

Adopt Mtec 201.01 through 209.02, to read as follows:

CHAPTER Mtec 200 PRACTICE AND PROCEDURE

PART Mtec 201 PURPOSE AND APPLICABILITY

Mtec 201.01 Purpose. These rules set forth how the board conducts proceedings to reach decisions on matters within its statutory jurisdiction. These rules shall be construed to secure the just, efficient and accurate resolution of such proceedings.

Mtec 201.02 Applicability. These rules shall apply to the following types of proceedings:

(a) Adjudicative proceedings regarding the issuance, renewal, or other status of a certificate of registration to practice as a medical technician;

(b) Investigations of alleged misconduct by registrants;

(c) Adjudicative proceedings seeking the imposition of disciplinary action upon a registrant;

(d) Public comment hearings;

(e) Petitions for rulemaking;

(f) Requests for declaratory ruling; and

(g) Sharing of information with other licensing boards, advisory boards, the Office of the Inspector General, Department of Health and Human Services, and law enforcement entities in this or another state or province.

PART Mtec 202 DEFINITIONS

Mtec 02.01 Definitions. The following terms shall have the meaning indicated when used in this chapter:

(a) "Board" means the board of registration of medical technicians created pursuant to RSA 328-I.

(b) "Complaint" means a written statement received by the board alleging professional misconduct of a medical technician as defined in RSA 328-I: 21, II.

(c) "Corrective action" means a written agreement between the board and a registrant whereby the registrant agrees to make certain changes in his or her practice, to accept clinical

supervision, and/or to take some recommended program of study to resolve a complaint of misconduct presented to the board.

(d) "Disciplinary proceeding" means an adjudicative proceeding commenced by the board for the purpose of examining alleged misconduct by a registrant.

(e) "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 certificate of registration or other privilege established by RSA 328-I.

(f) "Settlement agreement" means a written order of the board acknowledging consent of the registrant to enter stipulated facts and impose disciplinary action to resolve certain allegations of misconduct.

PART Mtec 203 WAIVERS

Mtec 203.01 Waiver of Procedural Rules.

(a) No procedural requirement of the rules in this chapter shall be waived, except for good cause as provided herein.

(b) For the purposes of this section, good cause shall be deemed to exist if:

- (1) Adherence to the rule would cause undue hardship to any party by:
 - a. Imposing unreasonable delay in the implementation of relief;
 - b. Imposing unreasonable delay in the provision of treatment; or
 - c. Imposing unreasonable and avoidable financial burdens upon a party.
- (2) Waiver of the rule would be consistent with the enabling statutes and rules of the board;
- (3) Waiver of the rule would not injure third persons; and
- (4) Waiver is made necessary by factors outside the control of the petitioner.

(c) Good cause may also be shown by any other fact or circumstance presented by a petitioner, other than neglect or misfeasance on the part of the petitioner.

(d) The procedures to be followed in the conduct of any adjudicative proceeding shall be subject to waiver by the presiding officer based upon:

- (1) The request of any party to the proceeding;
- (2) A request assented to by all parties to the proceeding; or
- (3) The determination of the presiding officer following notice to all parties and an opportunity for any party to be heard in opposition to the proposed waiver.

(e) The procedures to be followed in the conduct of any annual, regular, or special meeting of the board; or any public comment proceeding, shall be subject to waiver by the chairperson of the board upon the request of any participant in such proceeding.

(f) Notwithstanding (d) above, the decision of the chairperson to waive such procedures shall be overruled by a majority vote of the quorum of the board disapproving of such action; in which case the applicable provisions of these rules shall be followed.

(g) In a proceeding requesting rulemaking or a declaratory ruling, no waiver of required procedures shall be granted other than by a petition to waive such procedures filed with the board. The person requesting relief shall:

- (1) File an original and 6 copies of the petition with the board;
- (2) In such petition, clearly identify the rule in question and the relief requested;
- (3) In such petition, set forth specific facts and/or legal arguments which support the requested waiver.

(h) In a proceeding under (e) or (g) above, the board shall consider the petition and rule upon the same only in a public meeting duly noticed to the parties and the public in accordance with RSA 91-A.

Mtec 203.02 Waiver of Substantive Rules.

(a) No substantive requirement of the rules in this chapter shall be waived, except for good cause as provided herein.

(b) For the purposes of this section, good cause shall be deemed to exist if:

- (1) Adherence to the rule would cause undue hardship to any party by:

- a. Imposing unreasonable delay in the implementation of relief;
- b. Imposing unreasonable delay in the provision of treatment; or
- c. Imposing unreasonable and avoidable financial burdens upon a party.

(2) Waiver of the rule would be consistent with the enabling statutes and rules of the board;

(3) Waiver of the rule would not injure third persons; and

(4) Waiver is made necessary by factors outside the control of the petitioner.

(c) Good cause may also be shown by any other fact or circumstance presented by a petitioner, other than neglect or misfeasance on the part of the petitioner.

(d) In any proceeding before the board, a party may by petition request the waiver of any substantive requirement of these rules, which may be granted by a majority vote of the board for good cause shown. The person seeking waiver of one or more substantive rules shall:

(1) File an original and 6 copies of the petition with the board;

(2) In such petition, clearly identify the rule in question and the relief requested;

(3) In such petition, set forth specific facts and/or legal arguments which are believed to support a finding by the board of good cause to grant the requested waiver.

(e) The board shall cause the petition to be reviewed upon receipt, and placed before the board at a duly noticed public meeting. Based upon such review, the board shall:

(1) Require service of the petition upon persons who would be substantially affected by the proposed relief, if any; and advise them of their right to reply to the petition in accordance with these rules.

(2) Require the petitioner to provide further information or participate in additional proceedings as the board deems warranted after reviewing the petition and any replies received.

(f) In the event the board itself finds by majority vote that there is good cause to waive a substantive rule; it shall provide notice and an opportunity to be heard on the issue to affected parties and the public. No waiver shall be issued in advance of such hearing and then only upon a public finding that good cause exists to waive the substantive rule.

PART Mtec 204 INVESTIGATIONS

Mtec 204.01 Investigation.

(a) The board shall make inquiry of a registrant whenever it receives information alleging violation of any statute, ethical standard, or rule of professional conduct administered by the board.

(b) When the board receives information indicating that a medical technician has engaged in, or is likely to engage in, professional misconduct which poses an immediate danger to life or health, the board shall issue an order pursuant to RSA 328-I:10, IV, which sets forth the alleged misconduct and immediately suspends the certificate of registration for up to 120 days pending completion of a disciplinary proceeding on the specified issues.

(c) Investigations may gather information through various techniques, including but not limited to:

- (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 the registrant, potential witnesses and interested persons.

Mtec 204.02 Informal Resolution.

(a) The board shall dismiss a complaint when the undisputed allegations do not warrant disciplinary action against a registrant.

(b) With the consent of a registrant, the board may settle a complaint informally by taking confidential nondisciplinary action pursuant to RSA 328-I:10, II.

(c) The board may approve an offer of settlement received from a registrant without the consent of the complainant, provided that the complainant is given an opportunity to comment upon the terms of the proposed settlement.

Mtec 204.03 Formal Investigation.

(a) A formal investigation shall be commenced when the board determines that the facts in its possession are sufficient, if shown to be true, could lead to the imposition of disciplinary action pursuant to RSA 328-I:10.

(b) The board shall designate a person to serve as the investigating officer, provided that:

(1) No board member shall be so designated if the selection would constitute a conflict of interest, or create a breach of ethics in the profession represented by the board member.

(c) A formal investigation 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 registrant who is the subject of the investigation;
- (3) The general nature of the conduct being investigated;
- (4) Any statutes or rules, including applicable codes of ethics, alleged to have been violated;
- (5) The time, place and manner in which the investigation is to be conducted, and whether the investigating officer shall provide a preliminary report to the board;
- (6) Any special authority conferred upon the investigating officer, including the authority to issue subpoenas on behalf of the board to obtain information and data to prepare its report of investigation and prepare to prosecute the case;
- (7) The name of the person or persons designated as investigating officer; and
- (8) Any other provision relevant to the issues under investigation.

PART Mtec 205 ADJUDICATIVE PROCEEDINGS

Mtec 205.01 Hearings.

(a) The board shall commence an adjudicative proceeding to resolve any disciplinary or licensure allegation arising under this chapter which has not been resolved in accordance with Mtec 204.02.

(b) Once a disciplinary proceeding has been commenced, no party shall communicate with a participating member of the board concerning the merits of the case except upon notice to all parties and in accordance with the rules of this chapter.

Mtec 205.02 Presiding Officer, Appointment: Authority.

(a) The board shall appoint a person to preside at the hearing who shall be:

- (1) A member of the board; or

(2) A nonmember retained to serve as the hearing officer, who shall be charged with conducting the hearing and preparing a written decision with proposed recommendations for the final disposition of the case and any pending motions.

(b) The presiding officer shall as necessary:

- (1) Regulate and control the course of a hearing;
- (2) Facilitate an informal resolution of the subject matter of the hearing;
- (3) Administer oaths and affirmations;
- (4) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;
- (5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;
- (6) Recognize any individual who may seek to question any person who testifies;
- (7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, III (f); and
- (8) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner.

Mtec 205.03 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:

- (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 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, or mere acquaintance with a party or any witness shall not constitute good cause for withdrawal.

(d) If a member of the board withdraws in accordance with this section, the member shall also recuse himself or herself from any further connection with the investigation or disciplinary action against the registrant.

Mtec 205.04 Roles of Board Staff and Complainants.

(a) Unless called as witnesses, board staff shall have no role in any enforcement or disciplinary hearing.

(b) 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 registrant shall have no role in any enforcement or disciplinary hearing regarding the registrant.

Mtec 205.05 Filing and Format of Documents.

(a) All correspondence, pleadings, or communications intended for the board shall be:

- (1) Addressed to the board's office in care of its license clerk;
 - (2) Considered filed when it is actually received at the board's office in Concord;
 - (3) Include the title and docket number of the proceeding, if known;
 - (4) Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size;
- and

(b) Original petitions, motions, exhibits, memoranda or other documents filed in connection with a request for board action shall be filed together with 6 copies unless the board directs otherwise.

(c) Notwithstanding (b) above, only a single copy shall be filed of:

- (1) Transmittal letters;
- (2) Requests for public information;
- (3) Certificate of registration applications; and
- (4) A communication of alleged misconduct against a registrant.

(d) Documents in an adjudicative proceeding shall not be filed electronically or by facsimile transmission unless that method of filing has specifically been permitted by order of the board in that proceeding.

Mtec 205.06 Signature on a Document.

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

- (1) The signer has read the document;
- (2) The signer is authorized to file it;
- (3) To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and
- (4) The document has not been filed for purposes of delay or harassment.

Mtec 205.07 Computation of Time.

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

(b) Pursuant to RSA 21:35,

(1). Except where specifically stated to the contrary, when a period or limit of time is to be reckoned from a day or date, that day or date shall be excluded from and the day on which an act should occur shall be included in the computation of the period or limit of time.

(2). If a specified date falls on a Saturday, Sunday, or legal holiday, the document or fee shall be deemed timely filed if it is received by the next business day.

(c) Communications from the board to a party sent by United States mail shall be considered dated as of the date of the outgoing postmark if different than the date appearing on the document itself.

(d) Communications to the board shall be considered received on the received date so marked by the office.

Mtec 205.08 Commencement of Proceedings and Notice.

(a) The board shall commence an adjudicative proceeding by issuing a notice of hearing to the parties at least 30 days before the initial prehearing conference or hearing date.

(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 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; and
- (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; and
 - (b) Initial orders regarding the production or exchange of documents.

Mtec 205.09 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 filed in writing with the board, and a copy provided to all other parties to the proceeding.

Mtec 205.10 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:

- (1) The petitioner shows a substantial interest in the proceeding and qualifies for intervention in accordance with RSA 541-A: 32;
- (2) The petitioner requested intervention in accordance with these rules; and
- (3) Granting intervention will not prejudice a party or unduly delay the board's proceedings.

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

Mtec 205. 11 Consolidation or Severance.

(a) Two or more adjudicative proceedings may be consolidated for hearing, if:

- (1) The proceedings involve the same registrant, or substantially related issues;
- (2) The board receives a motion from one or more parties seeking such consolidation; and
- (3) The board determines, after notice to the parties and an opportunity for hearing, that fairness, accuracy and efficiency would be served by such an action.

(b) The board may sever one or more issues from an adjudicative proceeding if:

- (1) The board receives a motion from one or more parties seeking such severance; and
- (2) The board determines, after notice to the parties and an opportunity for hearing, that fairness, accuracy and efficiency would be served by such an action.

Mtec 205.12 Prehearing Conference.

(a) The presiding officer, upon motion from a party, or upon his or her own initiative, shall require the parties to attend an initial prehearing conference when such a conference would assist in planning for the prompt and efficient disposition of the proceeding.

(b) Matters to be addressed at the initial prehearing conference shall include, but not be limited to:

- (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 the parties agree that 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 consist of the submission of affidavits and memoranda to the board.

(d) If the parties agree that no facts material to the subject matter of the proceeding are in dispute, the proceeding shall be limited to the submission of memoranda to the board which argue the conclusions the parties wish the board to draw from the undisputed facts.

(e) If the parties do not agree to one of the methods of proceeding in (a) above, the matter shall:

- (1) Proceed to an adjudicatory hearing before the full board in accordance with the prehearing conference report and order; or

(2) Proceed to hearing before a single hearing officer in accordance with Mtec 207.05.

(f) At the conclusion of the prehearing conference, a written order shall be prepared setting forth the resolution of the issues noted in (b) above and the times set for further proceedings in the matter.

Mtec 205.13 Record of the Hearings.

(a) The board shall record all hearings by tape recording or other method that will provide a verbatim record of the proceedings.

(b) A stenographic recording of the hearing shall be taken and preserved in all hearings involving:

(1) The issuance, renewal, or other status of a regular, emergency or temporary certificate of registration to practice as a medical technician; or

(2) Disciplinary action upon a registrant.

(c) If any person requests a transcript of the recording of a hearing, the board shall:

(1) Cause an estimate of the cost to transcribe the recording to be prepared; and provided to the person requesting the transcript.

(2) Upon receipt of payment for the cost of the transcription, authorize preparation of the transcript and transmittal of the document to the board and a copy to the person making the request.

Mtec 205.14 Delivery of Documents.

(a) All documents filed by any party in connection with an adjudicative proceeding shall be delivered to all other parties to the proceeding 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.

(b) When a party's representative has filed an appearance, delivery shall be to the representative.

(c) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the board in a proceeding shall be accompanied by a certificate, signed by the person

making delivery, attesting to the method of delivery, date of delivery, and the parties to whom delivery was made.

Mtec 205.15 Motions and Objections.

(a) Motions shall be in written form, and filed with the presiding officer unless made in response to a matter asserted for the first time at a hearing, or 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 required by Mtec 205.04.

(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 required by Mtec 205.04.

(d) Objections to motions shall be filed within 30 days after the filing of the motion.

(e) Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion, but shall not in and of itself constitute grounds for granting the motion.

(f) The presiding officer shall rule upon a motion only after the time for objection has passed, and after full consideration of all objections received and other factors relevant to the motion.

Mtec 205.16 Postponement Requests and Failure to Attend Hearing

(a) Any party or intervener 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.

(e) 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.

(f) If any party to whom notice has been given in accordance with Mtec 205.08 fails to attend a hearing, the presiding officer shall declare that party to be in default, and:

(1) If the party has the burden of proof, the matter shall be dismissed; or

(2) If a party does not have the burden of proof, the testimony and evidence of any other parties or intervenors shall be received and the matter shall proceed to a decision.

(g) A party may move to strike the default within 30 days of receipt of an order imposing the default if there is just cause shown for failure to attend. Just cause shall include:

(1) Illness of the party that prevented attendance;

(2) Accident involving the party that prevented attendance; or

(3) Some other circumstance beyond the control of the party that does not involve neglect or inattention to the proceeding.

Mtec 205.17 Production of Information.

(a) The board shall provide for the disclosure to the parties 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) Each party shall attempt in good faith to make complete and timely response to requests for the voluntary production of information or documents relevant to the hearing.

(c) Any party may by motion request the presiding officer to order the parties to comply with information requests. Such motion shall be filed at least 30 days prior to the date scheduled for hearing, or as soon as possible after receiving the notice of hearing if the hearing will be held less than 30 days in the future.

(d) The motion shall:

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

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

(e) The presiding officer shall grant the motion if the parties cannot voluntarily resolve the request for information, and the moving party has demonstrated that the information is necessary for a full and fair presentation of the evidence at a hearing.

(f) At least 5 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.

Mtec 205.18 Evidence.

(a) Receipt of evidence and official notice of facts, the record of other proceedings before the board, generally recognized scientific or technical facts, or codes or standards adopted by the board shall be governed by the provisions of RSA 541-A:33.

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

Mtec 205.19 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.

Mtec 205.20 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.

Mtec 205.21 Proposed Findings of Fact and Conclusions of Law.

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

(b) The presiding officer may direct any party to submit proposed findings of fact or conclusions of 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.

(d) Oral argument to the full board, other than a brief opening and closing statement, shall be permitted only when requested in a written motion, which demonstrates a substantial need for such a procedure.

(e) Written argument in the form of legal memoranda shall be permitted subject to such filing schedules as the board shall direct by written order, or orally during the conduct of the hearing.

(f) The board may schedule supplemental argument or hearing, or otherwise reopen the record at any time prior to the issuance of a final order in a proceeding.

Mtec 205.22 Standards for the Selection of Disciplinary Sanctions.

(a) The purpose of disciplinary sanction shall be to:

- (1) Protect public health and safety, both as to the complainant and the public; and
- (2) Prevent future misconduct by the medical technician through correction of educational or other deficiencies which led to the finding of misconduct;

(b) In addition to the conduct described in RSA 328-I:10, V, the board shall consider the following conduct as aggravating factors:

- (1) The misconduct caused, or had the potential to cause, physical or mental harm to the client, patient or another person;
 - (2) The misconduct repeated earlier misconduct done by the medical technician, as determined by:
 - a. An earlier hearing;
 - b. An earlier settlement agreement predicated on the same misconduct by the medical technician; or
 - c. An admission by the medical technician; or
 - (3) The misconduct was intentional, rather than the result of negligence or inadvertence.
- (c) In considering which sanction or combination of sanctions to impose, the board shall consider the following conduct as mitigating factors:
- (1) The misconduct did not cause, or have the potential to cause, physical or mental harm to the client, patient or another person;
 - (2) The misconduct is the first misconduct of this type by the registrant reported to board;
 - (3) The misconduct was the result of mistake, lack of due care, or inadvertence;
 - (4) The registrant either self-reported the misconduct, or cooperated fully in the investigation of a complaint made by another person;
 - (5) The registrant has proposed a corrective action plan which will fully meet the purposes of disciplinary sanction noted above.
- (d) Based upon its findings, the board shall take disciplinary action by imposing one or more of the sanctions permitted by RSA 328-I:10.

Mtec 205.23 Decisions.

- (a) If the disposition of the matter depends upon the credibility of any witness, no board member shall participate in the deliberation of the decision unless he or she personally was in attendance for all of the witness's testimony in the case, in order to effectively assess the issue of credibility.

(b) Notwithstanding (a) above, if the record provides a reasonable basis for evaluating the testimony of all witnesses in the matter, a board member may participate in the deliberation of the decision even if not personally present to hear the testimony of the witness.

(c) When the board has directed a hearings officer to receive evidence and enter a proposed decision:

(1) There shall be no communications between the hearings officer and the board members concerning the merits of the case;

(2) The board members shall not participate in the questioning of witnesses at the hearing;

(3) Following the close of the hearing, the proposed decision of the hearings officer shall be served upon the parties and the board; and

(4) Following the receipt of the proposed decision of the hearings officer, all written pleadings, and the receipt of any oral argument, the board shall deliberate to a decision. The board decision shall:

a. Adopt the proposed decision without change;

b. Modify the proposed decision by majority vote; or

c. Refuse to approve or modify the proposed decision, and determine what additional proceedings are required to reach a final decision.

(d) The parties may file exceptions and supporting memoranda of law for review by the board within 30 days from the date the proposed decision was served.

(e) Each party may file one additional written reply pleading within 15 days following service of the original exception or memoranda.

(f) If a party wishes to present oral argument to the board regarding the proposed decision, the party shall file a separate motion for oral argument within the time allowed for filing exceptions or replies to exceptions.

(g) The board shall keep a final decision in its records for at least 5 years following its dates of issuance.

(h) Orders of the board shall take effect on the date they are served upon the parties.

Mtec 205.24 Motion for Rehearing, Reconsideration or Clarification.

(a) A motion for rehearing, reconsideration or clarification shall be filed within 30 days after service of a final adjudicative order.

(b) Any member of the board who participated in the decision may seek rehearing, reconsideration or clarification of a final adjudicative order by motion presented to the remaining board members within thirty days after entry of a final adjudicative order.

(c) The motion shall state with specificity those points of law or fact that:

(1) The board is alleged to have overlooked or misapprehended,

(2) How the order is alleged to be unclear or internally inconsistent,

(3) Shows how the order is alleged to be unlawful, unjust, or illegal in respect to jurisdiction, authority or observance of the law; or

(4) Shows how the order is alleged to be an abuse of discretion, or is arbitrary, unreasonable or capricious.

(d) Each motion for rehearing, reconsideration, or clarification shall be served on all parties to the proceeding in accordance with these rules.

(e) No answer to a motion for rehearing, reconsideration or clarification shall be required, but any answer or objection filed by another party shall be delivered to the board within 30 days following notification that the motion to reconsider has been filed with the board.

(e) The board shall deny the motion unless the board finds that a relevant rule, point of law or fact has been overlooked or misapprehended, or that the decision is unlawful, unjust, or unreasonable, but may amend its order to clarify any items alleged to be unclear or inconsistent.

Mtec 205.25 Motion for Rehearing or Reconsideration Granted.

(a) If the motion of any party or board member for rehearing or reconsideration is granted, the process for commencement of and adjudicative proceeding shall begin again, with notice to all affected parties.

(b) The scope of any rehearing or reconsideration including the issues to be heard and the introduction of the previous record into evidence shall be determined by the presiding officer at a new prehearing conference.

Mtec 205.26 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 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.

PART Mtec 206 RULEMAKING

Mtec 206.01 Procedure For Adopting Rules.

(a) The board shall seek to adopt any rule, or an amendment or repeal thereof, by filing a rulemaking proceeding in accordance with RSA 541-A.

Mtec 206.02 Petition for Rulemaking.

(a) Any person may request the board to adopt, amend, or repeal a rule by filing a petition with the board which contains the following information:

- (1) A statement of the petitioner's interest in the proposed rulemaking action;
- (2) The text of the proposed new rule;
- (3) The text of a proposed amendment to an existing rule;
- (4) The text of any existing rule which the petitioner wishes to have repealed;
- (5) A statement of the particular results intended by the petitioner to flow from the proposed rulemaking proceeding;
- (6) Any data or legal argument the petitioner believes would be useful to the board in evaluating whether the proposed rulemaking proceeding should be commenced.

Mtec 206.03 Disposition of Petition for Rulemaking.

(a) Within 30 days of the submission of a petition, the board shall:

- (1) Deny the petition by written order, stating its reasons for the denial, or
- (2) Initiate rulemaking proceedings, pursuant to RSA 541-A:4.

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

- (1) The petition for rulemaking seeks a change that is not 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.

PUBLIC COMMENT HEARINGS

Mtec 207.01 Public Access and Participation.

- (a) Public comment hearings shall be open to the public, and members of the public shall be entitled to provide information to the board, subject to the limitations of these rules.
- (b) Written comments may be submitted in lieu of or in addition to oral testimony.
- (c) Notice of the hearing shall be provided to the public in accordance with the requirements of RSA 541-A and RSA 91-A.

Mtec 207.02 Conduct of Public Comment Hearings.

- (a) A public comment hearing shall be attended by a quorum of the board.
- (b) A public comment hearing 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) For the purpose of creating the minutes of the meeting, each person who wishes to provide information to the board shall be asked to write on the speaker's list:
 - a. Their full name and address; and

b. The name and address of organizations, entities or other persons whom they represent, if any.

(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.

(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.

Mtec 207.03 Limitations on Public Participation.

(a) The person presiding at a public comment hearing shall refuse to recognize, or revoke the recognition of any person who:

(1) Speaks or acts in an abusive or disruptive manner to those in attendance;

(2) Fails to keep comments relevant to the subject matter of the hearing; or

(3) Needlessly restates information already provided to the board in a manner which results in the waste of time, or a likelihood that others who wish to speak will be denied an opportunity to present information to the board.

(b) The person presiding at a public comment hearing shall limit oral presentations on behalf of an organization or entity to no more than 3 persons, provided that:

(1) 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; and

(2) All those representing such organization or entity shall be entitled to file written comments of any length with the board within 10 days of the close of the hearing.

PART Mtec 208 DECLARATORY RULINGS

Mtec 208.01 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 factual situation.

(b) The request for a ruling shall be made by filing a petition with the board, which contains:

- (1) The name and address of the petitioner.
- (2) A concise statement of the facts which the petitioner believes requires a ruling from the board.
- (3) A proposed ruling which the petitioner seeks the board to adopt.
- (4) The claimed statutory and factual basis for the requested ruling, set forth in separately numbered paragraphs, including any supporting factual affidavits or memoranda of law.

Mtec 208.02 Action on Petitions for Declaratory Rulings.

(a) The board shall issue a decision on the request for a declaratory ruling, in writing, within 90 days of receipt of a petition.

(b) A copy of each written decision on a request for 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 Mtec 209 EXPLANATION OF ADOPTED RULES

Mtec 209 .01 Requests for Explanation of Adopted Rules. Pursuant to RSA 541-A:11, VII, 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.

Mtec 209.02 Contents of Explanation. The board shall, within 90 days of receiving a request in accordance with Mtec 209.01, 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.

Mtec 210 Information Sharing.

(a) Pursuant to RSA 328-I:11, I, information gathered during a board investigation shall not be subject to disclosure under the public disclosure provisions of RSA 91-A, unless:

- (1) The information becomes the subject of a public disciplinary hearing;
- (2) The information is requested by a law enforcement agency in this state, another state or province;
- (3) The information is requested by a federal law enforcement agency or the Office of Inspector General, United States Department of Health and Human Services;
- (4) Disclosure is permitted by a specific New Hampshire statutory provision; or
- (5) Disclosure, partial disclosure, or disclosure in accordance with a protective order is ordered by a court of competent jurisdiction.

(b) Pursuant to RSA 328-I:3, VII, the contents of the database of registered medical technicians shall be shared with:

- (1) Other licensing boards or advisory committees within this state;
- (2) Licensing boards or advisory committees outside of this state with jurisdiction over medical technicians;
- (3) The Office of Inspector General, United States Department of Health and Human Services; or
- (4) Law enforcement entities in this state, other states, or of the United States.

APPENDIX

Rule	Statute Implemented
201.01-205.25	RSA 328-I:4, 328-I:11; RSA 541-A:16, I(b)(2)
206.01- 206.03	RSA 541-A:16, I(c)
207.01-207.03	RSA 541-A:16, I(b)(3)
208.01-208.02	RSA 541-A:16(d)
209.01-209.02	RSA 541-A:11, VII
210	RSA 328-I:3; 328-I:11, I; RSA 91-A