

Readopt with amendments Plc 201 and Plc 202, eff. 12-28-2023 (doc. #13837), to read as follows:

PART Plc 201 PURPOSE AND APPLICABILITY; *INCORPORATED DEFINITIONS*

Plc 201.01 Purpose.

(a) The purpose of the various proceedings ~~undertaken pursuant to~~ ***that are governed by*** 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:

a. ~~T~~he submittal, review, and disposition of complaints;

b. ~~I~~nvestigations; and

c. ~~S~~ettling 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 implement applicable requirements of RSA 541-A and the procedures and criteria established in RSA 310.

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 that apply to a specific type of proceeding.

(b) This chapter shall apply to the professions listed in RSA 310:2, II ***or that otherwise are subject to the jurisdiction of the OPLC or executive director.***

Plc 201.03 Incorporated Definitions. The definitions in Plc 102 are hereby incorporated by reference.

PART Plc 202 *CHAPTER-SPECIFIC* 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 board.~~

~~Plc 202.0302~~ “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, that apply to regulate a profession 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”. For any profession for which there is no board, the term means the executive director.~~

~~Plc 202.0603 “Complainant” for purposes of providing the opportunity for comment 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 *and does not include any person who is required to report certain circumstances to a board or the OPLC, such as those required by RSA 329:17.*~~

~~Plc 202.0704 “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 202.0805 “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 202.0906 “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 202.1007 “Emergency proceeding” means a disciplinary or non-disciplinary remedial 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 202.1108 “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 202.1309 “File” as a verb means to place a document in the actual possession of the OPLC or a board.~~

~~Plc 202.1410 “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 202.1511 “Hearing” means a component of a proceeding, through which the OPLC or a board receives testimony, evidence, arguments, or comments, or any combination thereof, regardless of whether all participants are at the hearing in person or not.

Plc 202.1612 “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 202.2113 “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 202.2214 “Motion” means any request to the presiding officer *in an existing case* 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. The term does not include “petition”.

Plc 202.2315 “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 202.16 “Oral adjudicative hearing” means a trial-type hearing that is part of an adjudicative proceeding and is held at a specific time for the purpose of receiving live testimony from witnesses, together with any evidence and argument that is presented, regardless of whether all participants are at the hearing in person or not.

Plc 202.2417 “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, regardless of whether all participants are at the hearing in person or not.

Plc 202.2518 “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 202.2619 “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~~**20** “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~~**21** “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 a board to regulate a specific profession.~~

Plc 202.~~32~~**22** “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~~**23** “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~~**24** “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~~**25** “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.~~36~~**26** “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[®], Zoom[®], GoToMeeting[®], or GoToWebinar[®].

~~Plc 202.37 “Working day” means any Monday through Friday, excluding days on which state offices are closed in observance of holidays.~~

APPENDIX A: STATUTES IMPLEMENTED

Rule(s)	State Statute(s) Implemented
Plc 201, Plc 202	RSA 310; RSA 541-A:16, I(b)

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.

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.