

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

February 18, 1988

Ms. Sue Sansom, Executive Director
Arizona State Board of Cosmetology
1645 West Jefferson Street
Phoenix, Arizona 85007

Re: I88-024 (R87-197)

Dear Ms. Sansom:

You have asked whether the Arizona State Board of Cosmetology ("Board") has the power to authorize an organization using unlicensed persons to perform cosmetology services to hospital and nursing home patients if the services have therapeutic value and are without charge to the patient when the organization is paid by the health care institution for the services rendered. We conclude the Board is without the power to authorize such activity.

Administrative agencies possess only those powers granted by a constitution or statute. E.g. Fleming v. Pima County, 125 Ariz. 523, 611 P.2d 110 (App. 1980); Cox v. Pima County Law Enforcement Merit System Council, 27 Ariz.App. 494, 556 P.2d 342 (1976). The Board may not exercise powers not expressly granted it by legislation. Corella v. Superior Court In and For the County of Pima, 144 Ariz. 418, 698 P.2d 213 (App. 1985). The powers and duties of the Board include the duty to "[a]dminister and enforce this chapter and rules adopted pursuant to this chapter." A.R.S. § 32-504(A)(2).

The Cosmetology chapter sets forth a detailed licensing scheme which the Board is obligated to enforce. A.R.S. § 32-574 provides in pertinent part:

- A. A person shall not:
 1. Perform or attempt to perform cosmetology, aesthetics or nail technology

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without a license in that category issued pursuant to this chapter, or practice in a category in which he does not hold a license.

Specific exceptions to the licensing requirement are established in A.R.S. § 32-506 which provides:

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Practices done for the treatment of physical or mental ailments or disease by medical practitioners licensed pursuant to this title.
2. Commissioned physicians and surgeons in the armed forces of the United States or other federal agencies.
3. Persons licensed pursuant to chapter 3 or 12 of this title.^{1/}
4. Students attending schools licensed pursuant to this chapter while they are on school premises during school hours.
5. Persons employed by theatrical groups who apply makeup, oils and cosmetics.
6. Persons who sell makeup oils and cosmetics and who apply such products during the process of selling such products.
7. Shampoo assistants who shampoo hair under the direction of a cosmetologist licensed pursuant to this chapter.
8. Services performed by and for persons in the custody of the state department of corrections.

^{1/}Chapter 3 relates to barbers and Chapter 12 governs funeral directors and embalmers.

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None of the exceptions applies to persons who provide cosmetology^{2/} services to hospital and nursing home patients. It is fundamental that the expression of one or more items of a class in statute indicates a legislative intent to exclude all items of the same class which are not expressed. E.g., Pima County v. Heinfeld, 134 Ariz. 133, 654 P.2d 281 (1982). Therefore, the specific exceptions to the licensing requirements listed in A.R.S. § 32-506 are exclusive and the Board may not authorize additional exceptions such as persons who perform cosmetology services for hospital or nursing home patients. The details of compensation are not relevant to the licensing requirement. Nothing in A.R.S. § 32-574, which makes it unlawful to perform cosmetology without a license, requires compensation as an element of the offense. Similarly, the therapeutic value of the services is irrelevant unless the

2/A.R.S. § 32-501(6) provides:

"Cosmetology" means any one or a combination of the following practices if they are performed for cosmetic purposes:

- (a) Cutting, clipping or trimming hair.
- (b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
- (c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.
- (d) Arching eyebrows or tinting eyebrows and eyelashes.
- (e) Removing superfluous hair by means other than electrolysis.
- (f) Nail technology.

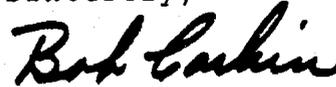
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services are performed by a licensed medical practitioner for the purpose of treatment. A.R.S. § 32-506(1).

You also ask whether a hospital or other licensed health care institution may lawfully contract to have cosmetology services provided by unlicensed persons.

A violation of A.R.S. § 32-574 is a class one misdemeanor. A.R.S. § 32-574(C). It is a crime to solicit, facilitate or aid and abet another in the commission of a criminal act. A.R.S. § 13-303; See A.R.S. §§ 13-301 to -306. Accordingly, it is unlawful for a hospital or nursing care institution to contract for or pay unlicensed persons to provide cosmetology services to its patients.

Sincerely,



BOB CORBIN
Attorney General

BC:WJW:DPS:djd



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Robert R. Corbin

July 14, 1988

Ms. Sue Sansom, Executive Director
Arizona State Board of Cosmetology
1645 West Jefferson Street
Phoenix, Arizona 85007

Re: ADDENDUM TO
I88-024 (R87-197)

Dear Ms. Sansom:

In view of the Legislature's recent amendment to A.R.S. § 32-506, approved by the governor on July 6, 1988 as an emergency measure, we issue this addendum to our earlier opinion, Ariz. Atty. Gen. Op. I88-024 dated February 18, 1988.

We had concluded that the Arizona State Board of Cosmetology ("Board") was without the power to authorize an organization using unlicensed persons to perform cosmetology services to hospital and nursing home patients because they were not specifically included in that chapter's exclusionary language. However, A.R.S. § 32-506(9) now provides that the following persons will also be excluded from the chapter which regulates the licensing of cosmetologists:

Persons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or supervisory care home with the consent of the patient and the hospital, nursing home or supervisory care home.

Because the Legislature has specifically authorized the exclusion of such services as set forth under A.R.S. § 32-506(9), it would not be unlawful for a hospital or nursing care institution to contract for or pay unlicensed persons to provide these types of cosmetology services to its patients.

Sincerely,

A handwritten signature in cursive script that reads "Bob Corbin".

BOB CORBIN
Attorney General

BC:DASH:bl