

STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
BOARD OF DENTAL EXAMINERS

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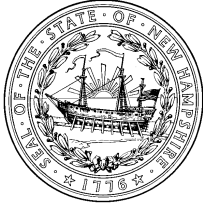
ORDER ON PETITION FOR DECLARATORY RULING
PETITIONER: LINDSEY COURTNEY, EXECUTIVE DIRECTOR

January 8, 2024

On behalf of the Office of Professional Licensure and Certification (the “Office”), the Executive Director asked the Board of Dental Examiners (the “Board”) whether Den 302.05(k), requiring a dental hygienist to obtain a permit from the board to be able to administer local anesthesia, is invalid as exceeding the Board’s statutory authority. The Executive Director also asked the Board to determine whether Den 302.05(p), requiring a dental hygienist to obtain a permit from the Board to be able to administer nitrous oxide, is invalid as exceeding the Board’s statutory authority.

I. 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.



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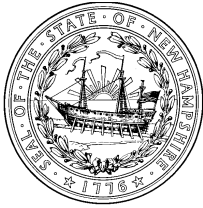
II. Legal Analysis

1. The Board agrees with the Executive Director's analysis of RSA 317-A:21-c, which "plainly does not require a dental hygienist to obtain permission or approval from the Board to administer local anesthesia." *See* N.H. Rev. Stat. Ann. § 317-A:21-c, II(e). The Board recognizes the requirement in Den 302.05(k) adds a licensure requirement without statutory authority, rendering the requirement in rule invalid. Any dental hygienist can administer local anesthesia.¹
2. Additionally, the Board finds the requirements found in administrative rule Den 302.05(p) to be properly authorized by statute. *See* N.H. Rev. Stat. Ann. § 317-A:21-c, II(f). The above referenced statute grants the board authority to "establish qualifications a dental hygienist must obtain to be competent to administer nitrous oxide."²
3. The Board understands the language found in RSA 317-A:21-c, II(f) to create a permit as defined in RSA 541-A:1.³ Under that definition and the appropriate rulemaking statute, the Board agrees that the rules requiring a dental hygienist to obtain a permit from the board to administer nitrous oxide are indeed authorized by statute. *See* N.H. Rev. Stat. Ann. § 317-A:12.

¹ See Petition for Declaratory Ruling, para. 5.

² See Petition for Declaratory Ruling, para. 6.

³ See Petition for Declaratory Ruling, para. 7, which provides the definition of "license" found in N.H. Rev. Stat. Ann. § 541-A:1 as "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law."



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III. Conclusion

For the foregoing reasons, the Board declares that Den 302.05(k) is unenforceable as exceeding the scope of the Board's authority under the Practice Act. Additionally, the Board declares that Den 302.05(p) is enforceable in all respects.