

July 22, 1975

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ARIZONA ATTORNEY GENERAL

Mr. Lloyd G. Hendershot
Secretary, State Board of
Barber Examiners
1645 West Jefferson
Phoenix, Arizona 85007

Dear Mr. Hendershot:

In your letter of April 17, 1975, you posed the following question:

Can the Board of Barber Examiners, under Article 4-R4-549C of the Rules and Regulations of the State Board of Barber Examiners, legally restore the license of a female barber whose husband was in the service and stationed overseas?

An administrative agency has the power to waive, relax or modify its own rules or to excuse non-compliance. Sun Oil Co. v. Federal Power Commission, 257 F.2d 333 (1958); Sawyer v. Central Louisiana Electric Co., 136 So.2d 153 (La. App. 1961); Keys v. Unemployment Compensation Board of Review, 183 Pa.Super. 164, 130 A.2d 262 (1957). It also has the power to interpret its own rules and regulations in accordance with the intentment of the regulation, especially where interpretation is necessary to avoid an unfair and unjust application of the rule. Norwegian Nitrogen Products Co. v. U.S., 288 U.S. 294, 77 L.Ed. 796, 53 S.Ct. 350 (1933); Gulf Oil Corp. v. Hickel, 435 F.2d 440 (1970).

Thus, in the present case, the Board of Barber Examiners could either interpret Article 4-R4-549C to include the spouse of a person in the service or waive strict compliance with the rule and restore the license because of the extenuating circumstances of the case.

Sincerely,

Bruce E. Rabbitt
Attorney General