



STATE OF NEW HAMPSHIRE  
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION  
ADVISORY BOARD OF RECREATIONAL THERAPISTS

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**FP 2023-67, Plc 1400 Recreational Therapists**  
**Summary of Comments on Initial Proposal with OPLC Responses**  
April 27, 2023

Background

Laws of 2022, 72:4-9, eff. 7-19-22, amended RSA 326-J to convert the previous Recreational Therapy Governing Board to an advisory board and transfer the Board's authority to the Executive Director of the Office of Professional Licensing and Certification (OPLC), in consultation with the advisory board. The Executive Director adopted Interim rules to implement RSA 326-J effective December 30, 2022. The Executive Director is now proposing to readopt the interim rules with amendments as regular rules. Details of the proposed amendments are in the Rulemaking Notice published in the *NH Rulemaking Register* on March 16, 2023.

No one from the public attended the public hearing held on April 13, 2023, and no written comments were received. Draft comments were received from OLS/Administrative Rules; those comments and responses thereto are below.

The OPLC made the following revisions on its own initiative:

Plc 1400: throughout the rules, corrected cross-references and made many changes to incorporate provisions of Plc 300 and delete duplicate provisions from Plc 1400. Plc 300 has been adopted to be effective May 1, 2023; Plc 1400 will have an effective date after May 1.

Plc 1401.03: in (b), changed "received" to "receive" (also noted as an edit by OLS).

Plc 1402.05: changed the capital letters to lower case at the end of the definition.

Plc 1402.14 and .15 (new): added definitions of "military spouse" and "on active military duty" to better align with Plc 300, and renumbered subsequent sections.

Plc 1403.04: in (a), added information on how the retention schedule can be accessed.

Plc ~~1404.0807~~: in (b)(3), changed "reiterated" to "restated".

Plc ~~1404.0908~~: in (b)(1), added a reference to RSA 310-A:1-h, III.

Plc 1404.09 (new): added section re: how to challenge a conditional denial of initial licensure.

Plc 1404.10 (new): added section re: facilitated licensure for active duty military and military spouses.

Plc 1404.11 (new): added section re: temporary licensing; replaces Part Plc 1406.

Plc 1405.02: designated existing language as paragraph (a) and added paragraph (b) to clarify that the rules do not prohibit student interns from being paid (based on public comments made during the April JLCAR regarding Plc 1500).

Plc ~~14071406.01~~: in section heading, replaced "for Notifications" with "to Notify" to be in active voice; combined paragraphs (c) and (d) as (c) intro and (1) and (2), and added new (3) to identify additional occurrences that must be reported.

Plc ~~14071406.05~~: revised to clarify required response to notification of audit.

Plc ~~1408~~1407.01: incorporated renewal requirements in Plc 308.02.

Plc ~~1408.08~~1407.06: deleted “Abandonment” from the section heading; not covered by this section.

Plc ~~1408.09~~1407.07: inserted “or Abandonment” into section heading to identify that it is covered here.

Plc 1407.10 (new): added section re: how to challenge the conditional denial of a license renewal application.

Plc ~~1408.13~~1407.12: incorporated procedures for seeking reinstatement of a suspended license.

Plc ~~1409~~1408.02: replace reference to reprinted code of ethics with reference to incorporation by reference table (also noted by OLS).

Plc ~~1409~~1408.03: in (a), added cross-reference to Plc 307.04.

Plc ~~1410~~1409.03: in (b)(1)b., clarified requirement for time frames; deleted language re: reinstatement after suspension (now covered in 1407.12).

Plc ~~1410~~1409.05: revised to mirror language in other Plc rules.

### **OLS Comments**

**Note:** Many comments were made on language that has been deleted due to cross-referencing to Plc 300; those comments are not listed here.

#### **Plc 1403.04 re: records of predecessor board**

Comment: “**Unclear/Legis. Intent.** the statute is silent on whether this “policy” is exempt from rulemaking or, alternatively, is not considered a rule. Without that clarification, the policy can be construed as a rule, as it prescribes or interprets an agency policy, procedure, or practice requirement that is binding on persons outside the agency, whether members of the general public or personnel in other agencies. Therefore, the policy should be written out as a rule because, pursuant to RSA 541-A:12, III, the OPLC cannot incorporate their own documents by reference. In order to do that, an statutory exemption is needed. Additionally, the excel spreadsheet this link leads to is unclear as written as to how long the records of the former board will be retained for.” (**Bold** in original.)

Response: The rule has been revised to delete the reference to a policy. The Excel® spreadsheet constitutes the retention schedule as approved by the Secretary of State, and identifies the number of years that records are retained as active in column C and the total number of years they are retained in column D. Records are listed by type of document, not by which board the records are associated with. As noted by Executive Director Courtney at the JLCAR hearing on Plc 1500, the retention schedule did get approved by the Secretary of State, and the OPLC posted the format as received from the Secretary of State’s office. While the information could be presented differently, the OPLC did not believe it was within its purview to deviate from the approved format.

#### **Plc 1404.02 re: applying for initial licensure**

Comment 1: [re: (b)(1)] “**Note to Agency:** Please submit a copy of this form to OLS” (**Bold** in original.)

Response 1: The form is being submitted with the final proposal.

Comment 2: [re: (b)(3)] “**Unclear:** The Board’s website on the OPLC website indicates a different fee amount. As the interim rule has been effective since December 30, 2022, this should have been updated in the website if the OPLC is continuing to post fees there.” (**Bold** in original.)

Response 2: A request to update the fee amount was made prior to the interim rules becoming effective; it is not known why the change was not made. Another request has been submitted.

**Plc 1407.07 re: documentation requirements; audits**

Comment: [re: (f)] “**Unclear:** what if the documentation is only available in print form? Below it says that academic coursework that is presented as live programming may be claimed as continued competency credit, so what if the live programming only distributes paper handouts?” (Bold in original.)

Response: “Live programming” is defined in Plc 1402.13 as “educational programming presented by an instructor or by a panel of instructors that is available to attendees at the time it is being originally presented. The term includes a program attended remotely using a computer or other audio-visual telecommunications equipment, provided the attendee has an opportunity during the program to ask questions about the material presented that are answered by the instructor(s).” (Emphasis added.) Thus, even with live programming documents may be distributed electronically. In any event, many documents required to be submitted are in paper form. Applicants scan the documents and submit the scans. Note that paragraphs (e) and (f) have been revised to clarify what is required.

**Plc 1408.01 re: eligibility for license renewal**

Comment: [re: (a)(1)] “**Unclear:** RSA 326-J:6, I(a) states that a person have not violated these or RSA 328-F. RSA 328-F is for the allied health professionals. There is a question of why this RSA 328-F is cited in RSA 326-J, as this board is not part of the allied health professionals governing board.” (Bold in original.)

Response: The OPLC is aware that the reference to RSA 328-F should have been deleted when the statute was amended, and intentionally did not carry the obsolete reference into the rule. However, the statutory language is not within the OPLC’s control.

**Plc 1408.02 re: application for license renewal**

Comment 1: [re: (a)(2)] “**Note to Agency:** Please submit a copy of this form to OLS” (Bold in original.)

Response 1: The form is being submitted with the final proposal.

Comment 2: [re: (d)] “**Unclear:** The Board’s website on the OPLC website indicates a different fee amount. As the interim rule has been effective since December 30, 2022, this should have been updated in the website if the OPLC is continuing to post fees there.” (Bold in original.)

Response 2: See Response 2 to same comment on Plc 1404.02.