

7196 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 30, 2001

The Honorable Glenn F. McConnell
Senator, District No. 41
P.O. Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator McConnell:

By your letter of July 6, 2001, you have requested an opinion of this Office concerning the licensing of massage/bodywork therapists and cosmetologists and estheticians. You ask whether a person who is licensed as a massage/bodywork therapist must also be licensed as an esthetician or cosmetologist in order to practice massage/bodywork therapy in this State.

Chapter 30 of Title 40 of the South Carolina Code of Laws governs the practice of massage/bodywork therapy. Section 40-30-100 states:

No person may practice massage/bodywork without a license issued in accordance with this chapter by the director; however, a person licensed by the State under this title or any other provision of law whose scope of practice overlaps with the practice of massage/bodywork is not also required to be licensed under this chapter unless the person holds himself out to be a practitioner of massage/bodywork. Nothing in this chapter may be construed to authorize a massage/bodywork therapist licensed under this chapter to practice physical therapy or chiropractic or to utilize chiropractic therapeutic modalities except where the scope of practice for massage/bodywork, as provided for in this chapter, overlaps with the practice of physical therapy or chiropractic. (Emphasis added).

As the emphasized language above indicates, a person must have a license to practice massage/bodywork in this State. Section 40-30-110 requires that in order to receive a license, a person must be at least eighteen years of age, have a high school diploma or GED, complete the appropriate study at an approved school, and pass an examination approved by the Advisory Panel

Request Letter

for Massage/Bodywork. Nothing in Section 40-30-110 requires that the person also be licensed as a cosmetologist or esthetician to obtain a massage/bodywork license. Thus, as a general rule, a licensed massage/bodywork practitioner does not need a cosmetology or esthetician's license.

As a practical matter, however, a person practicing massage/bodywork may also need a cosmetology or esthetician's license if the practitioner provides services falling within the definition of "massage/bodywork therapy," and also within the definition of "cosmetology" or "esthetician." Section 40-30-30 defines "massage/bodywork therapy" as:

...the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

Chapter 13 of Title 40, the chapter governing cosmetology and cosmetologists, contains the following definitions:

(2) "Cosmetology" means engaging in any of these practices or a combination of these practices when done for compensation either directly or indirectly:

(a) arranging, styling, thermal curling, chemical waving, pressing, shampooing, cutting, shaping, chemical bleaching, chemical coloring, chemical relaxing, or similar work, upon the hair, wig, or hairpiece of any person, by any means, with hands or mechanical or electrical apparatus or appliances;

(b) using cosmetic preparations, make-up, antiseptics, lotions, creams, chemical preparations on, or otherwise, or waxing, tweezing, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, legs, feet, face, neck, arms, hands; or

(c) manicuring or pedicuring the nails of a person or similar work.

(5) "Esthetician" means a person including, but not limited to, an independent contractor, who is licensed to practice skin care, make-up, or similar work. Skin care is for the sole purpose of beautifying the skin.

S.C. Code Ann. § 40-13-20.

Whether the practitioner's services constitute cosmetology or massage/bodywork would depend on the facts of each individual case. Fortunately, the definitions appear to contemplate activities that are readily distinguishable as one or the other. However, the statutes do provide for situations in which some overlap exists. Section 40-30-100, quoted above, specifically mentions the potential for overlap into the field of physical therapy and chiropractic therapy, and states that practitioners in other fields need not obtain massage/bodywork licenses for areas of overlap unless

Senator McConnell
Page 3 of 3
July 30, 2001

they hold themselves out as massage/bodywork providers. But note, Section 40-30-100 does not answer the reverse question, *i.e.*, when a massage/bodywork practitioner overlaps into another field, such as cosmetology, is a cosmetology license required? Chapter 13 of Title 40 does not answer this question either. Thus, it appears that in areas of overlap, a practitioner of another field need not obtain a massage/bodywork license for that activity, but a massage/bodywork practitioner may need a license in the overlapping field if the activities fall within a more restricted or protected area of expertise. Again, such a determination is highly fact-specific and, thus, beyond the scope of an opinion of this Office to adjudicate.

In sum, a person is not required to obtain a cosmetology or esthetician's license to practice in the area of massage/bodywork therapy. All that is required by statute is a massage/bodywork license. In instances of overlap, a massage/bodywork therapist may be required to obtain a license in another field if the particular activities are restricted to that profession. In the unlikely event that a service provided by a massage/bodywork therapist might cross the line into the practice of cosmetology, the practitioner should seek the opinion of the State Board of Cosmetology or the Advisory Panel for Massage/Bodywork for its determination.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General