

CHAPTER Acp 200 PRACTICE AND PROCEDURE

Repeal Acp 201 through Acp 219, effective 6/27/2012 (Document #10157), cited as follows:

~~PART Acp 201 PURPOSE~~

~~—— Acp 201.01 Purpose. The board shall conduct proceedings for the purpose of acquiring sufficient information to make fair and reasonable decisions on matters within its statutory jurisdiction, including decisions on applications and complaints filed against licensees. These proceedings shall secure a just, efficient and accurate resolution.~~

~~PART Acp 202 DEFINITIONS~~

~~—— Acp 202.01 Definitions.~~

~~—— (a) "Hearing" means the receipt and consideration by the board of data or argument, or both, by methods appropriate to the circumstances, and includes:~~

- ~~(1) Conducting trial-type evidentiary proceedings;~~
- ~~(2) Directing the filing of exhibits, affidavits, memoranda, briefs, or oral arguments; or~~
- ~~(3) Any combination of these or similar methods.~~

~~—— (b) "Order" means a document issued by the board:~~

- ~~(1) Establishing procedures to be followed in an adjudicatory or nonadjudicatory proceeding;~~
- ~~(2) Granting or denying a petition or motion;~~
- ~~(3) Requiring a person to do, or to abstain from doing, something; or~~
- ~~(4) Determining a person's rights to a license or other privilege established by RSA 328-G or rules of this chapter.~~

~~PART Acp 203 FAILURE TO COMPLY WITH RULES~~

~~—— Acp 203.01 Failure to Comply With Rules. Failure to comply with the rules of this chapter shall result in:~~

~~—— (a) Refusal of a noncompliant document for filing;~~

~~—— (b) Denial or conditional denial of a noncompliant application, petition, or motion; or~~

~~—— (c) Issuance of an order adverse to a noncompliant person.~~

~~PART Acp 204 COMPLAINTS AND INVESTIGATIONS~~

~~— Acp 204.01 Initiation of Disciplinary Proceedings. The board shall undertake investigations and disciplinary hearings, in response to a written complaint filed in accordance with Acp 208.02 or in response to other information that comes to the board's attention.~~

~~— Acp 204.02 Processing of Complaints.~~

~~(a) Upon receipt of a complaint, the board shall commence an investigation pursuant to Acp 204.03.~~

~~(b) The board shall dismiss a complaint at any time for failure to state a cause of action, failure to respond to a request for information, or failure to participate in any investigation or hearing ordered by the board.~~

~~(c) At any stage of the board's investigation of the allegations in a complaint, the board shall, with the consent of the licensee, issue a final settlement agreement or consent order that imposes discipline upon the licensee and terminates further disciplinary action in whole or part, provided that:~~

~~(1) The complainant receives notice and an opportunity to submit written comments concerning the proposed settlement or consent decree; and~~

~~(2) There are no material facts in dispute.~~

~~(d) At any time during the board's investigation of the allegations in a complaint, the board shall encourage the licensee and the complainant to participate in mediation on a timely and good faith basis with a designated non-board member who agrees to act as a mediator.~~

~~(e) When mediation is suggested under (d) above, the mediator shall attempt resolution of the dispute between the complainant and the licensee, and, within 60 days of reaching consensus through mediation, shall submit a written report to the board.~~

~~(f) The report noted under (e) above, shall contain:~~

~~(1) A written settlement agreed to by the parties; or~~

~~(2) A report of the circumstances that appear to prevent settlement of the issues between the parties.~~

~~(g) Upon receiving the mediator's report, the board shall, with consent of complainant, and pursuant to Acp 204.02(f)(2) above, discontinue its investigation. The board shall then issue an order of settlement, or if there is no settlement, proceed to initiate further disciplinary proceedings.~~

~~(h) Information gathered during investigations shall not be released to the public until an evidentiary hearing is held or a final settlement or other disposition of such a proceeding is reached. Information that is classified by law as confidential shall not be revealed unless it has been introduced as evidence.~~

~~— Acp 204.03 Investigations.~~

~~(a) The board shall conduct such investigations as it deems necessary to examine acts of possible misconduct that come to its attention through complaints or other means.~~

~~—— (b) Investigations shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a licensee.~~

~~—— (c) When an investigation occurs, an investigator designated by the board shall contact such persons and examine such records and other documents as are reasonably necessary to make a recommendation as to whether further board action should be taken on the allegations in question.~~

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

~~—— (e) Following the investigation, the investigator shall make a written report and recommendation to the board as to whether there is reasonable basis to conclude that the complaint concerns facts that constitute misconduct.~~

~~—— (f) Investigatory reports and all information gathered by an investigator shall be public unless confidential as established by law and provided as follows:~~

~~(1) The investigator's report shall be made available to the parties and intervenors in any adjudicatory proceeding resulting therefrom; and~~

~~(2) The board shall provide the nonconfidential information gathered in disciplinary investigations to:~~

~~a. Law enforcement agencies;~~

~~b. Boards or agencies relating to the practice of health care in other jurisdictions;~~

~~c. Board investigators or prosecutors;~~

~~d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; or~~

~~e. Persons to whom the licensee has given a release.~~

PART Acp 205 PRESIDING OFFICER

~~—— Acp 205.01 Designation.~~

~~—— (a) Adjudicatory proceedings commenced by the board shall be conducted by a presiding officer.~~

~~—— (b) The board shall appoint a board member or a member of the board's staff to serve as presiding officer.~~

~~—— (c) The presiding officer shall serve in a conscientious and truthful manner or shall be removed by the board without notice or hearing.~~

~~—— Acp 205.02 Authority of Presiding Officer.~~

~~—— (a) The presiding officer shall possess all authority with respect to the procedural aspects of adjudicatory proceedings that would be possessed by the board itself, including, but not limited to, the~~

~~power to administer oaths and affirmations, direct the course of the proceedings, and decide procedural and discovery issues.~~

~~—— (b) The presiding officer shall receive no testimony or oral argument on the merits of the case unless 3 board members are present.~~

~~—— (c) Except in proceedings conducted pursuant to Acp 212.03(b)(6), the presiding officer shall, to the extent consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicatory proceeding to query the witnesses.~~

~~—— (d) The presiding officer shall not accept final offers of settlement or impose consent decrees, but shall assist the parties in reaching settlements. When a settlement has been proposed in writing, the presiding officer shall refer it to the board for decision, but shall not stay the proceeding while the board is deliberating the settlement proposal.~~

~~—— (e) The presiding officer shall not decide motions or enter orders which finally resolve the proceeding or stay the proceeding. Potentially dispositive motions shall be referred to the board or deferred until the close of the record.~~

~~—— (f) If the presiding officer believes that a default or similar final order should enter against a party, the presiding officer shall issue a written recommendation to the board, with service on the parties, and the board shall take appropriate action after allowing the parties 10 days to file objections thereto.~~

~~—— Acp 205.03 Withdrawal of Presiding Officer.~~

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

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

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

~~(2) Has made statements or engaged in behavior which 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.~~

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

~~Acp 205.04 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.~~

~~PART Acp 206 ROLES OF BOARD STAFF AND COMPLAINANTS~~

~~— Acp 206.01 Role of Board Staff in Enforcement or Disciplinary Hearings. Unless called as witnesses, board staff as defined in Acp 103.02 shall have no role in any enforcement or disciplinary hearing.~~

~~— Acp 206.02 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the board about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.~~

~~PART Acp 207 COMMENCEMENT OF PROCEEDINGS~~

~~— Acp 207.01 Applicability. This part shall govern all proceedings conducted by the board except rulemaking and declaratory rulings.~~

~~— Acp 207.02 Commencement.~~

~~— (a) The board shall commence an adjudicatory proceeding by issuing a notice to the parties at least 15 days before the first scheduled hearing date or first prehearing conference.~~

~~— (b) The notice commencing an adjudicatory proceeding shall:~~

- ~~(1) Identify the parties to the proceeding as of the date of the order;~~
- ~~(2) Briefly summarize the subject matter of the proceeding, and identify the issues to be resolved;~~
- ~~(3) Attach any complaint against the licensee that forms, in whole or in part, the basis of the issues to be resolved;~~
- ~~(4) Specify the legislative authority for the proposed action, and identify any applicable board regulations;~~
- ~~(5) Specify any special procedures to be followed;~~
- ~~(6) Specify the date by which, and the address where, appearances or motions by representatives shall be filed;~~
- ~~(7) Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;~~
- ~~(8) Identify the presiding officer for the proceeding;~~
- ~~(9) Identify any confidentiality requirements applicable to the proceeding; and~~
- ~~(10) Contain such other information as the circumstances of the case may warrant including, but not limited to, orders consolidating or severing issues in the proceeding with other proceedings or orders directing the production of documents.~~

~~— Acp 207.03 Docketing, Service of Notice, Public Notice.~~

~~— (a) The board shall assign each adjudicatory proceeding a docket number, and serve the hearing notice upon all parties to the proceeding. The hearing notice shall be served upon the respondent by means of certified mail.~~

~~— (b) Service of all subsequent orders, decisions and notices issued by the board, including any amendments to the hearing notice, shall be served upon the parties and intervenors by regular mail.~~

~~— (c) Orders, notices, and decisions of the board, and motions, memoranda, exhibits, and other documents and data submitted to the board in a docketed case shall be kept in a docket file and made available for public inspection in the board's office except to the extent that confidentiality has been provided for under the provisions of law.~~

~~— Acp 207.04 Ex Parte Communications. Once a notice of hearing has been issued in an adjudicatory proceeding, no party shall communicate with any member of the board, or the presiding officer, concerning the merits of the case except upon notice to all parties and granting an opportunity for such party or parties to participate. In accordance with the rules of this chapter, no party shall cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.~~

~~— Acp 207.05 Rights to Representation.~~

~~— (a) Any party in an adjudicatory proceeding may be represented by counsel or lay representation, but such person appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practicable.~~

~~— (b) Requests to the board for counsel shall be denied and the board shall assume no responsibility for expenses of any party, except as specified in RSA 328-G:11, IV.~~

~~— Acp 207.06 Representatives and Appearances.~~

~~— (a) Persons appearing before the board shall represent themselves or be represented by:~~

~~(1) A New Hampshire licensed attorney who has filed a written appearance with the board containing his or her business address and telephone number; or~~

~~(2) An individual who is not a New Hampshire licensed attorney, and has filed a written appearance with the board containing:~~

~~a. A statement of intent to represent, signed by both the representative and the party who would be represented; and~~

~~b. The representative's daytime address and telephone number.~~

~~— (b) Corporations, partnerships and other legal entities that are not natural persons shall be represented only by:~~

~~(1) An attorney licensed in New Hampshire; or~~

~~(2) An officer, director, or responsible person who has express and written authority to act on behalf of the entity concerning the matter in question and has filed a motion for leave to appear as a representative.~~

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

~~—— (d) The board shall, after providing notice and opportunity for hearing, restrict an individual from acting as a representative before the board when the representative's behavior would constitute misconduct if the representative were an attorney.~~

~~—— Acp 207.07 Intervention.~~

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

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

~~(2) The petitioner's position with respect to the subject matter of the hearing;~~

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

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

~~—— (b) Petitions for intervention shall be granted if the petitioner has an interest in the proceeding and has clearly stated this interest.~~

~~—— (c) Petitions for intervention shall be granted subject to Acp 209.03, and orders granting intervention shall be subject to modifications.~~

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

~~—— (e) Once granted leave to intervene, intervenors shall take the proceeding as they find it and no portion of the proceeding shall be repeated because of the fact of intervention.~~

~~—— Acp 207.08 Consolidation and Severance.~~

~~—— (a) Whenever it shall appear to the board, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the board shall, as fairness and efficiency permit, consolidate those proceedings for hearing, or decision, or both.~~

~~—— (b) Whenever it shall appear to the board, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay may be thereby avoided, the board shall, as fairness and efficiency permit, sever one or more issues from a proceeding, and dispose of those issues in another proceeding.~~

~~PART 208 FILING AND SERVICE OF DOCUMENTS~~

~~—— Acp 208.01 Filing of Documents with the Board.~~

~~—— (a) A document shall be considered filed when it is actually received at the board's office in Concord and conforms to the requirements of this chapter. A document tendered for filing that is patently and facially in violation of the board's rules shall be returned to the sender and not accepted for filing.~~

~~—— (b) All documents filed shall be filed with an original and 5 copies, except that only a single copy of correspondence, applications and complaints against licensees shall be filed.~~

~~—— Acp 208.02 Subscription and Veracity of Documents.~~

~~—— (a) All complaints, petitions, motions, and replies filed with the board shall be signed by the proponent of the document or, if the party appears by representative, by the representative.~~

~~—— (b) The applicant's signature on a document filed with the board shall certify that:~~

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

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

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

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

~~—— (c) A willful violation of (b), above, shall cause the board to issue an order adverse to the party committing the violation.~~

~~—— Acp 208.03 Service of Documents.~~

~~—— (a) Complaints against licensees shall be filed with the board with service upon the licensee in question.~~

~~—— (b) Petitions for rulemaking and petitions for declaratory rulings shall be filed with the board by the petitioner without service upon other persons.~~

~~—— (c) All motions, replies, exhibits, memoranda, or other documents filed in an adjudicatory proceeding shall be served by the proponent upon all parties to the proceeding by:~~

~~(1) Depositing a copy of the document in the United States Postal Service, first class postage prepaid, addressed to the last address given to the board by the party being served, no later than the day the document is filed with the board; or~~

~~(2) Delivering a copy of the document in hand on or before the date it is filed with the board.~~

~~—— (d) All notices, orders, decisions, or other documents issued by the board in the course of an adjudicatory proceeding shall be served by the board upon all parties and intervenors to the proceeding by either:~~

~~(1) Depositing a copy of the document, first class postage prepaid, in the United States Postal Service, addressed to the last address given to the board by the party being served; or~~

~~(2) If a party or intervenor is not represented, delivering a copy of the document in hand to the party or intervenor.~~

~~—— (e) When a party or intervenor authorizes a representative, service shall be upon the representative.~~

~~—— (f) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, and required to be served upon the parties and intervenors to an adjudicatory proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.~~

~~PART Acp 209 PLEADINGS, COMPLAINTS, AND MOTIONS~~

~~—— Acp 209.01 Pleadings.~~

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

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

- ~~(1) The name and address of the petitioner;~~
- ~~(2) The name and address of the petitioner's representative, if any;~~
- ~~(3) A concise statement of the facts that caused the petitioner to request the board to act;~~
- ~~(4) The action that the petitioner wishes the board to take; and~~
- ~~(5) The identification of any statutes, rules, orders, or other authority that entitles the petitioner to request the board to act.~~

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

- ~~(1) The name and address of the petitioner;~~
- ~~(2) The name and address of the representative of the petitioner, if any;~~
- ~~(3) A statement addressing each fact alleged in the petition pursuant to Acp 209.03(d);~~
- ~~(4) A statement addressing the authority identified by the petitioner pursuant to Acp 209.03(c)(3);~~
- ~~(5) A concise response to each statement noted in Acp 209.03(d);~~
- ~~(6) The identification of any statutes, rules, orders, or other authority, not identified in the petition, having a bearing upon the subject matter of the petition; and~~
- ~~(7) The action the board took.~~

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

~~—— Acp 209.02 Complaints of Licensee Misconduct.~~

~~—— (a) Notwithstanding Acp 209.01, complaints shall be governed exclusively by this section.~~

~~—— (b) Complaints alleging misconduct by licensees noting violations of RSA 328-G:2, II, shall be in writing and filed at the board's offices in Concord, New Hampshire.~~

~~—— (c) A complaint shall contain the following information:~~

- ~~(1) The name and address of the complainant;~~
- ~~(2) The name and address of the licensee against whom the complaint is directed;~~
- ~~(3) Date, time, place and summary of alleged violation(s);~~
- ~~(4) Name, address of those having knowledge of the alleged violations;~~
- ~~(5) Specific provision of RSA 328-G:12, II, and Acp 503 on which the complaint is based; and~~
- ~~(6) Other data the complainant believes pertinent to the complaint.~~

~~—— (d) A complaint shall not be accepted that alleges acts of misconduct that occurred more than 6 years before the filing date unless it also alleges that these acts could not have reasonably been discovered during all or some substantial part of the intervening 6 year period.~~

~~—— (e) A complaint shall be treated as a petition to the board within the meaning of RSA 541-A:29.~~

~~—— (f) The licensee shall respond in writing to stated misconduct allegations by responding to each allegation within 30 days. Failure to so respond shall result in an order of default, including disciplinary sanctions, against the licensee.~~

~~—— Acp 209.03 Motions and Objections Thereto.~~

~~—— (a) Unless presented during an oral session of a proceeding, all motions and objections shall be in writing.~~

~~—— (b) All motions shall state clearly and concisely:~~

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

~~—— (c) Objections to motions shall state clearly and concisely:~~

- ~~(1) The defense of the party or intervenor filing the objection;~~
- ~~(2) The action which the party or intervenor filing the objection wishes the board to take;~~
- ~~(3) The statutes, rules, orders, or other authoritative relief in defense of the motion; and~~
- ~~(4) Any facts that are additional to, or different from, the facts stated in the motion.~~

~~— (d) An objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in the motion shall constitute the admission of that fact for the purpose of the motion. In the event a party or intervenor filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party or intervenor shall so state, specifically identifying each such fact.~~

~~— (e) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.~~

~~— (f) The board shall rule on motions as soon as practicable after the filing of the motion.~~

PART Acp 210 TIME PERIODS

~~— Acp 210.01 Computation of Time. Any time period specified in an order shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or state legal holiday. When the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.~~

~~— Acp 210.02 Change in Allowed Times. A motion for a change of time shall be granted upon concurrence with all parties.~~

~~— Acp 210.03 Limitations. A motion to change time shall be filed at least 3 business days prior to the event in question.~~

PART Acp 211 CONTINUANCE REQUESTS AND FAILURE TO ATTEND HEARING

~~— Acp 211.01 Continuances.~~

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

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

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

~~— Acp 211.02 Failure to Attend Hearing. If any party to whom notice has been given in accordance with Acp 208.03 fails to attend a hearing, the presiding officer shall:~~

~~— (a) Declare that party to be in default; and~~

~~— (b) Either:~~

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

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

~~PART Acp 212 PREHEARING MATTERS~~

~~—— Acp 212.01 Discovery and Disclosure. Upon the written request of a party, the board shall disclose to the parties any information, not privileged, in the possession of the board, that is pertinent to the subject matter of the proceeding.~~

~~—— Acp 212.02 Subpoena.~~

~~—— (a) Subpoena for the attendance of witnesses or the production of evidence in disciplinary proceedings shall be issued only upon the order of the board.~~

~~—— (b) A subpoena shall be issued on the initiative of the board or in response to the motion of a party.~~

~~—— (c) A party requesting a subpoena shall attach a copy of the proposed subpoena to its motion and if the motion is granted, the requesting party shall be responsible for the service of the subpoena and payment of any witness fee and mileage expenses that might be required.~~

~~—— (d) The person to whom the subpoena is directed may, within 10 days after service of the subpoena, or before the date specified by the board in the subpoena for compliance therewith, whichever is earlier, file a motion to quash or modify the subpoena.~~

~~—— (e) If the board 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, within the time prescribed in the subpoena, unless the board expressly provides additional time to comply.~~

~~—— (f) A subpoena shall be served by any person who is 18 years of age or older, and in the manner authorized for service of subpoenas in the New Hampshire superior court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service and a copy shall be immediately returned to the board by the person making service.~~

~~—— (g) Should any person fail to comply with a subpoena issued pursuant to this section, the board shall seek judicial enforcement.~~

~~—— Acp 212.03 Prehearing Conferences.~~

~~—— (a) At any time following the commencement of an adjudicatory proceeding, the board shall, upon motion, or upon its own initiative, encourage all parties and intervenors to attend one or more prehearing conference(s) to aid in the disposition of the proceeding.~~

~~—— (b) The following shall be considered at a prehearing conference:~~

- ~~(1) Settlement;~~
- ~~(2) Simplification of the issues;~~
- ~~(3) Possible amendments to the pleadings;~~

- ~~(4) Possible admissions of facts and of documents to avoid unnecessary proof;~~
- ~~(5) Possible limitations on the number of witnesses;~~
- ~~(6) Possible changes to the standard procedures which would otherwise govern proceeding;~~
- ~~(7) The distribution of written testimony, if any, and exhibits to the parties and intervenors;~~
- ~~(8) Possible consolidation of the examination of witnesses by the parties and intervenors;~~
- ~~(9) A time frame for exchange of witness and evidence lists; and~~
- ~~(10) Any other matters which might contribute to the prompt and orderly conduct of the proceedings.~~

~~— (c) The board shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record, in which case only the discussion of possible settlement shall not be recorded. Matters decided at a prehearing conference shall be reflected in an appropriate order.~~

~~— (d) Prehearing conferences in disciplinary proceedings shall not be open to the public, to the extent consistent with RSA 91-A.~~

~~— Acp 212.04 Witness and Evidence Exchange. Parties and intervenors shall exchange complete lists of witnesses and evidence pursuant to the timetable established in accordance with Acp 212.03(b)(9). Copies of all documentary evidence shall be provided to all parties and intervenors.~~

PART Acp 213 CONDUCT OF ADJUDICATIVE HEARINGS

~~— Acp 213.01 Method of Proceeding. Unless all parties and intervenors agree to a modification of the process, the board shall hold a trial-type evidentiary hearing with an opportunity for the subsequent submission of memoranda. Each party or intervenor shall have the opportunity to call its own witnesses and to cross-examine other witnesses who testify at the evidentiary hearing. The board shall conduct individual proceedings in a trial-type evidentiary hearing, unless otherwise agreed by the parties and intervenors, and the presiding officer shall schedule supplemental argument or hearing, or otherwise reopen the record, at any time prior to the issuance of a final order in a proceeding.~~

~~— Acp 213.02 Burden, Standard and Order of Proof.~~

~~— (a) The party 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 Acp 213.02(a), all moving parties and intervenors and all petitioners shall have the burden of persuading the board that their motions or petitions should be granted.~~

~~— (c) The complainant shall present its case first, followed by the respondent. For purposes of presentation of evidence, intervenors shall be considered either complainants or respondents.~~

~~— Acp 213.03 Evidence.~~

~~— (a) Proceedings shall not be conducted under the rules of evidence, but the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.~~

~~—— (b) All data that will reasonably assist the board to arrive at the truth shall be admissible.~~

~~—— (c) Evidence shall be submitted in written or oral form to assure the full and fair disclosure of the facts.~~

~~—— (d) If the board notices a fact, it shall so state, and permit any party the opportunity to show the contrary.~~

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

~~—— (f) The board shall cause a tape recording or stenographic record to be made of hearings and prehearing conferences. This record shall not be transcribed unless a request is made by a person who also agrees to pay the cost of the transcription.~~

~~—— (g) Information provided during an evidentiary hearing shall be considered public information.~~

~~—— Acp 213.04 Inquiry By Board Members.~~

~~—— (a) Subject to the direction of the presiding officer who shall regulate the time and manner of speaking in an orderly fashion, board members present during adjudicative proceedings shall question witnesses and make such inquiry of witnesses as they believe appropriate.~~

~~—— (b) Whenever credibility of witnesses is material to the outcome of the hearing, those rendering the decision in the case shall be present for such testimony.~~

~~—— Acp 213.05 Exceptions to Rulings By the Presiding Officer.~~

~~—— (a) There shall be no interlocutory appeal to the board of procedural or discovery orders made by the presiding officer.~~

~~—— (b) After the close of the record, the parties shall be provided 10 days to submit written exceptions to rulings of the presiding officer. The board shall rule upon any such exceptions and shall reopen or modify the record, if necessary or appropriate to effect relief.~~

PART Acp 214 DECISIONS

~~—— Acp 214.01 Proposed Findings of Fact and Conclusions of Law.~~

~~—— (a) Any party may submit proposed findings of fact and conclusions of law.~~

~~—— (b) The board shall include individual rulings upon such proposed findings or conclusions as part of its final decision.~~

~~—— Acp 214.02 Decision on Record.~~

~~—— (a) The decision of the board shall be based upon the board's evaluation of the evidence submitted during the hearing only.~~

~~—— (b) The board shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records~~

~~management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 541-A.~~

~~PART Acp 215 RECONSIDERATION AND STAY~~

~~— Acp 215.01 Motion for Reconsideration or Rehearing.~~

~~— (a) An adjudicatory order of the board shall not be final until the date it is served upon the parties and intervenors pursuant to Acp 208.03(d).~~

~~— (b) Within 30 days after service of a final adjudicatory order of the board, any party or intervenor may file a motion for reconsideration or rehearing.~~

~~— (c) A motion for reconsideration shall:~~

~~(1) Include any memorandum of law the petitioner wishes to submit;~~

~~(2) Identify each error of fact, error of reasoning, or erroneous conclusion contained in the final order that the moving party or intervenor wishes reconsidered; and~~

~~(3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party or intervenor.~~

~~— (d) The board shall grant or deny the motion, or any part thereof, on its merits, or treat the motion as a motion for reopening, and grant it pending the receipt of such additional data or additional argument as it considers necessary.~~

~~— Acp 215.02 Reconsideration on the Board's Own Motion.~~

~~— (a) Within the time frame specified in Acp 216.01(b), the board shall reconsider, revise, reverse or affirm any final action on its own motion.~~

~~— (b) If reconsideration is based upon the existing record, prior notice shall not be given to the parties and intervenors. If the board believes further argument or data should be considered, an appropriate order providing the parties and intervenors with notice and opportunity to be heard shall be issued before any revision is made in the board's previous action.~~

~~— Acp 215.03 Stay of Board Orders.~~

~~— (a) Board actions shall be stayed only in response to a specific motion requesting a stay or by the board acting on its own motion.~~

~~— (b) A motion for stay shall be considered only if it is filed within the time period for requesting reconsideration specified by Acp 216.01(b) and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire superior court.~~

~~— (c) Filing a motion for reconsideration shall not stay a board order. Combining a motion for stay with a motion for reconsideration shall be permissible, however.~~

~~PART Acp 216 DECLARATORY RULINGS~~

~~—— Acp 216.01 Petitions.~~

~~—— (a) Any person may request a declaratory ruling from the board on matters within its jurisdiction by filing an original and 5 copies of a petition pursuant to Acp 209.01(b).~~

~~—— (b) Such a petition shall also set forth the following information:~~

~~(1) The exact ruling being requested; and~~

~~(2) The statutory and factual basis for ruling, including any supporting affidavits or memoranda of a law.~~

~~—— Acp 216.02 Action on Petitions.~~

~~—— (a) The petitioner shall provide such further information or participate in such evidentiary or other proceedings as the board shall direct after reviewing the petition and any replies received.~~

~~—— (b) Upon review and consideration, the board shall within 90 days rule on the petition pursuant to Acp 209.01(c).~~

PART Acp 217 PETITIONS FOR RULEMAKING

~~—— Acp 217.01 Petition for Rulemaking.~~

~~—— (a) Any person may request the board to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a written petition that contains:~~

~~(1) A statement of the petitioner's request for the proposed rule;~~

~~(2) The text of the proposed rule or a statement of the particular results intended by the petitioner's interest in the subject matter of the proposed rule;~~

~~(3) An identification of the particular rule sought to be amended or repealed;~~

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

~~(5) Name, address, signature of petitioner and date.~~

~~—— Acp 217.02 Disposition of Petition.~~

~~—— (a) The board shall consider all petitions for rulemaking and proceed pursuant to RSA 541-A:4. The board shall request additional data or argument from the petitioner or other interested persons to clarify the argument.~~

~~—— (b) If the data or argument fails to support the petition, the board shall state the reason therefore in the order.~~

~~—— (c) If the data or argument supports the petition, the board shall commence rulemaking in accordance with RSA 541-A:3.~~

PART ~~Acp 218~~ RULEMAKING HEARINGS

~~—— Acp 218.01 Purpose. The purpose of this part is to provide a uniform procedure for the conduct of public hearings at which comment from the general public will be solicited for evaluation and consideration by the board relative to rulemaking.~~

~~—— Acp 218.02 Scope.~~

~~—— (a) These rules shall apply to all hearings required by state law to be conducted by the board at which public comment shall be solicited, except that they shall not apply to adjudicative hearings.~~

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

~~—— Acp 218.03 Notice.~~

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

~~—— (b) At a minimum, a notice for rulemaking public comment hearings shall comply with the requirements of RSA 541-A:6, I.~~

~~-~~

~~—— Acp 218.04 Media Access.~~

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

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

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

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

~~-~~

~~—— Acp 218.05 Moderator.~~

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

~~-~~

~~—— (b) The moderator shall:~~

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

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

~~(3) Place limits on the media to avoid disruption as set out in Acp 218.04(b);~~

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

~~(5) Limit the time for each speaker, as set out in Acp 218.06(b);~~

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

~~(7) Adjourn the hearing; and~~

~~(8) Provide opportunity for the submission of written comments.~~

~~— Acp 218.06 Public Participation.~~

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

~~— (b) The board, through the moderator, shall:~~

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

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

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

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

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

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

~~PART Acp 219 EXPLANATION AFTER ADOPTION~~

~~— Acp 219.01 Explanation After Adoption.~~

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

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

Adopt Acp 201 to read as follows:

PART Acp 201 APPLICABILITY AND WAIVER OF SUBSTANTIVE RULES

Text added to existing rule shown in ***bold italics***
Text deleted from existing rules shown in ~~strike-through~~

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Acp 201.01 Applicability of Plc 200. The Plc 200 rules shall govern the board of acupuncture with regards to all procedures for:

- (a) The receipt and investigation of misconduct complaints;
- (b) The conduct of adjudicative and non-adjudicative proceedings;
- (c) Rulemaking submissions, considerations, and dispositions of rulemaking petitions;
- (d) Public comment hearings;
- (e) Declaratory rulings;
- (f) Explanation of adopted rules;
- (g) Voluntary surrender of licenses; and
- (h) Waivers.

APPENDIX I

RULE	SPECIFIC STATE STATUTE THE RULE IMPLEMENTS
Acp 201 – Acp 219 (repeal)	2023, 212:6, II, III, effective 10-3-23
Acp 201.01	RSA 541-A:16, I(b)-(d)