

1967 O. A. G.

OFFICIAL OPINION NO. 24

July 19, 1967

**LICENSES AND PERMITS—STATE BOARD OF BEAUTY
CULTURISTS—Registered Nurse Acting as Instructor
in School Licensed by Board—Necessity of
Registration with Board.**

Opinion Requested by Mrs. Edith Sanderson, Executive Secretary, State Board of Beauty Culturist Examiners.

You have forwarded to us, for an opinion on the legal questions it presents, a letter from Mr. James A. Barrett, Business Manager, Weir Cook Division, Indiana Vocational Technical College, asking whether a registered nurse, who has a bachelor of science degree in general nursing (but who apparently is neither a registered beauty culturist, a registered manicurist, a registered electrologist nor a registered instructor pursuant to the Indiana Beauty Culture Law), may be permitted to lecture in the college's licensed beauty culture school. More specifically, permission is sought for the nurse to lecture on dermatology, venereal disease, anatomy, physiology, chemistry, bacteriology, sanitation, sterilization, personal hygiene, and first aid.

Acts 1935, chapter 72, as amended, found in Burns §§ 63-1801 through 63-1828, is the Indiana Beauty Culture Law (so named by its section 27, Burns § 63-1826). Its section 29 (Burns § 63-1828) states its purpose to be "to prevent the spreading of diseases and promote the general health of the public by promoting sanitary conditions in beauty culture shops and beauty culture schools and in the practices of beauty culture." Among the methods employed to achieve these purposes is the licensing of beauty culturists, beauty cultural schools and instructors by the Indiana State Board of Beauty

OPINION 24

Culturist Examiners. As amended by Acts 1955, ch. 262, § 1, the statute (Burns § 63-1801) makes it unlawful:

“(1) To practice beauty culture, manicuring or electrolysis, or *to act as an instructor thereof* in this state without a certificate of registration as a registered beauty culturist or registered manicurist or registered electrologist or registered instructor issued pursuant to the provisions of this act by the board of beauty culturist examiners as hereinafter established.

“(2) For any person, firm or corporation to own and/or operate a beauty culture school or beauty culture shop, unless it is at all times operated under the personal supervision and management of a registered beauty culturist.

“(3) For any person, firm or corporation to operate or control a beauty culture school without a license to operate a beauty school duly issued by the board of beauty culturist examiners. . . .” (Emphasis added.)

Literally interpreted, paragraph (1) above quoted does not make it unlawful for a registered beauty culturist “to practice beauty culture, manicuring or electrolysis, or to act as instructor thereof.” Likewise, it is not made unlawful for a registered manicurist or registered electrologist or registered instructor to do any or all of these things. Other provisions of the Indiana Beauty Culture Law make it clear, however, that the intent of the law as a whole is to prohibit the practice of beauty culture without a certificate of registration as a beauty culturist; to prohibit the practice of manicuring (as a separate practice) without a certificate of registration as a registered manicurist; to prohibit the practice of electrolysis without a certificate of registration as a registered electrologist; and, to prohibit any person from acting as an instructor of any of these practices without a certificate of registration as a registered instructor.

It should further be noted that the paragraph numbered (2) requires as a condition to the lawful operation of a beauty culture school, that the school be “at all times operated under the personal supervision and management of a registered

beauty culturist" (who, of course, may also be, but is not by this provision required to be, a registered instructor).

Section 2 of the law (Burns § 63-1802) defines "the practice of beauty culture" in the terms of acts performed (for compensation) upon specified areas of the body. It also defines a beauty culture school as any place wherein is taught "any or all of the fundamentals, theories, practices and practical application of beauty culture, as defined in this section and this act."

Section 2a (Burns § 63-1802a) defines instructor as "any person who teaches any one or all of the theories and practices of beauty culture. . . ."

Section 5a (Burns § 63-1805a) prescribes the qualifications one must possess to obtain a certificate of registration as a registered instructor, which (except for the grandfather clause) include a license as a beauty operator, a high school education, one year's practical beauty culture experience and the passing of an instructor's examination.

Section 3 (Burns § 63-1803) requires a school of beauty culture, among other things, to make at least 1,000 hours of instruction a prerequisite to graduation, which instruction shall include "all the fundamentals, theories and practical applications of beauty culture which shall also include histology of the hair, skin, muscles and nerves; structure of the head, face, neck, arms and hands; elementary chemistry, relating to sterilization and antiseptics; diseases of the skin, hair and glands. . . ."

It might well be reasoned, from a consideration limited to the precise wording of sections 1, 2, and 3, that a registered instructor is required only for the teaching of the practice of beauty culture as it is defined in section 2 of the law (Burns § 63-1802) and that the law makes no requirement as to the licensing or qualification of an instructor to teach any other required subject of instruction, if such other subject is only related to the practice of beauty culture and is not actually a part of the practice of beauty culture. But when sections 2a and 5a (Burns §§ 63-1802a and 63-1805a), which were added in 1955, are read in conjunction with the first three original sections, as amended, it becomes clear that the 1955

OPINION 24

amendments and additions to the law, in regard to the requirement for licensed instructors, use the phrases 1) "practice beauty culture" (Sec. 1, Burns § 63-1801), 2) "practice of beauty culture" (Sec. 2, Burns § 63-1802), 3) "theories and practices of beauty culture" (Sec. 2a, Burns § 63-1802a and Sec. 5a, Burns § 63-1805a), and 4) "fundamentals, theories and practical applications of beauty culture" (Sec. 3, Burns § 63-1803) as synonymous.

The conclusion is inescapable, therefore, that even though the operator of a school of beauty culture were to employ a registered nurse who by special training and experience is especially qualified to teach various subjects relating to health and hygiene as part of the statutory 1,000 hours of instruction, both the operator of the school and the nurse so employed would be in violation of the Indiana Beauty Culture Law unless the nurse were also a "registered instructor" pursuant to section 5a, Burns § 63-1805a. (This opinion does not consider the question of whether a registered nurse could teach either advance or supplementary courses in such subjects given in addition to the statutorily required 1,000 hours.)

The conclusion above is reinforced by section 10 of the law (Burns § 63-1810), which exempts many professions and vocations (including registered nurses) from the provisions of the law, but only "while in the proper discharge of their professional duties." This exemption is not sufficiently broad to permit any such persons to substitute for registered instructors under the provisions of the Act.

I have also carefully examined Acts 1963, ch. 311, Burns § 28-5010, *et seq.*, the Act which creates and governs the operation of the Indiana Vocational Technical College, and fail to find any provision thereof which exempts, or indicates any intent to exempt, any school of beauty culture it operates from any provision of the Indiana Beauty Culture Law. In fact, a contrary intent appears in the sentence in Acts 1963, ch. 311, § 5 (Burns § 28-5014) which relates to the powers of the board of trustees of the technical college: "The board shall have responsibility for the management and policies of the said educational institution, *within the framework of laws enacted* by the general assembly of the state of Indiana." (Emphasis added.)

The answer to Mr. Barrett's question is, then, that it is a violation of Indiana Beauty Culture Law for any of the course of primary instruction of 1,000 hours to be taught by any person who is not a registered instructor pursuant to that law. His letter seems to concede as much and expresses the desire "to request permission to deviate." This raises the question of whether the Board of Beauty Culturists and Examiners has the power to grant such permission.

There is only one instance in which the Indiana Beauty Culture Law makes any provision for the board to waive any requirement of the law. Section 12c (Burns § 63-1812c) authorizes the board to waive for hardship the requirement that a registered beauty culturist serve as such for six months before being issued a license to operate a beauty culture shop. With respect to the course of instruction in beauty culture schools, the board's only power to vary any provision of the law is the power granted by section 3 (Burns § 63-1803) "to establish a curriculum, including subject matter and number of hours to be devoted to the teaching of each subject," which obviously does not encompass the power to waive the requirement that instructors meet the registration requirements of the act. Therefore, the request for permission to deviate cannot be considered on its merits and must be denied for want of power to grant it under any circumstances.

It might well be argued that the licensing law concerning instructors might well be amended to give the "Board" the power by rule to approve as instructors well-qualified persons in related fields to teach subjects within their competence in beauty culture schools. In the absence of legislative authority, which does not now exist, this is beyond the present power of the board.