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## OPINIONS

### STATUTORY CONSTRUCTION:

Salespersons who style, comb, brush or arrange the hair of a customer in fitting hairpieces must be licensed cosmetologists.

Licensed cosmetologists may practice cosmetology outside a cosmetological establishment, provided sanitary rules established by the state board of cosmetology and director of public health are met.

Opinion No. 4700

February 7, 1973.

Mr. Robert E. French  
Administrative Secretary  
Board of Cosmetology  
1033 South Washington Avenue  
Lansing, Michigan 48926

You have requested whether 1931 PA 176, as amended, the act concerning cosmetology, being MCLA 338.751 *et seq.*; MSA 18.131 *et seq.*, would be violated if an individual not licensed as a cosmetologist combs and/or brushes the hair of a prospective customer in the process of selling a wig, fall, wiglet or other hairpiece.

You have also requested my opinion as to whether any place where the above acts are performed must be licensed pursuant to 1931 PA 176, as amended, as a cosmetological establishment.

You state that your inspectors have observed salespersons place hairpieces on the customer's head and then style and arrange the hair of the customer, blending the hair into the hairpiece. One comb or brush, your inspectors report, is used on every customer and no sanitary practices are followed with respect to the combs, brushes or other instruments used in performing these services. In addition, while the salesperson is performing these services, your inspectors report, the salesperson is in close proximity to the customer.

Cosmetology is defined in section 2(b) of 1931 PA 176 as follows:

“‘Cosmetology’ means any branch or any combination of branches of the occupation of a hairdresser, cosmetician, cosmetologist, beauty culturist, or any other person holding himself or herself out as practicing cosmetology by whatever designation and within the meaning of this act, which are now or may hereafter be practiced. The word cosmetology shall be defined and shall include the following practices or any 1 or a combination of the following practices: Arranging, cutting, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work, upon the hair of any female, with the hands, or with mechanical or electrical apparatus or appliances, or by any means; cleansing, massaging, stimulating, manipulating, exercising, beautifying, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams, or similar work upon the scalp, neck, face, arms, bust or upper part of the body of any person, or the removing of superfluous hair from

the upper part of the body of any person by the use of electrolysis, depilatories, waxes, or tweezers or manicuring the nails of any person. . . ." MCLA 338.752; MSA 18.132

The state board of cosmetology is entrusted with enforcing the provisions of the act concerning cosmetology. 1931 PA 176, § 5. In cooperation with the state board of health, the state board of cosmetology is to adopt or prescribe necessary sanitary rules to prevent the spreading of infectious or contagious diseases. 1931 PA 176, § 12. The state board of health has been abolished by section 4 of 1919 PA 146; MCLA 325.4; MSA 14.4, and its powers transferred to the state health commissioner. Pursuant to the executive organization act of 1965, 1965 PA 380, §§ 425, 426, 427; MCLA 16.525, 16.526, 16.527; MSA 3.29(425), 3.29(426), 3.29(427), the powers vested in the state health commissioner were transferred by a type I transfer to the department of public health with its head the director of public health.

One of the most important reasons for the regulation of cosmetologists is to prevent the spread of communicable diseases.

" . . . The occupation of hairdressing and cosmetology is of the same nature as barbering; both are trades which operate directly on the person and directly affect the health, comfort, and safety of the public and which are subject to regulation under the police power. Hence, cosmetologists and hairdressers, as well as the places where such a business or occupation is carried on, are subject to reasonable regulations designed to insure sanitary conditions and competent operators, to the end that the public may be protected against the spread of communicable diseases. The mere fact that barbers, among others, are exempted therefrom, does not necessarily render a regulation of the practice of cosmetology invalid. Regulation of the practice of cosmetology has been upheld even when applied to the practice of giving free beauty culture treatments to prospective customers of the cosmetic products on sale in a shop, the manager of which was not licensed under the statute and did not employ a licensed manager-operator to do the work involved." 10 Am Jur 2d, Barbers and Cosmetologists, § 2, pp 816-817.

Indeed, the applicant for a certificate of registration as a cosmetologist must pass:

" . . . written and oral tests as to their knowledge and skill in the use of antiseptic preparations, sterilization of tools and appliances, hygiene, bacteriology, histology of hair, skin, nails, structure of head, face and neck, and common diseases of the skin, hair and nails and the skill and care required to avoid the spreading or aggravation thereof, use of mechanical apparatus and electricity as applicable to the practice of the occupation of cosmetologist and may include such other demonstrations and tests as the board, in its discretion, may require." 1931 PA 176, § 21; MCLA 338.771; MSA 18.151.

Do the practices, then, described in your request, constitute the practice of cosmetology?

"A determination as to what particular persons are included within a provision requiring barbers, cosmetologists, etc., to be licensed or registered depends largely upon the particular language of the statute under consideration. Usually those who engaged in these activities for compensation, whether in the form of wages or commissions, are required to obtain a license. Although there are cases to the contrary, several courts have considered that the particular acts involved in sales demonstrations of cosmetic products are such as to come within the scope of statutes requiring licensing or registration of beauty specialists or cosmetologists, and it is further held not to violate the due process and equal protection clauses of the United States Constitution to apply such statutes to such persons." 10 Am Jur 2d, Barbers and Cosmetologists, § 11, p 825.

A person who arranges, styles, combs, dresses or curls the hair of a customer in fitting a hairpiece would come within the scope of the definition of a cosmetologist, and thus must be licensed by the state board of cosmetology.

A distinction should be made between a full hairpiece and a partial hairpiece. In regard to full hairpieces, if in fact the customer may have the full hairpiece on the head without the necessity of the salesperson touching the customer's hair to arrange or blend it, then the salesperson would not have to be licensed by the state board of cosmetology.

Your second question asks whether any place where the above acts are performed must be licensed as a cosmetological establishment.

A cosmetological establishment is defined in section 2(c) of 1931 PA 176 as follows:

"A 'cosmetological establishment or school of cosmetology' is any building, or any part thereof, completely partitioned off from any other business or dwelling, except a licensed barber shop wherein any of the herein classified occupations are practiced or taught for hire or compensation, and shall be subject to the provisions and within the meaning of this act as well as establishments shall be subject to rules and regulations adopted by the board and schools shall be subject to the curriculum set up by the board of schools of cosmetology." MCLA 338.752; MSA 18.132.

The attorney general has had occasion to rule on this issue before. In OAG 1947-1948, No. 198, p 235 (March 18, 1947), the issue was whether a cosmetologist could practice in the home of the customer, or was the cosmetologist restricted to practice in a cosmetological establishment. The attorney general said on page 236:

". . . It is the opinion of the Attorney General that a cosmetologist may practice cosmetology without restriction as to the place, except that she could not work in an unlicensed cosmetological establishment since such an establishment cannot lawfully operate."

Accordingly, if the place where a cosmetologist performs services comes within the statutory definition of a cosmetological establishment, as above defined, then that place must be licensed as a cosmetological establishment.

However, if in fact the place where a cosmetologist performs services does not come within the definition of a cosmetological establishment, the cosmetologist is not prohibited from performing services at that place.

And, in OAG 1947-1948, No. 723, p 621 (May 10, 1948), the attorney general was faced with the issue of whether the state board of cosmetology, in cooperation with the state board of health, could prescribe appropriate sanitary rules in connection with the practice of cosmetologists outside of cosmetological establishments.

"The Attorney General is of the opinion that the title of the act is broad enough to allow the cosmetology board, with the approval of the state board of health to adopt such rules and regulations governing the practice of cosmetologists who work outside of licensed cosmetological establishments as are necessary to prevent the spread of infectious and contagious diseases. However, such rules must not be so broad and inclusive as shall amount to prohibition against a licensed cosmetologist from practicing outside a licensed cosmetological establishment."

The state board of cosmetology, in cooperation with the director of public health, may establish appropriate rules to govern the conditions wherein cosmetologists could practice their work in stores where hairpieces are sold, but which do not constitute cosmetological establishments.

Full hairpieces or partial hairpieces may be sold in gasoline stations or supermarkets, as your inspectors have reported them being sold, so long as the salesperson does not touch the customer's hair to comb, style, arrange or blend it to fit in with the hairpiece. And under these circumstances, the salesperson would not have to be a licensed cosmetologist.

FRANK J. KELLEY,  
*Attorney General.*

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