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FP 2023-276, Plc 300 amendments Licensure and Discipline of Regulated Professions
Summary of Comments on Initial Proposal with OPLC Responses
February 22, 2024

Background

The Executive Director is proposing to readopt various sections and parts of Plc 300 with amendments to reflect the recodification of the statutes that authorize the OPLC and confer authority on the Executive Director, and to readopt with amendments and renumber Plc 213 from Chapter Plc 200, “Practice and Procedure”, to incorporate it into Chapter Plc 300, as was previously recommended by the Joint Legislative Committee on Administrative Rules. The proposed amendments are explained in more detail in the rulemaking notice published in the *NH Rulemaking Register* on November 30, 2023.

No board members, licensees, or members of the public attended the public hearing held on January 10, 2024, and no written comments were received. Draft comments were received from OLS/Administrative Rules; those comments and responses thereto follow the description of changes made on the OPLC’s own initiative.

The OPLC made the following revisions on its own initiative:

Plc 302.03 (definition of “application-related fees”): in (c), inserted “, or both,” after “specified in Plc 1002” in last line.

Plc 302.06 (definition of “compliance bureau”): replaced “compliance bureau” with “chief of inspectors” to accommodate restructuring of inspector resources within the OPLC.

Plc 302.28 (definition of “substantially similar requirements”): changed Plc 313.11 to Plc 313.13 to reflect changes being made in the readoption of Plc 313, which has been initiated.

Plc 304.01 (applying for initial license): in (1), changed the date of the form.

Plc 304.03 (required information): in (a)(10) [info for workforce analysis], deleted “at birth” from clause a.; replaced period with semi-colon at end of e.5. and f.6.

Plc 304.08 (review of complete applications; inspections): revised (a)(1), (c)(1), and (c)(2) based on replacement of “compliance bureau” with “chief of inspectors”.

Plc 307.06 (inactive status for certain military): in (b), changed the date of the form.

Plc 307.07 (reactivation): in (b), changed the date of the form; in (c), added an “s” to “fee” in “application-related fee” to conform to defined term.

Plc 308.05 (renewal application): in (b)(1), changed the date of the form; in (b)(4), added an “s” to “fee” in “application-related fee” to conform to defined term.

Plc 308.09 (review of renewal applications): in (b)(2), added an “s” to “fee” in “application-related fee” in first and second lines to conform to defined term.

Plc 310.05 (disciplinary proceedings): replaced “more likely than not” standard with “reasonable basis” standard to be consistent with Plc 200.

Plc 311.07 (misconduct): revised generally and to include reference to statute, which is proposed to be amended to identify misconduct (ref. HB 518).

Plc 311.10 (determining sanctions): in (a)(3), corrected the cross-reference.

Plc 311.12 (administrative fines): in (b), corrected the cross-reference.

Plc 312.04 (reinstatement of suspended licenses): in (b)(1), changed “an” to “any” in the last line; in (b)(2)a., added an “s” to “fee” in “application-related fee” in second line to conform to defined term.

OLS Comments

Plc 301.01 re: purpose

Comment 1: [re: (e), ethical and professional standards] “**Unclear**. These would be in addition to applicable statutes and board rules?” (Bold in original.)

Response 1: This is the language in the existing rules. The rules clearly establish basic expectations for professional behavior and reference any ethical standards adopted by the boards. However, the OPLC has added “to complement and supplement any such standards established in applicable law” so there will be no question about what is intended.

Comment 2: [re: (f)] “*Edit/Unclear. Is the intent to keep this as 2023? If so, disregard the comment.*”

Response 2: The date is intended to be 2023. The month and day have been inserted so it will be clearer for readers.

Plc 302.03 re: definition of “application-related fees”

Comment: “**Unclear**. There is no processing fee listed; only a licensing fee. Will the fees in Plc 1002 be split out so that applicants will know what they are paying for: a processing and a licensing fee? In places the rules seem to use 3 different terms for fees interchangeably. That is going to be confusing for licensees. See also the forms.” (Bold and underline in original.)

Response: Plc 1002 establishes all application-related fees, including an “application processing and licensing fee” for **every** profession, along with an “inspection fee” for initial licensure for **some** professions and an “examination fee” for initial licensure for **some** professions. The term “application-related fee” is defined so that the rules do not have to say “application processing and licensing fee and inspection fee, if applicable, and examination fee, if applicable” in each place where the fees are referenced. The defined term “application-related fees” **encompasses** application processing and licensing fees, inspection fees, and examination fees; **the term does not denote a different fee or fees**. OPLC searched the rules to find any place where something other than the defined term is used, and made minor revisions to Plc 304.02(a), Plc 307.07(a), (e) intro, & (e)(1) intro, 308.01(b)(2), and Plc 308.10(e)(3) to alleviate any potential confusion.

Plc 302.25 re: definition of “regulated profession”

Comment: “**Unclear/Edit**. Isn’t the OPLC working with the boards/applying the applicable board’s requirements to make sure the person is qualified prior to issuing a license? If so, shouldn’t this be the boards and the OPLC?” (Bold in original.)

Response: RSA 310:8, I makes it clear that licenses are issued by the OPLC “to applicants meeting the eligibility requirements as defined in statute, and rules adopted by each individual board”, not by “the OPLC and the boards”. The phrase “based on criteria established in applicable law, including rules adopted by the applicable board,” has been inserted to more completely reflect the statute.

Plc 302.28 re: definition of “substantially similar requirements”

Plc 304.01 intro re: applying for initial licensure

Comment: “**Unclear/Legis. Intent**. Many of these sections are reserved. It is unknown when the agency plans to enter into rulemaking for them. Not having any criteria in the rules means that there is a possibility of oral rulemaking in violation of RSA 541-A, and/or inconsistent application by the agency when granting reciprocity. Certainly isn’t clear why [sic] “substantially similar” is going to mean for the various professions.” (Bold in original.)

Response: The Rulemaking Notice for the readoption with amendments of Plc 313 filed on January 23, 2024 and published on February 1, 2024. The public hearing is scheduled for March 7, 2024. The OPLC anticipates filing the FP for JLCAR review at the April meeting. The Plc 313 interim rules and the existing and proposed rules in Plc 301-308 that reference them are clear that licensure by endorsement is available only if criteria are established in Plc 313, which means that if no criteria are established in Plc 313, then no license by endorsement will be issued.

Plc 304.01(a) re: applying for initial licensure

Comment: [The language in (a)(1) re: filing an application that contains the information specified is] *“Unclear. The application doesn’t contain information. The applicant is required by the rules to complete the application with their required information and to submit it. Edit. “2023, as required in” (Many board rules over the past year have used this indirect language and they have been amended to accurately reflect what is occurring.)”* (**Bold** in original.)

Response: The comment appears to be conflating the application form with the completed application, which is what the rule requires to be submitted (a “completed [application] that contains the information specified” (emphasis added)). However, the word “contains” has been replaced with “provides”, so that the completed application provides the information specified in Plc 304.03. The application form itself does not establish what information must be provided, and the rule is not requiring the form to do anything; the required information is specified in Plc 304.03.

Plc 304.02 re: facilitated licensing

Comment: [relative to use of “substantially similar requirements” in (a) and (b)] *“See the previous legis. intent comment.”*

Response: See previous response to comment at Plc 302.28/Plc 304.01 intro.

Plc 304.03 intro re: information required for initial license application

Comment: *“Unclear. Isn't what is being required is the completion of the “Universal Application for Initial License” as required by Plc 304.01(a)(1)? Why is that not being directly stated here? Writing it this way can be confusing to applicants. Consider: “provide the following on the application required by Plc 304.01(a)” OR “The applicant shall, on the form required in Plc 304.01(a), identify the profession for which the application is being filed, indicate whether the applicant is an individual or entity and provide the following:”* (**Bold** in original.)

Response: This is the language in the existing rules, and there is no indication that any confusion exists because of it. However, the language has been modified by inserting “On the application form identified in Plc 304.01(a)(1),” at the beginning of the intro.

Plc 304.03(d) re: applying for endorsement under Plc 304 instead of Plc 313

Comment: *“See the legis. intent comment. It is unclear how the applicant can do this if there are no rules for the person to refer to.”* (**Bold** in original.)

Response: See response to legislative intent comment. The criteria for substantially similar are being established in Plc 313.

Plc 304.08(c)(2) re: scheduling the inspection

Comment: [the language “make all reasonable efforts” is] *“Unclear. What does this subjective term mean in this context?”* (**Bold** in original.)

Response: The term is being used with its standard meaning. The Merriam Webster dictionary lists “being in accordance with reason” and “not extreme or excessive” as the first two definitions (<https://www.merriam-webster.com/dictionary/reasonable>); the Legal Information Institute at Cornell Law School (<https://www.law.cornell.edu/wex/reasonable>) defines it as “just, rational, appropriate, ordinary, or usual in the circumstances.”

Plc 304.08(d) re: applicant preventing inspection from being done

Comment: “**Unclear/Edit**. What does this [“or other conduct”] mean? This is very broad.” (Bold in original.)

Response: It means any conduct by the applicant that interferes with the inspector’s ability to complete the inspection. This language has been added to the rule.

Plc 304.08(e) re: board review of applications

Comment: “**Unclear**. If the request is sent during a time period in which the board will not meet for months, will the board hold a special meeting? Is there a possibility that an applicant could be approved when they should not have been approved? What if the board's statute requires their approval? Does the licensing bureau have this authority or does it lie with the executive director? Is the licensing bureau making this determination in consultation with the executive director? What will happen if a license has been granted that should not have been granted?” (Bold in original.)

Response: It is anticipated that the vast majority of applications will be processed without needing to initiate this process. In the few cases where board input is deemed to be needed, the request will be sent to the board chair, who will review the application and determine whether the answer is obvious to an individual having a board member’s education and experience or whether a meeting of the entire board is necessary. If a meeting is necessary, one will be scheduled within the relevant time period. To the extent that a practice act contains language requiring board approval before a license can be issued, that language has been superseded by RSA 310. The OPLC notes that there is always a possibility that a license will be issued when it should not have been, since there is always a possibility that an applicant will submit false or misleading information. The standard procedures developed by the Executive Director and implemented by the OPLC Licensing Bureau, which are a matter of internal policy and therefore not subject to rulemaking, are designed to minimize the possibility of erroneously issuing a license.

Plc 306.03 re: temporary license for active duty military and military spouses

Comment: “Legis. Intent. Please submit the form for OLS review.”

Response: Form is being filed with the FP.

Plc 307.01(a) re: applicability

Comment 1: “**Unclear/Edit**. If the intent is to keep the 2023 effective date, please disregard this unclear.”

Response 1: The 2023 effective date is intended to be retained. The month and date have been added so the rule is clearer for readers.

Comment 2: [the term “provisional” is] “**Edit/Unclear**. Is temporary meant?”

Response 2: No, provisional is intended. Existing Plc 313.07(c) says “If the information submitted by the applicant shows that the applicant qualifies for a license by endorsement but applicable law requires a criminal background check and the OPLC has not yet received the results from the NHDOS, the executive director shall issue a provisional license that allows the applicant to practice in New Hampshire pending the results of the criminal background check.” (Emphasis added.) The term is carried forward in the proposed readoption with amendments of Ple 313.

Plc 307.06 re: inactive status

Comment: [re: (b)(3), last 4 digits of applicant’s SSN] “**Legis. Intent**. Need specific authority to require even the last four digits of the SSN. May need to get a legislative fix. (Neither the form or the rule text ask for a DOB to confirm identity.)” (Bold in original.)

Response: RSA 541-A:22, III(h) prohibits agencies from “Requir[ing] a submission of a social security number unless mandated by state or federal law.” The OPLC is authorized by both state law, RSA 161-B:11, VI-a, and federal law, 42 U.S.C. 666(a)(13), to require applicants to submit social security numbers (SSN). It is not reasonable to suggest that separate, additional authority is needed in order to

require the submission of only a portion of an SSN that is otherwise already on file with the requesting agency.

Information to confirm identity is necessary to make it harder for a licensee to be swatted, or harassed by the filing of a request for inactive status without the licensee's knowledge or consent. Dates of birth do not have the same weight when it comes to confirming identity, since they are much more likely to be known --and much less likely to be unique -- than SSNs.

Plc 308.03 re: notification of pending license expiration

Comment: [relative to use of "office"] "*Unclear/Edit. Is OPLC meant?*"

Response: RSA 310:8, IV uses the term "office", so that's what was transcribed into the rules. The word "office" has been replaced with "OPLC" in the rule.

Plc 308.05(b)(1) and Plc 308.06 intro re: information required for renewal applications

Comment: "*Unclear/Edit. It's an application.*" (**Bold** in original.)

Response: The subject of both Plc 308.05(b)(1) and Plc 308.06 intro is "information". (Subparagraph (b)(1) says "The information specified in Plc 308.06 on the "Universal Application for License Renewal", dated November 2023, that is signed and attested to as provided in Plc 308.08;") (Emphasis added.) No change has been made.

Plc 308.06(b)(3) re: confirmation of identity

Comment: "*Legis. Intent. Must have specific authority to require the 4 digits of the SSN. Tax ID in case of an entity. Here and on the form. The Committee has issued preliminary objections for just the last 4 digits. Need a legislative fix in order to require this.*" (**Bold** in original.)

Response: See response at Plc 307.06. The OPLC notes that RSA 541-A:22, III(h) applies to social security numbers specifically, not to tax identification numbers generically. Since it can be presumed that the Legislature understands that entities do not have "social security numbers" and because the language of the statute is clear on its face, there is no reason to believe that it might have been intended to include anything more than what is stated in plain language.

Plc 308.10(e)(3) re: fees for withdrawn or abandoned applications

Comment: "*[U]nclear. The form says that "application processing fee" is nonrefundable. Here it does not specify.*" (**Bold** in original.)

Response: See previous response regarding the term "application-related fees". The language on the form has been adjusted.

Plc 308.11 re: referring applications for technical/professional expertise of boards

Comment 1: [(a) is] "*Unclear. Who makes this decision and based on what - just the criteria in the rule?*" (**Bold** in original.)

Response 1: See previous response at Plc 304.08(e).

Comment 2: [(b) is] "*Unclear. What will happen if the bureau issues a license when it shouldn't have? or if the board disagrees with the decision made?*" (**Bold** in original.)

Response 2: See previous response at Plc 304.08(e).

Comment 3: [(g)(3) is] "*Unclear. Which fee? The application says: the application processing fee.*" (**Bold** in original.)

Response 3: The rule and the form have been clarified.

Plc 309.01 re: purpose and applicability and Plc 310.01 re: applicability

Comment: [use of "provisional" in 309.01(b) and "temporary" in 310.01 intro is] "*Unclear/Edit. is temporary the same thing as provisional in the rule? If so, please use one term.*"

Response: Temporary licenses and provisional licenses are not the same. A temporary license can be issued under the procedures in Plc 305 or Plc 306; a provisional license is only issued under Plc 313 pending the receipt of the results of a criminal background check, where one is required by applicable law. Plc 310.01 has been modified to include provisional licenses.

Plc 311.03 re: additional grounds for denying initial license application

Comment: [re: “In addition to such grounds for denying an initial license application as are identified in applicable law, such as not meeting the specified requirements”] *“Edit/Unclear. This is very broad. Why can't the application's requirements be cited here? and generic statement "such as not meeting the applicable statutory requirements for the profession"?”*

Response: The rule is necessarily broad, as it does not -- and should not -- operate to exclude any basis for denying an application for any of the approximately 250 different licenses issued by the OPLC. Further, the application form does not establish requirements for licensure, so the “application’s requirements” cannot be cited, and the rule already includes a “generic statement” (*i.e.*, “such as not meeting the specified requirements”). However, “for the profession” has been inserted following “specified requirements” in case that makes it clearer for some people.

Plc 311.04 re: additional grounds for suspension, revocation, or refusal to renew

Comment: *“Edit/Unclear. Again very broad. Since this is renewals why not cite to the renewal application requirements? and include a statement that it includes the applicable statutory requirements”*

Response: See response at Plc 311.03. The same language has been inserted.

Plc 311.12 re: administrative fines

Comment 1: *“Unclear. There are still some boards with administrative fine authority. What is the fine amounts or the cap is different in that board's statute?”*

Response 1: The OPLC believes that RSA 310:12, I supersedes any separate authority previously established in a practice act. However, if a board attempted to use prior authority in a practice act to impose a higher amount, the licensee could challenge the result based on RSA 310:12. Similarly, if a practice act sets a lower maximum fine and a board acts under RSA 310:12 and imposes a higher amount, the licensee could challenge the result asserting the practice act controls. The courts would ultimately determine the result.

Comment 2: *“Unclear. This is Plc 311.12. How can they be determining that a fine is needed based on this rule? Isn't it based on the board's rules or the board's statute?”* (**Bold** in original.)

Response 2: The citation in paragraph (b) has been corrected.

Edits made: Plc 304.01(a); Plc 310.03