

OPINION NO. 79-002**Syllabus:**

"Ear piercing" does not constitute the practice of medicine under R.C. 4731.34.

To: William I. Lee, Ohio State Medical Board, Columbus, Ohio
By: William J. Brown, Attorney General, February 2, 1979

I have before me your request for my opinion which raises the following questions:

1. Does ear piercing constitute the practice of medicine as defined in the Medical Practice Act including Section 4731.34, Revised Code.
2. If the procedure of ear piercing does constitute the practice of medicine, may this procedure be delegated to and performed by an individual not licensed to practice medicine and surgery in Ohio provided such a procedure is performed under the supervision and within the immediate presence of a fully licensed physician.

R.C. 4731.34 defines the practice of medicine, in part, as follows:

A person shall be regarded as practicing medicine, surgery, podiatry, or midwifery, within the meaning of sections 4731.01 to 4731.60, inclusive of the Revised Code, who uses the words or letters, "Dr.," "Doctor," "Professor," "M.D.," "D.S.C.," "Pod.D.," "M.B.," or any other title in connection with his name which in any way represents him as engaged in the practice of medicine, surgery, podiatry, or midwifery, in any of its branches, or who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment of whatever nature, for the cure or relief of a wound fracture or bodily injury, infirmity, or disease . . .
(Emphasis added)

Thus, under this section, the practice of medicine could be found in either representation, examination and diagnosis for compensation, or treatment "for the cure or relief" for compensation. Since one who pierces ears is not representing himself as a physician, podiatrist, surgeon or midwife, diagnosing for compensation, nor providing any service ". . . for the cure or relief of a wound, fracture, or bodily injury,

infirmity or disease . . .," but is, instead, puncturing an earlobe solely for cosmetic reasons, it would appear that such person is not practicing medicine within the statutory definition.

In considering the definition of the practice of medicine set forth in R.C. 4731.34, it is important to keep in mind that any person who undertakes such "practice" without first obtaining a license from the medical board, is, under R.C. 4731.41, committing a crime. As such, R.C. 4731.34 is, by incorporation, a penal statute, and thereby subject to a strict construction. The Supreme Court, in Inglis v. Pontius, 192 Ohio St. 140 (1921), stated:

Penal statutes, or those which restrain the exercise, regulate the conduct, or impose restrictions upon any lawful trade, occupation or business, should be strictly construed, and their scope should not be extended to include limitations not clearly expressed in their terms.

Under a strict reading of R.C. 4731.34, it is apparent that ear piercing is not the practice of medicine.

While there is no Ohio case directly on point, in State v. Rich, 44 Ohio St. 2d 195 (1975), the Supreme Court did consider whether or not the procedure commonly referred to as "acupuncture" was the "practice of medicine" for purposes of R.C. 4731.34. In its conclusion the court held:

The insertion of needles beneath the skin to alleviate pain, infirmity or disease . . . known as acupuncture, constitutes the practice of medicine within the meaning of R.C. 4731.34. Rich, supra, at 197. (Emphasis added)

That the court chose to qualify its conclusion with the emphasized language, is, I think, significant. Clearly, a procedure must be undertaken for treatment of a disease, infirmity, deformity or other condition sought to be improved or corrected in order for it to qualify as a medical practice. Such is not the case with ear piercing, since it does not entail diagnosis or treatment for the cure or relief of any particular condition, but rather allows a person to wear certain types of jewelry.

While not controlling for purposes of R.C. 4731.34, it is nonetheless relevant that the Supreme Court of Arkansas has held that ear piercing is not the practice of medicine under their statute. Hicks v. Arkansas Medical Board, 537 S.W.2d 794 (1976). Significantly, the Hicks decision was premised upon the fact the practice of ear piercing is not intended to treat a disease or infirmity. Similar reasoning applies to R.C. 4731.34.

It must be noted that this opinion is directed only to the question of whether ear piercing constitutes the practice of medicine. Any issues of whether more drastic cosmetic procedures would fall within the statutory definition must be considered on their own merits.

In answer to your first question, it is my opinion that ear piercing does not constitute the practice of medicine under R.C. 4731.34. Therefore, consideration of your second question is unnecessary.

Accordingly, you are advised that:

"Ear piercing" does not constitute the practice of medicine under R.C. 4731.34.