

Readopt Hcp 206, 211, 212.04, and 213, effective 12-3-08 (Document #9338), cited and to read as follows:

PART Hcp 206 MISCONDUCT INVESTIGATIONS

Hcp 206.01 Misconduct Investigations.

(a) The board shall conduct misconduct investigations through a board-appointed investigator to examine acts of possible misconduct which come to its attention through complaints or other means. The type, form and extent of an investigation shall be determined by the investigator so appointed based upon the severity of the alleged misconduct, the availability of witnesses and information pertaining to the alleged misconduct, and the resources available to the board.

(b) Within 10 days of the commencement of an investigation under this part, the investigator shall notify the licensee or registrant who is the subject of the investigation of the nature of the misconduct alleged. Within 20 days of such notification, the licensee or registrant shall, pursuant to RSA 137-F:21, IX, provide to the investigator a detailed and good faith written response to each such allegation of misconduct. The response shall address each allegation of misconduct by admitting or contesting each of the material facts alleged.

(c) When a misconduct investigation occurs, the 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) The investigator shall make a written report of misconduct investigations which includes an assessment as to what the investigator believes could be proved at a disciplinary hearing.

Hcp 206.02 Post-Investigation Settlements.

(a) After the investigator has completed the investigation, the investigator shall attempt to reach a proposed agreement with the licensee or registrant that would resolve the complaint wholly or in part. Any proposed settlement agreement shall set forth all material facts involved in the allegations proposed to be resolved. Such proposed settlement agreement shall then be brought to the full board for its review.

(b) Upon receiving the proposed settlement agreement, the board shall consider whether to approve it. Proposed settlement agreements shall be entertained until a notice of hearing is issued. Thereafter, negotiated resolution shall be accomplished by means of a consent decree.

(c) Settlements under (a) above, shall not be granted if:

- (1) The complainant has not been provided notice and an opportunity to submit written comments concerning the proposal in question;
- (2) The board believes that material facts remain in dispute; or,
- (3) Facts in dispute are such that the board might impose a materially different sanction if additional relevant facts were known.

Hcp 206.03 Access to Information Obtained in Misconduct Investigations.

(a) Board investigations and all information obtained by the board as part of a misconduct investigation shall, be exempt from public disclosure requirements of RSA 91-A pursuant to RSA 137-F:21, II, unless such information subsequently becomes the subject of a public disciplinary hearing.

(b) Notwithstanding (a) above, and pursuant to RSA 137-F:21, II, reports and information obtained in a misconduct investigation shall be made available under the following circumstances and to the following persons:

- (1) If it is sought by parties to any adjudicative proceeding resulting therefrom;
- (2) If it is introduced as evidence in a disciplinary hearing; and
- (3) If it is requested by:
 - a. Law enforcement agencies;
 - b. Certifying agencies of other jurisdictions;
 - c. Board investigators or prosecutors;
 - d. Expert witnesses or assistants retained by board prosecutors or investigators in the same or related disciplinary matters; or
 - e. A licensee or registrant, complainant, or other person with knowledge of the subject matter of a particular misconduct allegation, when such disclosure would assist the board investigate that allegation.

Hcp 206.04 Procedure for Surrendering A License or Registration. An audiologist or hearing aid dealer may surrender a license or registration at any time by returning the document to the board and providing a signed statement indicating such intent.

Hcp 206.05 Effect of Voluntary License or Registration Surrender.

(a) Neither non-renewal or surrender of an audiology license or hearing aid registration shall preclude the board from investigating or completing a disciplinary proceeding based upon the audiologist's or hearing aid dealer's professional conduct while the license or registration was still in effect.

(b) A licensed audiologist nor registered hearing aid dealer who voluntarily surrenders a license or registration shall retain no right or privilege in a New Hampshire license or registration unless such a right or privilege is expressly preserved in the board order or in the settlement agreement that includes a voluntary surrender. Subject to the foregoing, a person who subsequently applies for audiology licensure or hearing aid dealer registration in New Hampshire after a voluntary surrender shall have the burden of proving compliance with all of the requirements then in effect for new applicants, including national examination and professional character requirements.

(c) Surrender of a license or registration pursuant to a voluntary surrender order or pursuant to a settlement agreement shall not preclude the board from investigating disciplinary proceedings not expressly referenced in such order or settlement agreement.

PART Hcp 211 NONADJUDICATIVE INVESTIGATIONS AND INFORMATIONAL HEARINGS

Hcp 211.01 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 material violation of any statute administered by the board, or of any rule of the board, 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 complainant; and
- (3) Face to face meetings with potential witnesses and interested persons.

Hcp 211.02 Formal Investigations.

(a) Formal investigations shall be commenced for the purpose of obtaining documents, recording testimony, and otherwise gathering information 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) Any statutes or rules believed to have been, or about to be, violated, or the possible regulatory action being contemplated by the board;
- (3) The identity of the persons, or class of persons, which are the subject of the investigation;
- (4) The general nature of the conduct being investigated;
- (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; and
- (7) Other provisions relevant to the issues under investigation and the time, place and manner in which the investigation is to be conducted.

(c) The issuance of an order of investigation shall not commence a disciplinary hearing and shall not constitute an allegation of misconduct against a license or registration holder.

Hcp 211.03 Investigators. The board shall appoint a member of its staff, an investigator, an attorney, or a member of the board to conduct a formal or informal investigation.

Hcp 211.04 Informational Hearings.

(a) The board shall conduct informational hearings to assist it in gathering information concerning policy matters, such as the proposing of board rules.

(b) The board chair, acting chair, or another board member designated by the chair shall serve as the presiding officer at informational hearings and shall conduct all facets of the proceeding.

(c) Sworn testimony shall not be received at informational hearings unless an order of investigation has been issued by the board.

(d) The board shall establish the order and the length of the presentations made in informational hearings.

PART Hcp 212 RULEMAKING

Hcp 212.04 Explanation after Adoption.

(a) Any person may request an explanation regarding adoption of the rules pursuant to RSA 310-A:11, VII by submitting a request to the board within 30 days of the board's adoption of the rule.

(b) The request shall be considered at the next scheduled board meeting and the board shall issue an explanation within 45 days after consideration.

PART Hcp 213 WAIVER OF SUBSTANTIVE RULES

Hcp 213.01 Petitions for Waiver.

(a) Unless granting it would conflict with any statutory provision, the board shall entertain a petition to waive or suspend any rule not covered by Hcp 201.04 upon the filing of a petition pursuant to Hcp 205.01(b) which clearly identifies the rule in question and sets forth specific facts and arguments which support the requested waiver. The petitioner shall file an original and 2 copies of the petition.

(b) Petitions for waivers of substantive rules shall address all of the following:

(1) Whether adherence to the rule would, in the petitioner's view, cause the petitioner unnecessary or undue hardship and a description of such hardship;

(2) Whether the requested waiver is necessitated due to neglect or misfeasance on the part of the petitioner;

(3) Whether waiver of the rule would be consistent with the statutes and rules administered by the board;

(4) Whether other good cause exists for waiving the rule; and

(5) Whether enforcement of the rule would injure third persons.

(c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the board shall require service of the petition on such persons and advise them of their right to object to the petition pursuant to Hcp 205.01(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 or suspension of a substantive rule upon its own motion by providing affected parties with notice and an opportunity to be heard, and issuing an order which finds that waiver would be consistent with the criteria of (b), above.

(f) The board shall grant the petition for waiver if the board finds that the circumstances set forth in Hcp 213.01(b)(1), (3) and (4) are present and further finds that the circumstances set forth in Hcp 213.01(b)(2) and (5) are not present.