

Readopt with amendment Plc 201-213, eff. 9-4-19 (doc. #12863), and renumber as Plc 201-211, to read as follows:

CHAPTER Plc 200 PRACTICE AND PROCEDURE

Statutory Authority: RSA 310-A:1-d, II(h)(2); RSA 541-A:16, I(b)

PART Plc 201 PURPOSE AND ~~SCOPE~~-***APPLICABILITY***

Plc 201.01 Purpose.

***(a) The office conducts ~~purpose of the~~ various proceedings for the purpose of acquiring undertaken pursuant to this chapter is to acquire* sufficient information to make fair and reasoned decisions on matters within ~~its the~~ statutory jurisdiction, ~~including decisions on applications for licensure and communications of alleged misconduct filed against licensees of the office of professional licensure and certification (OPLC) or other regulatory authority undertaking the proceeding.~~**

(b) The purpose of these rules shall be construed to secure the just, efficient, and accurate resolution of all office action. ~~this chapter is to provide:~~

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

(2) Uniform procedures for the submittal, review, and disposition of complaints, 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;

(3) Procedures for investigations, settling matters without adjudicative hearings, and disciplinary proceedings; and

(4) Uniform criteria for suspending, revoking, or refusing to issue or renew licenses issued by the regulatory authority.

(c) These rules are intended to supplement the requirements of RSA 541-A and any procedures or criteria expressly set forth in the practice act of a regulatory authority that is subject to these rules or in RSA 310-A:1-j through RSA 310-A:1-n.

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 other regulatory authority, as described in Plc 204 through Plc 213, and shall be in addition to applicable requirements of RSA 541-A and the rules set forth in Plc 204 through Plc 213 as applicable to a specific type of proceeding.

(b) This chapter shall apply to the following boards and professions, as regulated directly by the OPLC:

(b1) Body art;

(e2) Electrology;

(a3) Massage therapy;

(e4) Ophthalmic dispensing; and

(d5) Reflexology, structural integration, and Asian bodywork therapy; and.

(c) *This chapter also shall apply to:*

(1) *The boards, commissions, and councils listed in RSA 310-A:1-a, I, hereinafter referred to as “supported boards, commissions, and councils”, to the extent a specific issue is not addressed in the rules adopted by the supported board, commission, or council and provided that these rules shall not supplant or supersede any procedures expressly set forth in the practice act of the supported board, commission, or council; and*

(2) *To any supported boards, commissions, and councils that expressly incorporate these rules by reference.*

PART Plc 202 DEFINITIONS

~~Plc 202.01~~ Definitions.

~~(a)~~**Plc 202.01** “Adjudicative proceeding” means “adjudicative proceeding” as defined as in RSA 541-A:1, I, *reprinted in Appendix B.*

~~(b)~~**Plc 202.02** “Appearance” means a written notification to the ~~office~~**regulatory authority** that a ~~party~~**person** or a ~~party’s~~**person’s** representative intends to actively participate in a ~~hearing~~**proceeding**.

Plc 202.03 “*Applicable law*” means the statute(s), rules, standing orders, and case law, if any, under which a profession is regulated in New Hampshire.

~~(c)~~**Plc 202.04** “Complaint” means a communication of alleged misconduct containing information that, ~~as the office shall determine~~, if true, could violate ethical codes, administrative rules, or the ~~other~~**applicable** law.

~~(d)~~**Plc 202.05** “Data” means all information relevant to ~~the~~**an** investigation, included ~~ed~~**ing** but not limited to:

~~(1a)~~ Oral or written descriptions *provided by a complainant or witness*;

~~(2b)~~ Reports *obtained in the course of the investigation*;

~~(3c)~~ Maps; ~~(4)~~ ~~C~~charts; ~~(5)~~ ~~D~~drawings; and ~~(6)~~ ~~P~~photographs *obtained or created in the course of the investigation*;

~~(7d)~~ Audio or video recordings *obtained or created in the course of the investigation*; and

~~(8e)~~ Computer programs; or ~~(9)~~ ~~C~~computer printouts *obtained or created in the course of the investigation or otherwise used to analyze other information obtained.*

~~(e)~~**Plc 202.06** “Disciplinary proceeding” means an adjudicative proceeding commenced by ~~the~~**a regulatory authority** for the purpose of ~~examining a complaint against a licensee~~**determining whether to suspend, revoke, or refuse to renew a license or to impose other sanctions.**

Plc 202.07 “*Enforcement division*” means the division of enforcement of the OPLC established by RSA 310-A:1-a.

Plc 202.08 “*Executive director*” means the executive director of the OPLC or designee.

~~(f)~~**Plc 202.09** “File” *as a verb* means to place a document in the actual possession of ~~the office~~**a regulatory authority.**

Plc 202.10 “File electronically” for other than applications 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 to the applicable regulatory authority with documents attached in portable document format (pdf).

Plc 202.11 “Hearing” means a component of a proceeding, through which the regulatory authority receives testimony, evidence, arguments, or comments, or any combination thereof.

{(g) “Hearing counsel” moved, renumbered as Plc 202.26 “Prosecutor”}

Plc 202.12 “Intervenor” means a person allowed by the presiding officer to intervene in an adjudicative proceeding pursuant to RSA 541-A:32.

~~(h)~~***Plc 202.13 “Investigation” means a gathering of data by the office-a regulatory authority concerning matters within its jurisdiction.***

{(i) “Confidential letter of concern” moved, renumbered as Plc 205.02(a) [same]}

~~(j)~~***Plc 202.14 “Office investigator” means an office employee-individual designated by the regulatory authority who is responsible for conducting an investigation or overseeing the activities of the professional conduct investigators, or both.***

Plc 202.15 “License” means “license” as defined in RSA 541-A:1, VIII, reprinted in Appendix B.

Plc 202.16 “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 the OPLC or a supported board, commission, or council.

~~(j)~~***Plc 202.17 “Motion” means any request by a party to an existing proceeding-to the presiding officer for an order or relief relating to that proceeding-ruling some act to be done in favor of the participant making the motion, including a statement of justification or reason(s) for the request.***

~~(k)~~ “Office” means the New Hampshire office of professional licensure and certification as described in Plc 102. *{term replaced with OPLC}*

Plc 202.18 “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.

~~(m)~~***Plc 202.19 “Order” means a document issued by the executive director-regulatory authority or a presiding officer to:***

~~(1a)~~ Establishing procedures to be followed in an adjudicative or non-adjudicative proceeding;

~~(2b)~~ Granting or denying a petition or motion;

~~(3c)~~ ~~Requiring~~***Require*** a person to do, or to abstain from doing, something, ***as a result of an adjudicative proceeding***; or

~~(4d)~~ ~~Determining~~***Determine*** a person’s rights to a license or other privilege established by law.

Plc 202.20 “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 the hearing or submits comments in writing on paper or by e-mail, or both.

Plc 202.21 “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 persons who attend the public hearing held on the matter or provide comments orally or in writing on paper or by e-mail, or any combination thereof.

~~(n)~~***Plc 202.22 “Petition” means any request to the office-a regulatory authority seeking an order or any other action for relief, but does not include other than a license application or a motion.***

Plc 202.23 “Practice act” means the statute(s) that confers authority on the OPLC or on a board, commission, or council to regulate a specific profession.

~~(o)~~***Plc 202.24 “Presiding officer” means the executive director, office employee, or other individual, who has been designated as such by the executive director, to whom the office has delegated by a regulatory authority to preside over some or all aspects of an adjudicative or other proceeding.***

Plc 202.25 “Proceeding” means the totality of the handling of a matter, including the initiation, review, hearing, decision, and, if applicable, reconsideration of the matter. A proceeding can be either adjudicative or non-adjudicative.

~~(g)~~***Plc 202.26 “Hearing counsel-Prosecutor” means an-the individual appointed by the office-a regulatory authority to prosecute-present the evidence collected in an investigation in a proceeding related to licensee misconduct allegations and denials of applications for licensure.***

~~(p)~~ “Report of Investigation (ROI)” means report of information, facts, and data gathered for the office. *{term not used in rules}*

Plc 202.27 “Regulatory authority” means a legal entity to which these rules apply as provided in Plc 201.02 that has the statutory authority to regulate the conduct of persons who are or seek to be licensed in the profession within the regulatory authority’s jurisdiction, which in the case of the professions listed in Plc 201.02(b) is the OPLC.

Plc 202.28 “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 regulatory authority proposes to impose an administrative fine; or

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

~~(q)~~ “Rulemaking” means the statutory procedures for formulating office rules set forth in RSA 541-A:3. *{definition unnecessary}*

{(r) "Settlement agreement" moved, renumbered as Plc 205.02(b) "Consent order"}

Plc 202.29 "Working day" means any Monday through Friday, excluding days on which state offices are closed in observance of holidays.

PART Plc 203 PROVISIONS APPLICABLE TO ALL PROCEEDINGS

~~Plc 205~~***203.01 Computation of Time.***

- (a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.
- (b) Computation of any period of time ~~referred to~~***established*** in these rules shall begin with the day after the action ~~which~~***that*** sets the time period in motion, and ~~shall~~ include the last day of the period so computed.
- (c) ***For time periods not established in statute, if the last day of the period so computed does not fall on a Saturday, Sunday, or legal holiday working day, then the time period shall be extended to include the first business-working day following the Saturday, Sunday, or legal holiday.***

(d) Time periods established in statute shall be determined as specified in the statute.

~~Plc 204.01~~***203.02 Filing of Documents with the Office OPLC or Other Regulatory Authority.***

- (a) A document shall be considered filed when it is actually received ~~at the office in Concord by~~***the regulatory authority to which it is addressed, whether filed electronically or on paper***, and facially conforms to ~~the office's~~***applicable*** rules.
- (b) A document, ~~which facially violates the office's rules,~~***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*** ~~submissions shall be returned to the sender without prejudice to subsequent acceptance if the deficiencies are corrected and the document is refiled within any applicable time period.~~
- (c) All correspondence, filings, or communications intended for the ~~office OPLC~~ shall be addressed to the ~~office OPLC~~ in care of ~~its~~***the executive director's*** administrative assistant.
- (d) All correspondence, filings, or communications intended for any other regulatory authority shall be addressed to that authority in care of its board administrator.***
- (e) Until an electronic filing system becomes available, documents other than applications and appeal-related documents may be filed electronically to customersupport@oplc.nh.gov.***
- ~~(d)~~ ***(f) Subject to (g), below, all petitions, motions, exhibits, memoranda, or other documents filed in connection with a request for office action by a regulatory authority shall be filed with an original and 5 copies one copy if filed in hard copy.***

~~(eg)~~ ***(g) Notwithstanding (d) above, only the original or another single copy shall be filed of:***

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

~~204.03(eh)~~ Applications, ***and*** petitions for rulemaking, ~~and petitions for declaratory rulings~~ shall be filed with the ~~office~~ ***regulatory authority*** without service upon other persons.

(i) Petitions for declaratory ruling shall be filed with the regulatory authority with service on persons who would be directly affected by the ruling, if required by Plc 210.02(c).

Plc 203.03 Date of Issuance or Filing.

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

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

PART Plc ~~207~~204 ***COMPLAINTS; INVESTIGATIONS***

Plc 204.01 Purpose and Applicability.

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

(b) This part shall apply to complaints against individuals and businesses engaged in any of the professions identified in Plc 201.02(b) or regulated by another regulatory authority to which these rules apply under Plc 201.02(c).

Plc 204.02 Filing a Complaint.

~~204.03(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 ~~completing and submitting a written complaint with the office~~ ***as provided in this part.***

(b) Complaints shall be filed:

(1) With the OPLC at Enforcement.Complaints@oplc.nh.gov or directly with the regulatory authority; 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.

~~204.03(bc)~~ The ~~office~~ ***regulatory authority*** shall notify the ~~licensee~~ ***person who is the subject of the complaint*** of ~~said filing the complaint~~ unless such information ~~doing so~~ would jeopardize:

*(1) The safety of a ~~party~~ ***the complainant or any other individual***; or*

(2) The process of a criminal investigation.

(d) If the OPLC receives a complaint relating to a profession regulated by another regulatory authority or by a board, commission, or council that is not subject to these rules, the OPLC shall forward the complaint and response, if any, to that board, commission, or council for action under that authority's rules.

(e) 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.

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

(1) The signer has read the complaint;

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

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

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

Plc 204.03 Required Contents of Complaint. A complaint shall include:

(a) Identification of the profession to which the conduct being complained of relates;

(b) The name of the individual or business that is alleged to have engaged in the conduct complained of;

(c) If known, the type and license number of the license held by such individual or business, if any;

(d) A clear and concise statement of the facts on which the complaint is based, including but not limited to the following for each occurrence of the conduct being complained of:

(1) A description of the specific conduct that forms the basis of the complaint;

(2) The date and time the conduct occurred, provided that if the conduct occurred on more than one occasion, the date and time of the most recent occurrence may be provided with a statement of the overall time frame in which the conduct occurred and the number of times the conduct was repeated;

(3) The location or locations where the conduct occurred; and

(4) Whether there were any other individuals present when any instance of the conduct occurred and, if known, the name of and contact information for each such witness or observer;

(e) Information about the individual who is making the complaint, including:

(1) The complainant's first and last name;

- (2) ***The telephone number including area code and extension, if any, at which the complainant can be reached during normal daytime business hours; and***
- (3) ***The complainant's email address and mailing address; and***
- (f) ***Whether the complainant has:***
 - (1) ***Attempted to resolve the complaint with the licensee;***
 - (2) ***Retained an attorney in the matter, and if so the name, address, email address, and telephone number including area code of the attorney; and***
 - (3) ***Reported the complaint to any other regulatory authority and if so, the regulatory authority's name and the name, email address, and telephone number of a contact to whom the complaint was made, if known.***

Plc ~~207.01~~**204.04** ***Initiation and Conduct of Investigations.***

- (a) ~~The executive director~~ ***A regulatory authority shall authorize or*** conduct such investigations as ~~he or she~~ ***the authority*** deems necessary to examine acts of possible misconduct that come to ~~his or her~~ ***the authority's*** attention through complaints or other means, ***as provided in RSA 310-A:1-j.***
- (b) ***The initiation of an i***Investigation~~s~~ shall not ***constitute or be deemed to*** commence a disciplinary hearing ~~and proceeding~~.
- (c) ***The initiation of an investigation*** shall not constitute an allegation of misconduct against a licensee.
- (~~e~~) When an investigation occurs, an investigator ~~designated by the executive director~~ shall contact such persons, ***conduct such inspections,*** and examine such records and other documents as are reasonably necessary to make a recommendation as to whether further action should be taken ***based*** on the allegations in question.
- (~~e~~) Investigations, including those based upon allegations in a complaint, shall be conducted on an ex parte basis.

Plc **204.05** ***Subpoenas For Investigations.***

- (a) ***Subpoenas issued by the executive director for purposes of conducting an investigation shall be issued as provided in RSA 310-A:1-j, IV(d).***
- (b) ***Subpoenas issued by any other regulatory authority for purposes of conducting an investigation shall be issued as provided in the authority's practice act or RSA 310-A:1-j, IV(d).***

Plc **204.06** ***Investigation Reports.***

~~207.01~~(~~ea~~) Following the ***Upon completion of an*** investigation, the investigator shall:

- (1) ***M***ake a written report ***to the regulatory authority of the data gathered as a result of the investigation;*** and
- (2) ***Provide a*** recommendation to the ~~executive director~~ ***regulatory authority*** as to whether there is ***a*** reasonable basis to ~~conclude that the complaint concerns facts that constitute misconduct~~ ***proceed with a disciplinary proceeding.***

(b) As provided in RSA 310-A:1-j, III, the following information obtained during investigations shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A:

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

~~207.01(f-c)~~ Investigatory ***Investigation*** reports, ***exclusive of any legal analyses contained therein,*** and all ~~information~~ ***data*** gathered by an investigator shall be ~~confidential~~ ***except*** provided as follows: ~~(1) The investigator's report shall be made available to the parties and intervenors in any adjudicatory adjudicative proceeding resulting therefrom; and~~ ***the investigation to:***

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

~~(2d)~~ The ~~executive director~~ ***regulatory authority*** shall ***also*** provide, upon request, the ~~non-~~ confidential information gathered in ~~disciplinary~~ ***an*** investigations to:

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

PART Plc 205 SETTLEMENT PROCEDURES; NON-DISCIPLINARY REMEDIAL ACTIONS

Plc 205.01 Purpose and Applicability.

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

(b) This part shall apply to any matter in which an investigation determines that there is a basis to proceed with a disciplinary proceeding, subject to the time limitations in RSA 310-A:1-j, VI, reprinted in Appendix C.

Plc 205.02 Definitions.

~~202.01(i-a)~~ "Confidential letter of concern" means a ***non-disciplinary*** written letter from ~~the office~~ ***a regulatory authority to a licensee to*** drawing the licensee's attention to specific acts or omissions that could place the licensee at risk of future disciplinary action ***if the acts or omissions are repeated or otherwise continue.*** A confidential letter of concern is ~~non-disciplinary, is confidential, and is sent to the licensee following a communication of alleged misconduct, complaint, or investigation.~~ ***{2nd sentence now covered by 205.03(b), below}***

202.01(~~rb~~) ~~“Settlement agreement~~ ***Consent order***” means a written order, ***issued by*** ~~of the office regulatory authority acknowledging with the consent of the licensee, to enter~~ ***that contains*** stipulated facts and ~~imposing~~ ***imposes*** disciplinary actions ***that have been*** consented to by the licensee to resolve ~~certain~~ ***specific*** allegations of licensee misconduct.

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

(d) ***“Treatment program” means a program, including but not limited to a professionals’ health program under RSA 310-A:1-e, I-a, in which an individual receives medical or psychological treatment, or both, or another appropriate form of intervention or monitoring, to assist the individual in overcoming a condition that has impaired the individual’s ability to practice competently and safely.***

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

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

- (a) ***Dismiss the action, if the investigation does not reveal that misconduct occurred;***
- (b) ***Dismiss the action and issue a confidential letter of concern, if the investigation shows that:***
 - (1) ***The licensee’s actions constituted misconduct, but occurred under conditions that suggest the licensee would not, under normal circumstances, engage in the conduct and the actions have not been repeated; or***
 - (2) ***It might not be possible to prove in an adjudicative hearing that the licensee engaged in the actions, even though a reasonable person would conclude, based on the totality of the evidence, including evidence that might not be admissible at a hearing, that the licensee did engage in the actions; or***
- (c) ***Commence an adjudicative proceeding.***

Plc 205.04 Consent Orders.

(a) ***If a disciplinary 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, and suspension, the agreement shall be written as a proposed consent order to be presented to the regulatory authority.***

(b) ***Pursuant to RSA 310-A:1-k, III, if the matter resulted from a complaint, the complainant shall have the opportunity, before the proposed consent order becomes final, to comment on the terms of the proposed consent order.***

(c) ***The proposed consent order shall be submitted to the regulatory authority for review and approval, as required by RSA 310-A:1-k, III.***

(d) ***If the regulatory authority to which a proposed consent order is submitted pursuant to (c), above, does not accept the consent order and schedules the matter for an adjudicative hearing, the terms of the consent order shall not be made part of any record and the respondent shall not be bound by any terms of the consent order.***

Plc 205.05 Preliminary Agreement to Not Practice; Voluntary Surrender.

(a) A PANP shall not constitute an admission of wrongdoing by the licensee.

(b) The voluntary surrender of a license shall not, in and of itself, constitute an admission of wrongdoing by the licensee.

Pl 205.06 Non-Disciplinary Remedial Actions.

(a) As provided in RSA 310-A:1-k, VII, a regulatory authority “may take non-disciplinary remedial action against any person licensed by it upon finding that the person is afflicted with physical or mental disability, disease, disorder, or condition deemed dangerous to the public health.”

(b) In order to take non-disciplinary remedial action, the regulatory authority 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.

(c) The regulatory authority shall take non-disciplinary remedial action as specified in RSA 310-A:1-k, VII(a)-(c), reprinted in Appendix C, provided that the regulatory authority shall revoke the license only if the findings required by (b)(2), above, are made based on clear and convincing evidence.

***PART Plc 203206 PRESIDING OFFICER, WITHDRAWAL, AND WAIVER OF RULES
ADJUDICATIVE PROCEEDINGS***

Plc 206.01 Applicability. *The rules in Plc 206 shall apply to any proceeding initiated by a regulatory authority that is subject to these rules as provided in Plc 201.02 under the authority’s specific statutory authority to:*

(a) Suspend, revoke, or refuse to renew a license or impose an administrative fine, or both; or

(b) Conduct a hearing to determine whether to issue an initial license.

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

(a) Any participant in an adjudicative proceeding and any person who has filed a motion for reconsideration 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 will be accepted.

(c) The prosecutor shall accept service via email.

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

(e) Emails sent to the email address on file with the presiding officer for which no delivery failure notification is received shall be presumed to have been received by the addressee, provided that service of documents under Plc 206.10 shall be by email only if the participant has indicated that service will be accepted by email.

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

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

~~Plc 203.01~~***206.03*** Presiding Officer; Appointment; and Authority.

(a) All hearings in any adjudicative proceeding shall be conducted for initiated by the office OPLC shall be conducted by either the executive director or designee, sitting as presiding officer, or another person appointed or authorized by the executive director to serve as a presiding officer.

(b) All hearings in any adjudicative proceeding initiated by any other regulatory authority under this chapter shall be conducted by the individual authorized by that authority to serve as presiding officer.

~~(b)~~ ***(c) The presiding officer shall as necessary:***

- (1) Regulate and control the course of a hearing;***
- (2) Facilitate an informal resolution of the subject matter of the hearing;***
- (3) Administer oaths and affirmations;***
- (4) Issue or request the office regulatory authority to issue subpoenas to compel the attendance of witnesses at hearings or the production of documents, if so authorized by law;***
- (5) Receive relevant evidence at hearings and exclude irrelevant, immaterial, or unduly repetitious evidence;***
- (6) Rule on procedural requests, including adjournments or postponements-continuances, at the request of a party-participant or on the presiding officer’s own motion;***
- (7) Question any person-individual who testifies;***
- (8) Cause a complete record of any hearing, as described in RSA 541-A:31, VI, to be made, as specified in RSA 541-A:31, III (f); and***
- (9) 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.***

~~Plc 203.02~~***206.04*** Withdrawal of Presiding Officer.

(a) Upon his or her own initiative or upon the motion of any party-participant, a-the presiding officer shall, for good cause, withdraw from any hearing-proceeding.

(b) If the request to withdraw is made by a participant, the motion shall contain or be accompanied by sworn testimony or other evidence to support the motion.

(bc) Good cause shall exist if ~~a~~***the*** presiding officer:

- (1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship with any ~~party~~***participant***;
- (2) Has made statements or engaged in behavior, other than voting upon matters relevant to the case, ~~which~~***that*** objectively demonstrates that he or she has prejudged the facts of a case; or
- (3) Personally believes that he or she cannot fairly judge the facts of a case.

(ed) Mere knowledge of the issues, the ~~parties~~***participants***, or any ***actual or potential*** witness shall not constitute good cause for withdrawal.

Plc ~~203.03~~***206.05*** Waiver of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any ~~party~~***participant***, shall 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 ~~office~~***regulatory authority*** than would adherence to a particular rule or procedure.

PART ~~Plc 204~~ FILING AND SERVICE OF DOCUMENTS

{Plc 204.01 moved, renumbered as Plc 203.02}
{Plc 204.02 moved, renumbered as Plc 206.09}

Plc ~~208.01~~***206.06*** Commencement of ***Adjudicative*** Proceedings.

(a) ***Except for proceedings initiated pursuant to RSA 541-A:30, III relative to emergency suspensions, the executive director-regulatory authority shall commence an adjudicative proceeding by issuing a notice of hearing to the parties-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.***

{(b) moved, renumbered as Plc 206.07(c)}

(b) If a regulatory authority commences a proceeding under RSA 541-A:30, III by issuing an order to immediately suspend a license based on a determination that public health, safety or welfare requires emergency action, the regulatory authority shall commence an adjudicative proceeding as required by the statute, namely not later than 10 working days after the date of the regulatory authority's order suspending the license.

(c) The notice commencing an adjudicative proceeding shall:

- (1) Identify the docket number assigned to the matter by the regulatory authority;***
- ~~(2)~~ Specify the ***date***, time, place, and nature of any hearing ***that has been scheduled***;
- ~~(3)~~ Summarize the subject matter of the proceeding and identify the issues to be resolved;
- ~~(4)~~ Specify the legislative authority for the proposed action and identify any applicable ~~agency~~***rules***;
- ~~(5)~~ Specify the date by which, and the address ~~where~~***to which***, appearances or motions by ~~parties or representatives~~***participants*** shall be filed;

~~(56)~~ Specify the date, time, and location of an initial prehearing conference ~~or dates for an oral hearing~~ ***if one has already been scheduled;***

~~(67)~~ Identify the presiding officer for the proceeding ~~if other than the chairperson of the agency;~~

~~(78)~~ Identify any special procedures to be followed;

~~(89)~~ Identify any confidentiality requirements applicable to the proceeding;

~~(910)~~ Specify that each ~~party~~ ***respondent*** has the right to have an attorney represent him or her at the ~~party's~~ ***respondent's*** own expense; ~~and~~

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

~~(1012)~~ Contain such other information or attachments as are warranted by the circumstances of the case, including, but not limited to:

- a. Orders consolidating or severing issues in the proceeding with other proceedings; and
- b. Orders directing the production or exchange of documents.

{(d) moved, renumbered as Plc 206.07(e)}

Plc ~~208.02~~ **206.07** Methods of Proceeding - Generally.

(a) If the ~~parties~~ ***participants*** agree, the ~~office~~ ***regulatory authority*** shall proceed 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 ~~which~~ ***that*** argue the conclusions the ~~parties~~ ***participants*** wish the ~~agency~~ ***regulatory authority*** to draw from the undisputed facts.

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

~~Plc 208.01~~ ~~(bc)~~ ***For proceedings in any of the professions listed in Plc 201.02(b),*** ~~The~~ ~~adjudicatory~~ ***adjudicative*** proceeding shall be held ~~conducted~~ ***either*** by either the executive director alone or, if the executive director determines that the expertise of the advisory ***committee or advisory*** board members, ***as applicable***, is necessary, by a panel consisting of the executive director and a minimum of 2 members of the relevant advisory ***committee or advisory*** board ~~listed in Plc 201.02.~~

(d) For proceedings in any other professions, the adjudicative proceeding shall be conducted in accordance with applicable law, including but not limited to RSA 310-A:1-I, II, reprinted in Appendix C.

~~Plc 208.01~~ ~~(de)~~ A recording of the hearing shall be taken and preserved. If requested by a ~~party~~ ***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.

Plc 208.03206.08 Appearances and Representation.

(a) A ~~party~~***respondent*** or the ~~party's~~***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; ~~and~~
- (3) The ~~party~~***respondent's*** or representative's daytime address, ~~and~~ telephone number ***including area code, and email address; and***
- (4) ***Whether the respondent or representative will accept service via email, provided that if the filing does not so indicate, the presiding officer or designee shall contact the individual filing the appearance to find out in lieu of rejecting the filing.***

(b) The prosecutor shall file an appearance that identifies the matter in which the prosecutor will be appearing and includes a daytime address and telephone number including area code, and email address.

~~(bc)~~ Any changes to the information in (a) ***or (b)***, above, shall be filed with the ~~office~~***presiding officer***, in writing, within 5 ~~business-working~~ days of the change.

~~(ed)~~ The ~~office~~***regulatory authority*** 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 ~~office~~***authority***, willfully disrupted ~~office~~***proceedings of the authority***, or made material misrepresentations to the ~~office~~***authority*** or a ~~party~~***participant*** in an ~~office~~***proceeding of the authority***.

~~(de)~~ Any prohibition issued under ~~(ed)~~, above, shall apply only to the ~~office's~~***regulatory authority's*** proceedings.

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

Plc 204.02206.09 Subscription and Veracity-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.

~~(ac)~~ All ~~communications of alleged misconduct,~~ petitions, motions, and replies filed with the ~~office~~***in the proceeding*** shall be signed and dated by the proponent of the document or, if the ~~party~~***proponent*** appears by a representative, by the representative.

~~(b)~~ Licensure applications shall be signed only by the applicant.

~~(ed)~~ The signature on a document filed with the office shall constitute a certification that:

- (1) The signer has read the document;

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

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

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

~~(d) With respect to communications of alleged misconduct, the signer shall indicate whether the conduct complained of is alleged to have occurred as a result of or in connection with litigation and whether the litigation is still pending.~~ *{no longer required}*

Plc 204.03206.10 Service of Documents.

{(a)-(b) moved, renumbered as Plc 204.02(a)-(b)}

{(c) moved, renumbered as Plc 203.02(g)}

~~(da)~~ All objections, motions, replies, memoranda, exhibits, or other documents filed in ~~connection with a request for office action~~ ***an adjudicative proceeding*** shall be served by the proponent upon all ~~parties or persons who have filed appearances with the office to be heard on a matter~~ ***other participants*** by:

(1) Depositing a copy of the document in the United States ~~m~~Mail, first class postage prepaid, addressed to the ~~last address given to the office by the person being served~~ ***of record in the proceeding for the participant being served***, no later than the day the document is filed with the ~~office~~ ***presiding officer***; ~~or~~

(2) Delivering a copy of the document in hand on or before the date it is filed with the ~~office~~ ***presiding officer***; ~~or~~

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

~~(eb)~~ Notices, orders, decisions, or other documents issued by the ~~office~~ ***regulatory authority or presiding officer*** in connection with ~~requests for office action~~ ***an adjudicative proceeding*** shall be served by the ~~office~~ ***issuer*** upon all ~~parties or their representatives on a~~ ***participants in the*** matter by:

(1) Depositing a copy of the document, first class postage prepaid, in the United States ~~m~~Mail, addressed to the ~~most recent address given to the office by the party~~ ***of record in the proceeding for the participant*** being served; ~~or~~

(2) Delivering a copy of the document in hand to the ~~party~~ ***participant***; ~~or~~

(3) ***Sending a copy of the document as an attachment to an email addressed to the email address of record, provided that the participant who provided the email address has indicated that service would be accepted in this manner.***

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

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

~~PART Plc 205~~ TIME PERIODS

{Plc 205.01 moved, renumbered as Plc 203.01}

~~PART Plc 206~~ MOTIONS AND OBJECTIONS

~~Plc 206.01~~**206.11** Motions and Objections.

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

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

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

- (1) The purpose of the motion;
- (2) The relief sought by the motion;
- (3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion;
- (4) The facts claimed to constitute grounds for the relief requested by the motion; and
- (5) The signature and date required by Plc ~~204.02(a)~~**206.09(a)**.

~~(d)~~ (e) Objections to motions shall be filed within 10 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

~~(e)~~ (f) Objections to motions shall state clearly and concisely:

- (1) The objection or defense of the ~~party~~**participant** filing the objection to any fact or request in the motion, set forth in separate paragraphs numbered identically to the paragraphs in the original motion;
- (2) The action ~~which~~ the ~~party~~**participant** filing the objection wishes the ~~office~~**presiding officer** to take on the motion;
- (3) ~~The s~~Statutes, rules, orders, or other authority relief ~~upon in defense of~~**to rebut** the motion;
- (4) Any facts ~~which~~**that** are additional to or different from the facts stated in the motion; and
- (5) The signature and date required by Plc ~~204.02(a)~~**206.09(a)**.

~~(f)~~ (g) Motions shall be decided upon the writings submitted, ***unless the presiding officer or, in the case of a dispositive motion, the regulatory authority, determines that a hearing is necessary to a full understanding of the motion or objection, or both.***

(g) Repetitious motions shall not be submitted.

{Plc 207 moved, renumbered as Plc 204}

~~PART Plc 208~~ ADJUDICATIVE PROCEEDINGS

{Plc 208.01 moved, renumbered as Plc 206.06}
{Plc 208.02 moved, renumbered as Plc 206.07}
{Plc 208.03 moved, renumbered as Plc 206.08}

Plc 208.04206.12 Role of Complainants ***and Regulatory Authority Staff*** in Adjudicatory ***Adjudicative*** Proceedings.

(a) Unless called as a witness or granted intervenor status, a person ~~who initiates~~ ***whose complaint resulted in*** an adjudicative proceeding ~~by complaining to the office about the conduct of the person who becomes a party~~ shall have no role in any ~~adjudicatory~~ ***the adjudicative*** proceeding.

~~Plc 208.05 Role of Office Staff in Adjudicatory Proceedings.~~ (b) Unless called as a witness ***or serving as the regulatory authority's representative in the adjudicative proceeding or as the presiding officer,*** ~~office staff of the regulatory authority conducting the proceeding~~ shall have no role in any ~~the~~ ***adjudicatory*** ~~adjudicative~~ proceeding.

Plc 208.06206.13 Intervention.

(a) ***Any person who is not a respondent, respondent's representative, or prosecutor who wishes to participate in an adjudicative proceeding shall file a motion to intervene.***

(ab) ~~A m~~Motions to intervene shall state with particularity:

- (1) The petitioner's interest in the subject matter of the hearing;
- (2) Why the interests of the ~~parties~~ ***existing participants*** and the orderly and prompt conduct of the proceeding would not be impaired ***by allowing the petitioner to intervene;*** and
- (3) Any other reasons why the petitioner should be permitted to intervene.

(bc) ~~A m~~Motions to intervene shall be granted if the ~~agency~~ ***presiding officer*** finds ***that:***

- (1) ~~T~~he petitioner has a substantial interest in the proceeding;
- (2) ~~T~~he petitioner requested intervention in accordance with these rules; and if
- (3) ~~G~~granting intervention will not prejudice ***an existing party-participant*** or unduly delay the ~~agency's~~ proceedings.

(ed) ~~Once granted leave~~ ***If a motion to intervene is granted,*** ~~an~~ ***the*** 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.

Plc 208.07206.14 Consolidation; Severance.

(a) Adjudicative proceedings ~~which~~ ***that*** involve the same or substantially related issues shall be consolidated for hearing or decision, or both, when fairness, accuracy, and efficiency would be served by such an action.

(b) Consolidation shall be ordered in response to a timely motion from a ~~party~~ ***participant*** or on the ~~agency's~~ ***presiding officer's*** own initiative.

~~Plc 208.08 Severance.~~ (c) Upon timely motion from a ~~party~~ ***participant*** or on the ~~executive director's~~ ***presiding officer's*** own initiative, the ~~executive director~~ ***presiding officer*** shall sever one or more issues from a proceeding and dispose of those issues in another proceeding if ~~it finds~~ ***he or she***

determines that doing so would materially promote the fairness, accuracy, and efficiency of the proceeding.

(d) The presiding officer shall issue written notice to all participants of any determination to sever or consolidate proceedings.

Plc ~~208.09~~***206.15*** Continuances.

(a) Any ~~party or intervenor~~ ***participant*** may make an oral or written motion that a hearing be delayed or continued to a later date or time.

(b) A motion for a delay or a continuance shall be granted if the presiding officer determines that there is good cause to do so.

(c) Good cause shall include:

- (1) The unavailability of ~~parties, intervenors, representatives of parties or intervenors,~~ ***one or more participants*** or witnesses necessary to conduct the hearing;
- (2) The likelihood that a settlement will make the hearing or its continuation unnecessary; and
- (3) Any other circumstances that demonstrate that a delay ***in commencing the hearing or a continuance of a hearing that has already commenced*** would assist in resolving the case fairly ***and efficiently***.

(d) If the later date, time, and place are known when the hearing is being delayed or continued, the information shall be stated on the record. If the later date, time, and place are not known at that time, the presiding officer shall as soon as practicable issue a written scheduling order stating the date, time and place of the delayed or continued hearing.

Plc ~~208.10~~***206.16*** Prehearing Conferences.

(a) At any time following the commencement of an adjudicative proceeding, the presiding officer, upon motion; or upon his or her own initiative, shall request the ~~parties~~ ***participants*** to attend ~~one or more~~ ***a*** prehearing conference when ***the presiding officer believes that*** such a conference would aid in the ~~disposition~~ ***efficient and fair resolution*** of the proceeding.

(b) Matters ~~which~~ ***that*** can be addressed at a prehearing conference shall include:

- (1) The distribution of exhibits and written testimony, if any, to the ~~parties~~ ***participants***;
- (2) Opportunities and procedures for simplification of the issues;
- (3) Possible amendments to the pleadings;
- (4) Opportunities and procedures for settlement;
- (5) Possible admissions of fact and authentication of documents to avoid unnecessary proof;
- (6) Possible limitations on the number of witnesses and possible limitations on the scheduling of witnesses;
- (7) Possible changes to the standard procedures ~~which~~ ***that*** would otherwise govern the proceeding; and

(8) Other matters ~~which~~***that*** might contribute to the prompt and orderly conduct of the proceeding.

(c) As provided in RSA 310-A:1-k, V, pre-hearing conferences shall be exempt from the provisions of RSA 91-A.

Plc 208.11206.17 Discovery and Disclosure; ***Identification of Exhibits.***

(a) The ~~office~~***regulatory authority*** shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the ~~office~~,***authority*** ~~which~~***that*** is reasonably related to the subject matter of the proceeding.

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

(1) ~~Sseek~~ leave to do so; and ~~shall~~

(2) ~~I~~dentify the exact type of discovery requested.

(c) Discovery shall be ordered when the ~~parties~~***participants*** cannot adequately address specific relevant factual issues at the time fixed for the presentation of evidence, and addressing these issues at a subsequent time would place the requesting party at a material disadvantage.

(d) ~~At least~~***Subject to (e), below, not less than*** 14 days before the hearing the ~~parties and any intervenor~~***participants*** shall provide to the other ~~parties and intervenors~~***participants and to the presiding officer***:

(1) A list of all witnesses to be called at the hearing together with a brief summary of their testimony;

(2) A list of all documents and exhibits to be offered as evidence at the hearing; and

(3) A ***clear and legible*** copy of each document or exhibit, ***which shall be sequentially marked and identified as follows***:

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

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

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

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

(e) If the proceeding was initiated pursuant to RSA 541-A:30, III relative to emergency suspensions, the time period for providing the items specified in (d)(1)-(4), above, shall be not less than 3 working days before the hearing.

Plc 208.12206.18 Subpoenas ***for Hearings***.

~~(a) Notwithstanding Plc 201.02, this section shall only apply to the professions of:~~

~~(1) Electrology, for which the executive director has subpoena authority under RSA 314:7, IV and VI; and~~

~~(2) Ophthalmic dispensing, for which the executive director has subpoena authority under RSA 327 A:11.~~

{(a) now covered by next paragraph}

~~(b) The regulatory authority shall issue s~~Subpoenas for the attendance of witnesses or the production of evidence in investigations or ~~an~~ adjudicative proceedings ~~shall be issued upon the order of the executive director~~ ***in accordance with RSA 310-A:1-k, II or such other authority as is conferred by applicable law.***

~~(c) In adjudicative proceedings, a party~~ ***The participant*** requesting the executive director to ~~authorize~~ a subpoena ***to be issued*** shall attach a copy of the proposed subpoena to its motion. If the motion is granted, the requesting party ~~party~~ ***participant*** shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.

~~(d) A m~~Motions to quash or modify a subpoena shall be entertained from the person to whom the subpoena is directed, if filed ~~within 7 days after service of the subpoena, or~~ ***no later than*** one ***working*** day before the date specified in the subpoena for compliance therewith, ~~whichever is later.~~ If the executive director ~~presiding officer~~ denies the motion to quash or modify, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena or any modification thereof, within the balance of time prescribed in the subpoena or within 3 days from the date of the agency's order, whichever is later, unless the executive director ~~presiding officer~~ expressly provides additional time to comply.

~~(e) The executive director~~ ***presiding officer*** shall grant a motion ~~for~~ ***to issue*** a subpoena or ***a motion to*** quash a subpoena ~~providing if~~ there is a preponderance of evidence to support the motion.

~~(f) Should~~ ***If*** a person fails to comply with a subpoena issued pursuant to this section, ~~the executive director shall take one or more of the following actions~~ ***then:***

(1) If the person is a licensee, such noncompliance shall constitute misconduct, for which the executive director ~~regulatory authority~~ shall:

a. Impose sanctions specific to any pending proceeding or investigation, including, but not limited to, entry of a default judgment as to some or all of the pending issues ~~which~~ ***that*** is adverse to the noncompliant ~~party~~ ***participant***; or

b. Institute a separate investigation against any non-compliant individual who is subject to the agency's ~~regulatory authority's~~ jurisdiction; or

(2) For all such ~~non-compliant~~ persons, the executive director ~~presiding officer~~ shall:

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

b. ***Recommend that the regulatory authority*** ~~s~~Seek judicial relief; or

c. Determine there was just cause for the failure to comply with the subpoena, ***which*** ~~Just cause~~ shall include:

1. Illness;

2. Accident;
3. Death of a family member; or
4. Other circumstances beyond the control of the ~~party~~***non-compliant person.***

Plc 206.19 Testimony at an Adjudicative Hearing.

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

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

(c) Unless otherwise agreed at a prehearing conference or changed in a ruling on a motion, testimony shall be offered in the following order:

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

(d) Anyone offering testimony shall be subject to cross-examination as provided in Plc 206.20.

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

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

Plc ~~208.14~~206.20 Inquiry by Presiding Officer or Panel Members; Cross-Examination.

(a) The presiding officer shall make such inquiry of witnesses, ~~parties, or counsel,~~ or participants as he or she believes necessary to develop a sound record for decision.

(b) If the ~~adjudicatory~~ adjudicative hearing is being held by a regulatory authority that is a supported board, commission, or council, or if there is a panel pursuant to Plc ~~208.04~~206.06(b), the presiding officer shall allow the ~~advisory board or panel~~ members on the panel may likewise to make such inquiries as are necessary for a full understanding of the issues to be determined.

(c) The presiding officer shall allow the participants or their representatives to cross-examine each witness at the conclusion of the testimony of the witness.

Plc ~~208.13~~206.21 Evidence.

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

(b) ~~All data which~~ Evidence that is relevant and material to the subject matter of the adjudicative proceeding in which it is offered and that will reasonably assist the ~~office~~ presiding officer and regulatory authority to determine ~~arrive at~~ the truth shall be admissible, ~~but~~

(c) ~~The~~ *presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.*

(e) ~~Witnesses appearing before the office shall testify under oath or affirmation.~~

{now covered by Plc 206.19}

(d) Whenever necessary for a full and fair consideration of the matter, the presiding officer shall take official notice in accordance with RSA 541-A:33, V.

(e) If a document or other exhibit has not been pre-marked as required by Plc 206.17, the presiding officer or designee shall mark each item accepted as an exhibit with a number or other notation to identify the exhibits in a sequential manner.

(f) If the original of a document is not readily available, the documentary evidence shall be received in the form of copies or excerpts.

(g) All written testimony and documents, materials, and objects admitted into evidence at an adjudicative hearing shall be made available during the course of the hearing for examination by any participant.

(h) Any participant who objects to a ruling of the presiding officer regarding evidence or procedure made during an adjudicative hearing shall state the objection and the grounds therefor at the time the ruling is made. Any participant who objects to a ruling of the presiding officer regarding evidence or procedure made at a time other than during an adjudicative hearing shall file a written objection to the ruling in the form of a motion within 5 working days of the date of the ruling. Nothing herein shall be construed as independent authorization for interlocutory appeal of rulings of the presiding officer on issues of evidence or procedure.

~~Plc 208.15~~**206.22** Burden and Standard of Proof.

(a) *Subject to (c) through (f), below, ~~the party~~ **person** asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.*

(b) Without limiting the generality of ~~paragraph (a), above, all moving parties and all petitioners~~ *the person filing a motion* shall have the burden of persuading the ~~agency~~ *presiding officer or, for any dispositive motion, the regulatory authority*, that their ~~motion or petition~~ should be granted.

(c) *In a disciplinary hearing, the prosecutor shall have the overall burden of proof by a preponderance of the evidence, unless (e), below, applies.*

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

(e) *In a hearing held pursuant to RSA 332-G:13 relative to determining whether an applicant or potential applicant is disqualified by reason of a criminal record, the regulatory agency shall have the burden of proof on the factors listed in RSA 332-G:13, VI(b) by clear and convincing evidence.*

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

~~Plc 208.16~~**206.23** Failure of a Party to Attend or Participate in the Hearing.

(a) *For purposes of this section, “party” means:*

- (1) ***The prosecutor or the respondent, in any disciplinary proceeding; or***
 - (2) ***The applicant, in any hearing held to determine whether the applicant is qualified to receive a license.***
- (ab) A party shall be in default if the party:
- (1) Has the overall burden of proof;
 - (2) Has ~~been received the notice~~ given notice in accordance with ~~as required by Plc 208.01206.06(a);~~ and
 - (3) Fails to attend the hearing.

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

(ed) If a party who does not have the overall burden of proof fails to attend the hearing after having ~~been received the notice~~ given notice in accordance with ~~as required by Plc 208.01206.06(a);~~ the testimony and evidence of any other parties or intervenors shall be received and evaluated.

Plc 206.24 Reconvening of Adjudicative Hearings.

(a) If a hearing is held in a participant's absence pursuant to Plc 206.23, the participant may file a motion within 10 days after the date of the hearing to reconvene the hearing.

(b) The motion to reconvene the hearing shall include an explanation of why the participant did not attend the hearing and why the participant did not notify the presiding officer in advance of the hearing, which explanation shall be supported by affidavits or other evidence.

(c) If the submitted evidence shows that good cause exists to explain the participant's failure to appear at the hearing and to explain the participant's failure to notify the presiding officer in advance of the hearing, the hearing shall be reconvened and testimony and evidence offered by the participant shall be received.

(d) For purposes of this section, good cause shall be limited to circumstances beyond the control of the participant that render the participant unable to attend the hearing and unable to notify the presiding officer in advance of the hearing.

Plc ~~208.17~~206.25 Proposed Findings of Fact and Conclusions of Law.

(a) ~~Parties~~***Participants*** may submit proposed findings of fact or conclusions of law.

(b) If proposed findings of fact or conclusions of law are submitted, each requested finding or conclusion which shall be set forth in a separately numbered paragraph.

(bc) The presiding officer shall direct any ~~party~~***participant*** to submit proposed findings of fact or conclusions of law if the presiding officer finds such a submission will clarify the pertinent facts or ***more specifically*** identify the applicable law.

Plc ~~208.18~~206.26 Deliberations and Decisions.

(a) For cases in which the OPLC is the regulatory authority, the following shall apply:

- (a1) If the adjudicatory ~~adjudicative~~ hearing was held by ~~with~~ a panel pursuant to Plc ~~208.01206.06(b)~~, the ~~advisory board~~ ***panel*** members ~~on the panel~~ may sit for deliberations with the executive director ***presiding officer*** and offer recommendations for the final disposition of the case or any pending motions;
- (b2) Notwithstanding (a1), above, the executive director shall have sole and exclusive authority to decide on the final disposition of the case; ***and***
- (e3) ~~A f~~Final adjudicative orders of the agency, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date ~~they are~~ ***it is*** served upon the parties ***respondent and the enforcement division*** pursuant to Plc ~~204.03(e)~~ ***206.10(b)***.
- (b) ***For cases conducted by a regulatory authority other than the OPLC, the following shall apply:***
- (1) ***If the adjudicative hearing was held by the full authority or by a panel designated by the authority, the board or panel members shall participate in the deliberations and offer recommendations for the final disposition of the case or any pending motions;***
 - (2) ***Notwithstanding (1), above, the full authority shall have sole and exclusive authority to decide on the final disposition of the case; and***
 - (3) ***A final adjudicative order shall take effect on the date it is served on the respondent and the enforcement division pursuant to Plc 206.10(b).***

Plc ~~208.19~~ ***206.27*** Motion for Reconsideration or Rehearing.

- (a) Motions for reconsideration or rehearing shall be filed within 30 ***calendar*** days after service of a final adjudicative order.
- (b) The motion shall state, with particular clarity,:
- (1) ***Clearly identify*** points of law or fact that the ***movant asserts the agency-regulatory authority*** has overlooked or misapprehended; ~~and shall~~
 - (2) ***Contain*** such argument in support of the motion as the movant desires to present; ***and***
 - (3) ***Be served by the movant on all other participants in accordance with Plc 206.10.***
- (bc) No answer to a motion for reconsideration shall be required, but any answer or objection filed shall be delivered to the ~~office~~ ***regulatory authority*** within 5 ***working*** days following ~~notification~~ ***receipt of service*** of the motion to ~~reconsider~~ ***for reconsideration***.
- (ed) The filing of a motion for reconsideration shall not stay any order of the office unless, upon specific written request, the agency has ordered such a stay.

Plc ~~208.21~~ ***206.28*** Stay of Office Orders ***Pending Appeal Prohibited By Statute***.

- (a) Office actions shall be stayed only in response to a specific motion requesting a stay or by the agency acting on its own motion. ***Pursuant to RSA 310-A:1-n, I, any person who has been refused a license or certification by a regulatory authority or who has been disciplined by a regulatory authority "shall have the right to petition for a rehearing within 30 days after the original final decision."***

~~(b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Plc 208.19(a), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire superior court. Pursuant to RSA 310-A:1-n, II, appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541.~~

~~(c) A stay of office action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration. Pursuant to RSA 310-A:1-n, III, no sanction shall be stayed by the regulatory authority during an appeal.~~

Plc ~~208.20~~**206.29** Records of Decisions. The ~~office~~**regulatory authority** shall keep a final decision in its records for at least 5 years following its dates of issuance, unless the director of the division of records management of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40 **or approves a different retention schedule.**

PART ~~Plc 210~~**207** PUBLIC COMMENT HEARINGS NON-ADJUDICATIVE PROCEEDINGS

Plc ~~210~~**207.01** Purpose and Applicability.

(a) The purpose of this part is to provide uniform procedures for the conduct of ~~public comment non-adjudicative proceedings, in particular oral public~~ hearings held pursuant to RSA 541-A:11.

(b) *This part shall apply to proceedings conducted by a regulatory authority to:*

(1) Adopt, readopt, amend, or repeal rules; or

(2) Provide information to the public and receive comments from the public in any other matter that is not an adjudicative proceeding covered by Plc 206.

{Plc 210.02 moved, renumbered as Plc 207.05}

{Plc 210.03 moved, renumbered as Plc 207.06}

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

(a) For a rulemaking hearing held pursuant to RSA 541-A:3, IV, by publication as specified in RSA 541-A:6, together with notice required by RSA 91-A if the regulatory authority is subject to the open meeting provisions of that statute;

(b) For any other oral public hearing conducted by or on behalf of the executive director, by such means as the executive director determines will notify those persons likely to be interested in the most cost-effective manner; or

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

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

(a) As required by RSA 541-A:11, II, for rules proposed by a regulatory authority that is a board or commission, each hearing on proposed rules shall be attended by a quorum of its members.

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

Plc ~~240.04~~**207.04** Conduct of ***Presiding Officer for Oral*** Public ~~Comment~~ Hearings.

(a) ~~Public comment hearings shall be attended by~~ ***The presiding officer for a non-adjudicative proceeding for the OPLC shall be*** the executive director, or his or her designee ***who is knowledgeable in the subject area of the proposed rules.***

~~(b) Public comment hearings shall be presided over by the executive director, or his or her designee knowledgeable in the subject area of the proposed rules.~~ *{merged into prior paragraph}*

(b) The presiding officer for an oral public hearing for any other regulatory authority shall be the individual designated by that authority for that proceeding.

(c) The ~~person~~ ***presiding officer*** ~~over a~~ ***at an oral public*** hearing shall:

(1) Call the hearing to order;

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

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

(4) Recognize those who wish to be heard;

(5) If necessary, establish limits pursuant to Plc ~~240.03~~**207.06**; ***and***

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

~~(6)a.~~ ***If necessary to permit the hearing to go forward in an orderly manner, effecting the removal of an person individual who speaks or acts in a manner that is personally abusive or otherwise disruptive to the hearing;***

~~(7)b.~~ ***If necessary, postpone or moving the hearing; and***

~~(8)c.~~ ***Adjourning or continuing the hearing.***

(d) moved, renumbered as 207.07(a)-(b)

(e) moved, renumbered as 207.07(c)-(d)

(f) moved, renumbered as 207.07(e)-(f)

Plc ~~240.02~~**207.05** Public Access and Participation.

(a) ~~Public comment~~ ***Non-adjudicative*** hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Plc ~~240.03~~**207.06**.

(b) ***Subject to (c), below, People each individual*** who wishes to testify shall be asked to write on the speaker's list:

(1) ~~Their~~ ***His or her*** full names and addresses ***municipality of residence or, if testifying on behalf of an organization or other person, the municipality in which the organization or other person is located;*** and

(2) The names and addresses of ***each*** organizations, entities, or other persons ~~whom they~~ ***the speaker is*** representing, if any.

(c) If the number of people attending the hearing is small enough that a list is not needed to ensure that everyone who wishes to testify is provided an opportunity to do so, a speaker's list shall not be required, provided that each individual who testifies shall orally provide the information specified in (b), above.

~~Plc 210.03~~***207.06*** Limitations on Public Participation. The ~~office's chair or other person~~ designated by the presiding officer to ~~preside over~~ ***at an oral public*** hearing shall:

(a) Refuse to recognize for speaking or revoke the recognition of any ~~person~~ ***individual*** who:

- (1) Speaks or acts in an abusive or disruptive manner;
- (2) Fails to keep comments relevant to the ~~proposed rules that are the~~ subject matter of the hearing; or
- (3) Restates more than once what he or she has already stated; and

(b) Limit presentations on behalf of the same ~~organization or~~ entity to no more than 3, provided that all those representing such ~~organization or~~ entity may enter their names and addresses ***munipality of residence*** into the record as supporting the position of the ~~organization or~~ entity.

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

~~210.04(da)~~ A hearing ***on proposed rules*** shall be postponed ***only*** in accordance with RSA 541-A:11, IV. ~~when:~~

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

- (1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing will be unable to do so;
- (2) The ~~executive director or other person designated by the executive director to preside over the hearing~~ ***presiding officer*** is ill or unavoidably absent ***and no other individual can be designated to serve as the presiding officer;***
- (3) Postponement will facilitate greater participation by the public; or
- (4) The ~~executive director or other person designated by the executive director to preside over the hearing~~ ***presiding officer*** finds there is other good cause to do so, ***such as but not limited to conditions existing in the building or locality where the hearing is being held that pose an unreasonable risk to the health or safety of those who wish to attend the hearing.***

~~210.04(ec)~~ A hearing ***on proposed rules*** shall be moved to another location ***only*** in accordance with RSA 541-A:11, V. ~~when~~

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

~~210.04(f-e)~~ A hearing ***on proposed rules*** shall be continued past the scheduled time or to another date ***only*** in accordance with RSA 541-A:11, III. ~~when:~~

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

- (1) The time available is not sufficient to give each ~~person~~***individual*** who wishes to speak a reasonable opportunity to do so; or
- (2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend and it is not possible to ***immediately*** move the hearing to another location.

Plc 207.08 Closing the Hearing and the Record.

(a) The presiding officer shall close the oral public hearing when he or she determines that no one has further questions or comments that are relevant to the subject of the hearing.

(b) At an oral public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony or supplemental information that the presiding officer determines to be relevant to the subject of the hearing, the presiding officer shall designate a specific time period for the record to remain open to receive such information.

(c) For rulemaking hearings, the record shall remain open until the date specified in the notice published pursuant to RSA 541-A:6 unless extended pursuant to RSA 541-A:11.

PART ~~Plc 209.01~~ ***208*** RULEMAKING ***PETITIONS***

~~Plc 209.01 Procedure for Adopting Rules. An office rule, or any amendment or repeal thereof,~~
shall be governed by RSA 541-A: *{unnecessary; true as a matter of law}*

Plc 208.01 Applicability. The rules in this part shall apply to any petition submitted to a regulatory authority pursuant to RSA 541-A:4.

Plc 208.02 Filing of Rulemaking Petition.

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

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

~~Plc 209.02~~ ***208.03 Content of Petition for Rulemaking. A request for the commencement of a proceeding*** ~~petition~~ to adopt, amend, or repeal a rule shall be submitted to the executive director in the form of a petition which contains the following information:

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

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

(c) Whether the person is asking the regulatory authority to adopt, amend, or repeal a rule;

(ad) A clear and concise statement of why the petitioner's interest in the proposed rulemaking action wants the regulatory authority to undertake the action requested;

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

(ef) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed; and

(eg) Any data or argument as the petitioner believes would be useful to the executive director-regulatory authority in deciding whether to commence a rulemaking proceeding.

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

Plc 209.03208.05 Disposition of Petition for Rulemaking.

(a) Within 30 days of the submission of a petition to the executive director, the executive director shall either:

(1) Determine whether to grant or deny the petition by written order, stating its reasons for the denial, or shall initiate rulemaking proceedings, by written order, in response to the petition and in accordance with Plc 209.04.; and

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

(b) If the petition is submitted to a regulatory authority that is a board, commission, or council, then within 30 days after the first meeting of the authority held after receipt of the petition, the regulatory authority shall:

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

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

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

(d) If the petition is granted, the regulatory authority shall commence a rulemaking as required by RSA 541-A:4, I, reprinted in Appendix C.

(be) Any denial shall be based upon a finding by the executive director or other regulatory authority, as applicable, that:

(1) The petition for rule or amendment or repeal of an existing rule would proposed action is not be consistent with established standards of practice of the agency authority;

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

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

~~Plc 209.04 Commencement of Rulemaking Proceeding. The executive director shall commence a rulemaking proceeding by following the procedures set forth in RSA 541-A:3 et seq.~~

{(now covered by Plc 208.04(d))}

PART ~~Plc 213209~~ EXPLANATION OF ADOPTED RULES

Plc ~~213209.01~~ Requests for Explanation of Adopted Rules.

(a) Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the ~~executive director~~ ***including: regulatory authority that adopted the rule.***

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

(a) The name and address of the ~~individual~~ ***person*** making the request; ~~or~~ ***and, if the requestor is an*** (b) ~~If the request is that of an organization or other entity, the name, address, and email address of such organization or entity, and the name and address of the representative~~ ***individual*** authorized by the ~~organization or entity to make the request;~~ ***and***

(2) *Identification of the specific rule for which an explanation is sought.*

Plc ~~213209.02~~ Contents of Response to Request for Explanation.

(a) The ~~executive director~~ ***regulatory authority that adopted the rule*** shall, ~~provide a written response within 90 days of receiving a request in accordance with Plc 213209.01 if no board meeting is required; or within 60 days of the regulatory authority's first meeting after receiving the petition.~~ ***provide a written response which:***

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

(1) Concisely states the meaning of the rule adopted;

(2) Concisely states the principal reasons for and against the adoption of the rule in its final form; and

(3) States, ~~if the executive director did so,~~ why the ~~executive director~~ ***regulatory authority*** overruled any arguments and considerations presented against the rule, ***if any were presented.***

(c) *If the regulatory authority is a board, commission, or council, the response shall reflect the consensus of a quorum of its members.*

(bd) ~~In ruling on~~ ***If the executive director determines that the technical expertise of an advisory board or advisory committee is needed to respond to a petition for a declaratory ruling request for explanation,*** the executive director ~~may~~ ***shall*** consult with the advisory board ***or advisory committee.***

PART ~~Plc 244~~**210** DECLARATORY RULINGS

Plc 210.01 Purpose.

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

(b) This part shall not be used to circumvent other established methods of adjudication, such as an appeal, in cases where the regulatory authority has already made a determination, such as by issuing or denying a license or by initiating a disciplinary action.

Plc 210.02 Filing of Petition for Declaratory Ruling.

(a) Any person seeking a declaratory ruling from the executive director shall file a written petition for declaratory ruling that meets the requirements of Plc 210.03 with the executive director in accordance with Plc 203.02.

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

(c) If the ruling sought by the petition would directly affect a person other than the person filing the petition, the person filing the petition shall serve the petition on each other affected person as provided in Plc 203.02(i).

~~Plc 211.04~~**210.03 Contents of Petitions for Declaratory Rulings; Signature Required.**

~~(a) Any interested person may request a declaratory ruling from the office on how a statute, rule or order applies to a specific situation.~~ *{now covered by 210.01, 210.02}*

~~(b) The request pursuant to (a) above shall be made by filing a A petition with the executive director, which for declaratory ruling shall~~ contains:

~~(1)~~ *(1) The name and mailing address of the petitioner; and, if the petitioner has filed electronically or files 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)~~ *(2) The exact ruling being requested;*

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

~~(4)~~ *(4) Any supporting affidavits or memoranda of law; and.*

(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 document;

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

(3) To the best of the signer's knowledge 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 administrative, civil, or criminal proceeding.

Plc 210.04 Processing of Petition for Declaratory Ruling.

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

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

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

(b) Within 25 days of the first meeting held by any other regulatory authority after receipt by the regulatory authority of a petition for declaratory ruling, the regulatory authority shall review the petition to determine:

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

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

(c) The executive director or other regulatory authority, as applicable, shall notify the petitioner in writing of the results of its review under (a) or (b), above.

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

(1) Identify the information or explanation needed; and

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

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

Plc ~~211.02~~210.05 Action on Petitions for Declaratory Rulings.

(a) The executive director shall issue a ~~declaratory ruling,~~ decision on the petition in writing, within 60 days of:

(1) Receipt of a ~~the~~ petition, if no additional information or explanation from the petitioner or assistance from the department of justice is needed;

(2) Receipt of all additional information and explanations requested from the petitioner pursuant to Plc 210.04(d); or

(3) Receipt of advice from the department of justice, if advice is requested.

(b) Any other regulatory authority shall issue its decision on the petition in writing within 60 days of the authority's first meeting after:

- (1) Receipt of the petition, if no additional information or explanation from the petitioner or assistance from the department of justice is needed;***
 - (2) Receipt of all additional information and explanations requested from the petitioner pursuant to Plc 210.04(d); or***
 - (3) Receipt of advice from the department of justice, if advice is requested.***
- (bc)*** A copy of each declaratory ruling shall be:

- (1) Filed with the director of legislative services as required by RSA 541-A:16, II(b);***
- (2) Sent to the petitioner by first class mail, or by email if the petitioner filed electronically or filed on paper but provided an email address and agreed to receive the decision via email; and***
- (3) Filed with the office. Sent to any other person who was served pursuant to Plc 210.02(c).***

(ed) ~~In ruling on~~ ***If the executive director determines that the technical expertise of an advisory board or advisory committee is needed to respond to*** a petition for a declaratory ruling, the executive director ~~may~~ ***shall*** consult with the advisory board ***or advisory committee.***

PART ~~Plc 212.01~~211 WAIVER OF SUBSTANTIVE RULES

Plc ~~212.01~~211.01 Petitions for Waiver of Rules.

(a) The executive director shall entertain petitions to waive or suspend any rule upon the filing of a request for a waiver which clearly identifies the rule in question and sets forth specific facts and arguments which support the requested waiver. Any participant in a non-adjudicative proceeding or otherwise affected by the rules in Plc 200 et seq. who wishes to request a waiver of a rule in Plc 200 et seq. shall proceed in accordance with this section.

{(b) moved, renumbered as (d), below}

(b) Waiver requests made in conjunction with an adjudicative proceeding shall be in the form of a motion that is filed and handled in accordance with Plc 206.11.

(c) A petition to waive a rule filed under this section shall:

- (1) Be directed to the presiding officer if one has been designated, or to the regulatory authority if no presiding officer has been designated;***
- (2) Be in written form, unless made in response to a matter asserted for the first time at an oral public hearing or on the basis of information that was not received in time to prepare a written request prior to the hearing at which the request is made; and***
- (3) Be included in the record of the proceeding if in writing, or recorded in full in the record of the hearing if made at an oral public hearing.***

(bd) ~~Petitions~~ ***A petition for a waiver of substantive rules shall include a clear and concise statement of the reason(s) why the waiver is being sought, including an explanation that addresses:***

- ~~(1) Whether adherence to the rule would cause the petitioner hardship~~ ***The economic and operational consequences to the petitioner of complying with the rule as written;***
 - (2) Whether the requested waiver is necessary because of any neglect or misfeasance on the part of the petitioner;
 - (3) Whether waiver of the rule would ~~injure~~ ***harm or otherwise operate to the disadvantage of any*** third person(s); and
 - ~~(4) Other~~ ***Any additional information the petitioner believes provides*** good cause for waiving the rule.
- (ee) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the ~~agency~~ ***regulatory authority*** shall:
- ~~(1) Require service of the petitioner to serve~~ the petition on such persons; and
 - ~~(2) Advise them such persons~~ of their right to reply to the petition.
- (ef) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as ~~shall be~~ ***are*** ordered by the ~~agency~~ ***regulatory authority*** after reviewing the petition and any replies received.
- (g) ***If a request for waiver is made orally at an oral public hearing and the presiding officer finds that additional information is needed in order for the request to be fully and fairly considered, the presiding officer shall direct the requestor to submit the request in writing, with supporting information as specified in (d), above, within 3 working days of the date of the oral request. If other participants in the proceeding wish to respond to the request, the response(s) shall be filed no later than 7 days after the request is filed.***
- (h) ***If a request for waiver is made orally at an oral public hearing on proposed rules and the time period(s) specified in (g) above fall after the deadline specified for the submittal of written comments, the regulatory authority shall extend the deadline as provided in RSA 541-A:11, III.***

Plc 211.02 Decisions on Waiver Requests.

- (a) ***The presiding officer or regulatory authority, as applicable, shall rule upon a waiver request after full consideration of all factors relevant to the request.***
- (eb) ~~The executive director~~ ***A regulatory authority*** shall waive a ~~substantive rule~~ upon his or her ~~its~~ own motion by providing affected ~~parties~~ ***persons*** with notice and an opportunity to be heard, and after issuing an order ~~which~~ ***that*** finds that good cause has been shown.
- (fc) For the purposes of this section, good cause shall be ***determined with reference to the rule for which the waiver is sought. If good cause is not specifically defined in the rule for which a waiver is sought, good cause shall*** deemed to exist if, ~~at a minimum, the petitioner has demonstrated that:~~
- ~~(1) Adherence to the rule would cause the petitioner hardship~~ ***Compliance with the rule cannot be achieved due to circumstances beyond the control of the person requesting the waiver and waiving the rule will not materially prejudice any other person;***
 - ~~(2) Waiver of the rule would be consistent with the statutes and rules of the agency~~ ***Compliance with the rule would cause operational or economic consequences, or both, to the person requesting the waiver that outweigh any disadvantage caused to any other person(s) by granting the waiver; or***

~~(3) Waiver of the rule would not injure third persons; and~~ ***Compliance with the rule would otherwise be counterproductive to the purpose of the proceeding in which the waiver is sought, given the specific circumstances of the proceeding and the reason(s) for the waiver request.***

~~(4) Waiver is necessary due to factors outside the control of the petitioner.~~

{(4) now covered by (1)}

~~(gd) In ruling on~~ ***If the executive director determines that the technical expertise of an advisory board or advisory committee is needed to respond to a petition for a waiver, the executive director may shall*** consult with the advisory board ***or advisory committee.***

Adopt Plc 212 and Plc 213 to read as follows:

PART Plc 212 WAIVER OF PROCUREMENT PROVISIONS

Statutory Authority: RSA 21-G:37, V

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

Plc 212.02 Applicability. Unless otherwise specified, Plc 210 shall apply to the procurement of goods and services by a regulatory authority using a request for bid (RFB), request for application (RFA), request for proposal (RFP), or similar invitation.

Plc 212.03 Definitions.

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

(1) Impedes or diminishes the regulatory authority’s ability to provide materials or services necessary to protect public health or safety from the effects of such situation, condition, or set of circumstances;

(2) Inhibits or interrupts the continuity of services provided by the regulatory authority; or

(3) Prevents the regulatory authority from complying with any state or federal statute, rule, or regulation.

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

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

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

Plc 212.04 Waiver of Requirements.

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

- (1) Prevent the loss of federal or other funds subject to recapture; or
- (2) Prevent or mitigate an emergency situation as defined in Plc 210.03(a).

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

PART Plc 213 DISCIPLINARY PROCEEDINGS; LICENSE CONDITIONS

Plc 213.01 Definitions. For purposes of this part, the following definitions shall apply:

- (a) “Applicant” means a person who has applied for a license to practice in New Hampshire, prior to a final decision being made on the application;
- (b) “Chronic non-complier” means a person who:
 - (1) Has committed, within 3 years of the date of application or of the violation(s) for which a disciplinary proceeding has been initiated, as applicable:
 - a. More than 2 violations that remain uncorrected after a regulatory authority has notified the respondent, in writing, of the violations and the need to correct them, which demonstrates that the respondent is unable or unwilling to comply with applicable requirements; or
 - b. More than 3 violations that are corrected by the respondent after a regulatory authority has notified the respondent, in writing, of the violations and the need to correct them, but recur with a frequency that demonstrates that the respondent is unable or unwilling to maintain compliance with applicable requirements; or
 - (2) Has been the subject, within 3 years of the date of the application or of the violation(s) for which a disciplinary proceeding or show cause hearing on an application has been initiated, as applicable, of 2 or more administrative or civil enforcement actions or one criminal enforcement action that have not been overturned on appeal for violations of any applicable law pertaining to any of the respondent’s activities; and
- (c) “Regulatory authority” means, unless specifically limited to New Hampshire:
 - (1) “Regulatory authority” as defined in Plc 202.25; and
 - (2) Any comparable authority in any other jurisdiction in which a licensee is authorized to practice.

Plc 213.02 Grounds for Denying an Initial License Application. In addition to such grounds for denying an initial license application as are identified in the rules that are specific to the license for which an application was filed, the following shall constitute good cause to deny a license application:

- (a) The applicant owes any fees to a regulatory authority, unless the fees are being paid in accordance with a payment schedule and the applicant is current with all payments;
- (b) The applicant owes any administrative fines to a regulatory authority, unless the fines are being paid in accordance with a payment schedule and the applicant is current with all payments;
- (c) The applicant has failed to comply with any order issued by a regulatory authority, unless the applicant is complying in accordance with a compliance schedule and is current with all items;

(d) The applicant owes any civil or criminal penalties imposed as a result of a judicial action taken to enforce any statute or rule implemented by a regulatory authority, unless the penalties are being paid in accordance with a payment schedule and the applicant is current with all payments;

(e) The applicant has failed to comply with any civil or criminal restoration or restitution order imposed as a result of a judicial action taken to enforce any statute or rule implemented by a regulatory authority, unless the applicant is complying in accordance with a compliance schedule and is current with all items; and

(f) The applicant is a chronic non-complier.

Plc 213.03 Grounds for Suspension, Revocation, or Refusal to Renew. In addition to such grounds for suspending, revoking, or refusing to renew a license as are identified in the rules that are specific to the license at issue, the following shall constitute good cause to suspend, revoke, or refuse to renew a license:

(a) The licensee owes any fees to a regulatory authority, unless the fees are being paid in accordance with a payment schedule and the license holder is current with all payments;

(b) The licensee owes any administrative fines to a regulatory authority, unless the fines are being paid in accordance with a payment schedule and the license holder is current with all payments;

(c) The licensee has failed to comply with any order issued by a regulatory authority, unless the license holder is complying in accordance with a compliance schedule and is current with all items;

(d) The licensee owes any civil or criminal penalties imposed as a result of a judicial action taken to enforce any statute or rule implemented by a regulatory authority, unless the penalties are being paid in accordance with a payment schedule and the license holder is current with all payments;

(e) The licensee has failed to comply with any civil or criminal restoration or restitution order imposed as a result of a judicial action taken to enforce any statute or rule implemented by a regulatory authority, unless the license holder is complying in accordance with a compliance schedule and is current with all items; and

(f) The licensee is a chronic non-complier.

Plc 213.04 Burden of Persuasion.

(a) This section shall apply to:

(1) Any proceeding to determine whether to impose sanctions, including suspension, revocation, refusal to renew, and imposition of administrative fines, based on conduct for which a licensee has been disciplined in another jurisdiction; and

(2) Any proceeding to determine whether to deny a license application based on conduct that resulted in another jurisdiction denying a license to an applicant.

(b) In a proceeding that is subject to this section, the licensee or applicant, as applicable, shall bear the burden of persuasion by a preponderance of the evidence that the individual's conduct in another jurisdiction does not constitute grounds to impose sanctions or deny licensure, as applicable, in New Hampshire.

Plc 213.05 Determination to Deny a License Application or to Suspend, Revoke, or Refuse to Renew a License.

(a) The determination of whether to deny a license application or to suspend, revoke, or refuse to renew a license shall be made in accordance with the procedural rules specific to the type of license at issue.

(b) If the respondent has not already had the opportunity to contest, through an adjudicative proceeding, the prior violation(s) on which the New Hampshire regulatory authority proposes to base a decision to deny a license application or to suspend, revoke, or refuse to renew a license, the respondent shall have the opportunity to contest or otherwise explain such prior violation(s) through an adjudicative proceeding prior to a final decision being made.

Plc 213.06 License Conditions.

(a) The New Hampshire regulatory authority shall include conditions in a license whenever it determines that such conditions are necessary to:

- (1) Provide greater assurance that the licensee will comply with applicable law; or
- (2) Minimize the potential for harm to public health, safety, or welfare from any violations of applicable requirements.

(b) Any conditions so added shall relate directly to the activity for which the license is issued and shall be no more than reasonably necessary to achieve the criteria in (a), above.

(c) The determination of whether such conditions are reasonably necessary shall be made based on:

- (1) The nature and scope of the license being issued; and
- (2) The compliance history of the applicant, including whether the applicant is a chronic non-complier.

(d) The licensee may appeal any conditions included in a license pursuant to this section in accordance with existing appeal routes established under applicable law.

APPENDIX A: STATUTES IMPLEMENTED

Rule(s)	State Statute(s) Implemented
Plc 200 (see below for additional or more specific statutes)	RSA 541-A:16, I(b)
Plc 204	RSA 310-A:1-d, II(h)(2); RSA 310-A:1-j
Plc 206	RSA 541-A:16, I(b)(2); RSA 541-A:30-a; RSA 541-A:33
Plc 206.13	RSA 541-A:32
Plc 206.18	RSA 310-A:1-k, II
Plc 207	RSA 541-A:16, I(b)(3)
Plc 208	RSA 541-A:16, I (c)
Plc 209	RSA 541-A:11, VII
Plc 210	RSA 541-A:16, I(d)
Plc 211	RSA 541-A:22, IV

Rule(s)	State Statute(s) Implemented
Plc 212	RSA 21-G:37, V
Plc 213	RSA 310-A:1-d, II(d)

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

310-A:1-j Investigations.

...

VI. Allegations of professional misconduct shall be brought within 5 years from the time the office reasonably could have discovered the act, omission or failure complained of, except that conduct which resulted in a criminal conviction or in a disciplinary action by a relevant licensing authority in another jurisdiction may be considered by the board without time limitation in making licensing or disciplinary decisions if the conduct would otherwise be a ground for discipline. The board may also consider licensee conduct without time limitation when the ultimate issue before the board involves a pattern of conduct or the cumulative effect of conduct which becomes apparent as a result of conduct which has occurred within the 5-year limitation period prescribed by this paragraph.

310-A:1-k Disciplinary Proceedings; Remedial Proceedings.

...

VII. Boards, councils, and commissions may take non-disciplinary remedial action against any person licensed by it upon finding that the person is afflicted with physical or mental disability, disease, disorder, or condition deemed dangerous to the public health. Upon making an affirmative finding after notice and an opportunity for a hearing, the board, council, or commission may take non-disciplinary remedial action:

(a) By suspension, limitation, or restriction of a license for a period of time as determined reasonable by the board.

Text added to existing rules in ***bold italics***

Text deleted from existing rules shown ~~struck through~~

Explanatory comments in *{bracketed blue italics}*

(b) By revocation of license.

(c) By requiring the person to submit to the care, treatment, or observation of a physician, counseling service, health care facility, professional assistance program, or any combination thereof which is acceptable to the board.

310-A:1-I Hearings, Decisions and Appeals. –

...

II. Notwithstanding any other provision of law, allegations of misconduct or lack of professional qualifications that are not settled shall be heard by the board, council, or commission, or a panel of the board, council, or commission with a minimum of 3 members appointed by the chair of the board or other designee. Any member of the board, or other person qualified to act as presiding officer and duly designated by the board, shall have the authority to preside at such hearing and to issue oaths or affirmations to witnesses, rule on evidentiary and other procedural matters, and prepare a recommended decision. In the case of a hearing before a panel, the presiding officer shall prepare a recommended decision for the board, council, or commission, which shall determine sanctions.

541-A:4 Petition for Adoption of Rules. –

I. Any interested person may petition an agency to adopt, amend, or repeal a rule. Within 30 days of receiving the petition, or 30 days after the next scheduled meeting of a board, commission, or group receiving the petition, the agency shall determine whether to grant or deny the petition and notify the petitioner. If the agency decides to deny the petition, the agency shall notify the petitioner of its decision in writing and shall state its reasons for denial. If the agency grants the petition, it shall notify the petitioner and commence the rulemaking proceeding by requesting a fiscal impact statement pursuant to RSA 541-A:5 within 120 days of receipt of the petition and continuing the proceeding as specified in RSA 541-A:3.