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RECEIVED  
MAY 03 2004  
OPINION COMMITTEE

GLENN E. PARKER  
EXECUTIVE DIRECTOR  
glenn.parker@tsbhe.state.tx.us

STATE BOARD OF BARBER EXAMINERS  
<http://www.tsbhe.state.tx.us>

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Austin, Texas 78731  
(512) 936-6333 (888) 870-8755 FAX (512) 458-4901

FILE # ML-43669-07  
I.D. # 43669

April 29, 2004

Nancy Fuller  
Chair, Opinions Committee  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

RQ-0216-GA

Dear Ms. Fuller:

Attached is a request from the Texas State Board of Barber Examiners for an Attorney General's Opinion regarding a possible conflict in state statutes concerning the issuance and/or renewal of licenses for barbers and manicurists using the Texas Online internet process.

I have also attached a copy of a letter dated December 19, 2003 in which the Barber Board also requested the same opinion. Dr. Douglas Beran, the Board's previous executive director, resigned on January 2, 2004. I cannot confirm that Dr. Beran actually sent this request for an opinion to your office, and I do not see it listed on your agency's website as a pending request.

As you can see, I have simply updated Dr. Beran's letter. I have also attached some additional information that may help the Committee reach a decision.

Please contact me at 936-6311 or 936-6333 if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Parker".  
Glenn Parker  
Executive Director

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April 29, 2004

The Honorable Greg Abbott  
Texas Attorney General  
c/o Nancy Fuller, Chair Opinions Committee  
PO Box 12548  
Austin, TX 78711-2548

The TexasOnline statute (2054.251), Government Code) directs the Barber Board to participate in the TexasOnline project whereby licensees can obtain their original and renewal licenses/permits online. The Appropriations Bill (VIII – 9), 78<sup>th</sup> Texas Legislature requires the Barber Board to achieve certain performance measures:

	<u>FY04</u>	<u>FY05</u>
Percent of Licensees Who Renew Online	13%	18%
Percent of New Individual Licenses Issued Online	0%	10%

However, the Texas Occupations Code, Chapter 1601, Barbers, provides that a person, upon applying for an original barber/manicurist license (1601.264) or a renewal (1601.402), must *present* a health certificate from a physician stating that the applicant does not have an infectious or contagious disease. Such a *physical presentation* cannot occur electronically.

The Barber Board requests the Office of the Attorney General to give direction to the Barber Board on how to comply with these seemingly mutually exclusive mandates by the Texas Legislature.

Thank you for your consideration of this request.

Sincerely,

Glenn D. Parker  
Executive Director

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**Additional Information**

The Board of Barber Examiners currently does participate in the Texas Online Project for license renewals. However, because of the requirement that licensees must present a health certificate to the Board before a license can be issued or renewed, Barber Board licensees can only pay online. They cannot complete the license renewal process online. Applicants who pay online must still mail to the Board the required health certificate before a license can be issued.

The Board is required to collect \$6 from all barbers and \$3 from all manicurists who renew their licenses regardless of whether or not the licensee uses Texas Online to pay the renewal fee. All licensees, including those who use Texas Online to pay their fees online, must still mail to the Board their health certificate. Therefore, most licensees choose not to participate in Texas Online, even though they must pay either the \$6 fee or the \$3 fee anyway. Agency staff maintains a file of licensees who have paid renewal fees through Texas Online. A license is not renewed for those individuals until the health certificate is received in the mail and matched to the Texas Online payment record.

Approximately five percent (5%) of current Barber Board licensees who are eligible to use the Texas Online system choose to do so. Barber licensees are being required to pay fees to use a system that does not allow them to actually renew their licenses online because of the statutory requirement for the presentation of the health certificate.

Therefore, the Board is seeking guidance on how it can be required to both participate in the Texas Online project for the issuance or renewal of licenses for which a health certificate is required and at the same time comply with the statute that applicants present a health certificate to the Board before certain licenses can be issued or renewed.

Chapter 1601.264 of the Texas Occupations Code states:

*"The board may not issue a certificate or license until an applicant presents a health certificate from a physician stating that the applicant does not have an infectious or contagious disease."*

Texas State Board of Barber Examiners  
Request for Attorney General's Opinion  
April 28, 2004

Chapter 1601.402(d) of the TOC states:

*"The Board may not renew a certificate or license until an applicant presents a health certificate from a physician stating that the applicant does not have an infectious or contagious disease."*

Barber Board Rule 51.98 (Texas Administrative Code Title 22, Part 2, Chapter 51.98) currently states:

*"As required by Senate Bill 187 and Senate Bill 645, 77<sup>th</sup> Legislature, Regular Session, each licensee, upon renewal, shall pay the following State-Mandated Fee for Occupation Licensing Transactions Using the Internet: \$6.00 for a barber; \$3.00 for a manicurist. This fee is in addition to the renewal fee."*

Relevant bills concerning the Texas Online Project passed by the legislature and signed into law by the Governor include:

- (1) SB 187, 77<sup>th</sup> Leg., RS;
- (2) SB 645, 77<sup>th</sup> Leg, RS; and,
- (3) SB 1152, 78<sup>th</sup> Leg, RS. SB 187, Subchapter I, Sec. 2054.252 Texas Online Project creates Texas Online.

SB 645, 77<sup>th</sup> Leg, RS, Sec. 2054.252 states:

*"Applicability. (a) The following licensing authorities shall participate in the system established under Section 2054.253" (252?):*

- (1) "State Board of Barber Examiners;"

SB 1152, 78<sup>th</sup> Leg, RS, Section 7 again requires the Board of Barber Examiners to participate in the Texas Online project.

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**FILE COPY**

December 19, 2003

The Honorable Gregg Abbot  
Texas Attorney General  
c/o Nancy Fuller  
Chair, Opinion Committee  
109 W. 14th, 6th Floor  
Austin, Texas

file name: Attorney General Opinion  
TexasOnline and Health Certificate.doc  
folder: Enforcement Correspondence

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The Barber Board requests the Office of the Attorney General to give direction to the Barber Board on how to comply with these seemingly mutually exclusive mandates by the Texas Legislature.

Thank you for your consideration of this request.

William H. Kuykendall, J.D.  
Chairman

Douglas A. Beran, Ph.D.  
Executive Director