

Disciplinary Hearings Process Guide for Self-Represented Individuals



Office of Professional Licensure & Certification

7 Eagle Square, Concord, NH 03301

Version 1.0, 2024

Index

Index	1
Introduction	2
The Basics: Who, What, Where, When, & Why.....	3
Where are Hearings Located?.....	3
Why is there a Hearing?	3
Who Attends a Hearing?.....	4
What Happens During a Hearing.....	5
Understanding the Notice of Hearing.....	6
Rules, Procedures, & Terms	7
Glossary:	7
Rules that contain deadlines:	8
Special Accommodations	9
Frequently Asked Questions.....	10

Introduction

The Office of Professional Licensure and Certification (OPLC) is responsible for conducting administrative hearings with the professional Boards to determine whether an individual committed professional misconduct or unlicensed practice. This guide is meant to assist self-represented individuals understand the process.

Questions related to hearings can be directed to hearingsclerk@oplcnh.gov. The Hearings Clerk is the point of contact for all hearings. Respondents (individuals who receive a notice of hearing) are welcome to hire an attorney to represent them at their own expense. No attorney will be provided for you. These are not criminal proceedings.

General Note: This guide does not constitute legal advice. This is not a comprehensive overview of all relevant laws and rules. Respondents are encouraged to read through the laws and rules ahead of the hearing.

The Basics: Who, What, Where, When, & Why

Where are Hearings Located?

All hearings are held at **OPLC, 7 Eagle Square, Concord, NH 03301**. There is metered parking on Storrs St. and North Main St. When you arrive, the front desk will be able to assist you in getting to the correct room.

If you enter on the first floor off Storrs St., there is an elevator directly to your right. Take it to the second floor and follow the signs for OPLC licensing to reach the front desk.

If you enter on the third floor off N. Main St., you will enter into a large atrium. Take the stairs down one level. Follow the signs to reach the front desk.

Prehearing conferences are typically held via Zoom. The link can be found in the Notice of Hearing. If your prehearing conference is to be held at OPLC, that information will also be in the Notice of Hearing.

If you are unable to attend your hearing in-person, email hearingsclerk@oplcnh.gov with the administrative prosecutor copied on the request to attend the hearing via Zoom.

When is the Hearing?

The dates and times of your hearing and prehearing conference are identified on the Notice of Hearing. If you have any questions regarding scheduling, email hearingsclerk@oplcnh.gov.

Why is there a Hearing?

Hearings are initiated by a Board vote. The specific issue(s) to be addressed at the hearing can be found in the “Issues Presented” section of the Notice of Hearing.

Who Attends a Hearing?

The Board: A group of individuals that oversee a profession.

- During the hearing, the Board is like a jury.
- They will listen to what the prosecution has to say, listen to what you have to say, and ask their own questions.
- The Board will deliberate in a non-public session and decide what happened after all evidence has been presented.
- They will send their “Findings of Fact” (see Glossary, p. 7) to the “Presiding Officer” (see below). You will receive these findings as part of the final order.

The Presiding Officer: An Attorney that works for the OPLC.

- During the hearing, they are like a judge. They decide on legal objections, swear in witnesses, and control the hearing.
- The Presiding Officer also decides which exhibits (see Glossary, p. 7) will be shown to the Board and who will be allowed to testify.
- After the hearing, the Presiding Officer will read the Board’s “Findings of Fact” and decide whether professional misconduct or unlicensed practice was committed.
 - In other words, the Board votes on a list of facts. Then, the Presiding Officer uses that list of facts when determining if the laws/rules were violated.
- The Presiding Officer is responsible for writing a final order. The final order will communicate to you what decision has been made.

The Administrative Prosecutor: An Attorney that works for the OPLC, Enforcement Division (also called “Hearing Counsel”).

- Before the hearing, the administrative prosecutor will provide you with discovery (a packet of documents related to your case), exhibits they plan to use, and a list of witnesses they plan to call.
- At the hearing, they will be presenting Enforcement’s version of events to the Board.
- If you have interest in settling your matter, this is the person with whom you would speak.

What Happens During a Hearing?

Prehearing Conference: A Prehearing Conference is a meeting between the respondent, the administrative prosecutor, and the presiding officer.

- The objective is to discuss prehearing matters such as exhibits, witnesses, the duration of the hearing, and related matters.
- Reading the Notice of Hearing and any exhibits sent to you from the administrative prosecutor ahead of time will improve the efficiency of the prehearing conference.
- The prehearing conference as an opportunity to ask any process questions you may have.

Hearing: A hearing is an opportunity for the Board to listen to the evidence from both the administrative prosecutor and the licensee.

- The prosecution presents its case first because it holds the “burden of proof” (see Glossary, p. 7).
- The respondent goes second because they do not hold the burden of proof.
- Both sides will have the opportunity to “cross-examine” (ask questions of) the opposing side’s witnesses.
- The Board may choose to ask any witness questions.
- The prosecution must prove its case by a “preponderance of the evidence” (see Glossary, p. 7).

Settlement Agreement: This is an agreement between the respondent and the Board which eliminates the need for a hearing.

- The terms of this agreement are negotiated between the respondent and the administrative prosecutor.
- After the individual and the administrative prosecutor agree on terms, the settlement agreement is *proposed* to the Board.
- The agreement does not take effect until the Board votes to approve it.
- Do not seek to fulfill any requirements of a settlement agreement (e.g., pay a fine, take classes, etc.) until **after** you receive a copy signed by the Board.

Sanctions: These are potential penalties the Board may impose should there be a finding of misconduct. More information on sanctions for disciplinary cases can be found here: <https://www.gencourt.state.nh.us/rsa/html/XXX/310/310-12.htm>. More information on sanctions for unlicensed practice cases can be found here: <https://www.gencourt.state.nh.us/rsa/html/XXX/310/310-13.htm>.

Understanding the Notice of Hearing

The Notice of Hearing is a document that communicates important information regarding your hearing. Please read the entire document carefully. Here, some particularly important information related to dates and deadlines are highlighted.

The Header: This contains the date of the prehearing conference & hearing. It is important that you reach out to hearingsclerk@oplc.nh.gov if you have a conflict as soon as possible. Make sure to copy the administrative prosecutor on all correspondence.

Section II (a):

- This section states the type of hearing, the time & date of the hearing, and the place of the hearing.
- Below the location of the hearing, you will find the amount of time that has been set aside for the hearing.

Section II (c) *Issues Presented:*

- This section states the issue(s) to be considered at the hearing.
- The laws and/or rules that are alleged to have been violated and a brief summary of the allegations (see Glossary, p. 7) can be found here. The hearing is about the issue(s) contained in this section.
- Please read it over carefully. All laws and/or rules cited in this section can be found on the OPLC website. A link can be found in the *Rules, Procedures, & Terms* section of this guide.

Section II (h), (i), & (j) *Motions, Objections, & Exhibits:*

- This section contains deadlines for submitting motions, objections, and exhibits (these terms are defined in the *Rules, Procedures, & Terms* section of the guide).
- If you are unsure about whether something can be submitted or when it can be submitted, send an email to hearingsclerk@oplc.nh.gov. When making submissions or sending correspondence of any kind, copy the administrative prosecutor.

Section II (q): *Prehearing Conference*

- The “Prehearing Conference” section repeats the prehearing conference date highlighted in the header. Importantly, the link to connect to the Zoom is in this section. It is possible that the prehearing conference is set to be held at OPLC. If that is the case, you will find that information in this section.

Rules, Procedures, & Terms

Laws and rules that govern hearings at OPLC can be found here: <https://www.oplc.nh.gov/oplc-laws-and-rules>. Board specific laws and rules can be found here: <https://www.oplc.nh.gov/laws-and-rules>.

Glossary:

Admissible: Permitted to be seen by the Board; permissible.

Allegation: A claim or assertion that someone has committed misconduct.

Aggravating Factors: Circumstances or facts that warrant harsher sanctions.

Assent: Agree to, specifically when referring to a motion.

Board: The group of individuals that have been appointed to oversee a given profession.

Burden of proof: The duty to prove what has been alleged.

Complainant: The person who submitted a complaint.

Complaint: A written statement that alleges misconduct.

Continuance: A postponement of a prehearing conference or hearing.

Cross-examine: Asking questions to the opposing party's witness.

Direct examination: Asking questions to one's own witness.

Discovery: The process of disclosing evidence to the other party.

Docket: The log of proceedings.

Ex parte communication: Communication with the Board or Presiding Officer that excludes the other party.

Exhibit: A document, recording, video, object, or other article presented to the Board as evidence.

Findings of Fact: The Board's enumeration of what occurred.

Mitigating Factors: Circumstances or facts that warrant lighter sanctions.

Moot: Not subject to a ruling because the issue has passed or never actually arose.

Motion: A request for the presiding officer and/or Board from one or both of the parties.

Motion to Continue: A request to postpone or reschedule the prehearing conference, hearing, or both.

Motion in Limine: A prehearing motion asking the presiding officer to exclude evidence proposed by the other party.

Objection: Statement opposing a request or proposal made by the opposing party.

Order: A document communicating a decision of the presiding officer and/or Board.

Preponderance of the evidence: More likely than not, or 51% likely.

Relevant and material: The standard for admitting evidence; evidence that is related to the issue(s) presented and that makes a consequential fact more or less probable.

Sanction: A penalty imposed by the Board.

Stipulation: An agreement by the parties on a specific issue (e.g. a “stipulated fact” is a fact the parties both agree to be true).

Subpoena: An order requiring an individual to appear at a hearing.

Rules that contain deadlines:

Rule 206.12: All motions shall be filed at least ten (10) days before the date of any hearing, conference, event, or deadline which would be affected by the requested relief.

Rule 206.12(d): Any responses or objections to motions or other requested relief shall be filed within ten (10) days of the receipt of such motion or other relief.

Note regarding motions and objections: it is not required that motions/objections be overly formal. An email is perfectly acceptable. Whether in the body of an email or typed out more formally onto a word/pdf, all motions and/or responses can be emailed to hearingsclerk@oplc.nh.gov with the administrative prosecutor copied onto the email.

Rule 206.18(d): A final witness list, including a brief summary of their testimony, a list of proposed exhibits, and a copy of any proposed exhibits shall be provided to the Presiding Officer’s Office and other parties no later than fourteen (14) days prior to the hearing. Respondent’s exhibits shall be pre-marked for identification with capital letters (A, B, C, D, etc.); Hearing Counsel’s exhibits shall be pre-marked for identification with Arabic numerals (1, 2, 3, 4, etc.).

Note regarding exhibits: sending your exhibits ahead of time is an important part of the process. Please email them to hearingsclerk@oplc.nh.gov with the administrative prosecutor copied onto the email. The administrative prosecutor will also send you his/her exhibits at least 14 days prior to the hearing.

Special Accommodations

Accessibility: OPLC is equipped with infrastructure such as an elevator and ramps. If you have any accessibility concerns or needs, please contact hearingsclerk@oplc.nh.gov.

Interpreter: OPLC will provide an interpreter upon request. Please email hearingsclerk@oplc.nh.gov in advance of your hearing noting the language for which you would like an interpreter. Please note, depending on how far in advance you make a request, the hearing may have to be rescheduled to provide time to find an interpreter.

Virtual Hearings: If you live out of state or have other reason to need to attend the hearing via Zoom, email hearingsclerk@oplc.nh.gov with a brief description of why you would like to attend the hearing virtually. Copy the administrative prosecutor when making your request.

Frequently Asked Questions

Why have I received a Notice of Hearing?

Answer: The Board has voted to initiate a hearing. The specific matter(s) to be addressed at the hearing can be found in the “Issues Presented” section of the Notice of Hearing.

What if I need to reschedule or postpone the hearing?

Answer: You can submit a “motion to continue” (a request to postpone the hearing) via email to hearingsclerk@oplcnh.gov. Provide a brief description of why you would like the hearing to be rescheduled. When making this request, copy the administrative prosecutor. There is no special form for a motion to continue. Sending an email is sufficient.

Where is the hearing going to take place?

Answer: OPLC, 7 Eagle Square, Concord, NH 03301. When you arrive, the front desk will be able to assist you in getting to the correct room. There is metered parking on Storrs St. and North Main St. If you are unable to attend in person, please email hearingsclerk@oplcnh.gov with the administrative prosecutor copied on to request a hearing via zoom.

When is the hearing going to take place?

Answer: The date and time of your hearing can be found in the Notice of Hearing. It is listed in the header section. If you have any scheduling questions, email hearingsclerk@oplcnh.gov.

Who is going to be at the hearing?

Answer: At the hearing will be the Board, Presiding Officer, administrative prosecutor, witnesses, and yourself. Also, please know that hearings are generally held in public. So, there may be members of the public both in person and on Zoom.

Can I hire an attorney?

Answer: Yes, you can hire an attorney at your own expense. If you do hire an Attorney, have them file an appearance with the hearingsclerk@oplcnh.gov.

Do I have to hire an attorney?

Answer: No, if you do not want to hire an attorney, you can represent yourself.

What is a settlement and how can one be discussed?

Answer: A settlement agreement is an agreement between the respondent and the Board which eliminates the need for a hearing. If you are interested in discussing settlement, reach out to the administrative prosecutor on your case. The administrative prosecutor will reach out to you with contact information.

Can I present exhibits?

Answer: Yes, you are welcome to present exhibits to the Board in support of your case. An exhibit is a document/object presented as evidence. Examples include but are not limited to pictures, receipts, letters, etc. Exhibits you would like the Board to consider should be submitted to hearingsclerk@oplcnh.gov with the administrative prosecutor copied at least fourteen (14) days before the hearing. The Presiding Officer will decide which exhibits are permitted to be viewed by the Board.

Can I call witnesses?

Answer: Yes, you are welcome to call witnesses to speak in support of your case. Please provide a list of people who you would like to testify to hearingsclerk@oplcnh.gov with the administrative prosecutor copied at least fourteen (14) days before the hearing. The Presiding Officer will decide which witnesses are permitted to testify.