



**THE ATTORNEY GENERAL
OF TEXAS**

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**CRAWFORD C. MARTIN
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August 25, 1972

Hon. M. H. Crabb, Secretary
Texas State Board of Medical
Examiners
1612 Summit Avenue, Suite 303
Fort Worth, Texas 76102

Opinion No. M-1192

Re: Whether the piercing
of ears by a lay person
or organization for
monetary or other con-
sideration constitutes
the "practice of medi-
cine" within the meaning
of Article 4510, Vernon's
Civil Statutes?

Dear Dr. Crabb:

Your recent letter requesting the opinion of this
office concerning the referenced matter states as follows:

"The Texas State Board of Medical Examiners
in Executive Session on Saturday, July 22, 1972,
passed a Resolution requesting an Opinion as to
the legality of a lay-organization or a lay-person
not licensed to practice the Healing Arts can
legally pierce ears where a charge is made for the
service, or where the service is provided as a
consideration for the purchase of the earrings,
constitutes the practice of medicine as defined
in Article 4510, Revised Civil Statutes of Texas."

Article 4510, Vernon's Civil Statutes, provides as
follows:

"Any person shall be regarded as practicing
medicine within the meaning of this law:

"(1) Who shall publicly profess to be a phy-
sician or surgeon and shall diagnose, treat, or
offer to treat, any disease or disorder, mental

or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. . . ."

The legal question presented by your request is one of first impression in this State.

We take notice of the fact that the reason persons, primarily females, desire to have their ears pierced is so they will be able to wear certain styles of earrings which, absent such piercing, could not be attached to their ear lobes.

Article 4510, supra, speaks in terms of an unlicensed layman's treating a physical or mental "disease, disorder, deformity, or injury". We fail to see how the piercing of ears can possibly constitute treatment of a "disease, disorder, deformity, or injury" within the meaning of that Article.

We believe the rationale applicable to our holding is best expressed in the analogous case of People v. Lehrman, 296 N.Y.S. 580 (N.Y.App.Div. 1937). There, the defendant was indicted for unlawfully practicing medicine. In her regular course of business, she operated a beauty parlor and removed hair from females' faces by means of the electrolysis process. In overturning her conviction, the court held that: "Practices such as this have always been held to be matters of personal taste and adornment and not connected with the practice of medicine." 296 N.Y.S. at 581.

For other holdings to the same effect, see Engel v. Gerstenfeld, 171 N.Y.S. 1084 (N.Y. App.Div. 1918); People v. Maggi, 33 N.E.2d 925 (Ill.App.Div. 1941), aff'd 39 N.E.2d 317 (Ill.Sup. 1942); and 56 A.L.R.2d 904 (1957).

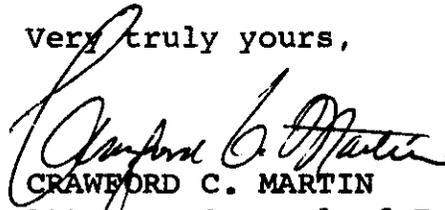
In view of the foregoing authorities, you are advised that the piercing of ears by a lay person or organization for monetary or other consideration does not constitute the "practice of medicine."

You are further advised that any medical treatment of the ear lobe, should the same be required as the result of the initial piercing of the lobe, would constitute the "practice of medicine". We are not advised that such medical treatment is ordinarily required or to be reasonably expected as the result of this practice.

S U M M A R Y

The piercing of ears by a lay person or organization for monetary or other consideration does not constitute the "practice of medicine", within the meaning of Article 4510, Vernon's Civil Statutes.

Very truly yours,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Austin C. Bray, Jr.
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

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Bob Gauss
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