

**Readopt with amendments Plc 201 and Plc 202, eff. 8-4-22 (doc. #13427), cited and to read as follows:**

## CHAPTER Plc 200 PRACTICE AND PROCEDURE

Statutory Authority: RSA 310:6, II; RSA 541-A:16, I(b)

### PART Plc 201 PURPOSE AND APPLICABILITY

#### Plc 201.01 Purpose.

(a) The purpose of the various proceedings undertaken pursuant to this chapter is to acquire sufficient information to make fair and reasoned decisions on matters within the statutory jurisdiction of the office of professional licensure and certification (OPLC) or the board undertaking the proceeding.

(b) The purpose of this chapter is to provide:

(1) Uniform procedures for the conduct of adjudicative proceedings and non-adjudicative proceedings;

(2) Uniform procedures for the submittal, review, and disposition of complaints, investigations, and settling disciplinary and non-disciplinary remedial matters by agreement; and

(3) Uniform procedures for the submittal, review, and disposition of rulemaking petitions, requests for explanation of adopted rules, requests for declaratory rulings, waivers of rules, and waivers of procurement provisions under RSA 21-G:37.

(c) These rules are intended to supplement the requirements of RSA 541-A and any procedures or criteria expressly set forth in RSA 310 or the practice act of a board.

#### Plc 201.02 Applicability.

(a) The definitions in Plc 202 and rules in Plc 203 shall apply to all administrative proceedings conducted by the by the OPLC or a board, as described in Plc 204 through Plc 212, and shall be in addition to applicable requirements of RSA 541-A and the rules set forth in Plc 204 through Plc 212 as applicable to a specific type of proceeding.

(b) As provided in RSA 310, this chapter shall apply to the professions listed in RSA 310:2, II.

### PART Plc 202 DEFINITIONS

Plc 202.01 “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541-A:1, I, reprinted in Appendix B. The term includes “disciplinary proceeding”, “emergency proceeding”, and “licensing proceeding”.

Plc 202.02 “Advisory board” means a board, council, commission, or committee for a profession for which the practice act confers regulatory authority on the executive director in consultation with the advisory body.

Plc 202.03 “Appearance” means a written notification to the OPLC or a board that a person or a person’s representative intends to actively participate in a proceeding.

Plc 202.04 “Applicable law” means the statute(s), rules, standing orders, and case law, if any, under which a profession is regulated in New Hampshire.

Plc 202.05 “Board” means “board” as defined in RSA 310:2, I(a), namely “a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.” The term includes “advisory board” and “policy-autonomous board”.

Plc 202.06 “Complainant” for purposes of the consultation required by RSA 310:10, VIII(a) means the individual who originally filed the complaint that led to the disciplinary proceeding that is proposed to be settled by agreement. The term does not include any person affiliated with the OPLC or a board.

Plc 202.07 “Complaint” means a communication of alleged misconduct containing information that, if true, could violate ethical codes or other applicable law. The term does not include reports of malpractice claims, insurance claims, or disciplinary action(s) in another jurisdiction.

Plc 202.08 “Data” means all information relevant to an investigation, including but not limited to:

- (a) Oral or written descriptions provided by a complainant or witness;
- (b) Reports obtained in the course of the investigation;
- (c) Maps, charts, drawings, and photographs obtained or created in the course of the investigation;
- (d) Audio or video recordings obtained or created in the course of the investigation; and
- (e) Computer programs or computer printouts obtained or created in the course of the investigation or otherwise used to analyze other information obtained.

Plc 202.09 “Disciplinary proceeding” means an adjudicative proceeding commenced by the OPLC or a board for the purpose of determining whether to suspend, revoke, refuse to renew a license based on alleged misconduct, or impose any other sanction(s). The term includes proceedings conducted pursuant to RSA 310:13 relative to unlicensed practice.

Plc 202.10 “Emergency proceeding” means an adjudicative proceeding initiated by a board pursuant to RSA 541-A:30, III, or pursuant to the board’s practice act if applicable, to address a threat to public health, safety, or welfare that requires emergency action.

Plc 202.11 “Enforcement division” means the division of enforcement of the OPLC established by RSA 310:2, II.

Plc 202.12 “Executive director” means the executive director of the OPLC or designee.

Plc 202.13 “File” as a verb means to place a document in the actual possession of the OPLC or a board.

Plc 202.14 “File electronically”, for other than applications for a license and related documents that can be filed using the on-line licensing portal, means to file a document by:

- (a) Using the electronic filing system available at <https://www.oplc.nh.gov> when it becomes available; or
- (b) Until an electronic filing system becomes available, by sending an email with documents attached in portable document format (pdf) in accordance with Plc 203.02 or Plc 204.02, as applicable.

Plc 202.15 “Hearing” means a component of a proceeding, through which the OPLC or a board receives testimony, evidence, arguments, or comments, or any combination thereof. The term includes hearings conducted in-person and hearings conducted in-person with remote participation.

Plc 202.16 “Intervenor” means a person allowed by the presiding officer to intervene in an adjudicative proceeding pursuant to RSA 541-A:32.

Plc 202.17 “Investigation” means a gathering of data by the OPLC on behalf of a board concerning matters within the jurisdiction of the board.

Plc 202.18 “Investigator” means an individual designated by the OPLC to conduct an investigation or oversee the activities of the professional conduct investigators, or both.

Plc 202.19 “License” means “license” as defined in RSA 541-A:1, VIII, reprinted in Appendix B.

Plc 202.20 “Licensee” means a person who holds a license, certification, registration, or other form of approval required by law to engage in a profession regulated by a board.

Plc 202.21 “Licensing proceeding” means a proceeding conducted to determine whether an applicant meets the qualifications established in applicable law for licensure. The term does not include any disciplinary proceeding.

Plc 202.22 “Motion” means any request to the presiding officer for an order or ruling directing some act to be done in favor of the participant making the motion, including a statement of justification or reason(s) for the request.

Plc 202.23 “Non-disciplinary remedial proceeding” means an adjudicative proceeding commenced by a board for the purpose of determining whether a licensee is afflicted with physical or mental disability, disease, disorder, or condition deemed dangerous to the public health.

Plc 202.24 “Oral public hearing” means a legislative-type hearing that is part of a non-adjudicative proceeding, that is held for the purpose of receiving oral or written comments, or both, from the public. The term includes oral public hearings conducted in-person and conducted in-person with remote participation.

Plc 202.25 “Order” means a document issued by the presiding officer or a board to:

- (a) Establish procedures to be followed in an adjudicative or non-adjudicative proceeding;
- (b) Grant or deny a petition or motion;
- (c) Require a person to do something, or to abstain from doing something, as a result of an adjudicative proceeding; or
- (d) Determine a person’s rights to a license or other privilege established by law.

Plc 202.26 “Participant” means:

- (a) For an adjudicative proceeding, a respondent, respondent’s representative, intervenor, intervenor’s representative, or prosecutor for that adjudicative proceeding; or
- (b) For a non-adjudicative proceeding, any person who attends or otherwise participates in the oral public hearing or submits comments in writing on paper or by e-mail, or both.

Plc 202.27 “Participants” means:

- (a) For an adjudicative proceeding, all respondent(s), respondent’s representative(s), intervenor(s), intervenor’s representative(s), and prosecutor(s) for that adjudicative proceeding; or
- (b) For a non-adjudicative proceeding, the collective group of individuals who attend or otherwise participate in the public hearing held on the matter or provide comments orally or in writing on paper or by e-mail, or any combination thereof.

Plc 202.28 “Person” means an individual or a legal entity such as a corporation or professional association, whether operating as a for-profit or non-profit organization.

Plc 202.29 “Petition” means any request to the OPLC or a board seeking an order or any other action for relief other than a license application or a motion.

Plc 202.30 “Policy-autonomous board” means a board for a profession for which the practice act confers the authority to establish substantive requirements, such as requirements for licensure, directly on the board.

Plc 202.31 “Practice act” means the statute(s) that confers authority on the OPLC or a board to regulate a specific profession.

Plc 202.32 “Presiding officer” means the individual who has been designated:

(a) By the OPLC to preside over some or all aspects of an adjudicative proceeding that is not a licensing proceeding; or

(b) By a board to preside over some or all aspects of a licensing proceeding or a non-adjudicative proceeding.

Plc 202.33 “Proceeding” means the totality of the handling of a matter, including the initiation, review, hearing, decision, and, if applicable, reconsideration or rehearing of the matter. A proceeding can be either adjudicative or non-adjudicative.

Plc 202.34 “Prosecutor” means the individual appointed by the OPLC to present the evidence collected in an investigation in a proceeding arising from allegations of licensee misconduct or unlicensed practice. The term includes “administrative prosecutor”.

Plc 202.35 “Remote participation” means participating in an in-person hearing via electronic means from a location other than that at which the hearing is being conducted.

Plc 202.36 “Respondent” means:

(a) For purposes of a disciplinary proceeding, the person who holds the license or who has applied for renewal of a license;

(b) For purposes of an administrative fine proceeding, the person against whom the board proposes to impose an administrative fine; or

(c) For any other action initiated under Plc 200, the person against whom the board proposes to take the action.

Plc 202.37 “Via electronic means” means using a video teleconference electronic meeting platform that enables all participants to communicate with each other contemporaneously, such as, but not limited to, WebEx<sup>®</sup>, Zoom<sup>®</sup>, GoToMeeting<sup>®</sup>, or GoToWebinar<sup>®</sup>.

Plc 202.38 “Working day” means any Monday through Friday, excluding days on which state offices are closed in observance of holidays.

**Readopt with amendments Plc 203.02 and Plc 203.03, eff. 08-04-22 (doc. #13427), and renumber as Plc 203.02 through Plc 203.04, to read as follows:**

Plc 203.02 Filing of Documents with the OPLC or a Board.

(a) A document shall be considered filed when it is actually received by the OPLC or the board to which it is addressed, whether filed electronically or on paper, and facially conforms to applicable rules.

(b) A document that does not, on its face, comply with applicable rules shall not be accepted for filing. In such cases, the sender shall be notified of the deficiencies without prejudice to subsequent acceptance if the deficiencies are corrected and the document is refiled within any applicable time period.

(c) Documents relating to an appeal that are filed electronically shall be sent to [hearingsclerk@oplcnh.gov](mailto:hearingsclerk@oplcnh.gov).

(d) Requests for records under RSA 91-A shall be filed in accordance with Plc 103, at [righttoknow@oplcnh.gov](mailto:righttoknow@oplcnh.gov) if filed electronically.

(e) All correspondence, filings, or communications intended for the OPLC that do not relate to an adjudicative proceeding or a right-to-know request shall be addressed to the OPLC in care of the executive director's administrative assistant.

(f) All correspondence, filings, or communications intended for a board that do not relate to an adjudicative proceeding or a right-to-know request shall be addressed to that board in care of its board administrator.

(g) Until an electronic filing system becomes available, documents other than applications, right-to-know requests, and appeal-related documents may be filed electronically by sending them to [customersupport@oplcnh.gov](mailto:customersupport@oplcnh.gov).

(h) Subject to (i), below, all petitions, motions, exhibits, memoranda, or other documents filed in connection with a request for action by the OPLC or a board shall, if not able to be filed electronically, be filed with an original and one copy.

(i) Only the original or another single copy shall be filed of:

- (1) Transmittal letters;
- (2) Requests for public records;
- (3) License applications; and
- (4) A complaint against a licensee or against a person who is engaging in a regulated profession without the requisite license.

Plc 203.03 Service in Non-Adjudicative Proceedings.

(a) Applications and petitions for rulemaking shall be filed with the applicable board without service upon other persons.

(b) Petitions for declaratory ruling shall be filed with the applicable board with service on persons who would be directly affected by the ruling, as required by Plc 210.02(c).

Plc 203.04 Date of Issuance or Filing.

(a) All orders, decisions, notices, or other written correspondence or documents issued by or at the direction of the OPLC or a board shall be deemed to have been issued on the date noted on the document.

(b) All correspondence, petitions, applications, requests for findings of fact and conclusions of law, motions, petitions for rehearing, and any other written documents shall be deemed to have been filed with or received by the OPLC or board or, for filings in an adjudicative proceeding, the presiding officer to which it is addressed, on the actual date of receipt by the addressee, as evidenced by a date stamp placed on the document by the addressee in the normal course of business or the date the addressee receives the electronic filing.

**Readopt with amendments Plc 204.01 and Plc 204.02, eff. 08-04-22 (doc. #13427), to read as follows:**Plc 204.01 Purpose and Applicability.

(a) The purpose of this part is to establish the procedures that apply to the filing of complaints against a licensee or against a person who is engaging in a regulated profession without the requisite license and the procedures that will be followed to investigate such complaints.

(b) This part shall apply to complaints against individuals and businesses engaged in any of the professions regulated by a board.

(c) As provided in RSA 310:4, II(d), the executive director shall be responsible for the investigation of all complaints of professional misconduct in accordance with RSA 310:9.

Plc 204.02 Filing a Complaint.

(a) Individuals wishing to file an official complaint against a licensee or against a person believed to be engaging in a regulated profession without the requisite license shall do so by submitting a written complaint as provided in this part.

(b) Complaints shall be filed:

(1) With the OPLC at [Complaints@oplcnh.gov](mailto:Complaints@oplcnh.gov); and

(2) As promptly as reasonably possible after the conduct occurs or is otherwise discovered, so that it is more likely that any relevant records still exist and the recollections of witnesses are more likely to be reliable.

(c) As required by RSA 310:9, II, the enforcement division shall review the complaint to determine whether the allegation states a viable claim and then:

(1) Refer the complaint to the board with a recommendation that the complaint be dismissed, if the allegation is not viable; or

(2) Initiate an investigation into the matter(s) covered by the complaint.

(d) If an investigation is initiated, the enforcement division shall send a copy of the complaint to the subject of the complaint unless doing so would jeopardize:

(1) The safety of the complainant or any other individual; or

(2) The process of a criminal investigation.

(e) If the OPLC receives a complaint relating to a profession regulated by any governmental authority that is not a board as defined in RSA 310:2, II, the OPLC shall forward the complaint to that authority for action under that authority's rules.

(f) All communications of alleged misconduct filed under this part shall:

(1) Contain the information specified in Plc 204.03; and

(2) Be signed and dated by the individual making the complaint or by a duly-authorized representative of such individual, provided that for documents filed electronically, the act of filing shall constitute the signature and the date the transmission is sent shall be the date of the complaint.

(g) The signature on a complaint filed pursuant to this part shall constitute certification that:

(1) The signer has read the complaint;

- (2) The signer is authorized to file the complaint;
- (3) To the best of the signer's knowledge and belief, there are good grounds to support the complaint; and
- (4) The complaint has not been filed for purposes of harassment or delay in any active or contemplated administrative, civil, or criminal proceeding.

**Adopt new Plc 204.04 and renumber Plc 204.04 through Plc 204.06 as Plc 204.05 through Plc 204.07, so that Plc 204.04 reads as follows:**

Plc 204.04 Responding to a Complaint.

(a) If a copy of the complaint is sent to the subject of the complaint pursuant to Plc 204.02(d), the enforcement division shall inform the subject of the complaint:

- (1) That a response shall be filed within 30 days of receipt; and
- (2) Of the email address to which the response shall be sent.

(b) The subject of the complaint shall respond within 30 days of receipt by addressing each factual allegation in the complaint, either agreeing with or disputing the allegation and, if disputing the allegation, providing information that the subject of the complaint believes to be true.

(c) The subject of the complaint may provide additional information that is relevant to the matter.

(d) If the subject of the complaint needs additional time to file a response, the person may request an extension of up to 30 days by submitting a written request to the email address identified for filing the response no later than the deadline for filing the response.

(e) The request for extension shall:

- (1) Identify the amount of additional time needed, which shall be no more than 30 days; and
- (2) Explain why additional time is needed, which shall demonstrate that the circumstances preventing a response from being filed by the deadline were beyond the person's control.

(f) The division of enforcement shall grant one extension if the subject of the complaint demonstrates that the circumstances preventing a response from being filed by the deadline are beyond the person's control.

**Readopt with amendments Plc 204.04 through Plc 204.06, eff. 08-04-22 (doc. #13427), and renumber as Plc 204.05 through Plc 204.07, to read as follows:**

Plc 204.05 Initiation and Conduct of Investigations.

(a) As provided in RSA 310:9, III, the OPLC shall investigate allegations of misconduct upon its own initiative or upon written complaint.

(b) The initiation of an investigation shall not constitute or be deemed to commence a disciplinary proceeding.

(c) The initiation of an investigation shall not constitute an allegation of misconduct against a licensee.

(d) When an investigation occurs, an investigator shall contact such persons, conduct such inspections, and examine such records and other documents as are reasonably necessary to make a recommendation as to whether further action should be taken based on the allegations in question.

(e) Investigations, including those based upon allegations in a complaint, shall be conducted on an ex parte basis.

Plc 204.06 Subpoenas For Investigations. Subpoenas issued by the executive director for purposes of conducting an investigation shall be issued as provided in RSA 310:9, V.

Plc 204.07 Investigation Reports.

(a) Upon completion of an investigation, the investigator shall:

- (1) Make a written report to the board of the data gathered as a result of the investigation; and
- (2) Provide a recommendation to the board as to whether there is a reasonable basis to proceed with a disciplinary proceeding.

(b) As provided in RSA 310:9, IV, the following information obtained during investigations shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A unless such information subsequently becomes part of a public disciplinary hearing:

- (1) Complaints or other allegations of misconduct received by the OPLC;
- (2) Information and records acquired during an investigation; and
- (3) Reports and records made by the investigator as a result of an investigation.

(c) Investigation reports and all data gathered by an investigator shall be provided in any adjudicative proceeding resulting from the investigation to:

- (1) The respondent and respondent's representative;
- (2) Each intervenor and intervenor's representative; and
- (3) The prosecutor.

(d) The enforcement division shall also provide, upon request, the confidential information gathered in an investigation to:

- (1) Law enforcement agencies;
- (2) Boards or agencies relating to the respondent's profession in other jurisdictions in which the respondent is licensed or is applying to be licensed;
- (3) Investigators and prosecutors in the same or related disciplinary matters;
- (4) Expert witnesses or assistants retained by the prosecutor or investigators in the same or related disciplinary matters; and
- (5) Persons to whom the licensee has given a release.

**Readopt with amendments Plc 205.01 through Plc 205.04, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 205.01 Purpose and Applicability.

(a) The purpose of this part is to establish the criteria and procedures for settling a matter without the need for an adjudicative hearing.

(b) This part shall apply to any matter in which an investigation determines that there is a basis to proceed with a disciplinary or non-disciplinary remedial proceeding, subject to the time limitations in RSA 310:9, I.

Plc 205.02 Definitions.

(a) “Confidential letter of concern” means a non-disciplinary written letter from a board to a licensee to draw the licensee’s attention to specific acts or omissions that could place the licensee at risk of future disciplinary or non-disciplinary remedial action if the acts or omissions are repeated or otherwise continue.

(b) “Consent order” means a written order, issued by the presiding officer on behalf of the board with the consent of the licensee, that contains stipulated facts and imposes disciplinary sanctions or non-disciplinary remedial measures that have been consented to by the licensee to resolve specific allegations of licensee misconduct.

(c) “Preliminary agreement not to practice (PANP)” means an agreement between a respondent and the enforcement division that the respondent will refrain from practicing until any disciplinary or non-disciplinary remedial proceeding that results from a pending or completed investigation is resolved.

(d) “Treatment program” means a program, including but not limited to a professionals’ health program identified in RSA 310:5, III, in which an individual receives medical or psychological treatment, or both, or another appropriate form of intervention or monitoring, to assist the individual in overcoming a condition that has impaired the individual’s ability to practice competently and safely.

(e) “Voluntary surrender” means the relinquishment by a licensee of the right to practice a profession without a formal adjudication of misconduct.

Plc 205.03 Actions Upon Receipt of Investigation Report. Upon the receipt of an investigation report, the board shall:

(a) Dismiss the action, if the investigation does not reveal that misconduct occurred;

(b) Dismiss the action and issue a confidential letter of concern, if the investigation shows that:

(1) The licensee’s actions constituted misconduct, but occurred under conditions that suggest the licensee would not, under normal circumstances, engage in the conduct and the actions have not been repeated; or

(2) It might not be possible to prove in an adjudicative hearing that the licensee engaged in the actions, even though a reasonable person would conclude, based on the totality of the evidence, including evidence that might not be admissible at a hearing, that the licensee did engage in the actions; or

(c) Commence an adjudicative proceeding to determine whether to impose disciplinary sanctions or non-disciplinary remedial measures.

Plc 205.04 Consent Orders; Review of Proposed Settlement Terms.

(a) If a disciplinary or non-disciplinary remedial proceeding is initiated and discussions between the prosecutor and the respondent result in an agreement on the facts that constitute the basis for sanction(s) and on the appropriate sanction(s), including but not limited to diversion to a treatment program, voluntary surrender, limitations on the scope of practice, or suspension, the agreement shall be written as a proposed settlement agreement and presented to the board for review, as required by RSA 310:10, VIII(a).

(b) If the board has questions about the proposed settlement, such as whether the terms are appropriate or whether the respondent understands them, the board shall conduct a hearing on the proposed settlement agreement in the same manner and under the same conditions as a prehearing conference.

(c) If the board agrees with the terms of the proposed settlement agreement, the board shall:

(1) Approve the settlement agreement and issue it as a consent order, if the matter did not arise from a complaint for which consultation with the complainant is required under RSA 310:10, VIII(a); or

(2) If the matter did arise from a complaint for which consultation with the complainant is required under RSA 310:10, VIII(a), approve the settlement agreement as a provisional consent order, then proceed in accordance with (d)-(g), below.

(d) To provide the opportunity for comment required by RSA 310:10, VIII(a), if the matter resulted from a complaint for which consultation with the complainant is required under RSA 310:10, VIII(a), the board shall notify the complainant of:

(1) The terms on which the matter is proposed to be resolved; and

(2) The deadline for submitting written comments on the proposed terms, which shall be no sooner than 14 days from the date of the notice.

(e) If notice is provided to a complainant pursuant to (d), above, and no comments are received from the complainant, the consent order shall become final 30 days after issuance under (c)(2), above.

(f) If comments are received from the complainant, the presiding officer shall review the comments and:

(1) If the comments indicate the complainant's agreement with the terms or if the comments do not demonstrate potential fundamental flaws or errors in the proposed terms, approve the proposed settlement agreement, resulting in the consent order becoming final 30 days after issuance under (c)(2), above; or

(2) If the comments demonstrate potential fundamental flaws or errors in the proposed terms, present the comments to the board for review, resulting in the consent order not becoming final automatically.

(g) For purposes of this section, "fundamental flaws or errors" means mistakes of law or of material fact that, if corrected, would result in the proposed terms being unacceptable given the nature and severity of the actual underlying misconduct.

(h) After reviewing comments received pursuant to (f)(2), above, the presiding officer and board shall:

(1) Affirm the provisional consent order, resulting in the consent order becoming effective as of its confirmation, if after further review:

a. The presiding officer determines that there are no fundamental flaws or errors in the application of the law to the facts; and

b. The board determines that there are no fundamental flaws or errors in the factual findings or proposed terms; or

(2) Rescind the provisional consent order and schedule the matter for an adjudicative hearing, if after further review it is determined that there are fundamental flaws or errors in the law as applied, findings, or proposed terms.

(i) If the board to which comments are submitted pursuant to (f)(2), above, rescinds the provisional consent order as a result of the comments and schedules the matter for an adjudicative hearing, the terms of the proposed settlement agreement and provisional consent order shall not be made part of any record and the respondent shall not be bound by any terms of the proposed settlement agreement or provisional consent order.

**Readopt with amendments Plc 205.06, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 205.06 Non-Disciplinary Remedial Actions.

(a) A board shall take non-disciplinary remedial action against any person licensed by it only if it finds that the person is afflicted with physical or mental disability, disease, disorder, or condition that is deemed dangerous to the public health.

(b) For purposes of this section, the following definitions shall apply:

(1) “Deemed dangerous to the public health” means that the affliction or condition causes the licensee to be incapable of behaving in conformity with accepted professional standards for the profession in which the licensee practices; and

(2) “Unacceptable threat to public health, safety, or welfare” means that the threat posed by the licensee to the life, health, or safety of individuals with whom the licensee interacts in a professional capacity is greater than the licensee’s interests in retaining his or her license.

(c) In order to take non-disciplinary remedial action, the board shall:

(1) Provide notice and an opportunity for an adjudicative hearing to the licensee; and

(2) Only take the action after making an affirmative finding that:

a. The licensee is afflicted with a physical or mental disability, disease, disorder, or condition deemed dangerous to the public health; and

b. Allowing the licensee to continue to practice would create an unacceptable threat to public health, safety, or welfare.

(d) The action taken by the board shall be the least restrictive action that will address the affliction or condition and abate the threat, provided that the board shall revoke a license only if the findings required by (c)(2), above, are made based on clear and convincing evidence.

**Readopt with amendments Plc 206.01 through Plc 206.03, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 206.01 Applicability; Definition.

(a) The rules in Plc 206 shall apply to any proceeding initiated by a board under:

(1) RSA 310:10, to suspend, revoke, refuse to renew a license based on alleged misconduct, or impose administrative fines or other disciplinary sanctions or non-disciplinary remedial measures, or any combination thereof;

(2) RSA 310:13, to impose a fine for unlicensed practice; or

(3) RSA 310:11, to initiate and conduct a licensing proceeding.

(b) For purposes of this part, “reciprocal discipline hearing” means an adjudicative hearing conducted to determine:

(1) Whether to impose sanctions, including suspension, revocation, refusal to renew based on alleged misconduct, and imposition of administrative fines, based on conduct for which a licensee has been disciplined in another jurisdiction; or

(2) Whether to deny a license application based on:

- a. Conduct that resulted in another jurisdiction denying a license to an applicant; or
- b. Conduct for which a licensee has been disciplined in another jurisdiction.

Plc 206.02 Contact Information Updates Required; Specify Whether Electronic Service is Acceptable.

(a) Any participant in an adjudicative proceeding and any person who has filed a petition for rehearing shall maintain a current mailing address, daytime telephone number including area code, and personal e-mail address on file with the presiding officer until completion of the matter.

(b) Each participant other than the prosecutor shall indicate whether or not service of documents using the email address provided or other electronic means such as a secure file transfer protocol will be accepted.

(c) The prosecutor shall accept service via email or other electronic means such as a secure file transfer protocol.

(d) Notices mailed by first class mail, postage prepaid, to the address on file with the presiding officer shall be presumed to have been received by the addressee.

(e) Emails sent to the email address on file with the presiding officer and documents provided using other electronic means such as a secure file transfer protocol for which no indication is received that delivery was not made shall be presumed to have been received by the addressee, provided that service of documents under Plc 206.11 shall be by email or other electronic service only if the participant has indicated that email or other electronic service will be accepted.

(f) For purposes of this section, “completion of the matter” means the later of:

- (1) The date compliance is achieved or the fine is paid, if applicable;
- (2) The expiration of the time period allowed by law for appealing the decision, if no appeal is filed within that time; or
- (3) The date of the final decision on the last appeal taken.

Plc 206.03 Presiding Officer Appointment and Authority.

(a) All hearings in any adjudicative proceeding other than a licensing proceeding shall be conducted by the presiding officer designated pursuant to RSA 310:10, IV.

(b) All hearings in any licensing proceeding shall be conducted by the individual authorized by the board to serve as presiding officer.

(c) The presiding officer shall as necessary:

- (1) Regulate and control the course of a hearing;
- (2) Facilitate an informal resolution of the subject matter of the hearing;
- (3) Administer oaths and affirmations;

- (4) For other than licensing proceedings, issue subpoenas to compel the attendance of witnesses at hearings or the production of documents as provided in RSA 310:10, V;
- (5) Receive relevant evidence at hearings and exclude irrelevant, immaterial, or unduly repetitious evidence;
- (6) Rule on procedural requests, including adjournments or continuances, at the request of a participant or on the presiding officer's own motion;
- (7) Question any individual who testifies;
- (8) Cause a complete record of any hearing, as described in RSA 541-A:31, VI, to be made; and
- (9) Take any other action consistent with applicable law necessary to conduct the hearing and complete the record in a fair and timely manner.

**Readopt with amendments Plc 206.05 through Plc 206.09, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 206.05 Waiver of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any participant, shall waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension:

- (a) Appears to be lawful; and
- (b) Would be more likely to promote the fair, accurate, and efficient resolution of issues to be resolved in the proceeding than would adherence to a particular rule or procedure.

Plc 206.06 Commencement of Adjudicative Proceedings.

(a) Except for emergency proceedings initiated as provided in Plc 206.07, the board shall commence an adjudicative proceeding by issuing a notice of hearing to the respondent, the respondent's attorney if known, and the enforcement division, at least 15 days before the first scheduled hearing date or first prehearing conference in accordance with RSA 310:10, X.

(b) The notice commencing an adjudicative proceeding shall:

- (1) Identify the docket number assigned to the matter by the OPLC;
- (2) Specify the date, time, place, and nature of any hearing that has been scheduled;
- (3) Summarize the subject matter of the proceeding and identify the issues to be resolved;
- (4) Specify the legislative authority for the proposed action and identify any applicable rules;
- (5) Specify the date by which, and the address to which, appearances or motions by participants shall be filed;
- (6) Specify the date and time of an initial prehearing conference if one has already been scheduled, together with the telephone number or log-in information to be used to participate in the prehearing conference;
- (7) Identify the presiding officer for the proceeding;
- (8) Identify any special procedures to be followed;
- (9) Identify any confidentiality requirements applicable to the proceeding;

(10) Specify that each respondent has the right to have an attorney represent him or her at the respondent's own expense;

(11) Specify that each participant has the right to have the board provide a certified shorthand court reporter at the participant's expense and notify all participants that any such request be submitted in writing at least 10 days prior to the proceeding, as provided in RSA 541-A:31, III(f); and

(12) Contain such other information or attachments as are warranted by the circumstances of the case, including, but not limited to:

a. Orders severing issues from the proceeding or consolidating the proceeding with a different proceeding; and

b. Orders directing the production or exchange of documents.

(c) If the respondent signs a preliminary agreement not to practice (PANP) pending resolution of the matter, a full evidentiary hearing to determine final disciplinary action shall only be held more than 60 days after the date of the notice issued pursuant to (b), above, if:

(1) The prosecutor and the respondent agree to delay the proceeding; or

(2) More time is needed to obtain information that is necessary to make a final determination, provided that the hearing shall be held no later than 120 days from the date of the notice issued pursuant to (b), above, unless the information is not available within that time due to:

a. Reasons within the control of the respondent; or

b. The pendency of a criminal prosecution arising from the same circumstances as those on which the administrative proceeding is based.

(d) If a hearing is delayed pursuant to (c), above, the presiding officer shall schedule a prehearing conference to request a status report from the prosecutor and the respondent within 120 days of the notice issued pursuant to (b), above, and at intervals no shorter than 60 days and no longer than 90 days thereafter until a full adjudicative hearing is scheduled.

#### Plc 206.07 Initiation and Conduct of Emergency Proceedings.

(a) To initiate an emergency proceeding, the board shall issue an order that immediately suspends the respondent's license based on:

(1) A determination that there is a reasonable basis to believe that public health, safety, or welfare requires emergency action, if the action is commenced under RSA 541-A:30, III; or

(2) Such determination as is required by the practice act under which the action is commenced.

(b) If a board commences an emergency proceeding, the board shall conduct an adjudicative hearing within the time specified in the statute upon which the action is based, which for actions commenced under RSA 541-A:30, III is not later than 10 working days after the date of the board's order suspending the license, to determine whether to continue the suspension of the respondent's license pending a full adjudication of the matter.

(c) The board shall issue a notice of the date, time, and place of the hearing to determine whether to continue the suspension that:

(1) Complies with Plc 206.06(b); and

(2) Includes a statement that offers of proof may be made as provided in Plc 206.23.

(d) A respondent may request the hearing held pursuant to (b), above, to be delayed, which request shall be granted only if the respondent agrees to the emergency suspension remaining in place until the board issues its decision after the hearing held pursuant to (b), above.

(e) Except as provided in (f), below, at a hearing held pursuant to (b), above, the prosecutor shall have the burden of proof by a preponderance of the evidence that:

(1) Allowing the respondent to remain in practice pending a full adjudication of the matter poses a threat to public health, safety, or welfare, based on the nature and severity of the alleged violations from which the matter arose; and

(2) The threat to public health, safety, or welfare outweighs the respondent's interests in continuing to practice.

(f) If applicable law establishes different elements of proof, the prosecutor shall have the burden of proof by a preponderance of the evidence on each such element.

(g) The license suspension shall be continued pending a full adjudication of the matter only if the prosecutor meets the burden of proof established in (e) or (f), above, as applicable.

(h) If, as a result of the hearing held pursuant to (b), above, the board continues the license suspension pending a full adjudication of the matter, the board shall conduct a full evidentiary hearing to determine final disciplinary sanctions or non-disciplinary remedial measures within 60 days of the date of the initial emergency suspension unless extended pursuant to (i) or (j), below, provided the license shall remain suspended pending completion of the adjudication.

(i) A full evidentiary hearing to determine final disciplinary sanctions or non-disciplinary remedial measures shall only be held more than 60 days after the date of the initial emergency suspension if:

(1) The prosecutor and the respondent agree to delay the proceeding; or

(2) More time is needed to obtain information that is necessary to make a final determination, provided that the hearing shall be held no later than 120 days from the date of the initial emergency suspension unless the information is not available within that time due to:

a. Reasons within the control of the respondent; or

b. The pendency of a criminal prosecution arising from the same circumstances as those on which the administrative proceeding is based.

(j) If a hearing is delayed pursuant to (i), above, the presiding officer shall schedule a prehearing conference to request a status report from the prosecutor and the respondent within 120 days of the initial emergency suspension and at intervals no shorter than 60 days and no longer than 90 days thereafter until a full adjudicative hearing is scheduled.

Plc 206.08 Methods of Proceeding - Generally.

(a) If the participants agree, the proceeding shall be conducted as follows:

(1) 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, the proceeding shall, to that extent, consist of the submission of affidavits and memoranda; and

(2) 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 that argue the

legal conclusions the participants wish the presiding officer to draw from the undisputed facts.

(b) If the participants do not agree to one of the methods of proceeding in (a), above, the matter shall proceed to an oral adjudicative hearing.

(c) For proceedings in any of the professions for which the board is an advisory board or for which there is no board, the oral adjudicative hearing shall be conducted either by the presiding officer designated by the executive director alone or, if the executive director determines that the expertise of the advisory committee or advisory board members, as applicable, is necessary, by a panel consisting of the presiding officer and a minimum of 2 members of the relevant advisory committee or advisory board.

(d) For proceedings in any other professions, the oral adjudicative hearing shall be conducted in accordance with applicable law, including but not limited to RSA 310:10 and RSA 310:11 as applicable.

(e) A recording of the hearing shall be taken and preserved. If requested by a participant, the record of the proceeding shall be made by a certified shorthand court reporter at the requestor's expense, pursuant to RSA 541-A:31, VII-a.

(f) If a participant has reason to participate remotely, the participant shall file a motion no later than the deadline for filing a witness list, or as much in advance as possible based on the circumstances, which motion shall be granted if the presiding officer determines that:

- (1) The participant has access to equipment necessary to enable remote participation; and
- (2) The participant has demonstrated a compelling reason or justification, including but not limited to circumstances beyond the participant's control that impair the participant's ability to attend the hearing in person.

#### Plc 206.09 Appearances and Representation.

(a) A respondent or the respondent's representative shall file an appearance that includes the following information:

- (1) A brief identification of the matter, including the docket number;
- (2) A statement as to whether or not the representative is an attorney and, if so, whether the attorney is licensed to practice in New Hampshire;
- (3) The respondent's or representative's daytime address, telephone number including area code, and email address; and
- (4) Whether the respondent or representative will accept electronic service via email or other secure file transfer protocol, provided that if the filing does not so indicate, the presiding officer or designee shall contact the individual filing the appearance to find out in lieu of rejecting the filing.

(b) The prosecutor shall file an appearance that identifies:

- (1) The matter in which the prosecutor will be appearing; and
- (2) A daytime address and telephone number including area code and email address that can be used to contact the prosecutor.

(c) Any changes to the information in (a) or (b), above, shall be filed with the presiding officer, in writing, within 5 working days of the change.

(d) The presiding officer shall, after providing notice and opportunity for hearing, prohibit an individual from acting as a representative upon a finding that the individual has repeatedly violated rules or orders of the presiding officer, willfully disrupted the proceedings, or made material misrepresentations to the presiding officer or a participant in a proceeding.

(e) Any prohibition issued under (d), above, shall apply only to proceedings before the specific board at which the conduct causing the disqualification occurred.

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

**Readopt with amendments Plc 206.11 through Plc 206.13, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 206.11 Service of Documents.

(a) All objections, motions, replies, memoranda, exhibits, or other documents filed in an adjudicative proceeding shall be served by the proponent upon all other participants by:

(1) Depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the address of record in the proceeding for the participant being served, no later than the day the document is filed with the presiding officer;

(2) Delivering a copy of the document in hand to the participant being served on or before the date it is filed with the presiding officer; or

(3) Sending a copy of the document to the participant being served on or before the date it is filed with the presiding officer as an attachment to an email addressed to the email address of record or providing the document via secure file transfer protocol, provided that the participant who provided the email address has indicated that electronic service would be accepted in this manner.

(b) Notices, orders, decisions, or other documents issued by the presiding officer or board in connection with an adjudicative proceeding shall be served by the issuer upon all participants in the matter by:

(1) Depositing a copy of the document, first class postage prepaid, in the United States mail, addressed to the address of record in the proceeding for the participant being served;

(2) Delivering a copy of the document in hand to the participant being served; or

(3) Sending a copy of the document to the participant being served as an attachment to an email addressed to the email address of record or providing the document via secure file transfer protocol, provided that the participant who provided the email address has indicated that electronic service would be accepted in this manner.

(c) When a respondent's representative or intervenor's representative has filed an appearance, service shall be upon the representative.

(d) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the presiding officer shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service and the person(s) served.

Plc 206.12 Motions and Objections.

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

(b) Prior to filing a written motion, the participant filing the motion shall seek concurrence with the relief requested in the motion from the other participant(s), provided however that if the motion would result in a ruling that is adverse to another participant's interests, the moving participant shall not be required to seek concurrence from that participant.

(c) All motions shall state clearly and concisely in separately numbered paragraphs:

- (1) The purpose of the motion;
- (2) The relief sought by the motion;
- (3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion; and
- (4) The facts claimed to constitute grounds for the relief requested by the motion.

(d) The participant filing the motion shall sign and date the motion in accordance with Plc 206.10(c).

(e) Objections to motions shall be filed within 10 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.

(f) Objections to motions shall be signed as required by Plc 206.10(c) and state clearly and concisely:

- (1) The objection or defense of the participant filing the objection to any fact or request in the motion, set forth in separate paragraphs that identify the paragraph(s) in the original motion to which it relates;
- (2) The action the participant filing the objection wishes the presiding officer to take on the motion;
- (3) Statutes, rules, orders, or other authority relied upon to rebut the motion; and
- (4) Any facts that are additional to or different from the facts stated in the motion.

(g) Motions shall be decided upon the writings submitted, unless the presiding officer determines that the expertise of the board is necessary to a full understanding of the motion or objection, or both, in which case the matter shall be scheduled for a hearing.

(h) Repetitious motions shall not be submitted.

Plc 206.13 Role of Complainants and OPLC and Board Staff in Adjudicative Proceedings.

(a) Unless called as a witness or granted intervenor status, a person whose complaint resulted in an adjudicative proceeding shall have no role in the adjudicative proceeding.

(b) Unless called as a witness or serving as the presiding officer or prosecutor, staff of the OPLC or the board conducting the proceeding shall have no role in the adjudicative proceeding.

**Readopt with amendments Plc 206.17 through Plc 206.22, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 206.17 Prehearing 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 request the participants to attend a prehearing conference when the presiding officer believes that such a conference would aid in the efficient and fair resolution of the proceeding.

(b) The prehearing conference shall be conducted by telephone or via electronic means unless one or more of the participants objects to doing so.

(c) Matters that can be addressed at a prehearing conference shall include:

- (1) The distribution of exhibits and written testimony, if any, to the participants;
- (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 that would otherwise govern the proceeding; and
- (8) Other matters that might contribute to the prompt and orderly conduct of the proceeding.

(d) As provided in RSA 310:10, VI, pre-hearing conferences shall be exempt from the provisions of RSA 91-A.

Plc 206.18 Discovery and Disclosure; Identification of Exhibits.

(a) The enforcement division shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the OPLC that is reasonably related to the subject matter of the proceeding.

(b) Parties shall attempt to agree among themselves concerning the mutual exchange of relevant information. If these efforts prove unsuccessful, a participant wishing to initiate discovery against another participant, shall, by motion:

- (1) Seek leave to do so; and
- (2) Identify the exact type of discovery requested.

(c) Discovery shall be ordered when the participants 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.

(d) Subject to (e), below, not less than 14 days before the hearing the participants shall provide to the other participants and to the presiding officer:

- (1) A list of all witnesses to be called at the hearing together with a brief summary of their testimony;
- (2) A list of all documents and exhibits to be offered as evidence at the hearing; and
- (3) A clear and legible copy of each document or exhibit, which shall be sequentially marked and identified as follows:

a. Exhibits from the prosecutor shall be marked with the words "Prosecution Exhibit" followed by a sequential cardinal number, so that the first exhibit is labeled "Prosecution Exhibit 1" and the second is "Prosecution Exhibit 2," and so on;

b. Exhibits submitted by other participants shall be labeled in the same manner as the prosecutor's, except they shall be identified by the words "Respondent Exhibit" or "Intervenor Exhibit" as appropriate; and

c. Exhibits submitted by any person not covered by a. or b. above shall be marked as directed by the presiding officer; and

(4) Any requests for changes to standard procedure or other matters concerning conduct of the hearing.

(e) If the proceeding was initiated pursuant to Plc 206.07 relative to emergency proceedings, the time period for providing the items specified in (d)(1)-(4), above, shall be not less than 3 working days before the hearing held pursuant to Plc 206.07(b) to determine whether to continue an emergency suspension pending a full adjudication.

Plc 206.19 Subpoenas for Hearings.

(a) The presiding officer shall issue subpoenas for the attendance of witnesses or the production of documents or other evidence in an adjudicative proceeding other than a licensing proceeding in accordance with RSA 310:10, V.

(b) The participant requesting a subpoena to be issued shall attach a copy of the proposed subpoena to the motion requesting the issuance of a subpoena. If the motion is granted, the requesting participant shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.

(c) A motion to quash or modify a subpoena shall be entertained from the person to whom the subpoena is directed, if filed no later than one working day before the date specified in the subpoena for compliance therewith. If the presiding officer 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 presiding officer's order, whichever is later, unless the presiding officer expressly provides additional time to comply.

(d) The presiding officer shall grant a motion to issue a subpoena or a motion to quash a subpoena if there is a preponderance of evidence to support the motion.

(e) If a person fails to comply with a subpoena issued pursuant to this section, then:

(1) If the person is a licensee, such noncompliance shall constitute misconduct, for which the presiding officer or board shall:

a. 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 that is adverse to the noncompliant participant; or

b. Request the enforcement division to initiate a separate investigation against any non-compliant individual who is subject to the board's jurisdiction; or

(2) For all non-compliant persons, the presiding officer shall:

a. Order the proceeding to continue and defer all, or part, of the subpoena enforcement issues;

b. Recommend that the board seek judicial relief; or

c. Determine there was just cause for the failure to comply with the subpoena, such as illness, accident, recent death of a family member, or other circumstances beyond the control of the non-compliant person.

Plc 206.20 Testimony at an Adjudicative Hearing; Remote Testimony.

(a) All testimony at an adjudicative hearing shall be in accordance with RSA 541-A:33, I.

(b) Any individual offering testimony, evidence, or arguments shall state his or her name and municipality of residence on the record. If the individual is representing another person, the person being represented shall also be identified by name and address.

(c) Except as provided in (d), below, testimony shall be offered in the following order unless otherwise agreed at a prehearing conference or changed in a ruling on a motion:

- (1) The prosecutor and such witnesses as the prosecutor calls;
- (2) The respondent and such witnesses as the respondent calls; and
- (3) Any intervenor(s) and such witnesses as the intervenor(s) call.

(d) At a hearing held pursuant to Plc 206.07(b) to determine whether to continue an emergency suspension pending a full adjudication, the prosecutor shall present first.

(e) Anyone offering testimony shall be subject to cross-examination as provided in Plc 206.21.

(f) Any person included within (c)(1) through (3), above, who wishes to submit written testimony at the hearing in addition to oral testimony shall do so to the presiding officer, provided the person signs and dates such testimony and the presiding officer determines, as required by RSA 541-A:33, II, that the interests of the other participants will not thereby be prejudiced substantially. The participant submitting written testimony shall give a copy of such testimony to each other participant. All participants shall have the opportunity to cross-examine the witness on and offer rebuttal testimony to the written testimony.

(g) If a participant wishes to call as a witness an individual who is not in New Hampshire, the participant may file a motion to allow the individual to testify from a remote location using a video teleconference electronic meeting platform that allows all participants, the presiding officer, and members of the board or panel to communicate contemporaneously with each other, which motion shall be granted if:

- (1) The witness is outside the jurisdiction of New Hampshire but is willing to testify;
- (2) The witness has access to an electronic meeting platform that will allow all participants, the presiding officer, and members of the board or panel to communicate contemporaneously with each other and with the witness;
- (3) The testimony to be offered by the witness is material to the moving participant's presentation; and
- (4) Either:
  - a. The other participants will not be materially prejudiced by allowing the witness to testify from a remote location; or
  - b. Any disadvantage to another participant from allowing remote testimony is outweighed by the disadvantage to the moving participant if remote testimony is not allowed.

(h) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Plc 206.21 Inquiry by Presiding Officer or Panel Members; Cross-Examination.

- (a) The presiding officer shall make such inquiry of witnesses or participants as the presiding officer believes necessary to develop a sound record for decision.
- (b) If the adjudicative hearing is being held by a policy-autonomous board or if there is a panel pursuant to Plc 206.08(c) or (d), the presiding officer shall allow the board or panel members to make such inquiries as are necessary for a full understanding of the issues to be determined.
- (c) The presiding officer shall allow the participants or their representatives to cross-examine each witness, including any witness allowed to testify from a remote location pursuant to Plc 206.20(g), at the conclusion of the testimony of the witness.

Plc 206.22 Evidence.

- (a) Receipt of evidence shall be governed by RSA 541-A:33.
- (b) Evidence that is relevant and material to the subject matter of the adjudicative proceeding in which it is offered and that will reasonably assist the presiding officer and board to determine the truth shall be admissible.
- (c) The presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.
- (d) Whenever necessary for a full and fair consideration of the matter, the presiding officer shall take official notice in accordance with RSA 541-A:33, V.
- (e) If a document or other exhibit has not been pre-marked as required by Plc 206.18, the presiding officer or designee shall mark each item accepted as an exhibit with a number or other notation to identify the exhibits in a sequential manner.
- (f) If the original of a document is not readily available, the documentary evidence shall be received in the form of copies or excerpts.
- (g) All documents, materials, and objects admitted into evidence at an adjudicative hearing and all written testimony submitted for the hearing shall be made available during the course of the hearing for examination by any participant.
- (h) Any participant who objects to a ruling of the presiding officer regarding evidence or procedure made during an adjudicative hearing shall state the objection and the grounds therefor at the time the ruling is made. Any participant who objects to a ruling of the presiding officer regarding evidence or procedure made at a time other than during an adjudicative hearing shall file a written objection to the ruling in the form of a motion within 5 working days of the date of the ruling. Nothing herein shall be construed as independent authorization for interlocutory appeal of rulings of the presiding officer on issues of evidence or procedure.

**Readopt with amendments Plc 206.24 and Plc 206.25, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 206.24 Burden and Standard of Proof.

- (a) Subject to (c) through (h), below, the person 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 (a), above, the person filing a motion shall have the burden of persuading the presiding officer that the motion should be granted.
- (c) In a disciplinary or non-disciplinary remedial hearing, the prosecutor shall have the overall burden of proof by a preponderance of the evidence, unless (f), below, applies.

(d) In a hearing held pursuant to Plc 206.07(b) to determine whether to continue an emergency suspension pending a full adjudication, the prosecutor shall have the burden of proof as stated in Plc 206.07(e) or (f), as applicable.

(e) Subject to (f), below, in a hearing to determine whether to issue a license, the applicant shall have the overall burden of proving that he or she meets the qualifications established in applicable law by a preponderance of the evidence.

(f) In a hearing held pursuant to RSA 332-G relative to determining whether an applicant or potential applicant is disqualified by reason of a criminal record, the board shall have the burden of proof on the factors listed in RSA 332-G by clear and convincing evidence.

(g) In any disciplinary or non-disciplinary remedial proceeding, license revocation shall be imposed only if all elements of the misconduct on which the revocation would be based are either admitted by the respondent or proven by clear and convincing evidence.

(h) In any reciprocal discipline hearing:

- (1) The licensee or applicant shall have the burden of persuasion by a preponderance of the evidence that the individual's conduct in another jurisdiction does not constitute grounds to impose sanctions or deny licensure, as applicable, in New Hampshire, or that lesser sanctions should be imposed in New Hampshire; and
- (2) The prosecutor shall bear the burden of persuasion by a preponderance of the evidence on the issue of whether more stringent sanctions should be imposed in New Hampshire.

Plc 206.25 Failure to Attend or Participate in the Hearing.

(a) For purposes of this section, "party" means:

- (1) The prosecutor or the respondent, in any disciplinary or non-disciplinary remedial proceeding; or
- (2) The applicant, in any licensing proceeding.

(b) A party shall be in default if the party:

- (1) Has the overall burden of proof;
- (2) Has received the notice given as required by Plc 206.06; and
- (3) Fails to attend the hearing.

(c) If a party is in default under (b), above, the matter shall be dismissed unless there is just cause shown for failure to attend. Just cause shall include illness, accident, the recent death of a family member, or other circumstance beyond the control of the party that prevented the party from attending the hearing.

(d) If a party who does not have the overall burden of proof fails to attend the hearing after having received the notice given as required by Plc 206.06, the testimony and evidence of any other parties or intervenors shall be received and evaluated.

**Adopt new Plc 206.28 and Plc 206.29, eff. 08-04-22 (doc. #13427), and renumber subsequent sections, so that Plc 206.28 and Plc 206.29 read as follows:**

Plc 206.28 Closing the Record.

(a) After the conclusion of the hearing, the record shall be closed and no other evidence shall be received into the record, except as allowed by (b), below, and Plc 206.29.

(b) Before the conclusion of the hearing, a participant may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other participants have no objection or if the presiding officer determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the presiding officer shall keep the record open for the period of time necessary for the participant to file the evidence.

Plc 206.29 Reopening the Record. At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own initiative or on the motion of any participant, shall reopen the record to receive relevant, material, and non-duplicative testimony, evidence, or arguments not previously received, if the presiding officer determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.

**Readopt with amendments Plc 206.28 through Plc 206.31, eff. 08-04-22 (doc. #13427), and renumber as Plc 206.30 through Plc 206.34, to read as follows:**

Plc 206.30 Deliberations and Decisions.

(a) As provided in RSA 310:10, IV, the presiding officer in any disciplinary or non-disciplinary remedial proceeding shall preside at the hearing, administer oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

(b) As provided in RSA 310:10, VII, boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings and shall determine sanctions, if any.

(c) A final adjudicative order shall take effect on the date it is served on the respondent and the enforcement division pursuant to Plc 206.11(b).

Plc 206.31 Petition for Rehearing; Answers.

(a) A petition for rehearing shall be filed within 30 calendar days after service of a final adjudicative order.

(b) To request a rehearing, the respondent shall:

- (1) Use the "Universal Petition for Rehearing" dated August 2023; or
- (2) Provide the information required by (c), below, in another legible format.

(c) The petition shall:

- (1) Clearly identify the respondent and the docket number of the matter for which the petition is being filed;
- (2) Clearly state whether the petitioner is seeking to have the decision reversed or modified and, if modified, the specific modification(s) sought;
- (3) Clearly identify the specific findings of fact or conclusions of law, or both, that the petitioner asserts are erroneous;

- (4) Contain such argument in support of the petition as the petitioner desires to present, including an explanation of how substantial justice would be done by granting the relief requested; and
  - (5) Be served by the petitioner on all other participants in accordance with Plc 206.11.
- (d) The petitioner or petitioner's representative shall sign the petition.
  - (e) The signature provided pursuant to (e), above, shall constitute attestation that:
    - (1) The signer has read the petition for rehearing;
    - (2) The signer is authorized to file the petition for rehearing;
    - (3) To the best of the signer's knowledge, information, and belief, there are good grounds to support the petition for rehearing; and
    - (4) The petition for rehearing has not been filed solely or primarily for purposes of delay or harassment in any pending or contemplated administrative, civil, or criminal proceeding.
  - (f) No answer to a petition for rehearing shall be required, but any answer or objection filed shall be delivered to the presiding officer within 5 working days following receipt of service of the petition for rehearing.

Plc 206.32 Action on Petition for Rehearing.

- (a) The presiding officer shall grant a petition for rehearing if the petitioner demonstrates by a preponderance of the evidence that:
  - (1) The law was applied incorrectly;
  - (2) The facts on which the decision is based are not supported by the record; or
  - (3) Another compelling reason exists to reconsider the matter, including but not limited to new material evidence becoming available or material evidence that was offered was improperly excluded.
- (b) If the petition is not filed within the time specified in Plc 206.31(b) or if the petitioner does not meet the standard for granting the petition specified in (a), above, then:
  - (1) The presiding officer shall deny the petition; and
  - (2) An order denying the petition shall be:
    - a. Served on the participants in accordance with Plc 206.11; and
    - b. Effective on the date it is served.
- (c) If the presiding officer determines that issues of fact form the basis for part or all of the petition, the presiding officer shall forward the petition and any response(s) received to the board for consideration.
- (d) The presiding officer shall issue a decision on reconsideration after fully considering the petition and any responses thereto, which reconsideration shall include a hearing on the factual issues identified in the motion if the board determines a hearing to be necessary to a full consideration of the facts.
- (e) A final order upon rehearing shall be:

- (1) Served on the participants in accordance with Plc 206.11; and
  - (2) Effective on the date it is served.
- (f) Successive petitions for rehearing shall not be permitted.
- (g) The filing of a petition for rehearing shall not stay any order.

Plc 206.33 Stay of Orders Pending Appeal Prohibited By Statute.

- (a) Pursuant to RSA 310:14, I:
- (1) Any person who has been denied a license or certification by a board shall have the right to a rehearing; and
  - (2) A request for a rehearing shall be made within 30 days of receipt of the final decision.
- (b) Pursuant to RSA 310:14, II, any person who has been disciplined by a board shall have the right to petition in writing for a rehearing within 30 days of receipt of the original final decision.
- (c) Petitions or requests for rehearing shall be made in accordance with Plc 206.31.
- (d) Pursuant to RSA 310:14, III:
- (1) Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541; and
  - (2) No sanction shall be stayed by the board during an appeal.

Plc 206.34 Records of Decisions. The OPLC shall keep a final board decision for at least 5 years following its date of issuance, unless the director of the division of records management of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40 or approves a different retention schedule.

**Readopt with amendments Plc 207.01 through Plc 207.04, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 207.01 Purpose and Applicability.

- (a) The purpose of this part is to provide uniform procedures for the conduct of non-adjudicative proceedings, in particular oral public hearings.
- (b) This part shall apply to proceedings conducted by a board to:
- (1) Adopt, readopt, amend, or repeal rules, referred to as rulemaking; or
  - (2) Provide information to the public and receive comments from the public in any other matter that is not an adjudicative proceeding covered by Plc 206.

Plc 207.02 Notice of Oral Public Hearing. Notice of the date, time, and place of an oral public hearing shall be given as follows:

- (a) For a rulemaking hearing held pursuant to RSA 541-A:3, IV, by publication as specified in RSA 541-A:6, together with notice required by RSA 91-A if that statute applies;
- (b) For any other oral public hearing conducted by or on behalf of the executive director, by such means as the executive director determines will notify those persons likely to be interested in the most cost-effective manner; or

(c) For any other oral public hearing conducted by or on behalf of a board that is subject to the open meeting provisions of RSA 91-A, as required in that statute.

Plc 207.03 Attendance of Regulatory Authority at Hearings on Proposed Rules.

(a) As required by RSA 541-A:11, II, for rules proposed by a policy-autonomous board, each hearing on proposed rules shall be attended by a quorum of the board's members.

(b) As required by RSA 541-A:11, II, for rules proposed by the OPLC, each hearing shall be attended by the executive director or a designee who is knowledgeable in the particular subject area of the proposed rules.

Plc 207.04 Presiding Officer for Oral Public Hearings.

(a) The presiding officer for a non-adjudicative proceeding for the OPLC shall be the executive director or designee who is knowledgeable in the subject area of the subject of the hearing.

(b) The presiding officer for an oral public hearing for a policy-autonomous board shall be the individual designated by that board for that proceeding.

(c) The presiding officer at an oral public hearing shall:

(1) Call the hearing to order;

(2) Identify the subject matter of the hearing and, if the hearing is to receive comments on proposed rules, provide copies of the rules upon request;

(3) Cause a recording of the hearing to be made, if a recording is deemed necessary to preserve the offered testimony, provided that if a recording is not made then the presiding officer or designee shall prepare written notes to summarize the testimony;

(4) Recognize those who wish to be heard;

(5) If necessary, establish limits pursuant to Plc 207.06; and

(6) Take any other action consistent with applicable statutes and rules necessary to conduct the proceeding and complete the record in a fair and timely manner, including but not limited to:

a. Effecting the removal of an individual who speaks or acts in a manner that is personally abusive or otherwise disruptive to the hearing;

b. Postponing or moving the hearing; and

c. Adjourning or continuing the hearing.

**Readopt with amendments Plc 207.07, eff. 08-04-22 (doc. #13427), to read as follows:**

Plc 207.07 Postponing, Continuing, or Moving an Oral Public Hearing.

(a) A hearing on proposed rules shall be postponed only in accordance with RSA 541-A:11, IV.

(b) An oral public hearing held for any other purpose shall be postponed if:

(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 presiding officer is ill or unavoidably absent and no other individual can be designated to serve as the presiding officer;

- (3) A quorum of the board is necessary but is not present;
- (4) Postponement will facilitate greater participation by the public; or
- (5) The presiding officer finds there is other good cause to do so, such as but not limited to conditions existing in the building or locality where the hearing is being held that pose an unreasonable risk to the health or safety of those who wish to attend the hearing.

(c) A hearing on proposed rules shall be moved to another location only in accordance with RSA 541-A:11, V.

(d) An oral public hearing held for any other purpose shall be moved to another location if the original location is not able to accommodate the number of people who wish to attend the hearing or otherwise becomes unavailable, provided that the board shall provide notice of the change in location in the manner that is most likely to be seen by those wishing to attend the hearing, including posting a notice on the board's website.

(e) A hearing on proposed rules shall be continued past the scheduled time or to another date only in accordance with RSA 541-A:11, III.

(f) An oral public hearing held for any other purpose shall be continued past the scheduled time or to another date if:

- (1) The time available is not sufficient to give each individual 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 immediately move the hearing to another location.

**Readopt with amendments Plc 208 through Plc 212, eff. 08-04-22 (doc. #13427), to read as follows:**

**PART Plc 208 RULEMAKING PETITIONS**

Plc 208.01 Applicability. The rules in this part shall apply to any petition submitted to the executive director or a board pursuant to RSA 541-A:4.

Plc 208.02 Filing of Rulemaking Petition.

(a) Any person wishing to file a petition to adopt, amend, or repeal a rule in title Plc shall file the original and one copy of the petition with the executive director, provided that only the original or other single copy shall be required if the petition is filed electronically.

(b) Any person wishing to file a petition to adopt, amend, or repeal a rule in a title assigned to a policy-autonomous board shall file the original and one copy of the petition with that board, provided that only the original or other single copy shall be required if the petition is filed electronically.

Plc 208.03 Content of Petition for Rulemaking. A petition to adopt, amend, or repeal a rule shall contain the following:

(a) The name of each person requesting the adoption, amendment, or repeal of the rule, with an e-mail address for the person;

(b) If the person making the request is other than an individual, the name, daytime telephone number including area code, and email address of the individual who can be contacted regarding the petition;

(c) Whether the person is asking the executive director or board to adopt, amend, or repeal a rule;

(d) A clear and concise statement of why the petitioner wants the executive director or board to undertake the action requested;

(e) If the petition is to adopt a rule or to amend an existing rule, the text of the proposed or amended rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed or amended rule;

(f) If the petition is to repeal an existing rule, identification of the particular rule sought to be repealed; and

(g) Such other information or argument as the petitioner believes would be useful to the executive director or board in deciding whether to commence a rulemaking proceeding.

Plc 208.04 Burden of Persuasion for Rulemaking Petitions. The petitioner shall have the burden of persuasion relative to demonstrating that the criteria for denying the petition specified in Plc 208.05(e) are not met.

Plc 208.05 Disposition of Petition for Rulemaking.

(a) Within 30 days of the submission of a petition to adopt, amend, or repeal a rule in title Plc, the executive director shall:

(1) Determine whether to grant or deny the petition; and

(2) Notify the petitioner of the decision in writing sent to the email address provided in the petition.

(b) If the petition is submitted to a policy-autonomous board, then within 30 days after the first meeting of the board held after receipt of the petition, the board shall:

(1) Determine whether to grant or deny the petition; and

(2) Notify the petitioner of the decision in writing sent to the email address provided in the petition.

(c) As required by RSA 541-A:4, I, if the petition is denied, the notice sent pursuant to (a)(2) or (b)(2), above, shall specify the reason(s) for the denial.

(d) If the petition is granted, the executive director or board shall commence a rulemaking as required by RSA 541-A:4, I.

(e) A denial shall be based upon a finding by the executive director or board that:

(1) The proposed action is not consistent with established standards of practice of the profession being regulated or the purpose and intent of the statute being implemented;

(2) The executive director or board lacks rulemaking authority over the issue(s) in the petition; or

(3) The proposed action is not in the best interests of affected persons or is contrary to legislative intent.

## PART Plc 209 EXPLANATION OF ADOPTED RULES

Plc 209.01 Requests for Explanation of Adopted Rules.

(a) 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 executive director or the board that adopted the rule.

(b) A request submitted pursuant to (a), above, shall include:

- (1) The name and address of the person making the request and, if the requestor is an entity, the name, address, and email address of the individual authorized by the entity to make the request; and
- (2) Identification of the specific rule for which an explanation is sought.

Plc 209.02 Response to Request for Explanation.

(a) The executive director or the board that adopted the rule shall provide a written response within 90 days of receiving a request in accordance with Plc 209.01 if no board meeting is required or within 60 days of the board's first meeting after receiving the petition.

(b) The response required by (a), above, shall:

- (1) Concisely state the meaning of the rule adopted;
- (2) Concisely state the principal reasons for and against the adoption of the rule in its final form; and
- (3) State why the executive director or board overruled any arguments and considerations presented against the rule, if any were presented.

(c) For a policy-autonomous board, the board's response shall reflect the consensus of a quorum of the board's members.

(d) If the executive director determines that the technical expertise of an advisory board is needed to respond to a request for explanation, the executive director shall consult with the advisory board.

## PART Plc 210 DECLARATORY RULINGS

Plc 210.01 Purpose.

(a) The purpose of this part is to establish a mechanism whereby a person who is uncertain of the applicability of a particular statute implemented by the executive director or a board or a rule adopted by the executive director or a board may request a decision in advance of taking an action that might be subject to such statute or rule.

(b) This part shall not be used to circumvent other established methods of adjudication, such as an appeal, in cases where the executive director or board has already made a determination, such as by issuing or denying a license or by initiating a disciplinary or non-disciplinary remedial proceeding.

Plc 210.02 Filing of Petition for Declaratory Ruling.

(a) Any person seeking a declaratory ruling from the executive director or for a profession for which the board is advisory or for which there is no board shall file a written petition for declaratory ruling that meets the requirements of Plc 210.03 with the executive director in accordance with Plc 203.02.

(b) Any person seeking a declaratory ruling from a policy-autonomous board shall file a written petition for declaratory ruling that meets the requirements of Plc 210.03 with that regulatory authority in accordance with Plc 203.02.

(c) If the ruling sought by the petition would directly affect a person other than the person filing the petition, the person filing the petition shall serve the petition on each other affected person by:

(1) Depositing a copy of the petition in the United States mail, first class postage prepaid, addressed to the person being served, no later than the day the petition is filed with the regulatory authority; or

(2) Delivering a copy of the petition in hand to the person being served on or before the date it is filed with the regulatory authority.

Plc 210.03 Contents of Petition for Declaratory Ruling; Signature Required.

(a) A petition for declaratory ruling shall contain:

(1) The name and mailing address of the petitioner and, if the petitioner is filing electronically or is filing on paper but agrees to receive the notice under Plc 210.04(b) and a response by email, the email address to which the notice and response should be sent;

(2) The exact ruling being requested;

(3) Each statutory and factual basis for the ruling, set forth in separately numbered paragraphs; and

(4) Any supporting affidavits or memoranda of law.

(b) The petition shall be signed by the individual(s) submitting the petition or, if the petition is filed on behalf of an entity, by a duly-authorized representative of the entity, provided that if the petition is filed electronically, the act of submitting the petition shall constitute a signature.

(c) The signature(s) shall constitute a certification that:

(1) The signer has read the petition;

(2) The signer is authorized to file the petition;

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

(4) The petition has not been filed for purposes of delay or harassment in any pending or contemplated administrative, civil, or criminal proceeding.

Plc 210.04 Processing of Petition for Declaratory Ruling.

(a) Within 25 days of receipt by the executive director of a petition for declaratory ruling, the executive director shall review the petition to determine:

(1) Whether additional information or explanation is needed from the petitioner; and

(2) Whether the complexity of the petition, including but not limited to the issue(s) in question and the legal implications thereof, will cause the executive director to seek assistance from the department of justice.

(b) Within 25 days of the first meeting held by a policy-autonomous board after receipt of a petition for declaratory ruling, the board shall review the petition to determine:

- (1) Whether additional information or explanation is needed from the petitioner; and
- (2) Whether the complexity of the petition, including but not limited to the issue(s) in question and the legal implications thereof, will cause the board to seek assistance from the department of justice.

(c) The executive director or policy-autonomous board, as applicable, shall notify the petitioner in writing of the results of its review under (a) or (b), above.

(d) If additional information or explanation is needed from the petitioner, the notice sent pursuant to (c), above, shall:

- (1) Identify the information or explanation needed; and
- (2) Establish a deadline for the petitioner to provide the information or explanation, which shall be no sooner than 25 days after the date of the notice.

(e) If the executive director or policy-autonomous board, as applicable, will be seeking assistance from the department of justice, the notice sent pursuant to (c), above, shall inform the petitioner of the anticipated amount of time that will be needed to obtain such assistance.

Plc 210.05 Action on Petition for Declaratory Ruling.

(a) Subject to (c), below, the executive director shall make a decision on the petition and, if the petition is not denied, issue a declaratory ruling in writing within 60 days of:

- (1) Receipt of the petition, if no additional information or explanation from the petitioner or assistance from the department of justice is needed;
- (2) Receipt of all additional information and explanations requested from the petitioner pursuant to Plc 210.04(d); or
- (3) Receipt of advice from the department of justice, if advice is requested.

(b) Subject to (c), below, a policy-autonomous board shall make its decision on the petition and, if the petition is not denied, issue a declaratory ruling in writing within 60 days of the board's first meeting after:

- (1) Receipt of the petition, if no additional information or explanation from the petitioner or assistance from the department of justice is needed;
- (2) Receipt of all additional information and explanations requested from the petitioner pursuant to Plc 210.04(d); or
- (3) Receipt of advice from the department of justice, if advice is requested.

(c) If additional information is requested from the petitioner and is not received in time for a decision to be made and declaratory ruling issued within 60 days of receipt of the petition, the executive director or board, as applicable, shall request the petitioner to agree to an extension as provided in RSA 541-A:29, IV. If the petitioner does not agree to an extension and a reasoned decision cannot be made without the information requested from the petitioner, the petition shall be denied and no declaratory ruling shall be issued.

(d) If advice from the department of justice is requested and is not expected to be received within 60 days of receipt of the petition, the executive director or board, as applicable, shall request the petitioner to agree to an extension as provided in RSA 541-A:29, IV. If the petitioner does not agree to an extension, the regulatory authority shall make a decision within 60 days of receipt. If the decision is to deny the petition, no declaratory ruling shall be issued.

(e) A copy of each declaratory ruling shall be filed with the director of legislative services as required by RSA 541-A:16, II(b).

(f) A copy of each declaratory ruling or denial of a petition shall be:

(1) Sent to the petitioner by first class mail, or by email if the petitioner filed electronically or filed on paper but provided an email address and agreed to receive the decision via email; and

(2) Sent to any other person who was served pursuant to Plc 210.02(c) in the same manner as service was made.

(g) If the executive director determines that the technical expertise of an advisory board is needed to respond to a petition for a declaratory ruling, the executive director shall consult with the advisory board.

## PART Plc 211 WAIVER OF SUBSTANTIVE AND PROCEDURAL RULES

### Plc 211.01 Availability of Rule Waivers.

(a) Any participant in a non-adjudicative proceeding or otherwise affected by the rules in Plc 200, other rules in title Plc, or the rules of a policy-autonomous board who wishes to request a waiver of a rule shall proceed in accordance with this section.

(b) Waiver requests made in conjunction with an adjudicative proceeding shall be in the form of a motion that is filed and handled in accordance with Plc 206.12.

### Plc 211.02 Definitions. For purposes of this part, the following definitions shall apply:

(a) “Decision maker” means the person who has the authority to rule on a petition for waiver, such as the executive director, presiding officer or board.

(b) “Petition for waiver” means the document, or the totality of oral presentation, by which a person seeks relief from complying with a rule as written. The term includes “waiver request”.

Plc 211.03 Format of Petition for Waiver. A petition for waiver of a rule filed under this part shall:

(a) Be directed to the presiding officer if one has been designated, or to the executive director or board if no presiding officer has been designated;

(b) Be in written form, unless made in response to a matter asserted for the first time at an oral public hearing or on the basis of information that was not received in time to prepare a written request prior to the hearing at which the request is made; and

(c) Be included in the record of the proceeding if in writing, or recorded in full in the record of the hearing if made at an oral public hearing.

Plc 211.04 Content of Petition for Waiver. A petition for waiver filed under this part shall include a clear and concise statement of the reason(s) why the waiver is being sought, including an explanation that addresses:

(a) All of the relevant facts of the matter;

(b) The economic and operational consequences to the petitioner of complying with the rule as written;

(c) Whether the requested waiver is necessary because of any neglect or misfeasance on the part of the petitioner;

(d) Whether the requested waiver would harm or otherwise operate to the disadvantage of any third person(s), whether other actual or potential licensees or the general public;

(e) Whether the petitioner is proposing an alternative to the requirement for which the petition is being filed and, if so, what the alternative is and why it is adequate to meet the intent of the requirement for which the petition is being filed; and

(f) Any additional information the petitioner believes provides good cause for granting the requested waiver, including but not limited to citations to statutes, rules, orders, or other authority that support the waiver being requested.

Plc 211.05 Service of Petition for Waiver.

(a) If the petition asserts that any other identifiable person(s) would be harmed or otherwise disadvantaged by the proposed relief, the petitioner shall:

- (1) Serve the petition on each such person; and
- (2) Advise such persons of their right to reply to the petition within 10 days of receipt of service.

(b) If the petitioner has not served the petition as provided in (a), above, but the decision maker determines, after examination of the petition, that other identifiable person(s) would be materially affected by the proposed relief, the decision maker shall require the petitioner to serve the petition on such persons as provided in (a), above.

Plc 211.06 Responding to Petition for Waiver.

(a) Any person who receives service of a petition pursuant to Plc 211.05 who wishes to respond to the petition shall file a written response within 10 days of receipt of the petition that includes:

- (1) The name and address of the person who is filing the response;
- (2) If the person filing the response is representing another person, the name and address of the person being represented;
- (3) A concise statement of any additional or different facts that support or contradict the facts stated in the petition;
- (4) Citation(s) to any statutes, rules, orders, or other authority, not identified in the petition, having a bearing upon the subject matter of the petition; and
- (5) The action the person filing the response wishes the board to take.

(b) The person filing the response shall sign and date the response.

(c) The signature shall constitute a certification that:

- (1) The signer has read the response;
- (2) The signer is authorized to file the response; and
- (3) To the best of the signer's knowledge and belief, there are good grounds to support the response.

Plc 211.07 Proceedings on Petition for Waiver.

(a) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as are ordered by the decision maker after reviewing the petition and any response(s) received.

(b) If a request for waiver is made orally at an oral public hearing and the presiding officer finds that additional information is needed in order for the request to be fully and fairly considered, the presiding officer shall direct the requestor to submit the request in writing, with supporting information as specified in Plc 211.04, within 3 working days of the date of the oral request. If other participants in the proceeding wish to respond to the request, the response(s) shall be filed no later than 7 calendar days after the request is filed.

(c) If a request for waiver is made orally at an oral public hearing on proposed rules and the time period(s) specified in (b), above, fall after the deadline specified for the submittal of written comments, the board shall extend the deadline as provided in RSA 541-A:11, III.

Plc 211.07 Decisions on Waiver Requests.

(a) The decision maker shall rule upon a waiver request only after:

- (1) Fully considering all factors relevant to the request; and
- (2) Affirmatively finding that good cause, as described in (c) and (d), below, exists to grant a waiver.

(b) If the decision maker does not find good cause exists to grant the requested waiver but finds good cause exists to grant a modified waiver that will provide the petitioner with at least some relief, the decision maker shall grant a modified waiver.

(c) For the purposes of this section, good cause shall be determined with reference to the rule for which the waiver is sought, provided that:

- (1) No statutory requirement shall be waived unless:
  - a. The statute expressly provides for such waivers; and
  - b. All criteria specified in the statute for granting a waiver are met;
- (2) No waiver shall be granted that has the effect of authorizing conduct after the fact for which the board has imposed disciplinary sanctions in other cases, unless the rule is already in the formal rulemaking process to be revised in a way that allows the conduct; and
- (3) No waiver shall be granted that allows a licensee to practice with less education or experience than is required, unless conditions are imposed on the license to require supervision for a specified period of time by a fully-licensed practitioner in good standing in the same profession.

(d) If good cause is not specifically defined in the rule for which a waiver is sought, good cause shall be deemed to exist if none of the prohibitions in (c), above, apply and:

- (1) Compliance with the rule cannot be achieved due to circumstances beyond the control of the person requesting the waiver and waiving the rule will not materially prejudice any other identifiable person or the general public;
- (2) Compliance with the rule would cause operational or economic consequences, or both, to the person requesting the waiver that outweigh any disadvantage caused to any other person(s) by granting the waiver; or

(3) Compliance with the rule would otherwise be counterproductive to the purpose of the proceeding in which the waiver is sought, given the specific circumstances of the proceeding and the reason(s) for the waiver request.

Plc 211.08 Waivers Initiated by a Board. A board shall waive a rule upon its own motion only if the board:

- (a) Provides affected persons with notice and an opportunity to be heard; and
- (b) Issues an order that finds that good cause exists for granting the waiver.

Plc 211.09 Consideration of Waiver Requests by the Executive Director. For any proceeding where the board is an advisory board, if the executive director determines that the technical expertise of the advisory board is needed to respond to a petition for a waiver, the executive director shall consult with the advisory board.

## PART Plc 212 WAIVER OF PROCUREMENT PROVISIONS

Statutory Authority: RSA 21-G:37, V

Plc 212.01 Purpose. The purpose of this part is to establish the circumstances constituting an emergency or loss of funding for purposes of waiving the requirements of RSA 21-G:37, I - IV, as contemplated by RSA 21-G:37, V.

Plc 212.02 Applicability. Unless otherwise specified, Plc 212 shall apply to the procurement of goods and services by the OPLC using a request for bid (RFB), request for application (RFA), request for proposal (RFP), or similar invitation.

Plc 212.03 Definitions.

(a) "Emergency situation" means a natural, technological, or human made situation, condition, or set of circumstances that has caused, or is determined by the OPLC to be likely to threaten, harm to public health or safety and:

- (1) Impedes or diminishes the OPLC's or a board's ability to provide materials or services necessary to protect public health or safety from the effects of such situation, condition, or set of circumstances;
- (2) Inhibits or interrupts the continuity of services provided by the OPLC or a board; or
- (3) Prevents the OPLC or a board from complying with any state or federal statute, rule, or regulation.

(b) "Request for application (RFA)" means "request for application" as defined in RSA 21-G:36, III, as reprinted in Appendix B.

(c) "Request for bid (RFB)" means "request for bid" as defined in RSA 21-G:36, IV, as reprinted in Appendix B.

(d) "Request for proposal (RFP)" means "request for proposal" as defined in RSA 21-G:36, V, as reprinted in Appendix B.

Plc 212.04 Waiver of Requirements.

(a) The OPLC shall waive any or all of RSA 21-G:37, II - IV for any RFA, RFB, RFP, or similar invitation if the waiver is necessary to:

- (1) Prevent the loss of federal or other funds subject to recapture; or
- (2) Prevent or mitigate an emergency situation as defined in Plc 212.03(a).

(b) The OPLC shall post the information required by RSA 21-G:37, II and III as soon as practicable after the emergency situation that gave rise to the need for the waiver has been mitigated.

#### APPENDIX A: STATUTES IMPLEMENTED

Rule(s)	State Statute(s) Implemented
Plc 201	RSA 541-A:16, I(b); RSA 310
Plc 202	RSA 541-A:16, I(b); RSA 310
Plc 203.02 - 203.04	RSA 541-A:16, I(b); RSA 310
Plc 204.01, 204.02, 204.04 [new], 204.05-204.07	RSA 541-A:16, I(b); RSA 310:9
Plc 205.01 - 205.04, 205.06	RSA 541-A:16, I(b); RSA 310:10
Plc 206.01 - 206.03, 206.05 - 206.09, 206.11 - 206.13, 206.17-206.22, 206.24, 206.25, 206.28 [new], 206.29 [new], 206.30 - 206.34	RSA 541-A:16, I(b)(2); RSA 541-A:30-a; RSA 541-A:33; RSA 310:10, RSA 310:11, RSA 310:14
Plc 207.01 - 207.04, 207.07	RSA 541-A:16, I(b)
Plc 208	RSA 541-A:16, I(b); RSA 541-A:4
Plc 209	RSA 541-A:16, I(b); RSA 541-A:4
Plc 210	RSA 541-A:16, I(b); RSA 310
Plc 211	RSA 541-A:16, I(b); RSA 310
Plc 212	RSA 21-G:37

#### APPENDIX B: STATUTORY DEFINITIONS

##### RSA 541-A:1

I. “Adjudicative proceeding” means the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.

IV. “Contested case” means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.

VIII. “License” means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.

##### RSA 21-G:36

III. “Request for application (RFA)” means an invitation to submit an offer to provide identified services to an agency where the amount of funding available and the particulars of how the services are to be provided are defined by the agency and where the selection of qualifying vendors will be according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

IV. “Request for bid (RFB)” means an invitation to submit an offer to provide specified commodities or services to an agency at a price proposed by the bidder where selection is based on the lowest price meeting or exceeding specifications as stated in the bid.

V. “Request for proposal (RFP)” means an invitation to submit a proposal to provide specified goods or services, where the particulars of the goods or services and the price are proposed by the vendor and, for proposals meeting or exceeding specifications, selection is according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.