

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2021-109

Rule Number Plc 405

1. Agency Name & Address:

**Office of Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301**

2. RSA Authority: RSA 314-A:6, VI
3. Federal Authority: n/a
4. Type of Action:
 Adopt
 Amendment (only if Initial Proposal was filed before 9/27/20.)
 Repeal
 Readoption
 Readoption w/amendment

5. Short Title: **Microblading Certification**

6. Contact person for copies and questions:

Name: **Gretchen Hamel**
Address: **OPLC
7 Eagle Square
Concord, NH 03301**

Title: **Program Specialist IV**
Phone #: **Please contact via email:
Gretchen.Hamel1@opl.nh.gov**

7. The rulemaking notice appeared in the Rulemaking Register on **October 21, 2021**.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2021-109

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5. Short Title: **Microblading Certification**

6. (a) Summary of what the rule says and of any proposed amendments:

Plc 405 was recently adopted as an interim rule to establish criteria and procedures for individuals who are New Hampshire licensed estheticians or cosmetologists to obtain certification to perform microblading and the duties of those who are certified. Plc 405 is scheduled to expire March 1, 2022, so the rules in Plc 405 are proposed to be readopted with amendments as regular rules. Amendments are proposed to:

- Include statements as to the purpose and applicability of the rules;
- Clarify the eligibility requirements for obtaining certification;
- Clarify the training requirements for obtaining certification;
- Clarify what must be submitted to apply for initial or renewal certification;
- Change the expiration date to be coterminous with the requisite esthetician or cosmetologist license;
- Clearly state continuing education requirements for renewal;
- Explicitly require applicants to sign initial and renewal applications;
- Clarify the limitations on the use of a tattoo machine; and
- Include provisions for investigations and disciplinary proceedings as directed by RSA 314-A:6, VI.

6. (b) Brief description of the groups affected:

The rules in Plc 405 affect anyone who is licensed, or becomes licensed, in New Hampshire as an esthetician or cosmetologist who wishes to be certified to perform microblading.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statutes Implemented
Plc 405	RSA 314-A:2, IV [2021, 60:1 effective 7-1-21]

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Gretchen Hamel** Title: **Program Specialist IV**
Address: **OPLC** Phone #: **Please contact via email**
: **7 Eagle Square** Fax#: **(603) 271-0597 (main OPLC)**
Concord, NH 03301 E-mail: **Gretchen.R.Hamel1@oplc.nh.gov**

The rules can be reviewed on-line at
<https://www.oplc.nh.gov/oplc-laws-and-rules>

TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 PM on Friday, December 3, 2021**

Please submit comments to OPLC-Rules@oplc.nh.gov

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, November 17, 2021 at 9:30 AM**

Place: **Licensing Division Large Conference Room, Office of Professional
Licensure & Certification, 7 Eagle Square, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 21:109, dated 10/08/2021

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

The proposed rules when compared to the existing interim rules eliminate reference to fee amounts and directs that fee amounts will be specified in Plc 1002.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules strike the \$110.00 fees contained in Plc 405.03 and Plc 405.04 (being renumbered to Plc 405.04 and Plc 405.05, respectively) and directs the fee will be specified in Plc 1002. The proposed fees associated with cosmetologists and estheticians who choose to perform microblading of eyebrows for their clients as contained in proposed rules Plc 1002 increases the initial and renewal application fees from \$110 for a 2-year certificate to \$155 for a 2-year certificate. The recommended fees are anticipated to generate an amount not to exceed 125% of actual cost providing the service pursuant to RSA 310-A:1-e. Therefore, the proposed rules do not have a cost.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

Businesses that employ licensed estheticians or cosmologists who obtain microblading certification may benefit financially from increased business revenues. Due to the number and variability of factors, no estimate of the increase can be made.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules do not apply to political subdivisions. The rules thus do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures, and so do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment Plc 405, eff. 09-02-21 (doc. #13258, Interim), to read as follows:

PART Plc 405 MICROBLADING CERTIFICATE

Plc 405.01 Purpose, Applicability, and Definitions.

(a) The purpose of this part is to implement RSA 314-A:2, IV as enacted by Laws of 2021, 60:1, effective July 1, 2021.

(b) This part shall apply to any individual who is not a licensed body art tattoo practitioner who wishes to engage in microblading.

(c) The following definitions shall apply in this part:

(1) “Executive director” means the executive director of the office of professional licensure and certification (OPLC) or designee; and

(2) “Microblading” means a cosmetic tattoo of the eyebrow as defined in Plc 401.02(k).

Plc 405.02 Eligibility Requirements. To be eligible for a microblading certificate, an individual shall be a New Hampshire licensed esthetician or cosmetologist who has completed the following:

(a) Training that meets the requirements of Plc 405.03; and

(b) A course in the prevention of disease transmission and blood-borne pathogens.

Plc 405.03 Training Requirements. The training required by Plc 405.02(a) shall:

(a) Be at least 100 hours in length;

(b) Be provided by an instructor who is accredited by one or both of the following organizations:

(1) The American Academy of Micropigmentation (“AAM”); or

(2) The Society of Permanent Cosmetic Professionals (“SPCP”); and

(c) Include at a minimum:

(1) Instruction in the following areas:

a. Microblading fundamentals;

b. Color theory and design;

c. Pigment and ink;

d. Equipment including set-up and break-down procedures;

e. Contraindications of microblading;

f. Stretching the skin;

g. Depth;

h. Infection control;

i. Disinfection procedures; and

j. Aftercare; and

Authority/Note to the JLCAR on fees. RSA 314-A:2 establishes the initial and renewal license fee for those licensed to perform body art at \$110. HB 70, 2021 established the ability for licensed cosmetologists and estheticians to receive a certification for microblading; however, the bill did not specifically establish any fees, and RSA 314-A establishes fees for licenses issued under the statute not certifications or application processing fees issued thereunder. Pursuant RSA 310-A:1-e, I. (a) the Executive Director of the OPLC has authority to assess certification, renewal fees, and any necessary administrative fees associated with licensing or certifications. (See the Fiscal Impact Statement in the Notice.) However, the OPLC has not yet established the application processing fee in Plc 1002 because Plc 1000 does not exist. The agency notes in its response to comments that it has submitted a request for fiscal impact statement to the Legislative Budget Assistant and will be filing interim rules for Plc 1000 in January 2022.

(2) Completion of a minimum of 2 sets of eyebrows on a live model under the direct supervision of the course instructor.

Plc 405.04 Initial Microblading Certification.

(a) Any individual who wishes to engage in the practice of microblading who does not have a New Hampshire microblading certificate or a body art tattoo practitioner license shall file an application for initial microblading certificate in accordance with this section.

(b) Each applicant for an initial microblading certificate shall submit the following to the OPLC:

Note to Agency. The Board may want to include that the applicant's SSN pursuant to 42 USC 666(a)(13) and RSA 161-B:11 will be required on the application.

- (1) A completed "Initial Microblading Certificate Application" dated December 2021 that has been signed as specified in Plc 405.06;
- (2) The application processing fee specified in Plc 1002;
- (3) The number of the applicant's active New Hampshire esthetics or cosmetology license;
- (4) A microblading training completion certificate that states the name and address of the training provider, the organization that accredited the training instructor, the date the training was completed, and the number of hours of training received; and
- (5) Documentation of the completion of a course in the prevention of disease transmission and blood borne pathogens.

Edit. "January 2022" Here, and on the forms.

Plc 405.05 Microblading Certification Expiration and Renewal.

(a) An initial or renewal microblading certificate shall expire 2 years from the date of issuance or the expiration of the certificate holder's esthetics or cosmetology license, whichever is earlier.

(b) To be eligible to renew a microblading certificate, the holder of the certificate shall:

- (1) Be a New Hampshire licensed esthetician or cosmetologist; and
- (2) Complete not less than 3 hours of continuing education in microblading or prevention of disease transmission and blood-borne pathogens.

(c) The holder of a microblading certificate who wishes to renew the certificate shall submit the following to the OPLC:

- (1) A completed "Microblading Certificate Renewal Application" dated December 2021 that has been signed as specified in Plc 405.06;
- (2) The application processing fee specified in Plc 1002;
- (3) The number of the applicant's active New Hampshire esthetics or cosmetology license; and
- (4) Documentation of completion of at least 3 hours of continuing education in microblading or the prevention of disease transmission and blood-borne pathogens.

Plc 405.06 Signature and Certification.

(a) Each applicant for an initial or renewal microblading certificate shall sign and date the application.

(b) An application submitted using the on-line form shall be deemed to be signed and dated by the act of submitting the application.

(c) The applicant's signature shall constitute certification that:

(1) The information and documentation provided are true, complete, and not misleading to the best of the applicant's knowledge and belief; and

(2) The applicant understands that the submittal of false, incomplete, or misleading information:

a. Constitutes grounds to deny the application or to suspend or revoke any certificate that is issued based on the information; and

b. Potentially subjects the applicant to prosecution under RSA 641 relative to falsification in official matters.

Plc 405.07 Duties of Those Holding a Microblading Certificate.

(a) Each microblading certificate holder shall comply with RSA 314-A and Plc 400, including but not limited to the duties and responsibilities of all licensees under Plc 402.02 and standards of hygiene under Plc 402.03 with the following exceptions:

(1) Notwithstanding (a) above and Plc 402.02(b), microblading certificate holders may perform microblading in facilities approved for use as body art establishments or facilities licensed by the board of barbering, cosmetology, and esthetics;

(2) Notwithstanding (a) above and Plc 402.03(a)(8), microblading certificate holders shall use a new, single use microblading tool for the microblading of each individual;

(3) Notwithstanding (a) above and Plc 402.03(a)(12), microblading certificate holders may perform microblading in the same room as where cosmetics are being applied and where eating and drinking are allowed, but shall have a separate workspace that complies with Plc 402.03(a)(12); and

(4) Notwithstanding (a) above and Plc 402.03(a)(2), microblading certificate holders shall bandage according to standards of the microblading industry.

(b) A microblading certificate holder shall:

(1) Use a handheld microblading tool to perform services; and

(2) Not use a tattoo machine unless also licensed as a body art tattoo practitioner.

Plc 405.08 Initiation of Investigations; Disciplinary Proceedings.

(a) The executive director shall initiate an investigation of the holder of a microblading certificate whenever the executive director receives credible information that the holder:

(1) Has had a disciplinary proceeding initiated relative to his or her esthetics or cosmetologist license;

(2) Otherwise has violated any requirement applicable to obtaining or renewing a microblading certificate; or

(3) Has not maintained required health and safety standards relative to microblading.

(b) If the executive director determines that the investigation conducted pursuant to (a), above, has produced evidence that could be used to prove by a preponderance of the evidence that a violation of any applicable requirement has occurred, the executive director shall initiate a disciplinary proceeding in accordance with the applicable provisions of Plc 200 and RSA 541-A to suspend or revoke the microblading certificate or to impose limitations on the scope of practice of the microblading certificate holder, in accordance with (c) through (h), below.

(c) After the hearing conducted in accordance with (b), above, if the executive director determines that it has been proven by a preponderance of the evidence that the violation(s) on which the proceeding was based did in fact occur, the executive director shall suspend the microblading certificate conditional on obtaining additional training if, for each such violation:

- (1) The violation was committed negligently or unknowingly, such that additional instruction should help to ensure that it will not be repeated; and
- (2) The holder has not been the subject of a disciplinary proceeding for the same or a similar violation within the preceding 2 years.

(d) If a microblading certificate is suspended pursuant to (c), above, the holder may request the microblading certificate to be reinstated after obtaining the specified additional training.

(e) After the hearing conducted in accordance with (b), above, if the executive director determines that it has been proven by clear and convincing evidence that the violation(s) on which the proceeding was based did in fact occur, the executive director shall revoke the microblading certificate if, for any such violation:

- (1) The violation was committed recklessly or knowingly; or
- (2) The microblading certificate holder has been the subject of one or more disciplinary proceedings for the same or any similar violation within the preceding 2 years.

(f) If a microblading certificate is revoked pursuant to (e), above, the holder shall not apply again for a microblading certificate for at least 2 years from the date of the revocation.

(g) After the hearing conducted in accordance with (b), above, if the executive director determines that it has been proven by a preponderance of the evidence that the violation(s) on which the proceeding was based did in fact occur, the executive director shall impose limitations on the scope of practice of the microblading certificate holder to minimize the opportunities for the holder to commit additional or repeat violations or impose requirements for additional training if, for each such violation:

- (1) The violation was committed negligently or unknowingly; and
- (2) The holder has been the subject of one or more investigations that did not lead to discipline being imposed for the same or a similar violation within the preceding 2 years.

(h) If limitations on the scope of practice are imposed pursuant to (g), above, the holder may request the limitations to be removed upon presenting proof to the OPLC that:

- (1) The holder has complied with all terms of the limitations for not less than 2 years; and
- (2) The holder has obtained not less than 6 hours of training in the subject area(s) of the violation(s), in addition to the continuing education required by Plc 405.05(b)(2).

Appendix

Rules	State Statute Implemented
Plc 405	RSA 314-A:2, IV [2021, 60:1, effective 7-1-21]

State of New Hampshire

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

7 Eagle Square, Suite 200
Concord, N.H. 03301-2412
Telephone 603-271-2152

Lindsey B. Courtney
Executive Director



FP 2021-109, Plc 405 Microblading Certificate Summary of Comments on Initial Proposal with OPLC Responses December 8, 2021

Background

Plc 405 was adopted in September as an interim rule to establish criteria and procedures for individuals who are New Hampshire licensed estheticians or cosmetologists to obtain certification to perform microblading and the duties of those who are certified. Plc 405 is scheduled to expire March 1, 2022, so the rules in Plc 405 are proposed to be readopted with amendments as regular rules. Amendments are proposed to add certain provisions and clarify the requirements, as explained in more detail in the Rulemaking Notice published October 21, 2021 in the *NH Rulemaking Register*.

No one from the Advisory Board of Body Art Practitioners or the public attended the public hearing held on November 17, 2021, and no written comments were received from the advisory board or the public. Written comments were received from the Office of Legislative Services, Administrative Rules office (OLS); those comments and the OPLC's responses are summarized below in numerical order.

Note that the OPLC has determined that the standard of proof for revocation of a license should be clear and convincing, not just a preponderance, and so has made that change to Plc 405.08(e).

OLS Comments

Plc 405.04 and Plc 405.05 re: application forms

Comment: *“**Note to agency.** Please provide a copy of both the initial and renewal application forms for OLS review. If the applications only exist on-line screen shots are sufficient.” (Bold in original.)*

Response: Draft copies of the new forms are being filed with the FP.

Plc 405.04(b)(2) and Plc 405.0405(c)(2) re: application processing fee

Comment: *“**Unclear.** Plc 1002 does not yet contain such a fee.” (Bold in original.)*

Response: The application processing fees will be established in Plc 1002, so no other rule can be cited. The OPLC has initiated a rulemaking, by filing an FIS Request, to adopt an Interim rule

to establish the fee for microblading certificates. The OPLC expects the Proposed Interim Rule will be filed for review by the JLCAR in January.

Plc 405.08 re: initiation of investigations; disciplinary proceedings

Comment 1 [re: paragraph (b)]: “ **Unclear**. It is unclear whether the Board makes the decision that the evidence is credible or whether it is the OPLC investigator.” (**Bold** in original.)

Response 1: The rule has been revised to clarify that the Executive Director makes the finding.

Comment 2 [re: the phrase “If the hearing conducted in accordance with (b), above, proves” in paragraphs (c), (e), and (g)]: “ **Unclear/Edit**. A hearing officer makes this determination. Not the hearing itself. Here, (e), and (g) below.” (**Bold** in original.)

Response 2: The rule has been revised to clarify this language.

Comment 3 [re: subparagraphs (c)(1)-(2), (e)(1)-(2), and (g)(1)-(2)]: “ **Edit**. [change “The” to “When the”.” (**Bold** in original.)

Response 3: The lead-in to these subparagraphs is “...the OPLC shall revoke the microblading certificate **if**, for [each/any] such violation:” (emphasis added). Adding “When” to the subparagraphs would cause the subparagraphs to be grammatically incorrect. This change has not been made.

Edits made: Plc 405.05(a)

Office of Professional Licensing and Certification
7 Eagle Square
Concord, New Hampshire 03301
(603) 271-1452
Page 2

By my signature, I certify that the information and documentation provided are true, complete, and not misleading to the best of my knowledge and belief. I understand that providing information that is false, incomplete, or misleading constitutes grounds for denial, suspension, or revocation of a certificate and potentially subjects me to prosecution under RSA 641 relative to falsification in official matters.

Applicant's Signature: _____

Date Signed: _____

DRAFT

CHAPTER 60
HB 70 - FINAL VERSION

2021 SESSION

21-0025
10/08

HOUSE BILL **70**

AN ACT authorizing certification for the microblading of eyebrows.

SPONSORS: Rep. McGuire, Merr. 29; Rep. T. Lekas, Hills. 37; Rep. Pitre, Straf. 2

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill allows certain persons who are not licensed for tattooing as body art practitioners to perform microblading of eyebrows.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 60
HB 70 - FINAL VERSION

21-0025
10/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT authorizing certification for the microblading of eyebrows.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 60:1 New Paragraph; Body Art; Microblading. Amend RSA 314-A:2 by inserting after
2 paragraph III the following new paragraph:

3 IV. It shall be unlawful for any person who is not licensed under this chapter to perform the
4 microblading of eyebrows, unless such person has a current license to practice as a cosmetologist or
5 an esthetician under RSA 313-A and has been issued a certificate for microblading eyebrows
6 pursuant to rules adopted by the executive director.

7 60:2 New Paragraph; Body Art; Rulemaking. Amend RSA 314-A:6 by inserting after paragraph
8 V the following new paragraph:

9 VI. Requirements to obtain and renew a certificate for microblading eyebrows including:

- 10 (a) Application forms and approval of microblading courses.
11 (b) Standards of hygiene for performing microblading.
12 (c) Procedures for disciplinary action including suspension, limitation, or revocation of a
13 microblading certificate.

60:3 Effective Date. This act shall take effect July 1, 2021.

Approved: June 04, 2021
Effective Date: July 01, 2021