



## Antitrust Referral Analysis Submission by Board or Commission

Board or Commission: Ohio State Cosmetology and Barber Board

Contact Name: Charley L. Yaniko, Agency Counsel

Date: October 4, 2018

Referral Topic: Complaint Investigation Process for Unlicensed Residential Salons and Barber Shops

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. The CSI office was codified by ORC 107.52 for agency rule review. Additional scope was added in 2017 under ORC 107.56 which describes actions to be reviewed by the CSI Office for determination of approval or disapproval.

### Referral Information

1. What is the action/proposed action being taken?

The Ohio State Cosmetology and Barber Board uses the following approach when the Board receives a complaint alleging that an individual is practicing cosmetology, a branch of cosmetology, or barbering out of a private residence, and neither the individual nor the residence has ever held a license issued by the Board.

1<sup>st</sup> Allegation: Upon receipt of the allegation, the Board's inspection supervisor sends a form letter to the individual identified in the complaint. The letter identifies the applicable statutory chapters, explains how an individual can obtain the appropriate license if they are operating an unlicensed salon or barber shop in a private residence, and sets a due date for compliance. The letter also asks the individual to notify the Board if they are not operating an unlicensed salon or

barber shop in the home. If an individual timely complies with obtaining the appropriate licensure, or informs the Board that they are not operating a shop in their home, the matter is closed without further action. If they do not respond to the letter, or they respond to indicate that they are operating an unlicensed salon or barber shop and they fail to timely obtain the appropriate licensure, then the matter is either forwarded to an inspector for additional investigation, or forwarded to Board staff for the processing of a potential administrative action against the individual facility owner (or business entity owner) in accordance with the Board's standardized disciplinary process for unlicensed salons or unlicensed barber shops.

2<sup>nd</sup> (or more) Allegation: If the Board receives additional allegations alleging that an individual is operating an unlicensed salon or barber shop out of a private residence, and the Board has already followed the procedure set forth above, the matter is forwarded to an inspector for further investigation. If, following the additional investigation, the inspector determines that the individual is operating an unlicensed salon or barber shop, the matter is forwarded to Board staff for the processing of a potential administrative action against the individual facility owner (or business entity owner) in accordance with the Board's standardized disciplinary process for unlicensed salons or unlicensed barber shops.

In all cases where the Board seeks disciplinary action under either Chapter 4709 or 4713 of the Revised Code, the Board complies with Chapter 119 of the Revised Code, and either R.C. 4709.13 or 4713.64, as applicable, and the affected party is afforded an opportunity for a hearing on the matter before a Hearing Officer prior to the Board taking any disciplinary action. In addition, the Board follows a standardized disciplinary process for all unlicensed barber shops and salons, based on the Board's established matrixes for each chapter, as set forth in the separate referrals submitted for unlicensed barber shops and unlicensed salons.

2. In a brief statement explain the factual background, nature, purpose and rationale of the action/proposed action pertaining to this referral.

Chapters 4709 and 4713 of the Revised Code explicitly indicate that barbering and the branches of cosmetology may only be practiced in appropriately-licensed barber shops and salons. The Board, however, regularly receives complaints alleging that individuals are operating unlicensed barber shops or salons out of private residences. While sections 4709.05(H), 4713.07(A)(2), and 4713.66(A) of the Revised Code expressly authorize Board inspectors to investigate and inspect these locations, there are challenges involved in the investigation and inspection of activities occurring within private residences, including concerns about individual privacy and inspector safety. The Board's proposed standardized process in this referral allows the Board to reach out to individuals who may or may not be operating unlicensed salons or barber shops, educate these individuals about the applicable laws and rules, and provide an opportunity for compliance prior to engaging in more invasive, and potentially difficult or dangerous, investigation activities. The Board is currently holding a number of complaints alleging that individuals who have never held an individual license are operating shops or salons in private residences that have never been licensed by the Board, pending a decision on this referral.

3. Please check all of the following that apply as reasons the action/proposed action is subject to review? (ORC 107.56(B)(1))?

- Fixes prices or limits price competition;
- Divides, allocates or assigns customers or potential customers or geographic markets in this state among members of the occupation regulated by the boards;
- Excludes present or potential competitors from the occupation regulated by the board;
- Limits output or supply in this state of any good or service provided by the members of the regulated occupation;
- Prohibits offering a particular quality-level of a product or service;
- Restricts advertising or makes it more expensive or less effective;
- Substantially reduces the number of firms or providers that can serve a particular set of customers; or
- Any other activity that could be subject to state or federal antitrust law if undertaken by private persons.

4. Is the action/proposed action explicitly compelled or specifically authorized by statute? If so, please list the statute(s).

Yes.

Yes. R.C. 4709.02(B) specifically prohibits operating or attempting to operate a barber shop without a barber shop license.

R.C. 4713.14(I) specifically prohibits operating salon without a current, valid license issued under section 4713.41 of the Revised Code.

R.C. 4709.05(C) specifically tasks the Board with ensuring that the practice of barbering is only conducted in licensed barber shops, unless an individual's disability prevents them from going to a licensed barber shop.

R.C. 4709.05(H) explicitly states that the Board's authority to investigate and/or inspect activities or establishments for alleged violations of Chapter 4709 of the Revised Code and the rules promulgated thereunder applies to unlicensed individuals and businesses.

R.C. 4713.07(A)(2) and 4713.66(A) explicitly state that Board's authority to investigate and/or inspect activities or premises for alleged violations of Chapter 4713 of the Revised Code and the rules promulgated thereunder, and to take disciplinary action for any such violations, applies to unlicensed individuals.

5. Is the action/proposed action within the scope of the board or commission's statutorily-delegated general authority to regulate in a given occupation or industry? If so, please describe how it is within scope and reference the statute.

N/A. The proposed process is specifically authorized by statute.

6. Please identify the clearly articulated state policy (e.g., health and safety, or consumer protection) in state statute or rule, or any supporting evidence of the harm the action/proposed action is intended to protect against?

The proposed action is designed to protect public health and safety and to provide protection for consumers.

- 6a. How does the action/proposed action address the harm or advance the articulated state policy?

The proposed action serves as a method to deter individuals from operating unlicensed facilities. This helps to ensure that services in barbering or the branches of cosmetology are only provided in facilities that meet initial safety and sanitation requirements and are subject to inspection by the Board, which protects consumers from harm (chemical burns, razor cuts, skin diseases, infections, etc.) that could be caused by unsafe or unsanitary practices.

8. If appropriate, explain the action/proposed action's alleged consistency with state or federal antitrust law, which may include a description of how the action or proposed action may affect the number of competitors and those competitors incentive to compete in amount, quality, variety or other aspects of the good or service offered.

The action is consistent with state and federal antitrust law as it implements a clearly articulated state policy. Specifically, the Ohio General Assembly has determined that facilities offering barbering services or services within the branches of cosmetology should be licensed and regulated, and have tasked the Ohio State Cosmetology and Barber Board with carrying out this licensure and regulation. The Ohio General Assembly has also directly stated that engaging in such practice without a license is prohibited. The Board's proposed process carries out this state policy within the framework established by the General Assembly in Chapters 4709 and 4713 of the Revised Code.

9. What process did the board or commission follow to arrive at its decision to take action/proposed action including public hearings held, public comments invited, studies conducted, data collected interviews conducted, etc.?

The Board developed this process based on experiences in conducting investigations into complaints of unlicensed, residential barber shops and salons, and the challenges and concerns that have been identified by board inspectors. The goal was to develop a process that allowed the Board to educate and inform the individuals identified in these complaints prior to engaging in invasive and potentially confrontational investigation/inspection activity and possible administrative penalties.

10. Does the action/ proposed action relate to or depend upon a question that is the subject of a formal opinion request pending before the Ohio Attorney General?

No.

11. Provide any other information the board or commission deems appropriate for the Office's review of the action/proposed action.

The Board has attached a copy of the form letter noted above.

\*Send this completed form, a complete copy of action or proposed action, and any other documentation deemed appropriate for evaluation to [CSISReferrals@governor.ohio.gov](mailto:CSISReferrals@governor.ohio.gov).



# OHIO STATE COSMETOLOGY AND BARBER BOARD

To protect and support the public through regulation and education, while promoting the integrity of the cosmetology and barbering industries.

**1929 GATEWAY CIRCLE GROVE CITY, OHIO 43123**

PHONE: (614) 466-3834 [WWW.COS.OHIO.GOV](http://WWW.COS.OHIO.GOV)

Date

Name

Address

City, State, Zip

Re: Home Salon

Dear \_\_\_\_\_,

It has been brought to the attention of the Ohio State Cosmetology and Barber Board that you may be practicing cosmetology, barbering, or a branch of cosmetology or barbering (esthetics, hair design, manicuring, natural hair styling, braiding, threading, shampooing, and/or shaving) in your residence at \_\_\_\_\_ . According to Board records, you do not currently hold a salon or barber shop license for your residence, and there is no record indicating that you have applied for a license from the Board.

Operating a salon or barber shop without a current, valid license issued by the Board is in violation of Chapters 4709 and 4713 of the Ohio Revised Code. An individual who violates these statutes could face disciplinary action from the Board, and could even potentially face criminal charges and penalties for such a violation.

If you are not operating an unlicensed salon or barber shop in your home, please advise the Board of this information as soon as possible. If you are operating an unlicensed salon or barber shop at your residence, it may be possible to obtain a license for the salon or barber shop, and the necessary forms can be located on the Board's website at [www.cos.ohio.gov](http://www.cos.ohio.gov). If you do wish to pursue licensure for an unlicensed salon or barber shop, you must submit an application by \_\_\_\_\_. Failure to do so may result in the Board pursuing legal action.

If you have any questions or need assistance in resolving this issue, I may be reached at 614-644-6125 or at [meg.lamantia@cos.ohio.gov](mailto:meg.lamantia@cos.ohio.gov)

Sincerely,

Meg LaMantia  
Inspection and Investigation Supervisor  
Ohio State Cosmetology and Barber Board