense to any party; and~~

~~(3) The requesting party has acted diligently and the requested discovery would not unreasonably delay the proceeding.~~

~~— Den 208.08 Subpoenas.~~

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~~— (a) Subpoenas for the attendance of witnesses or the production of evidence in investigations or adjudicative proceedings shall be issued upon the order of the board after approval by the department of justice pursuant to RSA 317 A:18, V.~~

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

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~~— (c) The person to whom the subpoena is directed may, within 7 days after service of the subpoena, or one day before the date specified in the subpoena for compliance therewith, whichever is later, file a motion to quash or modify the subpoena. If the board denies the motion to quash or modify, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena, or any modification thereof, within the balance of time prescribed in the subpoena or within 3 days from the date of the board's order, whichever is later, unless the board expressly provides additional time to comply.~~

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~~— (d) A subpoena shall be served in any manner authorized by law. The date, time, and method of service shall be written on the reverse of the original copy of the subpoena by the person making service who shall then file that copy with the board.~~

~~-~~

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

~~-~~

~~(1) Impose sanctions specific to any pending proceeding or investigation, including, but not limited to, entry of a default judgment as to some or all of the pending issues which is adverse to the noncompliant party;~~

~~-~~

~~(2) Institute a separate investigation against any noncompliant individual who is subject to the board's jurisdiction; or~~

~~-~~

~~(3) Direct an interested party to seek or direct judicial enforcement of some or all of the subpoena.~~

~~-~~

~~— Den 208.09 Evidence.~~

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~~— (a) The evidentiary privileges recognized by the law of New Hampshire, but not the NH Rules of Evidence, shall apply to proceedings under this chapter.~~

~~-~~

~~— (b) All data which will reasonably assist the board arrive at the truth shall be admissible, but data which is irrelevant or immaterial; unduly repetitious or cumulative; or needlessly insulting or scandalous shall be excluded.~~

~~-~~

~~— (c) The board may direct that some or all of the evidence be filed prior to hearing in written form. However, unless the parties agree otherwise, oral testimony shall be required to allow appropriate cross examination and to avoid material prejudice, and to permit full and fair disclosure of disputed material facts.~~

~~-~~

~~— (d) If the board officially notices a fact, it shall so state, and permit any party, upon timely request, the opportunity to show the contrary.~~

~~— (e) Witnesses appearing before the board shall testify under oath or affirmation.~~

~~— (f) The board shall cause an electronic or stenographic record to be made of hearings and prehearing conferences. This record shall be transcribed upon the request of a party who pays the estimated cost of transcription in advance. Provided, however, that if the board elects to transcribe some or all of the record for its own use, the transcribed portions shall be included in the public docket file.~~

~~— Den 208.10 Burden of Proof.~~

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

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

~~method of proceeding under this part shall be determined as follows:~~

~~— (a) In contested cases, and as otherwise required by law, the proceeding shall consist of a trial-type evidentiary hearing with an opportunity for the subsequent submission of memoranda.~~

~~— (b) Where no facts material to the subject matter of the proceeding are in dispute, the proceeding shall, to that extent, be limited to the submission of memoranda wherein are argued the conclusions the parties wish the board to draw from the undisputed facts.~~

~~— (c) Oral argument, other than opening and closing statements, shall be permitted only by leave of the board on consideration of a written motion which sets forth the purported need for such a procedure. Written argument in the form of legal briefs or memoranda shall be permitted subject to filing schedules established by the board.~~

~~— (d) The foregoing paragraphs shall not limit the board's authority to structure individual proceedings in a manner suitable to their particular subject matter and recognized due process requirements, or to require the submission of additional data at any time.~~

~~— (e) An order scheduling supplemental argument or hearing, or otherwise reopening the record, may be issued by the presiding officer at any time prior to the issuance of a final order in a proceeding.~~

~~Den 208.11 Methods of Proceeding. The method of proceeding under this part shall be determined as follows:~~

~~— (a) In contested cases, and as otherwise required by law, the proceeding shall consist of a trial-type evidentiary hearing with an opportunity for the subsequent submission of memoranda.~~

~~— (b) Where no facts material to the subject matter of the proceeding are in dispute, the proceeding shall, to that extent, be limited to the submission of memoranda wherein are argued the conclusions the parties wish the board to draw from the undisputed facts.~~

~~— (c) Oral argument, other than opening and closing statements, shall be permitted only by leave of the board on consideration of a written motion which sets forth the purported need for such a procedure. Written argument in the form of legal briefs or memoranda shall be permitted subject to filing schedules established by the board.~~

~~— (d) The foregoing paragraphs shall not limit the board's authority to structure individual proceedings in a manner suitable to their particular subject matter and recognized due process requirements, or to require the submission of additional data at any time.~~

~~— (e) An order scheduling supplemental argument or hearing, or otherwise reopening the record, may be issued by the presiding officer at any time prior to the issuance of a final order in a proceeding.~~

~~— Den 208.12 Inquiry By Presiding Officer Or Board Members. The presiding officer shall make such inquiry of witnesses, parties or counsel, as he or she believes necessary to develop a sound record for decision. Other board members participating in the proceeding shall also ask such questions and make such inquiries as they deem appropriate, subject to recognition by the presiding officer.~~

~~— Den 208.13 Proposed Findings of Fact and Conclusions of Law. The presiding officer shall direct any party to submit proposed findings of fact or conclusions of law if the presiding officer believes proposed findings or conclusions would be helpful to the board in deciding the case. If such an order is issued, individual rulings upon such proposed findings or conclusions shall be included as part of any proposed or final decision required to be issued in the proceeding.~~

~~— Den 208.14 Ex Parte Communications. Once an adjudicative proceeding has been commenced, no party shall communicate concerning the merits of the case except upon notice to all parties and in accordance with the rules of this chapter, nor shall any party cause another person or party to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.]~~

**Repeal Den 208.15, effective 5/17/07 (Document #8884-A), amended effective 3/10/09 (Document #9408-A), as follows:**

~~[Den 208.15 Adjudicatory Proceedings.~~

~~— (a) Adjudication of misconduct allegations shall be conducted in accordance with this part, as supplemented by the hearing order and possible prehearing and other appropriate procedural orders served upon the parties, which shall establish the particular scheduling and filing requirements applicable to each case.~~

~~— (b) A hearing notice shall be subject to substantive amendment by the board at any time prior to the issuance of a final order. Provided, however, the parties shall receive at least 15 days notice and an opportunity to be heard on any new or materially different misconduct allegations to be decided in a particular disciplinary proceeding.~~

~~— (c) Upon the filing of a complaint which complies with the provisions of Den 207.02, the presiding officer shall order the licensee or registrant to respond in writing to stated misconduct allegations by admitting or denying each allegation within 20 days of the filing of such allegations with the board. The failure by the licensee or registrant to so respond within the specified time period shall result in the issuance of an order of default, and disciplinary sanctions shall be imposed against the licensee or registrant.~~

~~— (d) The board shall appoint an investigator or prosecutor if the board concludes that it is necessary for:~~

~~(1) A better understanding of the case; or~~

~~(2) A more effective presentation of the case; or~~



-  
~~(3) The protection of the public welfare.~~

-  
~~— (e) Prehearing conferences in disciplinary proceedings shall be public except to the extent that settlement discussions or other matters entitled to confidentiality are addressed.]~~

**Repeal Den 208.16, effective 3/7/15 (Document #10793-B), as follows:**

~~[Den 208.16 Reciprocal Discipline. Upon receipt of information indicating that a licensee licensed to practice in this state has been disciplined in another jurisdiction, the board shall commence an adjudicative proceeding to determine what, if any, discipline shall be imposed.]~~

**Repeal Den 209.01, effective 5/17/07 (Document #8884-A), cited as follows:**

~~[PART Den 209 PRESIDING OFFICER~~

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~~— Den 209.01 Designation.~~

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~~— (a) Adjudicative proceedings commenced by the board shall be conducted by a presiding officer.~~

-  
~~— (b) The presiding officer in any adjudicatory hearing shall be the president, if available, or the vice president.~~

-  
~~— (c) If neither the president or vice president is available, the board shall appoint another member as presiding officer.]~~

**Repeal Den 209.02 through Den 209.04, effective 3/10/09 (Document #9408-A), as follows:**

~~[Den 209.02 Authority of Presiding Officer.~~

-  
~~— (a) The presiding officer shall possess all authority with respect to the procedural aspects of adjudicative proceedings which could be exercised by the board itself, including, but not limited to, the power to administer oaths and affirmations, direct the course of the proceeding, and decide scheduling, discovery, and other procedural issues.~~

-  
~~— (b) Except as provided by Den 209.04, the presiding officer shall receive no testimony or oral argument on the merits of the case unless a majority of the board members eligible to participate in the proceeding, including the presiding officer, are present. Board members need not be present during prehearing conferences or arguments on discovery or other procedural motions.~~

-  
~~— (c) Except in proceedings conducted pursuant to Den 209.04, the presiding officer shall, consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicative proceeding to make reasonable inquiries of the parties and witnesses.~~

-  
~~— (d) The presiding officer shall not accept final offers of settlement or impose consent decrees. When a settlement has been proposed in writing, the presiding officer shall refer it to the board for decision, but shall not stay the proceeding merely because the board is deliberating on a settlement proposal.~~

~~— (e) The presiding officer shall not decide motions or enter orders which finally resolve any specific issue or issues designated by the board, and shall not stay the proceeding for more than 60 days. Potentially dispositive motions may be referred to the board immediately or deferred until the close of the record, in the discretion of the presiding officer.~~

~~— (f) If the presiding officer believes that a default or similar final order should be entered against a party, the presiding officer shall issue a written recommendation to the board, with service on the parties, and the board shall take appropriate action after allowing the parties 10 days to file objections thereto.~~

~~— Den 209.03 Exceptions to Interlocutory Rulings By The Presiding Officer.~~

~~— (a) The board shall not entertain interlocutory appeals of procedural or discovery orders made by the presiding officer. Contemporaneous exceptions to such rulings shall be unnecessary to preserve the objections of any party adversely affected.~~

~~— (b) The parties may include objections to an adverse ruling of a presiding officer in any exceptions taken to a proposed decision under Den 209.04. When a proposed decision is not issued, such objections shall be presented to the board as a motion or as part of a closing memorandum submitted within 10 days from the close of the hearing or such further period as the presiding officer shall allow.~~

~~— Den 209.04 Proposed Decisions By Presiding Officer.~~

~~— (a) The board may direct that some or all of the evidence be filed prior to hearing in written form. However, unless the parties agree otherwise, oral testimony shall be required to allow appropriate cross examination and to avoid material prejudice, and to permit full and fair disclosure of disputed material facts. Only those board members present throughout the hearing shall rule on the credibility of witnesses.~~

~~— (b) The parties may file exceptions and supporting memoranda of law for review by the board within 30 days from the date the proposed decision was served. Replies to exceptions and reply memoranda may be filed within 15 days from the date of the document being replied to.~~

~~— (c) If a party wishes to present oral argument to the board it shall file a separate motion for oral argument within the time allowed for filing exceptions or replies to exceptions.~~

~~— (d) When the board has directed a presiding officer to receive evidence and enter a proposed decision, there shall be no communications between the presiding officer and the board members concerning the merits of the case, and the board members shall not participate in the questioning of witnesses at the hearing, as would otherwise be permitted by Den 208.12.]~~

**Repeal Den 209.05, effective 5/17/07 (Document #8884-A), as follows:**

~~[Den 209.05 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) Among other reasons, 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.]~~

**Repeal Den 210.01, effective 5/17/09 (Document #8884-A), as amended effective 3/10/09 (Document #9408-A), cited as follows:**

~~[PART Den 210 RECONSIDERATION AND STAY~~

- ~~Den 210.01 Motion for Reconsideration or Rehearing.~~
- ~~(a) Final adjudicative orders of the board, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date they are served upon the parties pursuant to Den 206.03 (c).~~
- ~~(b) Within 30 days after service of a final adjudicative order, any party may file a motion for reconsideration or rehearing. The board shall make no distinction between the terms "reconsideration" and "rehearing."~~
- ~~(c) A motion for reconsideration shall:~~
  - ~~(1) Include any memorandum of law the moving party wishes to submit;~~
  - ~~(2) Identify each error of fact, error of reasoning, or erroneous conclusion contained in the final order which the moving party wishes reconsidered; and~~
  - ~~(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.~~
- ~~(d) The board shall grant or deny the motion, or any part thereof, on its merits to the extent the motion has revealed errors of law, fact or policy in the board's prior decision. The board shall also treat the motion as one for reopening and order the receipt of such additional data or additional argument as it considers necessary to evaluate any newly discovered evidence or to cure any alleged procedural errors.]~~

**Repeal Den 210.02 and Den 210.03, effective 5/17/07 (Document #8884-A), as follows:**

~~[Den 210.02 Reconsideration on the Board's Own Motion. Within the time frame specified in Den 210.01(b), the board shall correct, reconsider, revise or reverse any final action on its own motion if the board discovers new facts that indicate such final action was incorrect. If the board's action is based upon the existing record, prior notice shall not be given to the parties. If further argument or data are necessary before making such an order, the board shall provide the parties with notice and an opportunity to be heard before any final revision is made in the board's previous action.~~

~~Den 210.03 Stay of Board Orders.~~

~~— (a) Board actions shall be stayed only in response to a specific request from a party or on the board's own motion. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but it shall be permissible to combine a motion for stay with a motion for reconsideration.~~

~~-~~

~~— (b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Den 210.01(b), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire superior court.]~~

**Repeal Den 210.04, effective 3/10/09 (Document #9408-A), as follows:**

~~[Den 210.04 Retention of Adjudicatory Decisions. Board decisions which result from adjudicatory proceedings shall be retained by the board in perpetuity.]~~

**Repeal Den 211, effective 5/17/07 (Document #884-A), cited as follows:**

~~[PART Den 211 CONSOLIDATION AND SEVERANCE~~

~~— Den 211.01 Consolidation. Board proceedings which involve the same, or substantially related issues, shall be consolidated for hearing or decision, or both, when fairness, accuracy and efficiency would be served by such an action. Consolidation shall be ordered in response to a timely motion from a party or on the board's own initiative.~~

~~— Den 211.02 Severance. The board shall sever one or more issues from a proceeding and dispose of those issues in another proceeding when doing so would materially promote the fairness, accuracy and efficiency of the proceeding. Severance shall be ordered in response to a timely motion from a party or on the board's own initiative.]~~

**Repeal Den 212 effective 3/7/15 (Document #10793-A), cited as follows:**

~~[PART Den 212 NONADJUDICATIVE INVESTIGATIONS AND HEARINGS~~

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~~— Den 212.01 Informal Investigations.~~

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~~— (a) Notwithstanding any other provision of this title, the board, within the limits of its authority, and acting through its members, officers and employees, or through independent contractors, shall make inquiry of any person and otherwise gather data, and prepare reports describing the data obtained whenever:~~

~~-~~

~~(1) It receives data which leads it to believe that a violation of any statute administered by the board, or of any rule of the board, has occurred, or is likely to occur; or~~

~~-~~

~~(2) It desires to obtain data for any other lawful purpose.~~

~~-~~

~~— (b) Informal investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the case, including:~~

~~-~~

~~(1) Requests for additional information from the complainant;~~

~~-~~

- ~~(2) Requests for release of relevant records belonging to or under the control of the complainant; and~~
- ~~-~~
- ~~(3) Face to face meetings with potential witnesses and interested persons.~~
- ~~-~~
- ~~— (a) When necessary to determine the merits of a matter, the board shall commence a formal investigation for the purpose of obtaining documents, recording testimony, and otherwise gathering information relevant to any matter within its jurisdiction.~~
- ~~-~~
- ~~— (b) Formal investigations shall be commenced by the issuance of an order of investigation to the designated investigator and/or prosecutor containing:~~
- ~~-~~
- ~~(1) The statutory or regulatory authority for the investigation;~~
- ~~-~~
- ~~(2) Any statutes or rules believed to have been, or about to be, violated, or the possible regulatory action being contemplated by the board;~~
- ~~-~~
- ~~(3) The identity of the persons, or class of persons, which are the subject of the investigation;~~
- ~~-~~
- ~~(4) The general nature of the conduct being investigated;~~
- ~~-~~
- ~~(5) The identity of the investigating officer or committee;~~
- ~~-~~
- ~~(6) The date upon which the investigating officer shall report his or her findings and recommendations to the board;~~
- ~~-~~
- ~~(7) Any special authority conferred upon the investigating officer, including the authority to issue subpoenas on behalf of the board; and~~
- ~~-~~
- ~~(8) Other provisions pertinent to the specifics of individual investigations deemed desirable by the board.~~
- ~~-~~
- ~~— (c) The issuance of an order of investigation shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a license holder.~~
- ~~-~~
- ~~— Den 212.03 Investigators. The board shall appoint a member of its staff, an attorney, any other qualified person, or a committee of qualified persons to conduct a formal or informal investigation.~~
- ~~-~~
- ~~— Den 212.04 Investigations.~~
- ~~-~~
- ~~— (a) The board shall conduct such investigations as it deems necessary to examine acts of possible misconduct which come to its attention through complaints or other means. Informal investigations pursuant to Den 212.01 shall be conducted at any time and without prior order of the board. The board shall convert an informal investigation to a formal investigation at any time by following the procedures in Den 212.02(b).~~
- ~~-~~
- ~~— (b) The type, form and extent of an investigation shall be determined by a majority of the board based upon, without limitation, the severity of the alleged misconduct, the availability of witnesses and information pertaining to the alleged misconduct, and the resources available to the board.~~
- ~~-~~

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

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

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~~— (e) The investigator shall make a written report of misconduct investigations which includes a recommendation to the board as to whether there is a reasonable basis to conduct further disciplinary proceedings.~~

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~~— (f) Investigatory reports and all information gathered by an investigator shall be confidential except that:~~

~~-~~

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

~~-~~

~~(2) Information gathered in an investigation shall become subject to public disclosure if it is introduced as evidence in a disciplinary hearing;~~

~~-~~

~~(3) Information gathered in disciplinary investigations shall be made available to:~~

~~-~~

~~a. Law enforcement agencies;~~

~~-~~

~~b. Certifying agencies of other jurisdictions;~~

~~-~~

~~c. Board investigators or prosecutors;~~

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~~d. Expert witnesses or assistants retained by board prosecutors or investigators in the same or related disciplinary matters; or~~

~~-~~

~~e. A licensee, complainant, or other person with knowledge of the subject matter of a particular misconduct allegation, when such disclosure would assist the board to investigate that allegation.~~

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~~— Den 212.05 Informational Hearings.~~

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~~— (a) The board shall conduct non-adjudicative informational hearings to assist it in gathering information necessary to the performance of its statutory duties.~~

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~~— (b) The board chair, acting chair, or another board member designated by the chair shall serve as the presiding officer at informational hearings and shall have authority to conduct all facets of the proceeding.~~

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~~— (c) Sworn testimony shall not be received at informational hearings unless an order of investigation has been issued by the board.~~

~~-~~

~~— (d) The board shall establish the order and the length of the presentations made in informational hearings, and, consistent with any applicable statutes, limit the time allotted to each speaker.]~~

**Repeal Den 213.01 through Den 213-03, effective 6/17/2023 (Document #8884-A), cited as follows:**

[PART ~~Den 213~~ RULEMAKING

~~— Den 213.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be adopted after notice and opportunity for a legislative type informational hearing as provided by RSA 541 A:11. Rules shall be proposed by petition or on the board's own initiative.~~

~~— Den 213.02 Petition for Rulemaking. Any person may request the board to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a petition which contains:~~

~~— (a) A statement of the reason for the petitioner's interest in the subject matter of the proposed rule;~~

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

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

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

~~— Den 213.03 Disposition of Petition 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 unless the adoption, amendment or repeal sought would 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 of one administrative rule with another; or~~

~~(5) Negatively impacting the board's ability to carry out the mandates of RSA 317-A.~~

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

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

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

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

**Repeal Den 213.04 through Den 214, effective 3/10/09 (Document #9408-A), as follows:**

~~[Den 213.04 Deficiencies in Petitions.~~

~~— (a) If the board determines that any petition does not meet the requirements of this section, it shall immediately notify the petitioner, in writing, of the specific deficiencies; and~~

~~— (b) Upon receipt of a corrected petition, the board shall take action as outlined in Den 213.02.~~

~~PART Den 214 DECLARATORY RULINGS~~

~~— Den 214.01 Petitions for Declaratory Rulings.~~

~~— (a) Petitions for a declaratory ruling on matters within the jurisdiction of the board shall be filed as a petition which meets the requirements of Den 207.01 (b) and also contains the following information:~~

~~(1) The exact ruling being requested;~~

~~(2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;~~

~~(3) A statement as to how and why the issuance of a ruling on this subject would benefit the petitioner, other interested persons, and the public at large;~~

~~(4) The identity, including mailing addresses when reasonably available, of specific persons whose interests would be affected by the issuance or nonissuance of the ruling in question.~~

~~— Den 214.02 Action on Petitions for Declaratory Rulings.~~

~~— (a) If a petition for declaratory ruling indicates that other persons may be substantially affected by the proposed ruling, the board shall require service of the petition on such persons and advise them of their right to file a reply pursuant to Den 207.01(b).~~

~~— (b) The petitioner shall provide such further information as the board shall direct after reviewing the petition.~~

~~— (c) The board shall have no obligation to issue a declaratory ruling in response to a particular petition.~~

~~— (d) Petitions shall be denied when:~~

~~(1) The requested ruling would inappropriately impact upon pending administrative, judicial or legislative proceedings;~~

~~(2) Other procedural options are available to the interested parties or the board.~~

~~(3) They interfere with the board's ability to meet the requirements of RSA 317-A.]~~

**Repeal Den 215 and Den 216, effective 3/7/15 (Document #10793-A), cited as follows:**



~~[PART Den 215 WAIVER OF SUBSTANTIVE RULES~~

~~— Den 215.01 Petitions for Waiver.~~

~~— (a) Unless otherwise prohibited by statute, the board shall entertain a petition to waive or suspend any rule not covered by Den 203.02 by filing an original and 2 copies of a petition pursuant to Den 207.01(b) which clearly identifies the rule in question and sets forth specific facts and arguments which support the requested waiver.~~

~~— (b) Petitions for waivers of substantive rules shall address all of the following:~~

~~(1) Whether adherence to the rule would cause the petitioner unnecessary or undue hardship;~~

~~(2) Whether the requested waiver is not necessary because of any neglect or misfeasance on the part of the petitioner;~~

~~(3) Whether waiver of the rule would be consistent with the statutes and rules administered by the board;~~

~~(4) Whether enforcement of the rule would injure third persons;~~

~~(5) Whether waiver of the rule would injure third persons; and~~

~~(6) Whether other good cause exists for waiving the rule.~~

~~— (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 such person and advise them of their right to the petition pursuant to Den 206.03(b).~~

~~— (d) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as shall be ordered by the board after reviewing the petition and any replies received.~~

~~— (e) A petition for waiver of a rule which does not allege material facts, which, if true, would be sufficient to support the requested waiver, shall be denied without prior notice or further hearing.~~

~~— (f) The board shall initiate a waiver 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 waiver would be necessary to advance the purpose of RSA 317-A.~~

~~PART Den 216 EXPLANATION OF ADOPTED RULES~~

~~— Den 216.01 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 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.~~

~~Den 216.02 Contents of Explanation. The board shall, within 90 days of receiving a request for an explanation of an adopted rule, 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 Part Den 201 to read as follows:**

**PART Den 201 APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES**

Den 201.01 Rules of Practice and Procedure. The Plc 200 rules shall govern with regards to all procedures for:

- (a) Adjudicatory proceedings;
- (b) Rulemaking submissions, considerations, and dispositions of rulemaking;
- (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.

Den 201.02 Waiver of Administrative Rules.

(a) The board shall initiate a waiver of a substantive rule upon its own motion by providing affected parties with notice and opportunity to be heard, and issuing an order which finds that waiver would be necessary to advance the purpose of the rules of the board.

(b) Individuals who wish to request a waiver of a rule shall submit a written request to the board, which includes:

- (1) The rule for which a waiver is requested;
- (2) The anticipated length of time the requested waiver will be needed;
- (3) The reason for requesting the waiver;
- (4) Evidence of how the waiver will provide for the health and safety of the consumer or licensee;

- (5) A time-limited written compliance plan which sets forth plans to achieve compliance including an estimated date of compliance; and
- (6) The signature of the applicant.
- (c) The board shall consider the following when determining whether to approve or deny a waiver:
- (1) If adherence to the rule would cause the petitioner unnecessary or undue hardship;
  - (2) If the requested waiver is necessary because of any neglect or misfeasance on the part of the practitioner;
  - (3) If enforcement of the rule would injure a third person(s); and
  - (4) If waiver of the rule would injure a third person(s).
- (d) The board shall approve a waiver of an administrative rule request only if:
- (1) Granting a waiver does not have the effect of waiving or modifying a provision of RSA 310-A;
  - (2) The petitioner shows or has shown good cause exists to waive the rule; and
  - (3) The board determines that the individual's plans for compliance with the rule includes an estimated date of compliance and eventual compliance.
- (e) If the board, after receiving and reviewing a request for a waiver, requires further information or documentation to grant or deny the waiver, the board shall:
- (1) Notify the applicant in writing within 30 days; and
  - (2) Specify the information or documentation the board requires.
- (f) The board shall issue a written approval or denial of the waiver within 60 days of the date the request is received, unless additional information or documentation is required. If additional information and documentation is required, then the board shall issue a written approval or denial within 60 days of receiving the requested information or documentation.

## APPENDIX I

<b>RULE</b>	<b>STATUTE</b>
Den 201.01 - 201.02 (repeal)	RSA 317-A:1; 317-A:12
Den 202.01 (repeal)	RSA 317-A:12
Den 203.01 - 203.02 (repeal)	RSA 317-A:12, IX and X; 317-A:18; 317-A:18-a
Den 204.01 (repeal)	RSA 317-A:12, IX; 317-A:18-a, III
Den 205.01 - 205.03 (repeal)	RSA 317-A:12, X; 317-A:18
Den 206.01 - 206.02 (repeal)	RSA 317-A:12, X; 317-A:18
Den 206.03 (repeal)	RSA 317-A:12, X
Den 207.01 (repeal)	RSA 317-A:12, X; 317-A:18

Den 207.02 (repeal)	RSA 317-A:12, X; 317-A:17; 541-A:16, I(a)
Den 207.02 (i) (repeal)	RSA 317-A:12, XIII; 317-A:18
Den 207.03 (repeal)	RSA 317-A:12, X; 317-A:18
Den 207.04 (repeal)	RSA 317-A:12, X; 317-A:18-b
Den 207.05 (repeal)	RSA 317-A:12, X
Den 207.06 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 208.01 - 208.02 (repeal)	RSA 317-A:12, IX and X; 317-A:18-a
Den 208.03 (repeal)	RSA 317-A:12, X
Den 208.04 – 208.15 (repeal)	RSA 317-A:12, IX and X; 317-A:18-a
Den 208.15(c) (repeal)	RSA 317-A:12, X; 317-A:18
Den 208.16 (repeal)	RSA 317-A:12, IX; RSA 317-A:18-a
Den 209.02 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 209.02 (b), (c) (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 209.03 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 209.03 (b) (repeal)	RSA 317-A:12, X; 317-A:18-a
Den 209.04 – 209.05 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 210.01 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 210.01 (a) (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 210.02- 210.03 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 210.04 (repeal)	RSA 317-A:12, X; 317-A:18-a
Den 211.01 - 211.02 (repeal)	RSA 317-A:12, IX; 317-A:18-a
Den 212.01 - 212.02 (repeal)	RSA 317-A:12, X; 317-A:18, VII
Den 212.03 (repeal)	RSA 317-A:4, I (d); RSA 317-A:12, X; RSA 317-A:18, VII
Den 212.04 (repeal)	RSA 317-A:12, X; RSA 317-A:18, VII
Den 212.05 (repeal)	RSA 317-A:12, X
Den 213.01 - 213.03 (repeal)	RSA 541-A:16, I(c); 317-A:12
Den 213.04 (repeal)	RSA 541-A:16, I(c); 317-A:12
Den 213.04 (b) (repeal)	RSA 317-A:12, XIII; 541-A:16, I (c)
Den 214.01 - 214.02 (repeal)	RSA 541-A:16, I(d); 317-A:12
Den 214.01 (a) (repeal)	RSA 317-A:12, XIII; 541-A:16, I (d)
Den 214.02 (a) intro (repeal)	RSA 317-A:12, XIII; 541-A:16, I (d)
Den 215.01 (repeal)	RSA 541-A:16, II(a); 317-A:12, XIII
Den 215.01 (c) (repeal)	RSA 317-A:12, XIII; 541-A:16, I (a)
Den 216.01 - 216.02 (repeal)	RSA 541-A:16, II (a); RSA 317-A:12, XIII
Den 201.01	RSA 317-A:12, IX, XIV
Den 201.02	RSA 541-A:16, I (b)