

Readopt with amendment Plc 203.02, eff. 12-28-23 (doc. #13837), 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@oplc.nh.gov.

(d) Requests for records under RSA 91-A shall be filed in accordance with Plc ~~103104~~, at righttoknow@oplc.nh.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@oplc.nh.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.

Readopt with amendments Plc 203.05, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

Plc 203.05 Exercising RSA 310:10, XIV-XV or RSA 310:11, VII-VIII.

(a) In any proceeding held pursuant to RSA 310 or RSA 541-A, a board shall exercise the authority conferred by RSA 310:10, XIV and RSA 310:11, VII, both reprinted in Appendix C, if the board, by majority vote, determines that doing so would expedite the matter or otherwise serve the interests of justice, ~~for reasons that include, but are not limited to, the number of board members that would recuse themselves due to conflicts or potential conflicts.~~

(b) In acting under (a), above, a board shall determine the extent to which the presiding officer shall consult or otherwise coordinate with the board *when making the determinations that have been delegated, namely making findings of fact, determining appropriate sanctions or actions, and denying or accepting settlement agreements.*

(c) In any proceeding held pursuant to RSA 310 or RSA 541-A, if a board cannot meet quorum then the executive director shall initiate proceedings under the authority of RSA 310:10, XV and RSA 310:11, VIII, both reprinted in Appendix C.

(d) In any proceeding in which the provisions of RSA 310:10, XIV or XV or RSA 310:11, VII or VIII have been exercised, the term “board”, ***when used in these rules***, shall mean the presiding officer.

Readopt with amendment Plc 204.02, eff. 12-28-23 (doc. #13837), to read as follows:

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@opl.nh.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~~ ***anticipated*** administrative, civil, or criminal proceeding.

Readopt with amendments Plc 204.05, eff. 12-28-23 (doc. #13837), 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.~~
- ~~(c)~~ 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.
- (d) Inspections conducted as part of an investigation into allegations of misconduct shall not be subject to Plc 400.***
- (e) Investigations, including those based upon allegations in a complaint, shall be conducted on an ex parte basis.

Readopt with amendments Plc 204.07, eff. 12-28-23 (doc. #13837), to read as follows:

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, ***provided that if such recommendation is made, the recommendation shall specifically identify each statutory provision and each rule that is alleged to have been violated.***
- (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, ***to the extent not prohibited by orders issued by the presiding officer pursuant to RSA 541-A:32 and Plc 206.14;*** 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) ***Licensing b***Boards or agencies relating to the respondent’s profession in ***New Hampshire or any*** 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 205.04, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

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 and approval, as required by RSA 310:10, VIII(a), ***subject to (b), below.***

~~(db) 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) ***requires the complainant to have an opportunity to comment***, the board ~~administrative prosecutor shall notify provide the complainant of~~ ***with an opportunity to comment on the proposed settlement terms prior to submitting the proposed settlement to the board.***~~

~~(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.~~

~~(bc) 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 ***confidentiality*** conditions as a prehearing conference.~~

~~(ed) If the board agrees with the terms of the proposed settlement agreement, the board shall: (1) ***a***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.~~

(e) If the board does not agree with the terms of the proposed settlement agreement, the board shall return the settlement agreement to the parties, and include an explanation of each reason why the board does not agree with the terms.

~~(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 Plc 205.06, eff. 12-1-24 (doc. #14133, Interim), 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 the licensee’s 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 206.02, eff. 12-28-23 (doc. #13837), to read as follows:

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 *within 5 working days after the date of mailing*.

(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 *within one working day after the date sent*, 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.

Readopt Plc 206.03, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

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 presiding officer designated pursuant to RSA 310:11, III.

(c) The presiding officer shall have the authority conferred by RSA 310 and RSA 541-A to, 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 206.06 and Plc 206.07, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

Plc 206.06 Commencement of Adjudicative Proceedings.

(a) Except for emergency proceedings initiated as provided in Plc 206.07, the OPLC shall commence an adjudicative proceeding on behalf of the board 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 and this section.

(b) The notice commencing an adjudicative proceeding shall identify the docket number assigned to the matter by the OPLC and:

- (1) Comply with RSA 541-A:31, III by including:
 - a. A statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority under which the hearing is to be held;
 - c. A reference to the particular sections of the statutes and rules involved;
 - d. A short and plain statement of the issues involved, provided that a more detailed statement of the issues shall be furnished, if requested, within not more than 20 days from receipt of the request;
 - e. A statement that each participant has the right to have an attorney present to represent the participant at the participant's expense; and
 - f. A statement that each participant has the right to have the OPLC provide a certified shorthand court reporter at the participant's expense, and that any such request be submitted in writing at least 10 days prior to the hearing;
- (2) For disciplinary hearings, identify whether the action was initiated by a written complaint or on the board's own motion, or both;

- (3) Specify the date by which, and the address to which, appearances or motions by participants shall be filed;
 - (4) 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;
 - (5) Identify the presiding officer for the proceeding;
 - (6) Identify any special procedures to be followed;
 - (7) Identify any confidentiality requirements applicable to the proceeding; and
 - (8) 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 ***or the matter is otherwise resolved.***

Plc 206.07 Initiation and Conduct of Emergency Proceedings.

- (a) To initiate an emergency proceeding, the OPLC shall issue an order on behalf of the board 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 ***is commenced***, 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 ***OPLC, on behalf of 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 ***or the matter is otherwise resolved.***

Readopt Plc 206.08, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

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 before the board or, if the provisions of RSA 310:10, XIV or XV have been exercised as provided in Plc 203.05, before the presiding officer.
- (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 board members is necessary, by a panel consisting of the presiding officer and a minimum of 2 members of the relevant 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 541-A, 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 via electronic means, 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 participation via electronic means; 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.

Readopt with amendments Plc 206.09, eff. 12-28-23 (doc. #13837), to read as follows:

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) A respondent’s representative who is an attorney not licensed in New Hampshire shall file a “Representative’s Attestation Regarding Unauthorized Practice of Law”, dated January 2025, with the appearance filed pursuant to (a), above.

~~(b)~~ (c) 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.

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

~~(e)~~ (f) 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.

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

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

Readopt with amendment Plc 206.10, eff. 8-4-22 (doc. #13427), to read as follows:

Plc 206.10 Filing of Documents; Certain Communications Prohibited.

(a) Documents in an adjudicative proceeding shall be filed in accordance with Plc 203.02, provided that if a presiding officer has been identified, all documents shall be sent to the attention of the presiding officer.

(b) The requirement to file documents with the presiding officer shall not constitute permission for any participant to otherwise communicate with the presiding officer without all participants having prior notice of, and an opportunity to participate in, the communication.

(c) All petitions, motions, and replies filed in the proceeding shall be signed and dated by the proponent of the document or, if the proponent appears by a representative, by the representative.

(d) The signature shall constitute certification that:

- (1) The signer has read the document;
- (2) The signer is authorized to file the document;
- (3) To the best of the signer’s knowledge, information, and belief, there are good grounds to support the document; and
- (4) The document has not been filed for purposes of delay or harassment in any pending or ~~contemplated~~ ***anticipated*** administrative, civil, or criminal proceeding.

Readopt Plc 206.30, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

Plc 206.30 Decisions on Questions of Law, Issues of Fact, and Sanctions.

(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 or remedial measures, if any, subject to (c), below.

(c) If the provisions of RSA 310:10, XIV or XV have been exercised as provided in Plc 203.05, the presiding officer shall, in addition to exercising the authority conferred by RSA 310 and RSA 541-A, make findings of fact, determine appropriate sanctions or actions, and accept or deny settlement agreements.

(d) 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).

Readopt with amendments Plc 206.31 and Plc 206.32, eff. 12-1-24 (doc. #14133, Interim), to read as follows:

Plc 206.31 Request or Petition for Rehearing; Answers.

(a) For purposes of this section, “petition for rehearing” means, depending on context, ~~either:~~

(1) A request for a rehearing after a final order has been issued in a disciplinary or non-disciplinary remedial proceeding; ~~or~~

(2) A request for a rehearing after a license application has been denied after a hearing as provided in RSA 310:14, I-a and Plc 304.10; *or*

(3) A request for a rehearing after a determination of disqualification from state licensure based on a criminal record pursuant to RSA 332-G:10.

(b) A petition for rehearing shall be filed:

(1) Within 30 calendar days after service of a final order in a disciplinary or non-disciplinary remedial proceeding; ~~or~~

(2) Within 30 calendar days of receipt of the final decision to deny an application for licensure in a hearing held as provided in Plc 304.10; *or*

(3) Within 30 calendar days after the decision is made for a hearing conducted under RSA 332-G:10.

(c) To petition for rehearing, the respondent shall:

(1) Use the “Universal Petition for Rehearing” dated ~~November 2024~~ ***January 2025***; or

(2) Provide the information required by (d), below, in another legible format.

(d) The petition shall:

(1) Clearly identify:

a. The respondent, by name and license number, and the docket number of the matter for which the petition is being filed, for rehearing in a disciplinary or non-disciplinary remedial proceeding; ~~or~~

b. The applicant, by name as shown on the application, together with the profession for which the application was filed, the date of the hearing, and the date the decision was issued, for rehearing relating to licensure; *or*

c. The individual who requested the determination, by name as it appeared on the request, together with the date of the hearing and the date the decision was issued, for a determination under RSA 332-G:10;

- (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) For a petition for rehearing in a disciplinary or non-disciplinary remedial proceeding, be served by the petitioner on all other participants in accordance with Plc 206.11.
- (e) The petitioner or petitioner's representative shall sign the petition.
- (f) 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~~ ***anticipated*** administrative, civil, or criminal proceeding.
- (g) 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) In a disciplinary or non-disciplinary remedial proceeding, the presiding officer shall grant a petition for rehearing if the petition was timely filed and 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) In a rehearing of a ~~license~~ decision ***to deny a license or to impose conditions***, if the petition for rehearing was timely filed and states a rational basis for reconsideration, then:
- (1) The presiding officer shall grant the petition and refer the matter to the board for reconsideration if the provisions of RSA 310:11, VII or VIII have not been exercised and the petition raises questions of fact or mixed fact and law; or

(2) The presiding officer shall grant the petition and reconsider the decision if the provisions of RSA 310:11, VII or VIII have been activated.

(c) In a rehearing of a decision under RSA 332-G:10, the presiding officer shall grant a petition for rehearing if the petition was timely filed and the petitioner demonstrates by a preponderance of the evidence that:

(1) The facts on which the decision is based are not supported by the record; or

(2) 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.

~~(ed)~~ If the petitioner does not meet the ***applicable*** standard for granting a rehearing specified in (a) ~~or through (bc)~~, above, ~~as applicable~~, the presiding officer shall deny the petition, and an order denying the petition shall be:

(1) Served on the participants in accordance with Plc 206.11; and

(2) Effective on the date it is served.

~~(de)~~ If the presiding officer in a disciplinary or non-disciplinary remedial proceeding determines that issues of fact form the basis for part or all of the petition, the presiding officer shall:

(1) Forward the petition and any response(s) received to the board for consideration, if the provisions of RSA 310:10, XIV or XV have not been exercised; or

(2) Reconsider the facts and make any adjustments needed, if the provisions of RSA 310:10, XIV or XV have been exercised.

~~(ef)~~ A decision on reconsideration shall be issued 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 or presiding officer, as applicable, determines a hearing to be necessary to a full consideration of the facts.

~~(fg)~~ 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.

~~(gh)~~ Successive petitions for rehearing by or on behalf of the same participant shall not be permitted.

~~(hi)~~ Pursuant to RSA 310:14, III, the filing of a petition for rehearing shall not stay any order.

Readopt with amendments Plc 206.33, eff. 12-28-23 (doc. #13837), to read as follows:

Plc 206.33 ~~Rehearing; Appeal~~ ***from Final Decision on Rehearing.***

~~(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 Ple 206.31.~~

~~(d) Pursuant to RSA 310:14, III:~~

~~(1a)~~ Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541; and

~~(2b)~~ No sanction shall be stayed ***during an appeal*** by the board ~~during an appeal~~.

Readopt with amendment Plc 210.03, eff. 12-28-23 (doc. #13837), to read as follows:

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~~ ***anticipated*** administrative, civil, or criminal proceeding.

APPENDIX A: STATE STATUTES IMPLEMENTED

| Rule | State Statute(s) Implemented |
|---|--|
| Plc 203.02 | RSA 541-A:16, I(b); RSA 310 |
| Plc 203.05 | RSA 541-A:16, I(b); RSA 310:10, XIV-XV; RSA 310:11, VII-VIII |
| Plc 204.02, Plc 204.05, Plc 204.07 | RSA 541-A:16, I(b); RSA 310:9 |
| Plc 205.04, Plc 205.06 | RSA 541-A:16, I(b); RSA 310:10 |
| Plc 206.02, Plc 206.03, Plc 206.06, Plc 206.08, Plc 206.09, Plc 206.10, Plc 206.30 – Plc 206.33 | RSA 541-A:16, I(b)(2); RSA 541-A:30-a; RSA 541-A:33 |
| Plc 206.07 | RSA 541-A:30, III |
| Plc 210.03 | RSA 541-A:16, I(b); RSA 310 |

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.

APPENDIX C: STATUTORY PROVISIONS

RSA 91-A:2

IV. The provisions of this paragraph allowing for less than a quorum to be physically present for meetings shall apply only to boards, committees, councils, advisory committees and like bodies of state government, not including the general court or either house thereof or any committee of either house, nor the governor and council, the composition of which is permitted by law or regulation to be drawn from individuals who may reside throughout the state of New Hampshire. This paragraph does not apply to boards, committees, councils, advisory committees, or any other components or instrumentalities of county or municipal government. For purposes of this paragraph only the boards, committees, councils, and like bodies to which this paragraph is applicable shall be referred to as "state boards."

(a) A state board covered by this paragraph may vote to allow one or more members to participate in a meeting remotely only when physical attendance at the meeting site is not reasonably practicable. Any reason that such attendance is not reasonably practicable shall be stated in the minutes of the meeting. The authority granted under this paragraph may be revoked, renewed, or modified in the same manner as it is approved.

(b) At least one-third of the total membership of the state board shall be present at the physical location of the meeting. Each member participating electronically or otherwise shall be able to contemporaneously and throughout the meeting see and hear, and be seen and heard by, the other members of the public body attending the meeting and members of the public in attendance at the meeting site. A member participating in a meeting remotely as described in this paragraph is deemed to be present for all purposes, including for determination of a quorum and voting. Each member participating remotely shall identify the persons present in the location from which the member is participating. All votes taken during such a meeting shall be by roll call vote. Members of the public shall be permitted to participate remotely in remotely held state board meetings, including testifying or asking questions as the rules and procedures of the board allow.

(c) No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) In an emergency, when immediate action is imperative and the physical presence requirement is not reasonably practicable within the period of time requiring action, the minimum physical presence required under subparagraph (b) shall not apply. The determination that an emergency exists shall be made by the chair or presiding officer of the state board, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(e) Any meeting held pursuant to the terms of this paragraph shall comply with all other requirements of this chapter relating to public meetings not inconsistent with this paragraph, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings. –

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary and non-disciplinary proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial matters before the boards including disciplinary proceedings, non-disciplinary proceedings, the order of an immediate suspension of a license pursuant to RSA 310:12, IV, and unlicensed practice hearings held pursuant to RSA 310:13. The presiding officer shall have the authority to preside on such matters, to issue 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.

V. In disciplinary and non-disciplinary remedial proceedings, including those held pursuant to this section, RSA 310:12, IV, and RSA 310:13, the presiding officer may issue subpoenas for persons, relevant documents, and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. In carrying out disciplinary or non-disciplinary remedial proceedings, including those held pursuant to RSA 310:10, RSA 310:12, IV, and RSA 310:13, the presiding officer, as defined in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and make conclusions of law.

VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings, and shall determine sanctions, if any.

VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings, complaints may be dismissed or disposed of, in whole or in part:

(a) By written settlement agreement approved by the board, provided that any complainant shall have the opportunity, before the settlement agreement has been approved by a board, to comment on the terms of the proposed settlement; or

(b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a proper basis for disciplinary action.

IX. Disciplinary action taken by the board at any time, and any dispositive action taken after the issuance of a notice of public hearing, shall be reduced to writing and made available to the public. Such decisions shall not be public until they are served upon the parties, in accordance with rules adopted by the executive director.

X. Except as otherwise provided by RSA 541-A:30, the office shall furnish the respondent at least 15 days' written notice of a hearing in accordance with RSA 541-A:31, III. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

XI. Neither the office nor the boards shall have an obligation or authority to appoint attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or disciplinary or non-disciplinary remedial proceedings.

XII. No civil action shall be maintained against the office or the board, or any member of the board, office, or its agents or employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the board or determination by the board or office in relation to proceedings under this chapter.

XIII. For matters involving individuals identified in mental health records, testimony by client or patients shall be handled with utmost regard for the privacy and protection of their identity from public disclosure.

(a) A client or patient who is not a complainant shall not be compelled to testify at a hearing.

(b) If a client or patient who is not a complainant testifies at a hearing, the identity of the individual shall be screened from the public view and knowledge, although the respondent and attorneys shall be within the view of the client patient. The board may view the client or patient. The public's access to view or information that would identify the client or patient shall be restricted. The hearing may be closed to the public for the duration of the client or patient's testimony, at the board's discretion.

(c) If a complainant client or patient requests the privacy safeguards in subparagraph (b), the presiding officer may make such accommodations.

XIV. In any proceeding held pursuant to RSA 310 or RSA 541-A, a board may direct that evidence be received solely by a presiding officer who, in addition to exercising the authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged with making findings of fact, determining appropriate sanctions or action, or denying or accepting settlement agreements.

XV. In instances where a board lacks sufficient members to meet quorum, the executive director, or designee, may initiate proceedings held pursuant to RSA 310 or RSA 541-A and direct that evidence be received solely by the presiding officer who, in addition to exercising the authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged with making findings of fact, determining appropriate sanctions or action, or denying or accepting settlement agreements.

Source. 2023, 235:8, eff. July 15, 2023. 2024, 364:4, eff. Oct. 22, 2024.

310:11 Licensing Proceedings.

I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by the executive director.

II. If a license is denied following a licensing proceeding, its final decision shall be issued in accordance with RSA 541-A:35.

III. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all licensing proceedings before the boards. The presiding officer

Text added to existing rules in *bold italics*

Text deleted from existing rules ~~struck through~~

Text that is all new (introduced with “Adopt”) in regular font

shall have the authority to preside at such hearing and to issue 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.

IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay the fees of attorneys representing licensees, certified individuals, or witnesses during investigations or adjudicatory proceedings.

V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

VI. The presiding officer, as defined in RSA 541-A, shall have the authority to: hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; administer oaths and affirmations; and render legal opinions and make conclusions of law. The boards shall be the triers of fact.

VII. In any proceeding held pursuant to RSA 310 or RSA 541-A, a board may direct that evidence be received solely by a presiding officer who, in addition to exercising the authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged with making findings of fact, determining appropriate sanctions or action, or denying or accepting settlement agreements.

VIII. In instances where a board cannot meet quorum, the executive director, or designee, may initiate proceedings held pursuant to RSA 310 or RSA 541-A and direct that evidence be received solely by the presiding officer who, in addition to exercising the authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged with making findings of fact, determining appropriate sanctions or action, or denying or accepting settlement agreements.

Source: 2023, 235:8, eff. July 15, 2023. 2024, 364:5, eff. Oct. 22, 2024