

Change the chapter heading for Frl 2001 to read as follows:

CHAPTER Frl 200 RULES OF PRACTICE AND PROCEDURE

Repeal 201 through Frl 210, EFFECTIVE 6/24/11 (Document #9949-A), as follows:

~~[PART Frl 201 PURPOSE AND SCOPE~~

~~— Frl 201.01 Purpose. The board conducts proceedings for the purpose of acquiring sufficient information to make fair and reasonable decisions on matters within its statutory jurisdiction, including decisions on applications for licensure and complaints filed against licensees. The goal of these proceedings is to secure a just, efficient and accurate resolution.~~

~~— Frl 201.02 Scope. The rules of this chapter shall apply to all administrative proceedings conducted by the board and shall be in addition to applicable requirement of RSA 541-A.~~

~~PART Frl 202 DEFINITIONS~~

~~— Frl 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 any proceeding in which the rights, duties or privileges of a person are determined by the board, but does not include nonadjudicative investigations or rulemaking;~~

~~— (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) "File" means to place a document in the actual possession of the board;~~

~~— (e) "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;~~

~~— (f) "Hearing counsel" means an individual appointed by the board under Frl 211.03 or Frl 211.03 to prosecute or investigate misconduct allegations in the public interest;~~

~~— (g) "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;~~

~~— (h) "Motion" means any request by a party to an existing proceeding for an order or relief relating to that proceeding;~~

~~— (i) "Order" means a document issued by the board:~~

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

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- (2) ~~Granting or denying a petition or motion;~~
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- (3) ~~Requiring a person to do, or to abstain from doing, something; or~~
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- (4) ~~Determining a person's rights to a license or other privilege established by RSA 325 or the rules of this chapter;~~
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— (j) ~~"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;~~

— (k) ~~"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;~~

— (l) ~~"Proposed decision" means an initial or recommended decision made by a presiding officer pursuant to Frl 208.04 which is subject to review by the entire board; and~~

— (m) ~~"Rulemaking" means the procedures for formulating agency rules set forth in RSA 541 A:3.~~

— ~~Frl 202.02 Failure to Comply with Rules.~~

— (a) ~~Failure to comply with the rules of this chapter shall result in:~~

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- (1) ~~Refusing to accept or admit a noncompliant document for filing or refusing to consider a noncompliant oral petition or motion; or~~

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- (2) ~~Accepting or admitting, or denying or not 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 Frl 202.03.~~

— ~~Frl 202.03 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 it appears that the proposed waiver or suspension would 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.~~

PART ~~Frl 203~~ ~~APPEARANCES BEFORE THE BOARD~~

— ~~Frl 203.01 Representatives.~~

— (a) ~~Persons appearing before the board shall represent themselves or be represented by an individual who:~~

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- (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, but has filed a motion for leave to appear as a representative.~~

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

~~(1) Briefly describe the proposed representative's professional and character qualifications;~~

~~(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 only 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; or~~

~~(3) A competent individual who is not a New Hampshire licensed attorney, but has filed a motion for leave to appear as a representative which has been granted by the board.~~

~~(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 an individual from acting as a representative upon a finding that the individual has engaged in willful misconduct relating to representation before the board which would be sanctioned by a court if committed by an attorney appearing before the court.~~

~~(f) Any prohibition or restrictions issued under (e), above, shall apply to the board's proceedings, either pending or in the future, or any combination thereof, as warranted by the circumstances of the case.~~

~~PART Frl 204 TIME PERIODS~~

~~Frl 204.01 Computation of Time.~~

~~(a) 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.~~

~~(b) When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.~~

~~Frl 204.02 Change in Allowed Times.~~

~~(a) 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, for the purposes of efficiency and due process.~~

~~— (b) A motion for a change of time shall be granted upon concurrence of all parties.~~

~~— Frl 204.03 Limitations. A motion to change time shall not be filed within 3 business days of the event in question.~~

~~PART Frl 205 FILING AND SERVICE OF DOCUMENTS~~

~~— Frl 205.01 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. A document tendered for filing which is patently and facially in violation of the board's rules shall not be accepted for filing.~~

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

~~— (c) All petitions, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed with an original and 5 copies unless the board directs that a lesser number of copies be furnished.~~

~~— (d) 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.~~

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

~~— Frl 205.02 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 be 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 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.~~

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~~— Frl 205.03 Service of Documents.~~

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

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~~— (b) 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:~~

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~~(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;~~

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

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

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~~— (c) 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:~~

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~~(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; or~~

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

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~~— (d) 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.~~

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~~— (e) 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.~~

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~~PART Frl 206 PLEADINGS, COMPLAINTS AND MOTIONS~~

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~~— Frl 206.01 Pleadings.~~

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~~— (a) The only pleadings permitted shall be petitions and replies to petitions. 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;~~

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

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

~~(6) The signature and date required by Frl 205.02(a).~~

~~(c) Replies to petitions 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 petition pursuant to Frl 206.01(b)(3);~~

~~(4) A statement admitting or denying the authority identified by the petitioner pursuant to Frl 206.01 (b)(5);~~

~~(5) A concise statement of any additional or different facts which warrant the board acting in the manner requested by the respondent;~~

~~(6) A citation to any statutes, rules, orders or other authority, not identified in the petition, having a bearing upon the subject matter of the petition;~~

~~(7) The action which the respondent wishes the board to take; and~~

~~(8) The signature and date required by Frl 205.02(a).~~

~~(d) Replies shall be filed within 10 days from the date of the petition unless due process requires a longer period.~~

~~(e) Any fact contained in the petition 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 petitioner shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.~~

~~Frl 206.02 Complaints of Licensee Misconduct.~~

~~(a) Complaints alleging misconduct by licensees in violation of RSA 325:32, II shall be in writing and filed at the board's office in Concord, New Hampshire.~~

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

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

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

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

~~(4) The signature and date required by FrI 205.02(a).~~

~~— (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 FrI 211.04(f).~~

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

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

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

~~(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) At any stage of the board's evaluation of the allegations in a complaint, the board shall, 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.~~

~~— (g) Action under (f) 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; or~~

~~(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.~~

~~— (h) 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.~~

~~— (i) When mediation is conducted under (h), 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, shall 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.~~

~~— (j) Upon receiving the mediator's report, the board shall discontinue its investigation or proceed with adjudicative proceedings.~~

~~— (k) 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 N.H. Rule of Evidence 408.~~

~~— (l) 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.~~

~~— (m) 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 adjudicative hearing pursuant to Frl 207.02. 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.~~

~~— (n) A complainant shall not be a party to the 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.~~

~~— (o) Anonymous complaints shall be pursued by the board pursuant to RSA 325:33 I and III, when it believes:~~

~~(1) The allegations might have merit;~~

~~(2) The public welfare might be at risk; and~~

~~(3) The complainant has legitimate reasons for acting anonymously.~~

~~— (p) Pursuant to Frl 202.03, the board shall waive procedural rules in Frl 206.02 that require the name and address of the complainant.~~

~~— (q) Complaints shall be retained in the board's files as follows:~~

~~(1) Complaints which result in discipline shall be retained in perpetuity; and~~

~~(2) All written decisions and orders 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 325:32 II.~~

~~— Frl 206.03 Motions and Objections Thereto.~~

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

~~— (b) Motions shall state clearly and concisely:~~

~~(1) The purpose of the motion;~~

~~(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 FrI 205.02(a).~~

~~— (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;~~
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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 FrI 205.02(a).~~

~~— (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.~~

~~— (e) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.~~

~~— (f) 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.~~

~~PART FrI 207 ADJUDICATIVE PROCEEDINGS~~

~~— FrI 207.01 Applicability. This part shall govern all proceedings conducted by the board except rulemaking and nonadjudicative investigations.~~

~~— FrI 207.02 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:~~

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- ~~(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;~~
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- ~~(2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;~~
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- ~~(3) Specify the legislative authority for the proposed action, and identify any applicable board rules;~~
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~~(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) State that each party has the right to have an attorney present to represent the party at the party's expense;~~

~~(8) State that each party has the right to have the board 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;~~

~~(9) Identify any special procedures to be followed;~~

~~(10) Identify any confidentiality requirements applicable to the proceeding; and~~

~~(11) 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.~~

~~— Frl 207.03 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.~~

~~— (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.~~

~~— Frl 207.04 Intervention.~~

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

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

~~(2) The petitioner's position with respect to the subject matter of the hearing;~~

~~(3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and~~

~~(4) Any other reasons why the petitioner should be permitted to intervene.~~

~~— (b) Petitions for intervention shall be granted if the petitioner has a substantial interest in the proceeding and has been diligent with respect to requesting intervention, and if the petitioner's participation will not prejudice a party or unduly delay the proceeding.~~

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

~~— Frl 207.05 Roles of Complainants and Board Staff.~~

~~— (a) Complainants alleging misconduct by a licensed individual shall have no role in any hearing other than that of witness unless they petition for, and are granted, the right to intervene.~~

~~— (b) Unless called as witnesses, board staff shall have no role in any hearing.~~

~~— Frl 207.06 Right to Counsel. Any party or intervenor 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. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.~~

~~— Frl 207.07 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 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.~~

~~— Frl 207.08 Discovery and Disclosure.~~

~~— (a) The board shall disclose 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.~~

~~— Frl 207.09 Subpoenas.~~

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

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

~~— (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. 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.~~

~~— (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, 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) Seek judicial enforcement of some or all of the subpoena.~~

~~— Frl 207.10 Evidence.~~

~~(a) The evidentiary privileges recognized by the law of New Hampshire, including the N.H. 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 evidence subject to privilege 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 entirety of all oral proceedings shall be recorded verbatim by the board. 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.~~

~~— Frl 207.11 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.~~

~~— Frl 207.12 Methods of Proceeding. The method of proceeding under this part shall be determined as follows:~~

~~(a) Where facts material to the subject matter of the proceeding are in dispute, and personal observation of witnesses or the immediate opportunity for cross examination of witnesses is necessary or desirable, the proceeding shall, to that extent, consist of a trial type evidentiary hearing with an opportunity for the subsequent submission of memoranda;~~

~~(b) Where facts material to the subject matter of the proceeding are in dispute, but personal observation of the witnesses or the immediate opportunity for cross examination of witnesses is not required, some or all of the proceeding may, to that extent, consist of the subsequent submission of affidavits and memoranda;~~

~~(c) 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 said facts.~~

~~— (d) Oral argument other than a brief opening and a closing statement shall be permitted only when requested in a written motion which demonstrates a substantial need for such a procedure. Written argument in the form of legal briefs or memorandum shall be permitted subject to such filing schedules established by the board.~~

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

~~— (f) As applicable, an order scheduling supplemental argument or hearing, or otherwise reopening the record, shall be issued by the presiding officer or board at any time prior to the issuance of a final order in a proceeding.~~

~~— Frl 207.13 Inquiry By Presiding Officer Or Board Members. The presiding officer, and board members or board advisors recognized by the presiding officer, shall question witnesses and make such inquiry of witnesses 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.~~

~~— Frl 207.14 Proposed Findings of Fact and Conclusions of Law.~~

~~— (a) Any party may submit proposed findings of fact and conclusions of law.~~

~~— (b) 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.~~

~~— Frl 207.15 Ex Parte Communications. Once an adjudicative proceeding has been commenced, no party shall communicate with any person assigned to render a decision or make findings of fact and conclusions of law in the matter, 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 to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.~~

~~— Frl 207.16 Disciplinary Hearings.~~

~~— (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) The licensee shall respond in writing to stated misconduct allegations by admitting or denying each allegation within 30 days of receipt of the allegations. Failure to so respond within the specified time period shall result in an order of default, including disciplinary sanctions, against the licensee unless the licensee failed to respond for good cause. Good cause includes accident, mistake, misfortune or any other circumstances beyond the control of the objecting party.~~

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

~~PART Frl 208 PRESIDING OFFICER~~

~~— Frl 208.01 Designation.~~

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

~~— (b) The board chairperson shall serve as presiding officer or shall designate another qualified person to so serve.~~

~~— Frl 208.02 Authority of Presiding Officer.~~

~~— (a) Except as otherwise provided by board order, 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, decide scheduling, and conduct discovery, and stay proceedings.~~

~~— (b) Except as provided by Frl 208.04, 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 shall not need to be present during prehearing conferences or arguments on procedural or discovery motions.~~

~~— (c) Except in proceedings conducted pursuant to Frl 208.04, the presiding officer shall permit board members who are present during any stage of an adjudicative proceeding to make reasonable inquiries of the witnesses and counsel consistent with the fair and orderly conduct of the proceedings.~~

~~— (d) The presiding officer shall not accept final offers of settlement or impose consent decrees, but may assist the parties in reaching settlements. 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 the proceeding or 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 sole discretion of the presiding officer.~~

~~— (f) If the presiding officer believes that a default or similar final order should enter 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.~~

~~— Frl 208.03 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 Frl 208.04. 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 for good cause. Good cause shall include accident, mistake, misfortune or any other circumstances beyond the control of the objecting party.~~

~~— Frl 208.04 Proposed Decisions By Presiding Officer.~~

~~— (a) The board shall direct that 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 Frl 207.12.~~

~~— Frl 208.05 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.~~

~~PART Frl 209 RECONSIDERATION AND STAY~~

~~— Frl 209.01 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 Frl 205.03 (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.~~

~~— Frl 209.02 Reconsideration on the Board's Own Motion. Within the time frame specified in Frl 209.01(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.~~

~~— Frl 209.03 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 Frl 209.01(a), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire Superior Court.~~

~~PART Frl 210 CONSOLIDATION AND SEVERANCE~~

~~— Frl 210.01 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.~~

~~— Frl 210.02 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 Frl 211, effective 11/20/18 (Document #12672), as follows:

~~[PART Frl 211 NONADJUDICATIVE INVESTIGATIONS AND HEARINGS~~

~~— Frl 211.01 Informal Investigations.~~

~~— (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.~~

~~— Frl 211.02 Formal Investigations.~~

~~— (a) 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 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; and~~

~~(8) Other provisions deemed desirable by the board.~~

~~— (c) The issuance of an order of investigation shall not commence an adjudicative hearing and shall not constitute an allegation of misconduct against a license holder.~~

~~— Frl 211.03 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.~~

~~— Frl 211.04 Misconduct 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 Frl 211.01 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 Frl 211.02(b).~~

~~— (b) The type, form and extent of an investigation shall be determined by the need to examine acts of possible misconduct.~~

~~— (c) When a misconduct investigation occurs, an investigator designated by the board shall contact such persons and examine such 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.~~

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

~~— (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.~~

~~— (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;~~

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

~~(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;~~

~~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's investigation.~~

~~— Frl 211.05 Informational Hearings.~~

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

~~— (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.~~

~~— (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 Frl 212 and Frl 213, effective 6/24/23 (Document #9949-A), as follows:

~~[PART Frl 212 RULEMAKING~~

~~— Frl 212.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be adopted in accordance with RSA 541 A:3. Rules shall be proposed by petition or on the board's own initiative.~~

~~— Frl 212.02 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 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.~~

~~— Frl 212.03 Disposition of Petition.~~

~~— (a) The board shall, by order, grant or deny a petition for rulemaking. Before issuing such an order, however, the board may require additional data or argument from the petitioner or other interested persons.~~

~~— (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 325.~~

~~— (c) If the petition is denied, the board shall state the reason therefore in the order. If the petition is granted, the board shall undertake to commence a rulemaking proceeding in accordance with RSA 541-A:3.~~

~~— (d) 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.~~

~~PART Frl 213 PUBLIC COMMENT HEARINGS~~

~~— Frl 213.01 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.~~

~~— Frl 213.02 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 Frl 213:03.~~

~~— (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 or 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.~~

~~— Frl 213.03 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.~~

~~— Frl 213.04 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 placement of cameras to specific locations within the hearing room; or~~

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

~~— Frl 213.05 Conduct of Public Comment Hearings.~~

~~— (a) 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.~~

~~— (b) 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 Frl 213.03 and Frl 213.04;~~

~~(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.~~

~~— (c) 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 and unavoidably absent and a quorum is not present; or~~

~~(3) Postponement will facilitate greater participation by the public.~~

~~— (d) 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.~~

~~— (e) 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.]~~

Repeal Frl 214, effective 11/20/18 (Document #12672), as follows:

~~[PART Frl 214 WAIVER OF SUBSTANTIVE RULES~~

~~— Frl 214.01 Petitions for Waiver.~~

~~— (a) Any interested person may request the board to waive any rule not covered by Frl 202.04 by filing an original and 2 copies of a petition pursuant to Frl 206.01(b) which clearly identifies the rule in question and sets forth specific facts and arguments which support the requested waiver. No statutory requirements shall be waived.~~

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

~~(1) Adherence to the rule would cause the petitioner financial or personal hardship;~~

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

~~(3) Waiver of the rule would be consistent with the statutes and rules adopted by the board;~~

~~(4) Waiver of the rule would not injure third persons; and~~

~~(5) 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 persons and advise them of their right to reply to the petition pursuant to Frl 206.01(c).~~

~~— (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 consistent with the criteria of (b), above.~~

~~— (g) Unless otherwise specified in the waiver itself, the waiver shall be effective for the duration of the license.]~~

Repeal Frl 215, effective 6/24/11 (Document #9949-A), as follows:

~~[PART Frl 215 DECLARATORY RULINGS~~

~~— Frl 215.01 Requests for Declaratory Rulings.~~

~~— (a) Any individual or entity may request a declaratory ruling by the board if that individual or entity is directly affected by the applicable statute or by any administrative rule.~~

~~— (b) A request for a declaratory ruling shall be in writing containing:~~

~~(1) The name and address of the individual or entity making the request;~~

~~(2) The text of the ruling being requested;~~

~~(3) The reasons for the request; and~~

~~(4) The following declaration signed by the individual making the request, the authorized representative of such individual, or the authorized representative of the entity making the request:~~

~~“I declare that I have examined the request for a declaratory ruling, including the accompanying documents, and state that, to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct and complete.”~~

~~— Frl 215.02 Documents Required to Support Requests for Declaratory Rulings.~~

~~— (a) A request for declaratory ruling shall be accompanied by:~~

~~(1) A statement citing the statutory law, regulatory law or orders believed to support the ruling being requested;~~

~~(2) A statement of the facts believed to support the ruling being requested; and~~

~~(3) Supplementary material necessary to establish or clarify the facts set forth in the statement of facts.~~

~~— (b) A request for a declaratory ruling may be accompanied by additional material chosen by the person making the request.~~

~~— Frl 215.03 Processing Requests for Declaratory Rulings.~~

~~— (a) Within 30 days of receiving a request for a declaratory ruling the board shall advise the individual or entity requesting it if the ruling will be delayed by the need for additional information or the complexity of the issues presented.~~

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— (b) If additional information should be needed, the board shall specify the additional information required and request that it be provided in a statement of additional information that includes the declaration specified in Frl 215.01 (b)(4) and is accompanied by any material necessary to establish or clarify the facts set forth in the statement.

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~~— Frl 215.04 Issuance and Publication of Declaratory Rulings.~~

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— (a) ~~When facts sufficient to support a declaratory ruling have been established, the board shall issue a written declaratory ruling which applies all relevant law to the established facts.~~

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— (b) ~~When the established facts show that the board lacks subject matter or personal jurisdiction to issue a declaratory ruling, the board shall issue a written decision stating that it lacks jurisdiction to issue a declaratory ruling and identifying the lack of jurisdiction.~~

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

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~~— Frl 215.05 Effect of Declaratory Ruling. A declaratory ruling shall apply only to the board and to the individual or entity requesting it and shall be confined to the facts presented pursuant to Frl 215.02 (a)(2) through (a)(3) and in response to a request of the board made pursuant to Frl 215.03 (b).]~~

Repeal Frl 216, effective 11/20/18 (Document #12672), as follows:

~~[PART Frl 216 EXPLANATION AFTER ADOPTION~~

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~~— Frl 216.01 Explanation after Adoption.~~

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— (a) ~~Any person may request an explanation regarding adoption of the rules pursuant to RSA 541-A:11, VII by submitting a request to the board.~~

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— (b) ~~The request shall be considered at the next scheduled board meeting and the board shall issue a response within 45 days after consideration.]~~

Adopt Frl 201 to read as follows:

PART Frl 201 APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES

Frl 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 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.

Frl 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 325;
 - (2) The petitioner has shown good cause exists pursuant to (c) above 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

Rule	Specific State Statute the Rule Implements
Frl 200 (Specific provisions implementing specific statutes are listed below) (repealed)	RSA 325:9, VI; RSA 541-A:16, I (b)
Frl 201.01 (repealed)	RSA 325:9, VII
Frl 201.04 (repealed)	RSA 541-A:30-a, III (j)
Frl 202 (repealed)	RSA 541-A:30-a, III (b)
Frl 202.03 (repealed)	RSA 541-A:30-a, III (j)
Frl 203 (repealed)	RSA 541-A:30-a, III (f)
Frl 204 (repealed)	RSA 541-A:30-a, III (a)
Frl 205.01 – 205.02 (repealed)	RSA 325:9, VII
Frl 205.02 (n) (repealed)	RSA 541-A:30-a, III (g)
Frl 206 (repealed)	RSA 541-A:30-a
Frl 206.01 (repealed)	RSA 325:9, VII
Frl 206.02 (repealed)	RSA 325:9, VII
Frl 206.02 (n) (repealed)	RSA 541-A:30-a, III (g)
Frl 206.08 (repealed)	RSA 325:33-a
Frl 207 (repealed)	RSA 541-A:30-a
Frl 207.02 (repealed)	RSA 325:9, VII
Frl 207.08 (repealed)	RSA 325:9, VII
Frl 208 (repealed)	RSA 541-A:30-a
Frl 208.02 (repealed)	RSA 325:9, VII
Frl 208.03 (b) (repealed)	RSA 325:34, VII
Frl 209 (repealed)	RSA 541-A:30-a
Frl 209.03 (b) (repealed)	RSA 325:9, VII
Frl 210 (repealed)	RSA 541-A:30-a
Frl 211 (repealed)	RSA 325:9, VII
Frl 212 (repealed)	RSA 541-A:16, I (c)
Frl 213 (repealed)	RSA 541-A:16, I (b)
Frl 214 (repealed)	RSA 541-A:16, I (d)
Frl 215 (repealed)	RSA 541-A:16, I (d)
Frl 216 (repealed)	RSA 541-A:11, VII
Opt 201.01	RSA 541-A:16, I (b) intro.
Opt 201.02	RSA 541-A:16, I (b)-(d)