

Repeal Rab 201, effective 11/1/07 (Document #9017), as follows:

CHAPTER Rab 200 **RULES OF PRACTICE AND PROCEDURE:**

~~[PART Rab 201 PURPOSE AND SCOPE~~

~~— Rab 201.01 Purpose and Scope. The board has enacted these rules to establish procedures for acquiring information to make fair and reasoned decisions. This chapter provides rules of procedure for the conduct of investigations, adjudicative hearings in contested cases, non-adjudicative hearings, declaratory rulings, and actions on rulemaking petitions.~~

~~— Rab 201.02 Failure to Comply with Rules. Failure to comply with these rules shall result in:~~

~~— (a) A refusal to accept a non-compliant document for filing;~~

~~— (b) The denial of a non-compliant application, petition or motion;~~

~~— (c) The issuance of an order adverse to any non-compliant person; or~~

~~— (d) Such other action as is reasonably likely to bring about compliance.]~~

Repeal Rab 202.01 and Rab 202.02, effective 2/2/13 (Document #10269), cited as follows:

~~[PART Rab 202 DEFINITIONS~~

~~— Rab 202.01 “Adjudicative proceeding” means “adjudicative proceeding” as defined in RSA 541A:1, I, namely, “the procedure to be followed in contested cases, as set forth in RSA 541A:31 through RSA 541A:36.”~~

~~— Rab 202.02 “Complaint” means an allegation in writing and submitted to the board that an appraiser has committed misconduct.]~~

Repeal Rab 202.03, effective 9/14/18 (Document #12618) as follows:

~~[Rab 202.03 “Complaint officer” means the board member or investigator to whom the board has delegated, pursuant to Rab 102.02(e), the authority and responsibility to investigate or work with an investigator assigned by board staff, to resolve or attempt to resolve each complaint alleging professional misconduct by an apprentice or appraiser.]~~

Repeal Rab 202.04 through Rab 202.17, effective 2/2/13 (Document #10269) as follows:

~~[Rab 202.04 “Complainant” means the person who submits a complaint alleging professional misconduct by an apprentice or appraiser.~~

~~— Rab 202.05 “Contested case” means “contested case” as defined in RSA 541-A:1, IV, namely, “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 opportunity for hearing.”~~

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~~— Rab 202.06 “Docket marking” means a number given to an adjudicative proceeding pursuant to Rab 208.03.~~

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~~— Rab 202.07 “Hearing” means the receipt and consideration by the board of evidence, argument, or both, by methods appropriate to the circumstances, to render decisions in adjudicative proceedings and includes:~~

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~~— (a) Conducting trial-type evidentiary hearings;~~

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~~— (b) Directing the filing of exhibits, affidavits, memoranda, or briefs;~~

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~~— (c) Directing the delivery of oral argument; and~~

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~~— (d) Any combination of these and similar processes or actions.~~

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~~— Rab 202.08 “Investigation” means a formal or informal search by the board for data concerning matters within its jurisdiction.~~

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~~— Rab 202.09 “Investigator” means the board member, committee of board members, or other individual or committee of individuals qualified by reason of education or experience, to investigate a complaint.~~

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~~— Rab 202.10 “Motion” means any request by a party to a proceeding for an order relating to that proceeding.~~

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~~— Rab 202.11 “Notice” means a notification to all parties as to a pending action or result thereof, including time and date notification.~~

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~~— Rab 202.12 “Order” means a document issued by the board requiring a person to do or to abstain from doing something, or determining a person’s rights to a license, certification or to some other property or privilege.~~

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~~— Rab 202.13 “Party” means each person named or admitted as a party or properly seeking and entitled as a right to be admitted as a party. The term includes, when used in the context of an adjudicative hearing, intervenors admitted pursuant to RSA 541-A:32.~~

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~~— Rab 202.14 “Petition for declaratory ruling” means a request to the board for a ruling as to the specific applicability and clarification of any statutory provision enforced or administered by, or of any rule or order of, the board.~~

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~~— Rab 202.15 “Petition for rulemaking” means a request to the board to adopt, amend or repeal a rule.~~

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~~— Rab 202.16 “Petitioner” means a person who makes an application, complaint, request or other communication to the board other than a motion, seeking an order, license, action, or any other relief.~~

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~~— Rab 202.17 “Rulemaking” means the process set forth in RSA 541-A for the adoption of rules.]~~

Repeal Rab 203.01, effective 2/2/13 (Document #10269), cited as follows:

~~[PART Rab 203 COMPLAINTS ALLEGING PROFESSIONAL MISCONDUCT~~

~~— Rab 203.01 Complaints.~~

~~— (a) All allegations of professional misconduct, negligence or questionable appraisals shall be submitted in writing and shall be known as complaints. All complaints that comply with (b) below shall be investigated by the board pursuant to Rab 203.02.~~

~~— (b) Persons filing complaints shall provide the following:~~

~~(1) The specific grounds for any alleged misconduct;~~

~~(2) Detailed facts constituting the allegation;~~

~~(3) The specific appraisal in question;~~

~~(4) A description of any supporting information;~~

~~(5) The name, address and telephone number of individual appraiser performing the work in question on the complaint;~~

~~(6) The certificate or license number of the appraiser against whom the complaint is brought;~~

~~(7) All copies of any supporting documentation;~~

~~(8) A statement whether any court action has been initiated involving the appraisal or conduct at issue;~~

~~(9) The name, address and telephone of the complainant; and~~

~~(10) The date and signature of the complainant.~~

~~— (c) Complaints shall be submitted to the board at least 10 working days prior to a regularly scheduled meeting in order to appear on the agenda for that meeting.]~~

Repeal Rab 203.02, effective 2/2/13 (Document #10269), as amended effective 1/31/15 (Document #10777), as follows:

~~[Rab 203.02 Investigation of Complaints.~~

~~— (a) Notwithstanding any other provisions, the board shall, within the limits of its authority, and acting through its complaint officer or through other investigators pursuant to Rab 102.02(f), in the course of an investigation, make inquiry of any person, gather data, and prepare informative reports for use by the board to assist the board to fairly evaluate a complaint.~~

~~— (b) Upon receiving any written complaint that complies with Rab 203.01, the following procedure shall be followed:~~

~~(1) The Board shall review the complaint at the next scheduled board meeting and determine whether the complaint should be investigated further or dismissed. If the analysis of the complaint reveals conduct that, if true, would be a violation of USPAP, RSA 310-B or Rab 300-500, the board shall continue its investigation. If the complaint does not allege such conduct, then the board shall dismiss the complaint without further investigation.~~

~~(2) The board shall appoint a complaint officer or other investigators to conduct the investigation. Any board member who participates in an investigation shall not participate in any further actions of the board concerning the subject matter of that investigation.~~

~~(3) The complaint officer or other investigators shall discuss the complaint with the appraiser. If necessary for a full and fair evaluation of the complaint, the complaint officer or other investigators shall also discuss the complaint with the complainant and any other person;~~

~~(4) In instances where an appraisal report is included as part of the complaint, the complaint officer or other investigators shall evaluate the appraisal report for conformity with USPAP as a part of the investigation;~~

~~(5) When the investigation has been completed, and not before then, the complaint officer or other investigators shall attempt to resolve the complaint on an informal basis;~~

~~(6) After informal resolution of the complaint pursuant to (5) above has been attempted, and regardless of whether such attempt was successful, the complaint officer or other investigators shall provide a report of investigation on the complaint including a recommendation for the disposition of the complaint;~~

~~(7) After considering the complaint officer or other investigators' report of investigation, the board shall:~~

~~a. Dismiss the complaint if the information gathered in the investigation does not suggest that the apprentice or appraiser committed misconduct;~~

~~b. Accept the informal resolution of the complaint if such resolution was agreed to by the appraiser and the board agrees that the terms of the resolution address the basis or bases for the complaint in such a way as to protect the public from and prevent subsequent misconduct by the appraiser;~~

~~c. Commence an adjudicative hearing if the evidence suggests that the apprentice or appraiser engaged in misconduct and an informal resolution was not accepted by the appraiser or the board; or~~

~~d. Investigate the complaint further if the information gathered in the investigation is not sufficient to decide to dismiss the complaint pursuant to 7.a. above or to commence an adjudicative hearing pursuant to 7.c. above; and~~

~~(8) The complaint officer or other investigators shall not vote on the disposition of the complaint or render a decision on the matter if it goes to hearing.~~

~~— (c) If the board votes to commence an adjudicative hearing, the board shall direct the complaint officer or other investigators to explore resolution of the complaint through a proposed settlement with the appraiser. If the complaint officer and the appraiser reach a proposed settlement, the complaint officer or other investigators shall submit it to the board for its review.]~~

Repeal Rab 204.01 through Rab 215.04, effective 2/2/13 (Document #10269), cited as follows:

~~[PART Rab 204 PRESIDING OFFICER; WITHDRAWAL AND WAIVER OF RULES~~

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~~—— Rab 204.01 Presiding Officer; Appointment; Authority.~~

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~~—— (a) All hearings shall be conducted for the board by a natural person appointed or authorized to serve as a presiding officer.~~

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~~—— (b) A presiding officer shall as necessary:~~

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~~(1) Regulate and control the course of a hearing;~~

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~~(2) Facilitate an informal resolution acceptable to all parties;~~

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~~(3) Administer oaths and affirmations;~~

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~~(4) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;~~

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~~(5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;~~

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~~(6) Question any witness to develop a complete record;~~

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~~(7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI; and~~

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~~(8) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.~~

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~~—— Rab 204.02 Withdrawal of Presiding Officer.~~

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~~—— (a) Upon his or her own initiative or upon the motion of any party, a presiding officer or board official shall, for good cause, withdraw from any hearing.~~

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~~—— (b) Good cause shall exist if a presiding officer or board official:~~

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~~(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship;~~

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~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case;~~

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~~(3) Personally believes that he or she cannot fairly judge the facts of a case.~~

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~~—— (c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.~~

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~~—— Rab 204.03 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension~~

~~appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.~~

~~PART Rab 205 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~— Rab 205.01 Date of Issuance or Filing. All documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the board on the actual date of receipt by the board, as evidenced by a date stamp placed on the document by the board in the normal course of business.~~

~~— Rab 205.02 Format of Documents.~~

~~— (a) All correspondence, pleadings, motions or other documents filed under these rules shall:~~

~~(1) Include the title and docket number of the proceeding, if known;~~

~~(2) Be typewritten or clearly printed on durable paper 8 1/2 by 11 inches in size;~~

~~(3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and~~

~~(4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Rab 204.03.~~

~~— (b) A party or representative's signature on a document filed with the board shall constitute certification that:~~

~~(1) The signer has read the document;~~

~~(2) The signer is authorized to file it;~~

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

~~(4) The document has not been filed for purposes of delay.~~

~~— Rab 205.03 Delivery of Documents.~~

~~— (a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be delivered by that party to all other parties to the proceeding.~~

~~— (b) All notices, orders, decisions or other documents issued by the presiding officer or board shall be delivered to all parties to the proceeding.~~

~~— (c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mail, addressed to the last address given to the board by the party or if represented to the party's representative.~~

~~— (d) When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.~~

~~PART Rab 206 TIME PERIODS~~

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~~—— Rab 206.01 Computation of Time.~~

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~~—— (a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.~~

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~~—— (b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.~~

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~~—— (c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.~~

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~~PART Rab 207 MOTIONS AND PLEADINGS~~

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~~Rab 207.01 Motions; Objections.~~

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~~—— (a) Motions shall be in written form and filed with the presiding officer, unless made in response to a matter asserted for the first time at a hearing or on the basis of information which was not received in time to prepare a written motion.~~

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~~—— (b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall order the moving party to submit the motion in writing, with supporting information within 5 days of the order. Objections to such motions shall be filed within 5 days of the filing of the motion.~~

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~~—— (c) Objections to written motions shall be filed within 30 days of the date of the motion;~~

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~~—— (d) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.~~

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~~—— (e) The presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.~~

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~~—— Rab 207.02 Pleadings.~~

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~~—— (a) The only pleadings permitted shall be petitions, other than for rulemaking, and replies to petitions. Applications shall not be considered pleadings.~~

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~~—— (b) All petitions shall contain:~~

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

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~~(2) The name and address of the petitioner's representative, if any;~~

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~~(3) A concise statement of the facts that caused the petitioner to request the board to act;~~

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~~(4) The action that the petitioner wishes the board to take; and~~

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~~(5) The identification of any statutes, rules, orders, or other authority that entitles the petitioner to request the board to act.~~

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~~—— (c) Board replies to petitions shall contain:~~

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

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~~(2) The name and address of the representative of the petitioner, if any;~~

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~~(3) A statement addressing each fact alleged in the petition;~~

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~~(4) A statement addressing the authority identified by the petitioner;~~

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~~(5) A concise response to each statement;~~

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

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~~(7) The action the board took.~~

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~~—— (d) Replies shall be filed within 90 days from the date of the petition.~~

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~~PART Rab 208 NOTICE OF HEARING; APPEARANCES; PRE HEARING CONFERENCES~~

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~~—— Rab 208.01 Commencement of Hearing. A hearing shall be commenced by an order of the board giving notice to the parties at least 30 days prior to the hearing as required by Rab 208.03.~~

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~~—— Rab 208.02 Docket Numbers. A docket number shall be assigned to each matter to be heard which shall appear on the notice of hearing and all subsequent orders or decisions of the board.~~

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~~—— Rab 208.03 Notice of Hearing.~~

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~~—— (a) A notice of a hearing issued by the board at least 30 days prior to the hearing shall contain the information required by RSA 541 A:31, III, namely:~~

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~~(1) A statement of the time, place and nature of any hearing;~~

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~~(2) A statement of the legal authority under which a hearing is to be held;~~

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~~(3) A reference to the particular statutes and rules involved including this chapter;~~

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~~(4) A short and plain statement of the issues presented;~~

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~~(5) A statement that each party has the right to have an attorney represent them at their own expense; and~~

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~~(6) A statement that each party has the right to have the board provide a licensed court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing.~~

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~~Source. (See Revision Notes at chapter headings for Rab 100 and Rab 200) #10269, eff 2-2-13~~

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~~—— Rab 208.04 Appearances and Representation.~~

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

~~(1) A brief identification of the matter;~~

~~(2) A statement as to whether or not the representative is an attorney; and~~

~~(3) The party or representative's daytime address and telephone number.~~

~~— Rab 208.05 Prehearing Conference. Any party may request, or the presiding officer shall schedule on his or her own initiative, a pre-hearing conference in accordance with RSA 541-A:31, V to consider:~~

~~— (a) Offers of settlement;~~

~~— (b) Simplification of the issues;~~

~~— (c) Stipulations or admissions as to issues of fact or proof by consent of the parties;~~

~~— (d) Limitations on the number of witnesses;~~

~~— (e) Changes to standard procedures desired during the hearing by consent of the parties;~~

~~— (f) Consolidation of examination of witnesses; and~~

~~— (g) Any other matters which aid in the disposition of the proceeding.~~

~~PART Rab 209 ROLES OF BOARD STAFF AND COMPLAINANTS~~

~~— Rab 209.01 Role of Board Staff in Enforcement or Disciplinary Hearings. Unless called as witnesses, board staff shall have no role in any enforcement or disciplinary hearing.~~

~~— Rab 209.02 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the board about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.~~

~~PART Rab 210 INTERVENTION~~

~~— Rab 210.01 Intervention.~~

~~— (a) A non party may intervene in a matter pending before the board under the provisions of RSA 541-A:32, by filing a motion stating facts demonstrating that the non party's rights or other substantial interests might be affected by the proceeding or that the non party qualifies as an intervenor under any provision of law.~~

~~— (b) If the presiding officer determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearing, the presiding officer shall grant the motion for intervention.~~

~~— (c) Participation by intervenors shall be limited to that which is necessary to protect the interest identified in the petition for intervention.~~

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~~— (d) Petitions for intervention shall be filed any time after commencement of a proceeding, and state:~~

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

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~~(2) Whether the petitioner appears in support of the complainant, or the respondent, as well as for his or her own interest;~~

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

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

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~~— (e) A person filing a complaint that becomes the subject of a disciplinary hearing shall be served with the hearing notice and notified of the right to intervene in the proceeding.~~

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

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~~PART Rab 211 POSTPONEMENT REQUESTS AND FAILURE TO ATTEND HEARING~~

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~~— Rab 211.01 Postponements:~~

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~~— (a) Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.~~

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~~— (b) If a postponement is requested by a party to the hearing, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.~~

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~~— (c) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.~~

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~~— Rab 211.02 Failure to Attend Hearing:~~

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~~— (a) If any party to whom notice has been given in accordance with Rab 207.03 fails to attend a hearing, the presiding officer shall declare that party to be in default unless failure to attend is justified by a showing of good cause.~~

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~~— (b) Good cause shall include accident, illness or other circumstances beyond the control of the licensee.~~

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~~— (c) In the absence of good cause for failure to attend the hearing, the presiding officer shall:~~

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~~(1) Dismiss the case, if the party with the burden of proof fails to appear;~~

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(2) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case; or

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(3) Grant a postponement of the hearing under the provisions of Rab 211.01.
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~~PART Rab 212 REQUESTS FOR INFORMATION OR DOCUMENTS~~

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~~—— Rab 212.01 Voluntary Production of Information.~~

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~~—— (a) Each party shall attempt in good faith to completely and timely respond to requests for the voluntary production of information or documents relevant to the hearing.~~

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~~—— (b) When a dispute between parties arises concerning a request for the voluntary production of information or documents, any party may file a motion to compel the production of the requested information under Rab 212.02.~~

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~~—— Rab 212.02 Motions to Compel Production of Information.~~

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~~—— (a) Any party may make a motion requesting that the presiding officer order the parties to comply with information requests. The motion shall be filed at least 15 days before the date scheduled for the hearing, or as soon as possible after receiving the notice of hearing.~~

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~~—— (b) The moving party's motion shall:~~

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~~(1) Set forth in detail those factors which it believes justify its request for information; and~~

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~~(2) List with specificity the information it is seeking to discover.~~

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~~—— (c) When a party has demonstrated that such requests for information are necessary for a full and fair presentation of the evidence at the hearing, the presiding officer shall grant the motion.~~

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~~—— Rab 212.03 Mandatory Pre Hearing Disclosure of Witnesses and Exhibits. At least 5 days before the hearing the parties shall exchange a list of all witnesses to be called at the hearing with a brief summary of their testimony, a list of all documents or exhibits to be offered as evidence at the hearing, and a copy of each document or exhibit.~~

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~~PART Rab 213 RECORD, PROOF, EVIDENCE AND DECISIONS~~

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~~—— Rab 213.01 Record of the Hearing.~~

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~~—— (a) The board shall record the hearing by tape recording or other method that will provide a verbatim record except for a proceeding on emergency action shall be governed by RSA 541 A:30, III.~~

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~~—— (b) If any person requests a transcript of the taped record, the board shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the requesting party.~~

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~~—— (c) At the request of a party to any proceeding involving disciplinary action, the record of the proceeding shall be made by a licensed court reporter provided by the board at the requesting party's expense. A request for a licensed court reporter shall be filed at least 10 days prior to the hearing.~~

~~— Rab 213.02 Standard and Burden of Proof. The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.~~

~~— Rab 213.03 Testimony; Order of Proceeding.~~

~~— (a) Any person offering testimony, evidence or arguments shall state for the record his or her name, and role in the proceeding. If the person is representing another person, the person being represented shall also be identified.~~

~~— (b) Testimony shall be offered in the following order:~~

~~(1) The party or parties bearing the burden of proof and such witnesses as the party may call;~~

~~(2) The party or parties opposing the party who bears the overall burden of proof and such witnesses as the party may call.~~

~~— Rab 213.04 Evidence.~~

~~— (a) Receipt of evidence shall be governed by the provisions of RSA 541 A:33.~~

~~— (b) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious or legally privileged.~~

~~— (c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.~~

~~— (d) Transcripts of testimony and documents or other materials, admitted into evidence shall be public records unless the presiding officer determines that all or part of a transcript or document is exempt from disclosure under RSA 91 A:5 or applicable case law.~~

~~— Rab 213.05 Proposed Findings of Fact and Conclusions of Law.~~

~~— (a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.~~

~~— (b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact and conclusions of law.~~

~~— (c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.~~

~~— Rab 213.06 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 Rab 213.08.~~

~~— (b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other parties to the hearing 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 party to file the evidence and for cross examination on such evidence.

~~— Rab 213.07 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 party, 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.~~

~~— Rab 213.08 Decisions.~~

~~— (a) A board member shall not participate in making a decision unless he or she personally heard the testimony in the case, unless the matter's disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.~~

~~— (b) If a presiding officer has been delegated the authority to conduct a hearing in the absence of a majority of the officials of the board who are to render a final decision, the presiding officer shall submit to the board a written proposal for decision, which shall contain a statement of the reasons for the decision and findings of fact and rulings of law necessary to the proposed decision.~~

~~— (c) If a proposal for decision in a matter not personally heard by the board is adverse to a party to the proceeding other than the board itself, the board shall serve a copy of the proposal for decision on each party to the proceeding and provide an opportunity to file exceptions and present briefs and oral arguments to the board.~~

~~— (d) A proposal for decision shall become a final decision upon its approval by the board.~~

~~— (e) The board shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.~~

~~PART Rab 214 MOTION FOR REHEARING~~

~~— Rab 214.01 Purpose. The rules in this part are intended to apply whenever any person requests a rehearing of a decision of the board.~~

~~— Rab 214.02 Applicability. The rules in this part shall apply whenever any person requests a rehearing of a decision.~~

~~— Rab 214.03 Filing and Content of Motion.~~

~~— (a) The motion for rehearing shall be filed within 30 days of the date of the board decision or order.~~

~~— (b) A motion for rehearing shall:~~

~~(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;~~

~~(2) Describe how each error causes the board's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion, arbitrary, or capricious;~~

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~~(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and~~

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~~(4) Include any argument or memorandum of law the moving party wishes to file.~~

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~~—— Rab 214.04 Standard for Granting Motion for Rehearing. A motion for rehearing shall be granted if it demonstrates that the board's decision is unlawful, unjust or unreasonable.~~

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~~—— Rab 214.05 Decision on Motion for Rehearing. The board shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 10 days of the filing of the motion for rehearing.~~

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PART Rab 215 RULEMAKING

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~~—— Rab 215.01 How Adopted. A board rule, or any amendment or repeal thereof, shall be adopted by an order and pursuant to the process required by RSA 541-A. Rules may be proposed by any person through the petition process. The order adopting a rule shall contain a concise statement of the statutory authority for the rule, the reasons for its adoption, and any other data required by statute.~~

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~~—— Rab 215.02 Explanation after Adoption.~~

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

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

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~~—— Rab 215.03 Petition for Rulemaking.~~

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~~—— (a) Any person may petition the board to commence a rulemaking proceeding for the purpose of adopting, amending, or repealing a rule.~~

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~~—— (b) The petition shall contain:~~

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~~(1) The text of the proposed rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed rule;~~

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~~(2) If the petitioner proposes to amend an existing rule, the specific insertions and deletions sought;~~

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~~(3) If the petitioner proposes to repeal an existing rule, an identification of the particular rule sought to be repealed;~~

-
~~(4) Any data or argument the petitioner believes would be useful to the agency in deciding whether to commence a rulemaking proceeding; and~~

-
~~(5) A statement specifying the reasons the petitioner believes such adoption, amendment, or repeal should be undertaken by the board.~~

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~~—— Rab 215.04 Disposition of Petition.~~

~~— (a) The board shall, within 30 days from receipt of the petition, by order, grant or deny a petition for rulemaking. Before issuing that order, however, the board shall request additional data or argument from the petitioner or seek such information from others if the board determines that it needs such additional data, argument, or information to be able to render a decision on the merits of the petition.~~

~~— (b) A petition shall be granted by the board if the board determines that the requested action falls within the board’s authority, conforms to substantive provisions of statutes implemented by the board, and is consistent with policy considerations underlying the board’s purpose.~~

~~— (c) If the petition is denied, the board shall state the reason therefore in the order. Petitions for rulemaking shall be evaluated by the board in conformance with RSA 541-A.]~~

Repeal Rab 216.01 through Rab 216.03, effective 11/1/07 (Document #9017), cited as follows:

~~[PART Rab 216 RULEMAKING PUBLIC COMMENT HEARINGS~~

~~Rab 216.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings at which comment relative to rulemaking from the public will be accepted for evaluation and consideration by the board.~~

~~— Rab 216.02 Scope.~~

~~— (a) This part shall apply to all hearings required by RSA 541-A to be conducted by the board at which public comment shall be solicited, except that they shall not apply to adjudicative hearings.~~

~~— (b) If any requirement set by these rules conflicts with an applicable statute, such other authority shall control.~~

~~— Rab 216.03 Notice.~~

~~— (a) A public comment hearing concerning rulemaking shall be commenced by placing notice of the hearing in the “Rulemaking Register” so that it shall appear at least 20 days prior to the hearing date.~~

~~— (b) Notice for rulemaking public comment hearings shall comply with RSA 541-A:6, I.~~

~~— (c) Nothing in these rules shall prohibit the board from giving greater notice than the minimums set out in this part.]~~

Repeal Rab 216.04, effective 9/14/18 (Document #12618) as follows:

~~[Rab 216.04 Media Access.~~

~~— (a) Public comment hearings shall be open to the print and electronic media.~~

~~— (b) The moderator shall place limits on the activities of the media to avoid disruption in the following ways:~~

~~(1) Limit the placement of television cameras to certain locations in the hearing room; and~~

~~(2) Prohibit interviews from being conducted within the hearing room during the hearing.]~~

Repeal Rab 216.05 through Rab 217.02, effective 11/1/07 (Document #9017) as follows:

~~[Rab 216.05 Moderator.~~

~~— (a) The hearing shall be presided over by a moderator who shall be the board chairperson or a designee.~~

~~— (b) The moderator shall:~~

~~(1) Call the hearing to order;~~

~~(2) Cause a recording of the hearing to be made;~~

~~(3) Place limits on the media to avoid disruption as set out in Rab 216.04(b);~~

~~(4) Recognize those who wish to be heard and establish the order thereof;~~

~~(5) Place limitations on speakers as set out in Rab 216.06;~~

~~(6) Remove or have removed any person who disrupts the hearing;~~

~~(7) Provide opportunity for the submission of written comment; and~~

~~(8) Adjourn the hearing.~~

~~— Rab 216.06 Public Participation.~~

~~— (a) Any person who wishes to speak on the issue or issues which are the subject of the hearing shall place his or her name and address on a speakers' list before the last speaker on the list has finished speaking. All whose names appear on the speakers' list, as provided, shall be afforded reasonable time to speak at the hearing. The moderator shall limit the amount of time each speaker may speak to a reasonable time based on the number of people who wish to be heard, the time, and the availability of the facility.~~

~~— (b) The moderator, on behalf of the board, shall:~~

~~(1) Refuse to recognize a person who refuses to give his or her full name and address;~~

~~(2) When a group or organization wishes to comment, limit the group to no more than 3 spokespersons, provided that the members who are present shall be allowed to enter their names and addresses into the record as supporting the position by the group or organization;~~

~~(3) Revoke recognition of a speaker who speaks or acts in an abusive or disruptive manner; or~~

~~(4) Revoke recognition of a speaker who refuses to keep his comments relevant to the issue or issues which are the subject of the hearing.~~

~~— (c) Written comments may be submitted any time from the time notice has been published until the record has been closed by the moderator, which shall not be less than 7 calendar days after the hearing.~~

~~— (d) In the event that the number of speakers who wish to give oral testimony relevant to the issue or issues involved exceed that number who can be heard within a reasonable period of time subject to facility availability and length of the hearing, the hearing shall be reconvened pursuant to applicable provisions in RSA 541-A to afford such persons the opportunity to be heard. Speakers may elect to submit written testimony in lieu of additional oral hearing.~~

~~PART Rab 217 DECLARATORY RULINGS~~

~~— Rab 217.01 Petition for Declaratory Ruling.~~

~~— (a) A petition for declaratory ruling shall be used by a petitioner to request binding guidance as to the applicability of a statutory provision, order, or rule enforced by the board to the petitioner and his or her factual situation.~~

~~— (b) Each petition for a declaratory ruling shall:~~

~~(1) Be in writing;~~

~~(2) Specifically identify which statute, rule or order on which a ruling is sought; and~~

~~(3) Set forth all material facts or circumstances relevant to the ruling being sought.~~

~~— Rab 217.02 Disposition of Petition. The board shall, within 90 days from the receipt of the petition, issue a declaratory ruling. If the board determines that any petition does not meet the requirements of Rab 217.01, it shall immediately notify the petitioner in writing of the specific deficiencies.]~~

Adopt Rab 201.01 to read as follows:

PART Rab APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES

Rab 201.01 Applicability of Plc 200. The Plc 200 rules shall govern the boards within the office of licensed allied health professionals with regards to all procedures for:

- (a) Adjudicatory proceedings;
- (b) Rulemaking submissions, considerations, and disposition of rulemaking petitions;
- (c) Public comment hearings;
- (f) Declaratory rulings;
- (g) All statements of policy and interpretation;
- (h) Explanation of adopted rules;
- (i) Voluntary surrender of licenses; and
- (j) Petitions for waiver of rule.

Remove section heading PART Rab 218 as follows:

Readopt with amendment and renumber Rab 218.01, effective 9/14/18 (Document #12618), as Rab 201.02, cited and to read as follows:

~~[PART Rab 218 – WAIVER OF SUBSTANTIVE RULES]~~

Rab ~~[218.01]~~ **201.02** Petitions for Waiver.

(a) Any interested person may request the board to waive any rule not covered by ~~[Rab 204.03]~~ **Plc 203** by filing an original and 6 copies of a petition which identifies the rule in question and sets forth specific facts and arguments which support the requested waiver.

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

- (1) Adherence to the rule would cause the petitioner hardship;
- (2) The requested waiver is necessary because of any neglect or misfeasance on the part of the petitioner;
- (3) Waiver of the rule would be consistent with the statutes administered by the board; and
- (4) Waiver of the rule would injure third persons.

(c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the board shall require service of the petition on each such persons and advise each that she or he may file a reply to the petition.

(d) The petitioner shall provide further information or participate in such evidentiary or other proceedings as ordered by the board as necessary to complete action on the petition.

(e) A petition for waiver of a rule which does not contain the information required in (b) above shall be denied without further notice or hearing.

(f) The board shall grant petitions for waiver of a rule upon finding that good cause exists to do so based on the information supplied by the petitioner pursuant to Rab ~~[218]~~**201.01(b)**.

(g) The board shall, if good cause to do so exists, initiate waiver or suspension of a substantive rule upon its own motion by providing affected parties with notice and an opportunity to be heard, and issuing an order which finds that:

- (1) Adherence to the rule would cause the petitioner undue personal hardship;
- (2) There is no neglect or misfeasance on the part of the petitioner;
- (3) Waiver of the rule would be consistent with the statutes administered by the board; and
- (4) Waiver of the rule would not injure third persons.

APPENDIX B

Rule	Specific State Statute which the Rule Implements
Rab 202-214 (repealed)	RSA 310-B:24, VIII; RSA 541-A:16, I (b) (2); RSA 541-A:30-a; RSA 310-B:18; RSA 310-B:19
Rab 203.02 (b) and (c) (repealed)	RSA 310-B:19; RSA 310-B:18-a; RSA 310-B:24; VIII
Rab 215 (repealed)	RSA 541-A:16, I (c)
Rab 216 (repealed)	RSA 541-A:16, I(b)(3)
Rab 217 (repealed)	RSA 541-A:16, I(d)
Rab 201.01	RSA 541-A:16, I (b)
Rab 201.02 (formerly Rab 218.01)	RSA 541-A:16, I (b) intro.