

STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
BOARD OF BARBERING, COSMETOLOGY & ESTHETICS

7 EAGLE SQUARE, CONCORD, NH 03301-4980
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ORDER ON PETITION FOR DECLARATORY RULING

PETITIONER: LINDSEY COURTNEY, EXECUTIVE DIRECTOR

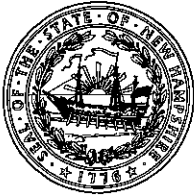
January 5, 2024

On behalf of the Office of Professional Licensure and Certification (the "OPLC" or "Petitioner"), the Executive Director asked the Board of Barbering, Cosmetology, and Esthetics (the "Board") whether RSA 313-A:19, I extends to licensed individuals seeking to provide a service in a client's home or temporary residence, where the location is not held open to the public for the purposes of provided cosmetology, barbering, esthetics, or manicuring services. The Office proposes the shop license requirement applies only to a location that is held out as a place of "business." The Board grants this Petition for Declaratory Ruling and issues the following order.

I. Background

Petitioner OPLC is the state agency responsible for processing and approving or denying applications for licensure, certification, or registration for all license types governed by OPLC or a board. N.H. Rev. Stat. Ann. 310:4.

The Office has received, and the board has also reviewed, multiple inquiries as to whether a licensed cosmetologist, barber, esthetician, or manicurist must obtain a shop license when performing services in a client's home or temporary residence, such as a hotel. The Petitioner



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seeks the Board's interpretation of its statute in order to continue providing consistent administrative support to licensees.

II. Standard of Review

A declaratory ruling is "an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency." N.H. Rev. Stat. Ann. §541-A:1, V. The purpose of a declaratory ruling is "to establish a mechanism whereby a person who is uncertain of the applicability of a particular statute implemented by a regulatory authority or rule adopted by the regulatory authority may request a decision in advance of taking an action that might be subject to such statute or rule." N.H. Code Admin. R. Plc 210.01. Therefore, a declaratory ruling does not have precedential value, nor does it apply to any individual other than the petitioner.

III. Legal Analysis

1. RSA 313-A:9, I provides that "[i]t shall be a class A misdemeanor for any natural person . . . to engage for remuneration in any practice regulated by this chapter without the appropriate license." RSA 313-A:19, I provides further that "[i]t shall be a misdemeanor for any person . . . to open, establish, conduct, or maintain a salon, barbershop, or mobile barbershop without first having obtained a shop license from the board." "Salon" is defined as "a beauty salon or other place kept open for the business of cosmetology, manicuring, or esthetics." N.H. Rev. Stat. Ann. § 313-A:1, XII. "Mobile barbershop" is considered "a vehicle or structure, readily mobile, designed, constructed or adapted to serve as a



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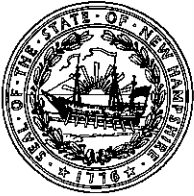
barbershop at multiple sites.” N.H. Rev. Stat. Ann. § 313-A:1, XI. “Barbershop” is “any establishment or place of business wherein the practice of barbering is engaged in or carried on.” N.H. Rev. Stat. Ann. § 313-A:1, III.¹

2. Upon review of RSA 313-A, the Board agrees with the Office’s analysis that the shop license requirement applies to locations held out as places of “business” as defined and set forth in the Petitioner’s Request for Declaratory Ruling. Petitioner states, “[w]hile a commercial transaction may occur at a client’s home or temporary residence when a licensee provides a cosmetology service (i.e., the exchange of such service for money), generally one commercial transaction between two parties does not transform a client’s private residence into a commercial establishment.”²
3. Additionally, the Board finds Director Courtney’s analysis of the Board’s inspection requirements for shops as limited to commercial establishments to be accurate.³
4. The requirement that shops maintain licenses protects the public from unsafe and unsanitary practices. Requiring a shop license for a licensed individual to perform services

¹ See Petition for Declaratory Ruling, para. 3.

² See Petition for Declaratory Ruling, para. 4 (“Based on the Office’s review of RSA chapter 313-A, it appears that the requirement to obtain a shop license applies only to a location that is held out as a place of “business.” See generally N.H. Rev. Stat. Ann. § 313-A:1 (noting that a salon, barbershop, and mobile barbershop is generally an establishment or place of business). Business is generally defined as a “commercial or mercantile activity engaged in as a means of livelihood.” See “Business.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/business>. Accessed 2 Nov. 2023.”).

³ See Petition for Declaratory Ruling, para 5 (“Further, the Board’s inspection requirements for shops appear to contemplate that shop licenses are limited to commercial establishments. Bar 404.01(d){1}, for example, requires that inspection reports for shops document the “establishment name.” Bar 302.05(d) provides that “[i]nvatory facilities shall be publicly accessible to all students, patrons, and employees.” (emphasis added). Further, Bar 302.05(p), setting forth disinfection requirements for spas, contemplates that a shop will have multiple patrons.”).

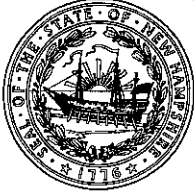


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in a client's home or temporary residence, however, does little to protect the public. A client's home or temporary residence cannot be subject to inspection, and any services performed there are under the individual's personal license to practice cosmetology, barbering, or esthetics. A licensee's personal license would be subject to sanctions for any potential misconduct. *See* RSA 313-A:22.

5. The Board does not extend this analysis to licensees performing services in the context of trade shows or other public locations that do not fall under the exemptions found in RSA 313-A:25.
6. While the Board maintains the interpretation contained within this ruling, the Board finds the interpretation to have potential unintended consequences and to represent a risk to public health and safety. Currently, most licensed cosmetologists, barbers, estheticians, and manicurists either maintain or are employed by licensed shops subject to OPLC inspection. The Board is concerned that some licensed individuals may utilize this interpretation to circumvent lawful licensing procedures meant to protect public health and safety, that many will begin operating out of homes and temporary residences with no "home base" shop. The only remaining public protection for individual consumers would be the complaint process against an individual licensee, The Board sees this interpretation, while accurate, as a "slippery slope" to individuals performing services with no license and as contrary to public safety. The Board is aware that many in their profession would take such advantage of this interpretation.



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7. The Board proposes promulgating rules to allow for some alternative which takes into account public health and safety as well as freedom to practice a profession. These proposed rules could provide a mechanism by which a licensed individual could temporarily provide services in a client's home or temporary residence, as well as address the need for shop licensing and inspection requirements for places of business open to the public. As this idea is in its infancy, the Board declines to further expand upon this rulemaking proposal at this time.
8. The members of the Board take seriously their task of protecting the public from unprofessional or unsafe practices. The Board welcomes the opportunity to further discuss a solution to this matter that balances a licensee's ability to practice with public safety as a primary consideration.

IV. Conclusion

For the foregoing reasons, the Board declares that individuals licensed by the Board to provide cosmetology, manicuring, esthetics, or barbering services do not need a shop license to provide a service to a client in the client's home or temporary residence where the home or temporary residence is not held open to the public. This interpretation, however, presents unintentional consequences as well as risks to public health and safety.

Jane Chappell 1.5.2024