

OPINION NO. 77-022**Syllabus:**

The State Board of Cosmetology may, pursuant to R.C. 4713.02, regulate the use of the "Depilatron" and similar techniques of hair removal by licensed cosmetologists.

To: Robert Moore, Exec. Secretary, State Board of Cosmetology, Columbus, Ohio

By: William J. Brown, Attorney General, May 3, 1977

Your office has requested my opinion as to whether the regulation of the "Depilatron" (trademark of Depilatron, Inc.) technique of hair removal falls within the jurisdiction of the State Board of Cosmetology.

Pursuant to conversations between this office and yours, as well as materials furnished, it appears that your request is prompted by a concern that the use of this equipment might be construed as the practice of medicine and, therefore, subject to regulation by the State Medical Board. In this regard R.C. 4731.41 states in relevant part:

"No person shall practice medicine or surgery or any of its branches without a certificate from the state medical board; no person shall advertise or announce himself as a practitioner of medicine or surgery, or any of its branches, without a certificate from the board; no person not being a licensee shall open or conduct an office or other place for such practice without a certificate from the board; no person shall conduct an office in the name of some person who has a certificate to practice medicine or surgery, or any of its branches; and no person shall practice medicine or surgery, or any of its branches, after a certificate has been revoked, or, if suspended, during the time of such suspension. Any person licensed as a cosmetic therapist and holding a certificate issued by the state medical board pursuant to Chapter 4731. of the Revised Code may advertise and offer the service of cosmetic therapy and conduct an office for the practice thereof under such rules and regulations as may be prescribed by the state medical board. Section 1701.03 of the Revised Code is not applicable to the practice of cosmetic therapy, except that no corporation shall be licensed to practice cosmetic therapy. . . ."

Depilatron is described in your request as a modern method of permanently removing superfluous hair. According to the brochure published by Depilatron, Inc. ("The Depilatron Method of Hair Removal", Depilatron, Inc. 1975, Woodbridge, Conn. 06525), the procedure differs from electrolysis in that needles are not used and there is no direct contact with the skin. Instead, a shielded tweezer is employed in the Depilatron method and a short wave current (radio frequency energy) is passed via the tweezer, through the hair and into the papilla. This causes the papilla, or hair root, to coagulate, thus preventing regrowth. The tweezer itself does not come into contact with the skin; there is no penetration. Further, it is our understanding that this process is utilized solely for cosmetic purposes.

The State Board of Cosmetology is charged by R.C. 4713.02 with adopting rules necessary for carrying out the provisions of R.C. Chapter 4713, including the examination of applicants for licenses as cosmetologists. In this regard R.C. 4713.01 defines what constitutes the practice of cosmetology. That section states, in pertinent part, that the practice of cosmetology involves work done for the "embellishment, cleanliness and beautification of women's hair . . ., including cutting . . . or similar work" and the "stimulating . . . or similar work upon the scalp, face, arms or hands, by the use of mechanical or electrically operated appliances . . ." (emphasis added). In addition, the statute states that the above practices, while inclusive of the practice of cosmetology, are not exclusive thereof. R.C. 4713.01, however, expressly precludes providing such services for the treatment of any physical disease.

On the other hand, R.C. 4731.34 defines what constitutes the practice of medicine. The applicable portion of that statute provides that one is engaged in the practice of medicine if he ". . . administers or dispenses for compensation . . . a drug . . . application . . . or treatment . . . for the cure or relief of a wound, fracture . . . or disease . . ." (emphasis added).

The Ohio Supreme Court in State v. Rich, 44 Ohio St.2d 195 (1975), had occasion to consider whether acupuncture constituted the "practice of medicine" within the meaning of R.C. 4731.34. The Court held that "insertion of needles beneath the skin to alleviate pain . . . or disease constitutes the practice of medicine. . . ." It must be recognized, however, that acupuncture is quite a different procedure from Depilatron. The latter differs from acupuncture in that no needles are inserted; the instrument never comes into contact with the skin. Further, and perhaps equally important, the sole purpose of Depilatron is cosmetic. In contrast, the purposes of acupuncture are healing or alleviating pain.

In addition, however, to the general provisions of R.C. 4731.34 defining the "practice of medicine", R.C. 4731.15 requires the State Medical Board to examine and register persons desiring to practice any limited branch of medicine or surgery, including "cosmetic therapy". The statutes do not define "cosmetic therapy". Nor do I find any cases which define this term for purposes of determining the scope of the State Medical Board's jurisdiction. As a practical matter the Medical Board has, pursuant to its authority under

R.C. 4731.16 to adopt rules governing the examination of applicants to practice limited branches of medicine, undertaken to define the scope of the practice of "cosmetic therapy". Rule 4731-1-08, Ohio Administrative Code, states:

"(A) Cosmetic therapy is the removal of hair from the face, scalp, neck or shoulders, and the therapeutic removal of superfluous or abnormal hair from the human body, and the systematic friction, stroking, slapping, kneading or tapping to the face, scalp, neck or shoulders.

(B) A practitioner of cosmetic therapy shall not remove hair except from the face, scalp, neck or shoulders by application of current through an electric needle to the hair papilla or except the therapeutic removal of superfluous or abnormal hair from the human body by application of current through an electric needle to the hair papilla.

(C) A practitioner of cosmetic therapy shall examine the appropriate parts, but shall not examine, diagnose, or treat other diseases or conditions than those indicated herein as within the scope of cosmetic therapy."

While this rule standing alone would not control as to the General Assembly's intention in this area, it may appropriately be considered along with the provisions of R.C. Chapters 4713 and 4731, in establishing a test, consistent with legislative intent, to determine what agency has jurisdiction to regulate operation of the equipment in question. See R.C. 1.49(F). It appears then that R.C. 4731.15 in its implementation with respect to cosmetic therapy has been directed only at cosmetic treatments, which involve the insertion of needles or other instruments into a person's skin.

This construction is bolstered by reference to R.C. Chapter 4713 and the practices which have in the past been authorized and regulated by the Board of Cosmetology pursuant thereto. As discussed above R.C. 4713.01(A) defines the practice of cosmetology as including, but not limited to, the use of mechanical or electrically operated appliances for the embellishment, cleanliness and beautification of a woman's hair, as well as cleansing, stimulating and similar work upon the scalp, face, arms or hands. Pursuant to these provisions such practices as the removal of hair with tweezers by licensed cosmetologists has been permitted.

In view of the foregoing I must, therefore, conclude that use of the equipment in question is not the practice of medicine for purposes of R.C. Sections 4731.15, 4731.34 or 4731.41, provided the treatment is not for the purpose of treating or curing any physical or mental diseases or ailments. Such treatment would, however, be subject to regulation by the State Board of Cosmetology pursuant to R.C. 4731.02.

In specific answer to your question the State Board of Cosmetology may, pursuant to R.C. 4713.02, regulate the use of the "Depilatron" and similar techniques of hair removal by licensed cosmetologists.