

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
RULING NO. D16-004

In the matter of: )  
J. Vernon Peterson )  
 )  
Petitioner )

**DECLARATORY  
RULING**

THIS CAUSE comes before the North Carolina Board of Funeral Service (hereinafter "Board") pursuant to North Carolina General Statute § 150B-4 and 21 NCAC 34A .0108, at its offices at 1033 Wade Avenue, Suite 108, in Raleigh, North Carolina, with a quorum present.

PROCEDURAL HISTORY

J. Vernon Peterson (hereinafter "Petitioner") filed a request for declaratory ruling on May 20, 2016. As required by 21 NCAC 34A .0108(a)(3), the Board agreed at its regularly scheduled public meeting on June 8, 2016 to grant the request and to issue a declaratory ruling within 45 days from the date of the decision to grant the request.

QUESTION

Petitioner—who holds a funeral service license issued by the Board and works for a funeral establishment—has had requests from clients as to whether individuals who are not licensed by the Board but who have a personal connection with a decedent may assist with the following in preparation for the funeral service: 1) arranging the hair and make-up of the decedent; 2) dressing the decedent; and/or 3) casketing the decedent. Petitioner wishes to know whether allowing such individuals to assist with these types of preparatory services is compliant with the Board's governing statutes and rules.

## RULING

Pursuant to North Carolina General Statute Chapter 150B-4(a), an agency, upon request from a person aggrieved, shall issue a declaratory ruling concerning the validity of a rule or the application of a statute or rule to a particular set of facts. This ruling is based solely on the facts provided to the Board and to the extent the Board can glean pertinent facts necessary to apply the statutes and regulations under its jurisdiction. Pursuant to In re Ford, this Declaratory Ruling and Petitioner's request for declaratory ruling only shall constitute the record for judicial review. See 52 N.C. App. 569, 572 (1981). The Board is charged by the North Carolina General Assembly with enforcing Chapter 90, Article 13A of the North Carolina General Statutes. See N.C. Gen. Stat. §§ 90-210.18A(a) & 90-210.23(a), (i).

Based on information provided to the Board, Petitioner holds Funeral Service License No. 3059 and is employed by Unity Funeral Services. Consumers have asked Petitioner whether a decedent's hairdresser, beautician, friend, or family member can assist with the following in preparation for the funeral service: 1) arranging the hair and make-up of the decedent; 2) dressing the decedent; and/or 3) casketing the decedent. Generally, these individuals are not licensed by the Board. Petitioner is seeking the Board's opinion as to whether allowing these types of individuals to engage in said services may violate Chapter 90, Article 13A, of the North Carolina General Statutes and subject his licensure to disciplinary action.

As an initial matter, the Board finds that Petitioner is a "person aggrieved" for purposes of making this declaratory ruling. Petitioner is a licensee of the Board and regularly engages in the practice of funeral services. As such, he would be subject to

disciplinary action if he were to violate the Board's governing statutes, rules, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time. N.C. Gen. Stat. § 90-210.25(e)(1)h. prohibits licensees from aiding or abetting a person not licensed by this Board to perform funeral services. As such, Petitioner's licensure could be subject to sanctions if he were aiding and abetting non-licensees to engage in the unlicensed practice of funeral service. Furthermore, the funeral establishment for which Petitioner works could be subject to discipline if he or the establishment's owners, partners, managers, members, operators, officers, agents, or employees violate any provision of Article 13A or any regulations of the Board. N.C. Gen. Stat. § 90-210.25(d)(4).

Turning to the substance of Petitioner's request, the Board relies upon the following statutes in issuing this ruling. First, the Board's practice act makes illegal the unauthorized practice of funeral service:

(f) Unlawful Practices. – If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article, the person shall be guilty of a Class 2 misdemeanor.

N.C. Gen. Stat. § 90-210.25(f)

Second, the "practice of funeral service" is defined as follows:

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

N.C. Gen. Stat. § 90-210.20(k) (emphasis added).

Third, the term “embalming” is defined as follows:

(e) “Embalming” means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

N.C. Gen. Stat. § 90-210.20(e) (emphasis added).

Based on the statutory references above, the Board interprets the practice of embalming to include the arranging of a decedent’s hair and/or make-up and the dressing/casketing of a decedent, if the individuals are compensated for performing such tasks. As such, individuals desiring to engage in such services for compensation must obtain either an embalmer’s license or a funeral service license from this Board, or hold another occupational license that would allow the individuals to lawfully engage in such services for profit. For instance, licensed cosmetologists may “visit . . . funeral homes and similar institutions to attend to the cosmetic needs of those in these institutions.” N.C. Gen. Stat. § 88B-15.

In light of the foregoing, the Board holds that individuals who are not licensed by the Board but who have a personal connection with a decedent may assist with arranging the hair/make-up of a decedent or dressing/casketing a decedent; provided, however, that such unlicensed individuals are not compensated for the services rendered and comply with N.C. Gen. Stat. 130A-395 (which regulates the manner in which dead bodies must be handled and transported). Furthermore, individuals who are licensed by another

be handled and transported). Furthermore, individuals who are licensed by another occupational licensing board, but not by this Board, may practice within the scope of their licensed profession, regardless of whether they are compensated or not for such services.

If Petitioner hires for pay individuals not licensed by this Board or another occupational licensing board whose scope of practice allows its licensees to arrange a decedent's hair and/or make-up or to dress/casket a decedent, he may be subject to disciplinary action for aiding or abetting the unlicensed practice of funeral service. N.C. Gen. Stat. § 90-210.25(e)(1)h. Furthermore, any individual assisting with such services will be considered an "agent" of the funeral establishment employing Petitioner, regardless of whether the individual is licensed by this Board, by another occupational licensing board, or unlicensed. N.C. Gen. Stat. § 90-210.25(d)(4). As such, any violation of the Board's governing statutes and rules by these individual may subject Petitioner and/or his employing funeral establishment to disciplinary action, and the Board may pursue injunctive relief against any unlicensed person performing funeral services.

#### EFFECT OF RULING

This ruling is binding on Petitioner and the Board consistent with North Carolina General Statute section 150B-4(a).

Issued by the North Carolina Board of Funeral Service, this, the 22<sup>nd</sup> day  
of July, 2016.

THE NORTH CAROLINA BOARD OF  
FUNERAL SERVICE

By: Valde T. [Signature]

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Declaratory Ruling was sent by certified U.S. Mail, Return Receipt Requested, postage prepaid to:

J. Vernon Peterson  
594 S. Reilly Road, Ste. 106  
Fayetteville, NC 28314

This, the 22 day of July, 2016.



Christina D. Cress  
General Counsel