

CHAPTER Mhp 200 PRACTICE AND PROCEDURE

Repeal Mhp 201 through Mhp 214, effective 12-16-14 (Document #10745), as follows:

~~PART Mhp 201 PURPOSE~~

~~— Mhp 201.01 Purpose. The board conducts various proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction, including decisions on applications for licensure and communications of alleged misconduct filed against licensees. The purpose of these rules shall be construed to secure the just, efficient and accurate resolution of all board action.~~

~~PART Mhp 202 DEFINITIONS~~

~~— Mhp 202.01 Definitions. The following terms shall have the meaning indicated when used in this chapter:~~

~~— (a) "Adjudicative proceeding" means 'adjudicative proceeding' as defined as in RSA 541-A:1 (I).~~

~~— (b) "Administrative Prosecutions Unit (APU)" means the administrative prosecutions unit of the attorney general's office.~~

~~— (c) "Board investigator" means a board member who is responsible for overseeing the activities of the professional conduct investigators.~~

~~— (d) "Communication of alleged misconduct" means a written statement received by the board suggesting professional misconduct of a licensee under RSA 330-A:27, II or Mhp 500.~~

~~— (e) "Complaint" means a communication of alleged misconduct containing information that, as the board shall determine, if true, could violate ethical codes, administrative rules or the law.~~

~~— (f) "Consent decree" means a final and binding order that is issued by agreement of all parties.~~

~~— (g) "Corrective action" means a settlement agreement between the board and a licensee whereby the licensee agrees to make certain changes in his or her practice including but not limited to:~~

- ~~(1) Remedial supervision;~~
- ~~(2) Additional clinical education units;~~
- ~~(3) License restrictions; and~~
- ~~(4) Psychological evaluation.~~

~~— (h) "Data" means all information relevant to the investigation, included but not limited to:~~

- ~~(1) Oral or written descriptions;~~
- ~~(2) Reports;~~

-
- (3) ~~Maps;~~
-
- (4) ~~Charts;~~
-
- (5) ~~Drawings;~~
-
- (6) ~~Photographs;~~
-
- (7) ~~Audio or video recordings;~~
-
- (8) ~~Computer programs; or~~
-
- (9) ~~Computer printouts.~~
-
- ~~—— (i) “Disciplinary proceeding” means an adjudicative proceeding commenced by the board for the purpose of examining a complaint against a licensee.~~
-
- ~~—— (j) "File" means to place a document in the actual possession of the board.~~
-
- ~~—— (k) “Hearing counsel” means an individual appointed by the board to prosecute licensee misconduct allegations and denials of applications for licensure to the board.~~
-
- ~~—— (l) “Investigation” means a gathering of data by the board concerning matters within its jurisdiction.~~
-
- ~~—— (m) “Letter of concern” means a written letter from the board drawing the licensee’s attention to specific acts or omissions that could place the licensee at risk of future disciplinary action. A letter of concern is non-disciplinary and is sent to the licensee following a communication of alleged misconduct, complaint and/or investigation.~~
-
- ~~—— (n) “Mediation” means an informal, confidential process facilitated by a qualified neutral party, and intended to resolve conflicts by agreement.~~
-
- ~~—— (o) "Motion" means any request by a party to an existing proceeding for an order or relief relating to that proceeding.~~
-
- ~~—— (p) "Order" means a document issued by the board:~~
 - (1) ~~Establishing procedures to be followed in an adjudicative or nonadjudicative 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 330-A.~~
-
- ~~—— (q) "Petition" means any request to the board seeking an order or any other action for relief, but does not include a license application or a motion.~~
-

~~— (r) "Presiding officer" means the board member or other individual to whom the board has delegated authority to preside over some or all aspects of an adjudicative or other proceeding.~~

~~— (s) "Professional Conduct Investigator (PCI)" means a trained licensed mental health practitioner who, as an agent of the board, under the guidance of the board investigator discovers facts and makes reports to the board.~~

~~— (t) "Report of Investigation" (ROI)" means report of information, facts and data gathered for the board.~~

~~— (u) "Rulemaking" means the statutory procedures for formulating agency rules set forth in RSA 541-A:3.~~

~~(v) "Settlement agreement" means a written order of the board acknowledging consent of the licensee to enter stipulated facts and imposing disciplinary actions consented to by the licensee to resolve certain allegations of licensee misconduct.~~

~~PART Mhp 203 APPEARANCES BEFORE BOARD~~

~~Mhp 203.01 Appearances and Representation.~~

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

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

~~(2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and~~

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

~~— (b) Any changes to the information in (a) above shall be timely filed with the board, in writing.~~

~~— (c) The board 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 board, willfully disrupted board proceedings, or made material misrepresentations to the board or a party in a board proceeding.~~

~~— (d) Any prohibition issued under (c), above, shall apply only to the board's proceedings.~~

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

~~PART Mhp 204 TIME PERIODS~~

~~— Mhp 204.01 Computation of Time. Any time period specified in this chapter 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.~~

~~Mhp 204.02 Change in Allowed Times and Granting Continuances. Except where a time period is fixed by statute, the board shall, upon motion or upon its own initiative, enlarge or shorten the time provided for the filing of any document; advance or postpone the time set for any oral hearing, prehearing conference, or other activity; and grant further continuances if it would be more likely to promote the fair, accurate and efficient resolution of the issues pending before the board than would adherence to a particular rule or procedure.~~

~~— Mhp 204.03 Limitations. Except in the case of an unforeseeable emergency, a motion to change time shall not be filed within 7 days of the event in question.~~

~~PART Mhp 205 FILING AND SERVICE OF DOCUMENTS~~

~~— Mhp 205.01 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 is facially in conformity with the board's rules.~~

~~— (b) A document, which is facially in violation of the board's rules, shall not be accepted for filing. Such 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 board shall be addressed to the board's office in care of its administrative assistant.~~

~~— (d) All petitions, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed with an original and 10 copies unless the board directs otherwise.~~

~~— (e) Notwithstanding (d) above, only a single copy shall be filed of:~~

~~(1) Transmittal letters;~~

~~(2) Requests for public information;~~

~~(3) License applications; and~~

~~(4) A communication of alleged misconduct against licensees.~~

~~— Mhp 205.02 Subscription and Veracity of Documents.~~

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

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

~~— (c) The signature on a document filed with the board shall constitute a certification that:~~

- ~~(1) The signer has read the document;~~
 - ~~(2) The signer is authorized to file it;~~
 - ~~(3) To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and~~
 - ~~(4) The document has not been filed for purposes of delay or harassment.~~
- ~~— (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.~~
- ~~— Mhp 205.03 Service of Documents.~~
- ~~— (a) Communications of alleged misconduct against licensees shall be filed with the board in accordance with Mhp 503.02.~~
- ~~— (b) The board shall notify the licensee of said filing unless such information would jeopardize:~~
- ~~(1) The safety of a party; or~~
 - ~~(2) The process of a criminal investigation.~~
- ~~— (c) Applications, petitions for rulemaking and petitions for declaratory rulings shall be filed with the board without service upon other persons.~~
- ~~— (d) All objections, motions, replies, memoranda, exhibits or other documents filed in connection with a request for board action shall be served by the proponent upon all parties or persons who have filed appearances with the board to be heard on a matter by:~~
- ~~(1) Depositing a copy of the document in the United States Mail, first class postage prepaid, addressed to the last address given to the board by the person 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.~~
- ~~— (e) Notices, orders, decisions or other documents issued by the board in connection with requests for board action shall be served by the board upon all parties or their representatives on a matter by:~~
- ~~(1) Depositing a copy of the document, first class postage prepaid, in the United States Mail, addressed to the most recent address given to the board by the party being served; or~~
 - ~~(2) Delivering a copy of the document in hand to the party.~~
- ~~— (f) When a party's representative has filed an appearance, service shall be upon the representative.~~

~~— (g) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board, 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 Mhp 206 PETITIONS AND MOTIONS~~

~~— Mhp 206.01 Petitions.~~

~~— (a) Applications for licensure shall not be considered petitions.~~

~~— (b) 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 which warrant the relief requested from the board;~~

~~(4) A description of the specific relief requested from the board;~~

~~(5) A citation to any statutes, rules, orders, or other authority which entitles the petition to the relief requested; and~~

~~(6) A signature and date as required by Mhp 205.02(a).~~

~~— (c) In situations in which a petition is served upon a third person, a reply to that petition shall contain:~~

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

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

~~(3) A statement admitting or denying, or stating that the respondent lacks sufficient knowledge to admit or deny each fact alleged in the petition pursuant to Mhp 206.01(b)(3);~~

~~(4) A statement admitting or denying the authority identified by the petitioner pursuant to Mhp 206.01(b)(5);~~

~~(5) A concise statement of any additional or different facts which warrant the board acting in the manner requested by the respondent;~~

~~(6) A citation to any statutes, rules, orders or other authority, not identified in the petition, having bearing upon the subject matter of the petition;~~

~~(7) A description of the action which the respondent wishes the board to take; and~~

~~(8) The signature and date required by Mhp 205.02(a).~~

~~— (d) Replies shall be filed within 10 days from the date of the petition unless otherwise ordered by the board.~~

~~— (e) Any fact contained in the petition which is not denied in the reply, shall be deemed admitted by the respondent. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The petitioner shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.~~

~~— Mhp 206.02 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) 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 dated required by Mhp 205.02(a).~~

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

~~(1) The objection or defense of the party 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 filing the objection wishes the board to take on the motion;~~

~~(3) The statutes, rules, orders, or other authority relief upon in defense of the motion;~~

~~(4) Any facts which are additional to or different from the facts stated in the motion; and~~

~~(5) The signature and date required by Mhp 205.02(a).~~

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

~~— (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.~~

~~PART Mhp 207 NONADJUDICATORY INVESTIGATIONS~~

~~— Mhp 207.01 Informal Investigations.~~

~~— (a) Notwithstanding any other provision of this title, the board, within the limits of its authority, and acting through its members, officers and employees, or through independent contractors, shall make inquiry of any person and otherwise gather data, and prepare reports describing the data obtained whenever:~~

~~(1) It receives data which leads it to believe that a violation of any statute administered by the board, or of any rule of the board, or code of ethics has occurred, or is likely to occur; or~~

~~(2) It desires to obtain data for any other lawful purpose.~~

~~— (b) Informal investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the case, including:~~

~~(1) Requests for additional information from the complainant;~~

~~(2) Requests for a release of relevant records belonging to or under the control of the petitioner; and~~

~~(3) Face-to-face meetings with potential witnesses and interested persons.~~

~~Mhp 207.02 Formal Investigations.~~

~~— (a) Formal investigations shall be commenced for the purpose of obtaining documents, recording testimony, and otherwise gathering data relevant to matters within the board's jurisdiction when the board believes this technique would be more effective than an informal investigation.~~

~~— (b) Formal investigations shall be commenced by the issuance of an order of investigation containing:~~

~~(1) The statutory or regulatory authority for the investigation;~~

~~(2) The identity of the persons, or class of persons, which are the subject of the investigation;~~

~~(3) The general nature of the conduct being investigated;~~

~~(4) Any statutes or rules, which include codes of ethics and the client's bill of rights, alleged to have been, or about to be violated;~~

~~(5) The identity of the investigating officer or committee;~~

~~(6) The date upon which the investigating officer shall report his or her findings and recommendations to the board;~~

~~(7) Any special authority conferred upon the investigating officer, including the authority to issue subpoenas on behalf of the board; and~~

~~(8) Other provisions relevant to the issues under investigation and the time, place and manner in which the investigation is to be conducted.~~

~~PART Mhp 208 ADJUDICATIVE PROCEEDINGS~~

~~— Mhp 208.01 Commencement of Proceedings.~~

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

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

- ~~(1) Specify the time, place and nature of any hearing;~~
- ~~(2) Summarize the subject matter of the proceeding and identify the issues to be resolved;~~
- ~~(3) Specify the legislative authority for the proposed action and identify any applicable board regulations;~~
- ~~(4) Specify the date by which, and the address where, appearances or motions by parties or representatives shall be filed;~~
- ~~(5) Specify the date, time, and location of an initial prehearing conference or dates for an oral hearing;~~
- ~~(6) Identify the presiding officer for the proceeding if other than the chairperson of the board;~~
- ~~(7) Identify any special procedures to be followed;~~
- ~~(8) Identify any confidentiality requirements applicable to the proceeding;~~
- ~~(9) Specify that each party has the right to have an attorney represent him or her at the party's own expense;~~
- ~~(10) 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;~~
 - ~~b. Orders directing the production or exchange of documents; and~~~~
- ~~(11) A stenographic recording of the hearing shall be taken and preserved.~~

~~— Mhp 208.02 Methods of Proceeding – Generally.~~

~~— (a) If the parties agree, the board 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 argue the conclusions the parties wish the board to draw from the undisputed facts.~~

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

~~— (c) Oral argument, other than a brief opening and closing statement shall be permitted when requested in a written motion, which demonstrates a substantial need for such a procedure. Written argument in the form of legal briefs or memorandum shall be permitted subject to such filing schedules as the board shall direct by oral or written order.~~

~~— (d) The presiding officer shall schedule supplemental argument or hearing, or to otherwise reopen the record at any time prior to the issuance of a final order in a proceeding.~~

~~Mhp 208.03 Intervention.~~

~~— (a) 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 and the orderly and prompt conduct of the proceeding would not be impaired; and~~

~~(3) Any other reasons why the petitioner should be permitted to intervene.~~

~~— (b) Motions to intervene shall be granted if the board finds the petitioner has a substantial interest in the proceeding, the petitioner requested intervention in accordance with these rules, and if granting intervention will not prejudice a party or unduly delay the board's proceedings.~~

~~— (c) Once granted leave to intervene, an intervener 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.~~

~~Mhp 208.04 Consolidation. Adjudicative proceedings, which 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. Consolidation shall be ordered in response to a timely motion from a party or on the board's own initiative.~~

~~Mhp 208.05 Severance. The board shall sever one or more issues from a proceeding and dispose of those issues in another proceeding if it finds doing so would materially promote the fairness, accuracy and efficiency of the proceeding. Severance may be ordered in response to a timely motion from a party or on the board's own initiative.~~

~~Mhp 208.06 Continuances.~~

~~— (a) Any party or intervenor 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, 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 or continuance would assist in resolving the case fairly.~~

~~— (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.~~

~~Mhp 208.07 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 to attend one or more prehearing conference when such a conference would aid in the disposition of the proceeding.~~

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

~~(1) The distribution of exhibits and written testimony, if any, to the parties;~~

~~(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 would otherwise govern the proceeding;
and~~
- ~~(8) Other matters which might contribute to the prompt and orderly conduct of the proceeding.~~
- ~~(c) If any person requests a transcript of the recording of a hearing, the board shall:
 - ~~(1) Cause a transcript to be prepared; and~~
 - ~~(2) Upon receipt of payment for the cost of the transcription, provide a copy of the transcript to the person making the request.~~~~

~~Mhp 208.08 Discovery and Disclosure.~~

- ~~— (a) The board shall provide for the disclosure of any investigative report or other unprivileged information in the possession of the board, which 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 wishing to initiate discovery against another party, shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.~~
- ~~— (c) Discovery shall be ordered when the parties 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 14 days before the hearing the parties and any intervenor shall provide to the other parties and intervenors:
 - ~~(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 copy of each document or exhibit.~~~~

~~Mhp 208.09 Subpoenas.~~

- ~~— (a) Subpoenas for the attendance of witnesses or the production of evidence in investigations or adjudicative proceedings shall be issued upon the order of the board or pursuant to authority delegated by the board to its staff or to a committee by specific resolution or order, or by rule.~~
- ~~— (b) In adjudicative proceedings, a party requesting the board to authorize a subpoena shall attach a copy of the proposed subpoena to its motion. If the motion is granted, the requesting party shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.~~

~~— (c) 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 one day before the date specified in the subpoena for compliance therewith, whichever is later. 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 or any modification thereof, within the balance of time prescribed in the subpoena or within 3 days from the date of the board's order, whichever is later, unless the board expressly provides additional time to comply.~~

~~— (d) The board shall grant a motion for a subpoena or quash a subpoena providing there is a preponderance of evidence to support the motion.~~

~~— (e) Should a person fail to comply with a subpoena issued pursuant to this section, the board shall take one or more of the following actions:~~

~~(1) 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 is adverse to the noncompliant party;~~

~~(2) Institute a separate investigation against any non-compliant individual who is subject to the board's jurisdiction;~~

~~(3) Continue with the proceeding and defer all, or part, of the subpoena enforcement issues; or~~

~~(4) Determine there was just cause for the failure to comply with the subpoena. Including just cause shall include:~~

~~a. Illness;~~

~~b. Accident;~~

~~c. Death of a family member; and~~

~~d. Other circumstances beyond the control of the party.~~

~~Mhp 208.10 Evidence.~~

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

~~— (b) The evidentiary privileges recognized by the law of New Hampshire, but not the N.H. Rules of Evidence, shall apply to proceedings under this chapter.~~

~~— (c) All data which will reasonably assist the board arrive at the truth shall be admissible.~~

~~— (d) Oral testimony shall be allowed unless the board, upon a finding that written evidence would be more efficient and would not result in material prejudice, orders that some or all of the evidence be submitted in written form.~~

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

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

~~— Mhp 208.11 Inquiry by Presiding Officer or Board Members. The presiding officer, board members or board advisors recognized by the presiding officer shall make such inquiry of witnesses, parties or counsel, as they believe necessary to develop a sound record for decision.~~

~~Mhp 208.12 Burden 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 paragraph (a), above all moving parties and all petitioners shall have the burden of persuading the board that their motion or petition should be granted.~~

~~Mhp 208.13 Failure of a Party to Attend or Participate in the Hearing.~~

~~— (a) A party shall be in default if the party:~~

~~(1) Has the overall burden of proof;~~

~~(2) Has been given notice in accordance with Mhp 208.01 (a); and~~

~~(3) Fails to attend the hearing.~~

~~— (b) If a party is in default under (a) 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.~~

~~— (c) If a party who does not have the overall burden of proof fails to attend the hearing after having been given notice in accordance with Mhp 207.01(a), the testimony and evidence of any other parties or intervenors shall be received and evaluated.~~

~~Mhp 208.14 Proposed Findings of Fact and Conclusions of Law.~~

~~— (a) Parties may submit proposed findings of fact or conclusions of law which shall be set forth in separately numbered paragraphs.~~

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

~~such an order is issued, individual rulings upon such proposed findings or conclusions shall be included as part of any proposed or final decision or order issued.~~

~~Mhp 208.15 Decisions.~~

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

~~— (b) All board members deciding the case shall be in attendance for all of the parties' testimony, and any other testimony on the issue of credibility, in order to effectively assess the issue of credibility.~~

~~Mhp 208.16 Motion for Reconsideration or Rehearing.~~

~~— (a) Final adjudicative orders of the board, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date they are served upon the parties pursuant to Mhp 204.03 (d).~~

~~— (b) Motions for reconsideration or rehearing shall be filed within 30 days after service of a final adjudicative order. The motion shall state, with particular clarity, points of law or fact that the board has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present.~~

~~— (c) No answer to a motion for reconsideration shall be required, but any answer or objection filed shall be delivered to the board within 10 days following notification of the motion to reconsider.~~

~~— (d) The filing of a motion for reconsideration shall not stay any order of the board unless, upon specific written request, the board has ordered such a stay.~~

~~Mhp 208.17 Reconsideration on the Board's Own Motion. Within the time frame specified in Mhp 208.16 (b), the board, on its own motion may reconsider, revise or reverse any final order. No reconsideration by the board shall occur unless the board finds that a relevant rule, point of law or fact has been overlooked or misapprehended. If, upon reconsideration, the board takes action based upon the existing record, prior notice shall not be given to the parties. If further argument or data should be considered before making such an order, the board shall provide the parties with notice and an opportunity to be heard before any final revision is made in the board's previous order.~~

~~Mhp 208.18 Records of Decisions. The board 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 and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.~~

~~Mhp 208.19 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 Mhp 208.16 (b), and shall demonstrate good cause sufficient to warrant the stay of an action by the New Hampshire Superior Court.~~

~~— (c) A stay of board 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.~~

Repeal Mhp 209 through Mhp 214, effective 12-16-14 (Document #10745), as follows:

~~PART Mhp 209 PRESIDING OFFICER, WITHDRAWAL AND WAIVER OF RULES~~

~~— Mhp 209.01 Presiding Officer, Appointment: Authority.~~

~~— (a) A 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) Request the board 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, at the request of a party or on the presiding officer's own motion;~~

~~(7) Question any person who testifies;~~

~~(8) Cause a complete record of any hearing 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.~~

~~— Mhp 209.02 Withdrawal of Presiding Officer.~~

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

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

- ~~(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship with any party;~~
- ~~(2) Has made statements or engaged in behavior, other than voting upon matters relevant to the case, 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.~~

~~Mhp 209.03 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure.~~

~~PART Mhp 210 RULEMAKING~~

~~Mhp 210.01 Procedure For Adopting Rules. A board rule, or any amendment or repeal thereof, shall be governed by RSA 541-A.~~

~~Mhp 210.02 Petition for Rulemaking. A request for the commencement of a proceeding to adopt, amend, or repeal a rule shall be submitted in the form of a petition which contains the following information:~~

- ~~— (a) A statement of the petitioner's interest in the proposed rulemaking action;~~
- ~~— (b) The text of the proposed rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed rule;~~
- ~~— (c) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed; and~~
- ~~— (d) Any data or argument the petitioner believes would be useful to the board in deciding whether to commence a rulemaking proceeding.~~

~~Mhp 210.03 Disposition of Petition for Rulemaking.~~

~~— (a) Within 30 days of the submission of a petition, the board shall either 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 Mhp 210.04.~~

~~— (b) Any denial shall be based upon a finding by the board that:~~

- ~~(1) The petition for rule or amendment or repeal of an existing rule would not be consistent with established standards of practice of the board;~~
- ~~(2) The board lacks rulemaking authority over the issues in the petition; or~~
- ~~(3) The petition is contrary to legislative intent.~~

~~— Mhp 210.04 Commencement of Rulemaking Proceeding. The board shall commence a rulemaking proceeding by following the procedures set forth in RSA 541-A:3 et seq.~~

~~PART Mhp 211 PUBLIC COMMENT HEARINGS~~

~~Mhp 211.01 Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541-A:11.~~

~~— Mhp 211.02 Public Access and Participation.~~

~~— (a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Mhp 211.03.~~

~~— (b) People who wish to testify shall be asked to write on the speaker's list:~~

- ~~(1) Their full names and addresses; and~~
- ~~(2) The names and addresses of organizations, entities or other persons whom they represent, if any.~~

~~— (c) Written comments, which may be submitted in lieu of or in addition to oral testimony, shall be accepted for 10 days after the adjournment of a hearing or after the adjournment of a postponed or continued hearing.~~

~~— Mhp 211.03 Limitations on Public Participation. The board's chair or other person designated by the board to preside over a hearing shall:~~

~~— (a) Refuse to recognize for speaking or revoke the recognition of any person 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 into the record as supporting the position of the organization or entity.~~

~~Mhp 211.04 Conduct of Public Comment Hearings.~~

- ~~— (a) Public comment hearings shall be attended by a quorum of the board.~~
- ~~— (b) Public comment hearings shall be presided over by the board chair or a board member knowledgeable in the subject area of the proposed rules who has been designated by the board to preside over the hearing.~~
- ~~— (c) The chair or other person presiding over a hearing shall:~~
- ~~(1) Call the hearing to order;~~
 - ~~(2) Identify the proposed rules that are the subject matter of the hearing and provide copies of them upon request;~~
 - ~~(3) Cause a recording of the hearing to be made;~~
 - ~~(4) Recognize those who wish to be heard;~~
 - ~~(5) If necessary, establish limits pursuant to Mhp 211.03;~~
 - ~~(6) If necessary to permit the hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the hearing;~~
 - ~~(7) If necessary, postpone or move the hearing; and~~
 - ~~(8) Adjourn or continue the hearing.~~
- ~~— (d) A hearing shall be postponed in accordance with RSA 541-A:11, IV when:~~
- ~~(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 board chair or other person designated by the board to preside over the hearing is ill or unavoidably absent;~~
 - ~~(3) Postponement will facilitate greater participation by the public; or~~
 - ~~(4) The board chair or other person designated by the board to preside over the hearing finds there is other good cause to do so.~~
- ~~— (e) A hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend the hearing.~~

~~— (f) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A:11, III when:~~

~~(1) The time available is not sufficient to give each person 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 move the hearing to another location.~~

~~PART Mhp 212 DECLARATORY RULINGS~~

~~— Mhp 212.01 Petitions for Declaratory Rulings.~~

~~— (a) Any interested person may request a declaratory ruling from the board on how a statute, rule or order applies to a specific situation.~~

~~— (b) The request pursuant to (a) above shall be made by filing a petition with the board, which contains:~~

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

~~(2) Each statutory and factual basis for the ruling, set forth in separately numbered paragraphs, including~~

~~(3) Any supporting affidavits or memoranda of law; and~~

~~(4) The name and address of the petitioner.~~

~~Mhp 212.02 Action on Petitions for Declaratory Rulings.~~

~~— (a) The board shall issue a declaratory ruling, in writing, within 60 days of receipt of a petition.~~

~~— (b) A copy of each declaratory ruling shall be:~~

~~(1) Filed with the director of legislative services;~~

~~(2) Sent to the petitioner by first class mail; and~~

~~(3) Filed with the board.~~

~~PART Mhp 213 WAIVER OF SUBSTANTIVE RULES~~

~~— Mhp 213.01 Petitions for Waiver.~~

~~— (a) The board shall entertain petitions to waive or suspend any rule upon the filing of an original and 10 copies of a petition pursuant to Mhp 206.01(b) which clearly identifies the rule in question and sets forth specific facts and arguments which support the requested waiver.~~

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

- ~~(1) Whether adherence to the rule would cause the petitioner hardship;~~
- ~~(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 third persons; and~~
- ~~(4) Other good cause for waiving the rule.~~

~~— (c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the board shall require service of the petition on such persons and advise them of their right to reply to the petition pursuant to Mhp 206.01(c).~~

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

~~— (e) The board shall initiate a waiver of a substantive rule upon its own motion by providing affected parties with notice and an opportunity to be heard, and issuing an order which finds that good cause has been shown.~~

~~— (f) For the purposes of this section, good cause shall be deemed to exist if, at a minimum, the petitioner has demonstrated that:~~

- ~~(1) Adherence to the rule would cause the petitioner hardship;~~
- ~~(2) Waiver of the rule would be consistent with the statutes and rules of the board;~~
- ~~(3) Waiver of the rule would not injure third persons; and~~
- ~~(4) Waiver is necessary due to factors outside the control of the petitioner.~~

~~PART Mhp 214 EXPLANATION OF ADOPTED RULES~~

~~— Mhp 214.01 Requests for Explanation of Adopted Rules. 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 board including:~~

~~— (a) The name and address of the individual making the request; or~~

~~— (b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.~~

Text added to final proposal shown in ***bold italics***
Text deleted from final proposal shown in ~~strikethrough~~

CA Request - 10-18-24 - 22

~~Mhp 214.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Mhp 214.01, provide a written response which:~~

- ~~— (a) Concisely states the meaning of the rule adopted;~~
- ~~— (b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and~~
- ~~— (c) States, if the board did so, why the board overruled any arguments and considerations presented against the rule.~~

Adopt Mhp 201 to read as follows:

PART Mhp 201 PRACTICE AND PROCEDURES

Mhp 201.01 Rules of Practice and Procedure. The Plc 200 rules shall govern with regards to all procedures for:

- (a) The receipt and investigation of misconduct complaints;
- (b) The conduct of adjudicatory 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) Petitions for waiver of rules.

APPENDIX I

Rule	Specific State Statute the Rule Implements
Mhp 201 (new)	RSA 541-A:16, I(b)-(d)