

Adopt He-P 1400, to read as follows:

CHAPTER He-P 1400 REFLEXOLOGISTS, STRUCTURAL INTEGRATORS, AND ASIAN BODYWORK THERAPISTS.

Statutory Authority: RSA 328-H:5

PART He-P 1401 DEFINITIONS

He-P 1401.01 Definitions.

- (a) “Applicant” means “applicant” as defined in RSA 328-H:2, I.
- (b) “Asian Bodywork Therapist” means a person providing Asian bodywork therapy in accordance with the scope of practice as described in RSA 328-H:3, III.
- (c) “Board” means “board” as defined in RSA 328-H:2, II.
- (d) “Commissioner” means the commissioner, department of health and human services or his or her designee.
- (e) “Cooperate” means to provide the department with any information requested by the commissioner during an investigation and to answer any questions posed by the department in order to enable it to determine compliance with RSA 328-H and He-P 1400.
- (f) “Department” means the New Hampshire department of health and human services.
- (g) “Directed plan of correction” means a plan developed and written by the department that specifies the necessary actions the licensee shall take to come into compliance with a violation of RSA 328-H or He-P 1400.
- (h) “Good standing” means that:
- (1) The practitioner has had no complaints, within the previous 5 years, for which an acceptable plan of correction has not been received; and
 - (2) No administrative action such as denial of application, suspension or revocation of license or imposition of an administrative fine that has not been paid has occurred or is pending.
- (i) “Inappropriate sexual contact” means the intentional touching of the client’s breasts or genitalia by the licensee, or a person practicing without a license, when such touching:
- (1) Is a therapeutic aspect of the therapy, but is done without the informed consent of the client; or
 - (2) Is not a necessary, therapeutic aspect of the therapy; and
 - (3) Is performed primarily for the purpose of sexual arousal or gratification of the licensee, the person practicing without a license, or the client.
- (j) “License” means the document issued by the department authorizing a person to practice as a reflexologist, structural integrator, or Asian bodywork therapist.
- (k) “Licensee” means “licensee” as defined in RSA 328-H:2, V.

(l) “Offense” means an act or acts of inappropriate sexual contact occurring during the course of a single therapy session.

(m) “Practice” means “practice” as defined in RSA 328-H:2, VI.

(n) “Practitioner” means “practitioner” as defined in RSA 328-H:2, VII

(o) “Reflexologist” means a person providing reflexology in accordance with the scope of practice as described in RSA 328-H:3, I.

(p) “Second offense” means inappropriate sexual contact committed by an individual who has at least once been found, after notice and opportunity for a hearing, to have committed inappropriate sexual contact.

(q) “Structural Integrator” means a person providing structural integration in accordance with the scope of practice as described in RSA 328-H:3, II.

(r) “Third offense” means inappropriate sexual contact committed by an individual who has at least twice been found, after notice and opportunity for a hearing, to have committed inappropriate sexual contact.

PART He-P 1402 LICENSE REQUIREMENTS

He-P 1402.01 Initial License Application Requirements.

(a) Any person 18 years or older who wishes to engage in the practice of reflexology, structural integration, or Asian bodywork therapy shall file an application for a practitioner license.

(b) Each applicant for licensure shall submit an application containing the following:

(1) The type of practitioner by indicating whether the applicant is applying for a license as a reflexologist, structural integrator, or Asian bodywork therapist;

(2) The applicant's first, middle and last name;

(3) The applicant's home and mailing address;

(4) The applicant's home telephone number;

(5) A recent 2” x 2” photograph of the applicant’s face;

(6) The applicant’s date of birth;

(7) The applicant’s social security number as required by RSA 161-B:11, VI-a;

(8) Documentation of current certification by the applicant’s respective national certifying agency in accordance with RSA 328-H:2, VII and He-P 1405;

(9) The name of each state where the applicant holds or has held a license or certificate to practice reflexology, structural integration, or Asian bodywork therapy, and the number of years the applicant has practiced in each state;

(10) The name, address and telephone number of the business where the applicant intends to practice, if known;

- (11) A statement indicating that the applicant has not been convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime, in this state or any other state, in accordance with RSA 328-H:8, I(d); and
- (12) The applicant's signature and date signed.
- (c) The application shall be submitted to the commissioner and accompanied by the initial license application fee as set forth in He-P 1406.01.
- (d) The commissioner shall review the application and notify the applicant in writing within 10 days if the application does not meet the requirements of (b) and (c) above, specifying any additional information or documentation the applicant shall submit.
- (e) The commissioner shall approve an initial application for licensure, if the applicant:
- (1) Is 18 years or older;
 - (2) Has submitted payment for the initial application license fee set forth in He-P 1406.01;
 - (3) Has submitted a complete application in accordance with (b) above; and
 - (4) Is in compliance with all of the provisions of RSA 328-H and He-P 1400, including:
 - a. Not having been convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime;
 - b. Not having been found by the department to have committed an act of inappropriate sexual contact with a client, pursuant to an investigation in He-P 1404.02 and an administrative adjudicative proceeding in He-P 1404.03(d); and
 - c. Payment of all administrative fines imposed by the commissioner.
- (f) The commissioner shall deny an application if the applicant does not meet the requirements in (e) above and knowingly makes any false statement regarding the application, license.
- (g) Application denials shall be conducted in accordance with He-P 1404.03.
- (h) The commissioner shall send the decision to deny the application to the applicant at the home address shown on the application.
- (i) If the application is denied in accordance with (f) above, the license application fee shall not be returned to the applicant.
- (j) Failure of the licensee to maintain national certification as required by He-P 1405.02 shall result in revocation of license in accordance with He-P 1404.04 (g) (5).
- (k) Licenses issued by the commissioner shall be effective for 2 years from the date of issuance.

He-P 1402.02 License Renewal.

- (a) A practitioner who wishes to maintain his or her license shall submit an application to the commissioner in accordance with RSA 328-H:9 at least 30 days prior to the expiration of his or her license.
- (b) At least 60 days prior to the expiration of a license, the commissioner shall:

- (1) Notify, in writing, the licensees whose licenses are to expire that their licenses are due to expire; and
 - (2) Include with the written notice an application for renewal of license.
- (c) In order to process the applications in a timely manner, the licensee shall submit to the commissioner, at least 30 days prior to the expiration of his or her license, the following information:
- (1) An application that contains the following:
 - a. The applicant's first, middle and last name;
 - b. The applicant's home and mailing address;
 - c. The applicant's home telephone number;
 - d. The name of each business where the applicant is practicing;
 - e. Each business address and telephone number;
 - f. Photocopies of out of state licenses, if any;
 - g. All information on disciplinary action taken, if any, in any other state regarding applicant's activities as a practitioner;
 - h. Documentation of current certification by the applicant's respective national certifying agency in accordance with RSA 328-H:2, VII and He-P 1405; and
 - i. A statement indicating that the applicant has not been convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime, in this state or any other state in accordance with RSA 328-H:8, I(d);
 - j.. Signature of applicant and date signed; and
 - (2) The renewal fee required by He-P 1406.01.
- (d) The renewal fee shall not be refundable.
- (e) The commissioner shall accept the application as being complete or notify the applicant in writing within 30 days that the application is incomplete, specifying what the applicant needs to submit to complete the application.
- (f) The commissioner shall approve applications for renewal, if the applicant:
- (1) Has submitted the renewal application license fee set forth in He-P 1406.01;
 - (2) Has submitted a complete application in accordance with (b);
 - (3) Is in compliance with all of the provisions of RSA 328-H or He-P 1400, including:
 - a. Not having been convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime;

b. Not having been found by the Department to have committed an act of inappropriate sexual contact with a client, pursuant to an investigation in He-P 1404.02 and an administrative adjudicative proceedings in He-P 1404.03 (d); and

c. Payment of all administrative fines imposed by the commissioner.

(g) The commissioner shall deny a renewal application if the applicant has not met all of the requirements in (f) above and knowingly made any false statement regarding the application or license.

(h) Application denials for renewal shall be in accordance with and He-P 1404.03.

(i) The commissioner shall send the decision to deny the renewal application to the applicant at the home address shown on the application.

(j) If the application is denied in accordance with (g) above, the license renewal application fee shall not be returned to the applicant.

(k) A renewal license shall be effective for 2 years from the date of expiration of the prior license.

He-P 1402.03 Expired License.

(a) If an application for renewal is received after the expiration date of the license, the license shall be expired.

(b) A practitioner whose license has expired in accordance with (a) above shall not practice until he or she has obtained a license in accordance with RSA 328-H and He-P 1400.

(c) A practitioner whose license has expired in accordance with (a) above, and wishes to reapply for a license, shall apply for an initial license in accordance with He-P 1402.01.

He-P 1402.04 Change of Address and Timely Submission of Application.

(a) Licensees shall immediately notify the commissioner when a change of home or business address occurs.

(b) Failure to receive an application for renewal of the current license sent by the department shall not excuse the practitioner from the obligation to submit an application for renewal at least 30 days prior to the expiration of the current license in accordance with He-P 1402.02 (c).

PART He-P 1403 BOARD

He-P 1403.01 Board.

(a) The commissioner shall appoint 3 members to serve on the advisory board in accordance with RSA 328-H:6.

(b) The commissioner shall appoint advisory board members who have been certified by the appropriate national certifying agency for at least 2 years preceding the appointment.

(c) The advisory board shall advise the commissioner on the technical aspects of reflexology, structural integration, and Asian bodywork therapy.

(d) The advisory board members shall serve 3-year terms pursuant to RSA 328-H:6.

(e) Each advisory board member shall be appointed for not more than 2 full consecutive terms.

PART He-P 1404 DENIAL, DISCIPLINARY ACTION, WAIVERS

He-P 1404.01 Complaint Procedure.

(a) Any person may file a complaint against a licensee, or person practicing without a license, for an alleged violation of RSA 328-H or He-P 1400.

(b) All complaints regarding a licensee, or a person practicing without a license, shall be in writing and include the following:

- (1) The name of the licensee or person practicing without a license;
- (2) The name and address of the complainant; and
- (3) The specific facts or circumstances that led to the complaint.

He-P 1404.02 Complaint Investigation.

(a) All complete complaints received by the department in accordance with He-P 1404.01 shall be investigated by the commissioner.

(b) The commissioner shall contact and individually question the complainant and the licensee or person practicing without a license about the complaint in an effort to determine if the complaint can be substantiated.

(c) The licensee or person practicing without a license shall cooperate with the department throughout the investigation.

(d) Upon completion of the investigation, the commissioner shall make a determination based on information received during the investigation as to whether the complaint is substantiated.

(e) If there is insufficient evidence to support the allegation(s) the department shall take no further action.

(f) Copies of the investigative findings shall be sent to the complainant and the licensee or person practicing without a license, indicating whether or not the complaint is substantiated.

(g) If it is determined by the commissioner that the licensee has violated any provisions of He-P 1400 or RSA 328-H, except violations which warrant revocation pursuant to He-P 1404.04(g), the department shall, within 15 days of the determination, issue to the licensee a directed plan of correction indicating the steps that must be taken in order to correct the violation(s).

He-P 1404.03 Adjudicative Actions and Administrative Appeals.

(a) Prior to taking adjudicative action against an applicant, licensee, or person practicing without a license, such as denial, suspension or revocation of license or imposition of a fine, the department shall send to the applicant, licensee, or person practicing without a license a written notice which states:

- (1) The reason(s) for the proposed action;
- (2) The action to be taken by the department; and
- (3) The right of the applicant, licensee, or person practicing without a license, to an administrative appeal.

(b) The department shall issue a written notice to the applicant, licensee, or person practicing without a license, along with the information that the individual has the right to appeal the notice in accordance with RSA 328-H:10 or RSA 328-H:15.

(c) Failure of the applicant, licensee, or person practicing without a license to request a hearing within 30 days of receipt of the notice shall result in the proposed action becoming final and immediately imposed.

(d) If the applicant, licensee, or person practicing without a license requests a hearing in writing no action shall be imposed on the individual pending the completion of an adjudicative process conducted in accordance with RSA 541-A:31 through 36 and He-C 200.

He-P 1404.04 Revocation, Denial, Disciplinary Action.

(a) The commissioner shall suspend a license in accordance with He-P 1404.03 if the licensee fails to:

- (1) Implement the steps indicated in the directed plan of correction described in He-P 1404.02(g) within 15 days of receiving the directed plan of correction;
- (2) Maintain a directed plan of correction;
- (3) Cooperate with an investigation by the department to the extent required by these rules; or
- (4) Pay a fine in accordance with He-P 1404.05.

(b) If a license is suspended in accordance with (a)(1) above, and the licensee requests a hearing in accordance with He-P 1404.03 (d), the hearing shall be held on the violations of He-P 1400 or RSA 328-H that resulted in the requiring of a directed plan of correction.

(c) If the outcome of a hearing held in accordance with (b) above is that the department did not have valid grounds to order the implementation of a directed plan of correction, then the suspension shall not be imposed.

(d) If the outcome of a hearing held in accordance with (b) above is that the department's order requiring the implementation of a directed plan of correction is upheld, the suspension shall take effect immediately and remain in effect until such time as the directed plan of correction is implemented corrective action is submitted and approved in accordance with (e) below.

(e) The length of suspension shall be until such time as the licensee:

- (1) Complies with the requirements for which the suspension was issued; and
- (2) Has paid all fines, if any, associated with the suspension; or
- (3) Has his or her license revoked in accordance with (g) below.

(f) Upon reinstatement of a suspended license, the applicant shall not be required to pay an additional license fee, and the expiration date of the license shall remain the same.

(g) The commissioner shall revoke a license in accordance with He-P 1404.03 if the licensee:

- (1) Has, at any time, been convicted of any crime involving violence inflicted on a person or threatened against a person, or any sexually-related crime, in accordance with RSA 328-H:10, V;

- (2) Has given false information on his or her application relative to their required national certification;
 - (3) Fails to comply with the conditions for the removal of a suspension within 90 days of the suspension taking effect;
 - (4) Has committed an act or acts of inappropriate sexual contact with a client; or
 - (5) Has failed to maintain his or her national certification in accordance with RSA 328-H:10, I.
- (h) A licensee whose license has been revoked or applicant whose application has been denied for committing an act or acts of inappropriate sexual contact shall not reapply for a license for:
- (1) At least one year from the date the revocation or denial became final, for the first offense; and
 - (2) At least 3 years from the date the revocation or denial became final, for the second offense.
- (i) License revocations and application denials, for committing an act or acts of inappropriate sexual contact, shall be permanent for the third offense.
- (j) Except for (i) above, a licensee whose license has been revoked and who wishes to reapply for a license shall reapply as for an initial license in accordance with He-P 1402.01.
- (k) Except for (i) above, an applicant whose application has been denied and who wishes to reapply for a license shall reapply as for an initial license in accordance with He-P 1402.01.
- (l) In addition to (j) and (k) above, a license shall not be granted to any applicant until the applicant has complied with the requirements for which the revocation or denial was issued and has paid all fines, if any, associated with the revocation or denial.

He-P 1404.05 Procedures for Imposing and Schedule of Administrative Fines.

- (a) When the commissioner has determined that a violation of RSA 328-H or He-P 1400 has occurred, the commissioner shall impose a fine in accordance with He-P 1404.03, RSA 328-H:15 and (d) below.
- (b) If the applicant, licensee, or person practicing without a license waives the right to a hearing and chooses to pay the imposed fine, the fine shall be paid to and received by the department within 30 days of receipt of the notice of fine by the individual.
- (c) The fine payment shall be sent to the commissioner.
- (d) Fines for violation of the provisions of RSA 328-H and He-P 1400 shall be imposed in accordance with the following schedule:
 - (1) For submitting false or fraudulent information on or with an application, the fine shall be \$500.00;
 - (2) For falsification of a license to practice reflexology, structural integration, or Asian bodywork therapy, the fine shall be \$500.00;
 - (3) For practicing or advertising reflexology, structural integration, or Asian bodywork therapy without a license, the fine shall be \$500.00;

- (4) For failure to implement and maintain a directed plan of correction, the fine shall be \$200.00 per violation;
- (5) For failure to cooperate during an investigation, the fine shall be \$750.00;
- (6) For committing an act or acts of inappropriate sexual contact, the fine shall be \$750.00 for the first offense;
- (7) For committing an act or acts of inappropriate sexual contact, the fine shall be \$1,500.00 for the second offense; and
- (8) For failure to maintain national certification in accordance with RSA 328-H:10, I, the fine shall be \$500.00;

He-P 1404.06 Waivers.

- (a) Each person seeking a waiver of a specific rule in this chapter shall submit a written request for waiver to the commissioner which includes:
 - (1) Specific reference to the rule for which a waiver is being sought;
 - (2) Full explanation of why a waiver is necessary; and
 - (3) Full explanation of alternatives proposed by the applicant, which shall be equally as protective of public health as the rule from which a waiver is sought.
- (b) The commissioner shall approve a request for waiver if:
 - (1) The commissioner concludes that authorizing deviation from strict compliance with the rule for which a waiver is sought does not contradict the intent of the rule or underlying statute; and
 - (2) The alternative proposed by the applicant ensures that the objective or intent of the rule for which a waiver is sought will be accomplished.
- (c) If a waiver is approved, the subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

PART He-P 1405 NATIONAL CERTIFICATION REQUIREMENTS

He-P 1405.01 National Certification Requirements. The national certification requirements for licensure shall be as follows:

- (a) A reflexologist shall hold current certification from the American Reflexology Certification Board;
- (b) A structural integrator shall hold current certification from the International Association of Structural Integrators or the Rolf Institute; and
- (c) An Asian bodywork therapist shall hold current certification as a diplomate in Asian bodywork therapy from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

He-P 1405.02 Maintenance of National Certification.

(a) Practitioners shall comply with the national certifications requirements identified in He-P 1405.01, and the requirements for maintenance of certification as described by the issuing certification agency including but not limited to continuing education.

(b) Practitioners shall maintain continuous national certification during a licensure period.

(c) If a practitioner's national certification is revoked, suspended, or expired, the practitioner shall:

(1) Notify the department; and

(2) Not engage in touch therapies for compensation.

(d) Failure to maintain national certification as required shall result in revocation in accordance with He-P 1404.04 (g) (5).

(e) Failure to maintain national certification as required shall result in the imposition of an administrative fine in accordance with He-P 1404.05 (d) (9).

PART He-P 1406 FEES

He-P 1406.01 Fees. The fees established in accordance with RSA 328-H:5,VIII(a) shall be as shown in Table 9.1 below:

Table 9.1 Fees

<u>Type</u>	<u>Fee</u>
Initial license application fee	\$175.00
License renewal application fee	\$150.00

Cross Reference Table

Section	Statute Implemented
He-P 1401.01	RSA 328-H:2
He-P 1402.01	RSA 328-H:8, RSA 328-H:5, VIII, (d)
He-P 1402.02	RSA 328-H:9, RSA 328-H:5, VIII, (d)
He-P 1402.03	RSA 328-H:5, VIII, (d)
He-P 1402.04	RSA 328-H:9
He-P 1403.01	RSA 328-H:6
He-P 1404.01	RSA 328-H:5
He-P 1404.02	RSA 328-H:5
He-P 1404.03	RSA 328-H:5, II, III, IV, & VIII (h)-(l), RSA 328-H:11, RSA 328-H:15
He-P 1404.04	RSA 328-H:5, II, III, IV, & VIII (h)-(l), RSA 328-H:11, RSA 328-H:15
He-P 1404.05	RSA 328-H:5, III & VIII (i), RSA 328-H:15
He-P 1404.06	RSA 328-H:5, VIII (g)
He-P 1405.01	RSA 328-H:2, VII
He-P 1405.02	RSA 328-H:2, VII
He-P 1406.01	RSA 328-H:8, I, (c)