



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

October 12, 1992

Mr. Ron Resech  
Executive Director  
Texas Cosmetology Commission  
5717 Balcones Drive  
P. O. Box 26700  
Austin, Texas 78755-0700

Letter Opinion No. 92-64

Re: Whether businesses which style hair, apply makeup, and take a portrait for a single fee are subject to the Cosmetology Regulatory Act, V.T.C.S., article 8415a, and related questions (ID# 16516)

Dear Mr. Resech:

You inquire about the applicability of the Cosmetology Regulatory Act (the "act"), V.T.C.S. article 8451a, to businesses which will "style your hair, apply makeup, and take a portrait for one fee."

We first address your concern whether, assuming cosmetology services are performed at such establishments, the establishments are subject to the act's requirements of licensure by the Texas Cosmetology Commission. Section 1(3) of the act defines "cosmetology" to include various practices performed "for compensation." Section 9(b) of the act provides in pertinent part: "[a] person may not conduct or operate . . . any . . . place of business in which the practice of cosmetology is taught or practiced without first obtaining a license." *See also* V.T.C.S. art. 8451a § 19 (beauty shop license), § 20 (specialty shop license). Section 39, however, provides for various exemptions from the act's provisions. Those exemptions relate to emergencies, licensed health care providers, makeup application, barbers, and services at nursing homes. Assuming that none of the act's exemptions apply in a particular instance, we think it is clear that the establishments you are concerned about are subject to the act's licensure requirements if "cosmetology" services, within the meaning of the act, are in fact performed there.<sup>1</sup>

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<sup>1</sup>The act requires licenses both for persons performing cosmetological services--*see, e.g.*, section 10 (operator's license)--and for persons maintaining establishments in which such services are performed. We understand you to be asking about licensure requirements for maintaining such establishments and not about requirements pertaining to those performing cosmetological services--and we limit our response here accordingly.

We next address your concern as to whether the "for compensation" element of the definition of cosmetology is met despite the fact that compensation for the services rendered by the establishments at issue is in the form of a single price which includes compensation for non-cosmetological photographic services. Again, section 1(3) of the act defines "cosmetology" to include various practices performed "for compensation." We think it clear that the "for compensation" element of the definition is met even though the compensation is in the form of a single price which also includes compensation for non-cosmetological services.

Finally, we address your concern whether the performance of "makeup removal" at the establishments in question constitutes the practice of cosmetology, thus subjecting such establishments to the licensure requirements of the act. Again, section 9(b) of the act provides in part that "[a] person may not operate . . . any . . . place of business in which the practice of cosmetology is . . . practiced without first obtaining a license." Section 1(3) defines "cosmetology" to include "cleansing the face" "for compensation." *Id.* § 1(3)(B). Section 39(3), however, exempts from the act's provisions "a person engaged in the business of or receiving compensation for makeup *applications* only."

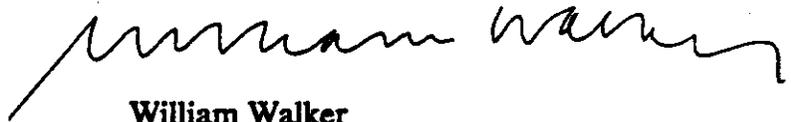
In our opinion, makeup removal at the establishments in question subjects them to the licensure requirements of the act. Makeup removal clearly falls within the "cleansing the face" language of the section 1(3) definition of "cosmetology." Also, as discussed above with reference to the first question, we think that the compensation element of the section 1(3) "definition of cosmetology" is met even though the compensation for makeup removal is comprehended in a single price which also includes compensation for non-cosmetological services. Nor, bearing in mind the rule of statutory construction that exemptions are to be strictly construed, do we believe that the section 39(3) exemption for "makeup application" applies to "makeup removal."

### S U M M A R Y

A business which styles hair, applies makeup, and takes a portrait for a single fee and at which cosmetology services are performed is, under the circumstances discussed, subject to the licensure requirements of the Cosmetology Regulatory Act, V.T.C.S. article 8451a. The "for compensation" element of the act's definition of "cosmetology" is met even though

compensation is in the form of a single price which also includes compensation for non-cosmetological services. An establishment at which makeup removal is practiced is, under the circumstances discussed, subject to the licensure requirements of the act.

Yours very truly,

A handwritten signature in cursive script, appearing to read "William Walker".

**William Walker**  
**Assistant Attorney General**  
**Opinion Committee**