

New Hampshire Board of Mental Health Practice

Order on Petition for Declaratory Ruling

Petitioner: Hanover Center for Cognitive Behavioral Therapy

The Hanover Center for Cognitive Behavioral Therapy (“Center”) filed a Petition for Declaratory Ruling requesting the Board of Mental Health Practice (“Board”) find that one of the Center’s employees, Lily Bickford (“Bickford”) is lawfully able to engage in limited mental health practice while being supervised by a licensed Doctorate-level clinician employed at the Center. In support, the Center asserts that Bickford: 1) qualifies as a candidate for licensure pursuant to RSA 330-A:23, I; and/or 2) qualifies for an exemption pursuant to RSA 330-A:34, I(b) and/or (d). The Board considered this matter at its August 19, 2022 meeting.

I. Background

The Center describes itself as “a facility located in Hanover, NH, established for the purpose of providing therapy services to patients in a wide range of clinical areas.” Petition of Declaratory Ruling (“Petition”) at paragraph I(1). The licensed provider staff at the Center includes six (6) licensed clinical psychologists. *Id.* Bickford is currently a non-clinical employee at the Center working in the business and finance departments, who is currently enrolled in the Clinical Mental Health Counseling Master’s degree program at Antioch University New England (“Antioch”). Bickford anticipates completing the Antioch program in Fall, 2025.

For approximately the past year, Bickford has participated in offering wellness coaching and options for educational resources to clients of the Center’s licensed clinicians. She asserts that she has been auditing weekly meetings with one of the Center’s licensed Clinical Psychologists in the practice group, as well as weekly group consultation meetings.

The Center is asking the Board to allow Bickford to work to provide individual therapy to clients on a limited basis with weekly supervision by one or more of the Center’s licensed psychologists. In its petition, the Center asserts that this would not constitute Unlawful Practice under RSA 330-A:23 if the Board determines that Bickford qualifies as a

candidate working under the direct supervision of a person licensed by the board. *See* RSA 330-A:23, I. In the alternative, the Center is asking the Board to determine that Bickford qualifies as a person exempted pursuant to RSA 330-A:34, I(b) because she is a student in a mental health discipline who is pursuing a course of study approved by an accredited degree-granting institution¹. In the alternative, she asserts she is exempted because she is a person providing mental health services as an employee of an institution, facility, which provides clinical mental health services and which provides clinical supervision of its staff and which assumes professional, ethical, and legal responsibility for such mental health services pursuant to RSA 330-A:34, I(d).

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, V; *See* N.H. Admin. R. Pt. Mhp (“Mhp”) 212.01(a). 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. Mhp 212.01(a). Therefore, they do not have precedential value; nor do they apply to anyone other than the petitioner.

III. Legal Analysis

A. RSA 330-A:23, I Analysis

RSA 330-A:23, entitled “Unlawful Practice; Penalty” provides in pertinent part:

Except as provided in RSA 330-A:24, it shall be unlawful for any person to be engaged in mental health practice unless that person is licensed by the board, ***working as a candidate under the direct supervision of a person licensed by the board***, conditionally licensed by the board, or engaged in the practice of other mental health services as an alternative provider as defined in RSA 330-A:2, I.

RSA 330-A:23, I (emphasis added). “Candidate for licensure” is defined as “a person, not licensed as a mental health practitioner, who is receiving ***post-graduate supervision*** in mental health practice in New Hampshire in order to meet the licensing requirements.” Mhp

¹ This argument was made during Ms. Bickford’s attorney’s presentation to the Board at its August meeting, but was not raised in the written Petition for Declaratory Ruling.

301.01(b) (*emphasis added*). Bickford has not yet completed the Clinical Mental Health Counseling program at Antioch and therefore, by definition, would not be receiving postgraduate supervision. *See also*, Mhp 302.01(b)(11) (requiring the date graduate degree was obtained). Furthermore, the application requirements for Pre-Licensure Supervised Practice are detailed in Mhp 302.01 and require that all candidates for licensure as a mental health practitioner and their supervisor(s) shall complete, sign and submit a “Candidate for Licensure: Supervision Agreement” that must be approved by the board before a candidate for licensure can begin to accrue the number of hours of **post-graduate** supervised clinical experience required to obtain a clinical mental health counselor license. RSA 330-A:19, III (*emphasis added*). Finally, supervisors of candidates are required to hold a mental health practitioner license pursuant to RSA 330-A:22, II, and Mhp 302.01(c)(6),(7) and (8). While the Center’s supervisors may be eminently qualified psychologists, they do not meet the requirements to be supervisors of candidates under the Board’s rules. Therefore, because Bickford does not qualify as a candidate for licensure, before engaging in clinical mental health counseling she is required to be licensed by the board pursuant to RSA 330-A:23 unless she qualifies as a “Person Exempted” under RSA 330-A:34.

B. NH RSA 330-A:34 Exemptions

1. RSA 330-A:34, I, I(b)

RSA 330-A:34, entitled ‘Persons Exempted’ contains specific provisions exempting categories of persons from having to be licensed to engage in clinical mental health counseling. The Center argues that Bickford meets two of those provisions. First, the Center contends that Bickford meets the requirements of RSA 330-A:34, I(b), which provides:

Nothing in this chapter shall be construed to limit...[t]he psychotherapy activities and services of a student, intern, or resident in a mental health discipline regulated by the board, who is pursuing a course of study approved by a regionally accredited degree-granting institution or at another training site approved as providing qualifying training and experience ***constituting a part of the supervised course of study.*** (*Emphasis added*)

While Bickford is a student in a mental health discipline who is pursuing a course of study, the clinical mental health services that she would be providing at the Center would not be part of a supervised course of study through Antioch. Nothing provided to the board by the Center,

either oral or written, indicates that Bickford’s proposed “limited, part-time therapeutic interaction with clients” is part of a supervised course of study that is a part of the curriculum at Antioch. Therefore, this exemption does not apply.

2. RSA 330-A:34, I(d)

The Center also contends that RSA 330-A:34, I(d) applies and would provide Bickford an exemption from the licensure requirements of the Mental Health Practice Act. Specifically, RSA 330-A:34, I(d) provides:

Nothing in this chapter shall be construed to limit...[t]he psychotherapy activities and services of any other person ***providing mental health services as an employee of or consultant to an institution, facility, or nonprofit institution or agency*** which provides clinical mental health services and which provides clinical supervision of its staff and which assumes professional, ethical, and legal responsibility for such mental health services. (*Emphasis added*)

The Center argues that there is no statutory definition of “facility” in RSA 330-A and relies on a broad interpretation of what qualifies as a facility as it applies to RSA 330-A:34, I(d). Thus, the Center contends that because it is self identified as a behavioral health facility providing clinical mental health services within the meaning of RSA 330-A:23, and the Center would provide clinical supervision of Bickford, the proposed mental health practice by Bickford is lawful pursuant to RSA 330-A:34, I(d). *See* Petition for Declaratory Ruling at IV, 22 through 26. The Board declines to interpret “facility” so broadly.

The exemption referenced in RSA 330-A:34, I(d) applies to mental health employees who work for an institution, facility, or nonprofit institution or agency that provides community mental health services as part of the New Hampshire Mental Health Services System established pursuant to RSA 135-C. A community mental health program (“CMHP”) is any program “operated by the state, city, town, or county, or a community based New Hampshire nonprofit corporation for the purpose of planning, establishing, and administering an array of community-based, mental health services pursuant to He-M 403 and as defined in RSA 135-C:2, IV.” He-M 426.02 (f). While some clinical mental health counselors employed at CMHPs to provide psychotherapy services are required to be licensed in order to practice without supervision (See He-M 426.08(h)(5)), some unlicensed

clinical mental health counselors provide clinical mental health services in CMHPs if they meet the requirements in He-M 426.08(i) and (j). It is the latter group that are exempted from licensure under RSA 330-A:34, I(d). Interpreting RSA 330-A:34, I in this manner allows an exemption for this subset of unlicensed clinicians practicing in community based mental health programs to continue providing those necessary services without having to seek licensure under this Board.

This interpretation is consistent with the other statutory exemptions in RSA 330-A:34, I, which provide exemptions to specific groups of people who are qualified and/or allowed to provide psychotherapy and/or counseling services without a Mental Health Practitioner license. For example, federal, state, county, or municipal agency employees providing psychotherapy services as part of their employment are exempt from licensure under RSA 330-A:34, I(a). Similarly, rabbis, priests, ministers or members of other religions providing counseling services within the scope of their ministerial duties and performed under the auspices or sponsorship of an established and legally recognized church or denomination are also exempt from licensure under RSA 330-A:34, I(c). Licensed physicians, advanced registered nurse practitioners, psychologists, and master licensed alcohol and drug counselors are also exempt from licensure pursuant to RSA 330-A:34 I(e), and finally, volunteers offering their clinical mental health services to non-profit charitable organizations and receiving no remuneration for their services are exempt under RSA 330-A:43, II.

Were the Board to apply the Center's broad interpretation of a "facility" it would allow any practice providing psychotherapy and clinical mental health services to employ unlicensed and untrained people to provide those services and circumvent the stated purpose of RSA 330-A "to regulate mental health practice by practitioners in the state to assure that the services provided are effective and of a quality consistent with the standard of care within each profession, and to safeguard the public against harm which may be caused by untrained, unskilled, or unlicensed practitioners." *See* RSA 330-A:1, I. It would also circumvent the statutory and regulatory licensure requirements established in RSA 330-A and Mhp.

IV. Conclusion

For the foregoing reasons, the Board concludes that the Center's proposed mental health practice by Bickford does not qualify for an exemption under any provision of RSA 330-A:34 and would therefore, constitute unlawful mental health practice pursuant to RSA 330-A:23.

Date: 10/20/2022

Ashley Gedonicz
Board Chair or Board
Administrator on behalf of the
Board of Mental Health Practice