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October 8, 2003

ANTOINETTE FONTENOT HUMPHREY  
Executive Director

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ADMINISTRATIVE LAW DIVISION

Mrs. Antoinette Humphrey  
Executive Director  
Texas Cosmetology Commission  
5717 Balcones Drive  
Austin, TX 78731-4203

RQ-0118-GA

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OCT 15 2003

OPINION COMMITTEE

✓ Mr. Jason Ray  
Assistant Attorney General  
Office of the Attorney General  
P. O. Box 12548, Capitol Station  
Austin, TX 78711-2548

FILE # ML-43299-03

I.D. # 43299

Re: Requested Formal Opinion from Attorney General's Office  
HB 653 Shampoo Apprentice Permit/Enacted by 78<sup>th</sup> Texas Legislature  
September 1, 2003

Dear Antoinette and Jason:

Please consider this letter as a formal request for an official written opinion from the Office of the Attorney General regarding HB 653-Shampoo Apprentice Permit. I would like the opinion to address items listed in this letter regarding HB653 as it relates to a state licensing agency (TxCC) whose goal is to protect the health and welfare of the public.

1602.002 Definition of Cosmetology (1) (A) includes shampooing as a cosmetology service.

1602.154 FEES. The commission shall set fees reasonable and necessary to cover cost of administering this chapter. The commission shall assess the fees against each person licensed or regulated under this chapter.

- 1602.251. License required (a) (for areas of licensing requirement see 1602.002)
- 1602.258 Eligibility for a specialty certificate (a) (b)
- 1602.259 License or certificate examination
- 1602.266 Student permit
- 1602.405 Practice at facility licensed by commission and state board of barber examiners
- 1602.406 Infectious and contagious diseases
- 1602.407 Grounds for refusing, revoking, or suspending license
- 1602.453 Course length and curriculum content
- 1602.501 Imposition of penalty
- 1602.502 Amount of penalty
- 1602.503 Report and notice of violation and penalty

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1602.504 Penalty to be paid or hearing requested  
1602.505 Hearing  
1602.506 Decision by Executive Director  
1602.507 Options Following Decision: Pay or Appeal  
1602.508 Collection of Penalty  
1602.509 Determination by Court  
1602.510 Remittance of Penalty and Interest  
1602.511 Administrative Procedure  
1602.551 Right of Access: Discovery of Violation  
1602.552 Injunctive Relief

The requirement for license by the state of Texas is to protect the health safety and welfare of the citizens of Texas. Chemicals may seriously harm the patron, analysis of the hair and scalp is very necessary to protect from the spread of contagious disease. Shampooing is a first step to chemical services received by clients in licensed salons. A hair and scalp analysis is a prerequisite to the shampooing prior to further services. A person who would attempt to shampoo a person without a license through the approved requirements set by the commission would be a danger to those who are served.

Currently Texas requires a license for every item included in 1602.002:

How is a state regulatory agency able to oversee a non- licensed individual?

How is a non-licensed individual able to operate under 1602.002, which requires a license?

How is the individual who employs this apprentice able to teach under the statutes requiring a license to teach?

An 'apprentice' is defined as one who works for another to learn trade; a learner; a novice. Or put under the care of an employer for instruction in a trade.

How does a salon qualify as a school where a person is taught?

With a licensed establishment and a licensed individual by the state of Texas how are they able to employ a person who is in violation of 1602.002 and 1602.251?

It would appear that Texas has an agency acting by statute with licensing requirements to protect the public. It is in direct conflict to allow an untrained, unlicensed individual to practice any part of cosmetology. Further when considering statutes which apply to all facets (training, through license examination, and renewals), it is in direct violation of the statute to issue a permit to anyone that has not complied with the statute as they are currently written.

#### **Additional Comments:**

**HB 653 is in direct conflict with the statute governing cosmetology in Texas.**

1. HB 653 requires the shampoo apprentice to have a health certificate

2. HB 653 allows an unlicensed person to perform cosmetology services on clients in a state-licensed facility.

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3. HB 653 allows the teaching to be administered by an unlicensed teacher, in an unlicensed school, with no requirements set for curriculum by the commission as required by statute.

4. HB 653 does not require the necessary fees that are reasonable and necessary to cover the cost of administering this chapter.

5. HB 653 is in violation with the already published and practiced statutes regarding cosmetology in the state of Texas. It serves no useful purpose for employment of the 16 yr. old, the salon who would employ them, or the client who would be served. There are app. 140,000 licensed cosmetologists, including licensed shampoo assistants who would be prime candidates for minimum wage as required by Section 6, Fair Labor Standards Act of 1938 (29 U.S. C. Section 206).

**Additional Questions:**

1. How is TCC able to oversee a non-licensed person?
2. How is TCC able to issue a permit to an individual who is not licensed as required in all areas or facility license not covered under current statute?
3. How does HB 653 justify the already licensed shampoo course given by licensed schools with licensed teachers and who are required to take a state approved exam and follow all statutes applying to cosmetology in Texas.

Please immediately initiate the proper steps for this request and notify me when it is started in order that I may advise all of the TxCC commissioners as soon as possible.

Yours truly,



Helen Quiram  
Chair

Cc: Office of Governor Perry

Faxed & Mailed