

**New Hampshire Board of Pharmacy**  
**Order on Petition for Declaratory Ruling**

Petitioner: Office of Professional Licensure and Certification

The Office of Professional Licensure and Certification (“OPLC”) filed a Petition for Declaratory Ruling requesting the Board of Pharmacy (“Board”) find that Ph 1104.0 and Ph 1105.02 are unenforceable as exceeding the scope of the Board’s authority under the Practice Act, RSA chapter 318, or in the alternative, issue a Declaratory Ruling that Collaborative Practice Agreements (“Agreements”) are a discrete licensing category under RSA Chapter 218, for which OPLC must establish and enforce licensing fees.

The Board considered this matter at its November 15, 2023 meeting. The Board hereby finds that Ph 1104.0 is unenforceable as it exceeds the scope of the Board’s authority under the Practice Act. The Board further find that Ph 1105.02 is enforceable and within the scope of the Board’s authority defined at RSA 318:5-(a) XVII.

**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. OPLC is further responsible for establishing fees for all license types under its purview. N.H. Rev. Stat. Ann. 310:5.

The Petitioner seeks guidance as to whether RSA 318:16-a, establishing Standards for Collaborative Pharmacy Practice, creates a discrete license type for Agreements. Petitioner contends that Agreements are not a separate type of pharmacy license but acknowledges that the Board may set, through rules, education and training standards for pharmacists engaged in collaborative practices.

**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.” RSA 541-A:1, *See* N.H. Admin. R. Pt. Ph (“Ph”) 201.02(c). A declaratory ruling is a statement by the Board regarding whether a particular statute

or rule applies to the specific situation presented in the petition. *Id.* Therefore, they do not have precedential value; nor do they apply to anyone other than the petitioner.

### III. ANALYSIS

RSA 318:1, XXVI defines “Collaborative Pharmacy Practice” to be “the practice of pharmacy whereby one or more pharmacists jointly agree, on a voluntary basis, to work in conjunction with one or more attending practitioners under written protocol whereby the collaborating pharmacist or pharmacists may perform medication therapy management authorized by the attending practitioner or practitioners under certain specified conditions and limitations.” “Any practitioner with prescriptive authority who holds an active, unrestricted license in the state of New Hampshire may enter into a collaborative pharmacy practice agreement.” NH Rev. Stat. Ann. 318:16-a, II.

For a pharmacist to participate in an Agreement, the pharmacist must hold a current unrestricted license, have at least \$1 million of professional liability insurance coverage, and have the necessary knowledge base for proper monitoring. N.H. Rev. Stat. Ann. 318:16-a, I. The Board is required to adopt rules establishing education and training standards, and other requirements, for pharmacists engaging in Agreements. N.H. Rev. Stat. Ann. 318:5-a, XVII. “Depending upon the complexity of the services being provided, the pharmacist may be required to have additional credentials or training and shall demonstrate the receipt of approval by the board of pharmacy.” N.H. Rev. Stat. Ann. 318-16-a, I(c). While this specific statutory provision seemingly permits board approval in certain undefined circumstances, the statute does not confer authority to the Board to establish additional types of pharmaceutical licenses or to approve or modify Agreements.

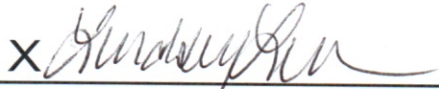
Ph 1104.0 requires a pharmacist seeking to enter an Agreement to submit an application for approval by the Board and provides that Board staff must review the application. Ph 1104.01(d) further requires a pharmacist party to an Agreement to update the Board of any change to the original application or supporting documentation within 15 days of the change taking effect. These requirements are outside of the statutory scope of the Board’s authority defined at RSA 318:5-a and RSA 318:51-e, and thus Ph 1104.0 is unenforceable.

RSA 318:5-a does require the Board to establish rules regarding education, training standards, and “other requirements” for pharmacists who engage in collaborative pharmacy practices. N.H. Rev. Stat. Ann. 318:5-a, XVII. Ph 1105.02, in the first instance, sets practice

standards for pharmacists engaged in an Agreement. The Board has the authority to establish rules regarding "other requirements" for pharmacists engaged in an Agreement under RSA 318:5-a, XVII.

Ph 1105.02(e) and (f) address procedures for a pharmacist party to an Agreement to cease collaborative practice in the event their license becomes restricted by the Board. The Board has the authority to make rules setting credential standards for pharmacists engaged in collaborative practice. Possessing and maintaining an unrestricted license is a proper credential to maintain a collaborative practice agreement. Ph 1105.02 is enforceable under the Practice Act.

For the foregoing reasons, the Board concludes that Ph 1104.0 is unenforceable as exceeding the scope of this Board's authority under RSA 318. The Board further concludes that Ph 1105.02 is enforceable as it is within the scope of the Board's authority under RSA 318.

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Lindsey Laliberte, R.Ph.

Vice Chair of the New Hampshire Board of Pharmacy