



ALABAMA STATE BOARD OF MEDICAL EXAMINERS

LARRY D. DIXON, EXECUTIVE DIRECTOR

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March 29, 2006

P. Brian Hale, Esq.
Assistant General Counsel
Alabama Department of Public Health
PO Box 303017
Montgomery AL 36130-3017

Dear Mr. Hale:

The Alabama Board of Medical Examiners, at its March 15, 2006, meeting, considered your letter dated January 24, 2006, requesting an opinion from the Board of Medical Examiners concerning the following questions: 1) Does cosmetic tattooing offered by a day spa constitute a body art procedure that can be considered a part of patient treatment? and, 2) If the preceding is answered in the affirmative, would the physician be required to personally perform the cosmetic tattooing procedure to claim an exemption from the State Board of Health's body art rules, or is this a procedure that the physician can properly delegate his or her staff to perform?

In your letter, you have stated the following facts:

The physician is a plastic surgeon who has a primary office in Birmingham, Alabama, and who also uses a Cullman day spa location as a satellite office for the convenience of his plastic surgery patients who live north of Birmingham. The physician serves as a medical director for the day spa, which offers a permanent cosmetic procedure to its clients. Pursuant to rules of the State Board of Health, this procedure is considered to be "cosmetic tattooing," defined as "a tattoo procedure designed primarily to place permanent color or pigment in or under the skin or mucosa and that is intended to be used in lieu of cosmetic makeup, such as permanent eyeliner or lip color." See Rule 420-3-23.02(7), Ala. Admin. Code. A facility offering this cosmetic tattooing service would normally be required to be licensed as a body art facility pursuant to rules of the State Board of Health. See Rule 420-3-23.01, *et. seq.*, Ala. Admin. Code. The physician claims that the day spa is exempt from the State Board of Health's body art rules, and the necessity of a license based upon the following exemption in those rules: "Physicians - Physicians licensed by the State of Alabama who perform body art

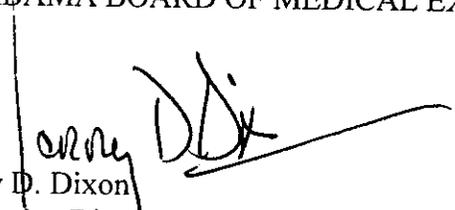
P. Brian Hale, Esq.
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procedures as a part of patient treatment are exempt from these rules.”
Rule 420-3-23.04(1), Ala. Admin. Code.

Based upon the facts stated in your letter, the opinion of the Alabama Board of Medical Examiners is that the standard method of cosmetic tattooing offered by the day spa is a procedure which is not a part of patient treatment. Because the first question was answered in the negative, the Board of Medical Examiners declines to address the second issue stated in your letter.

If you have any questions, please contact our agency.

Sincerely,
ALABAMA BOARD OF MEDICAL EXAMINERS


Larry D. Dixon
Executive Director

LDD:chk

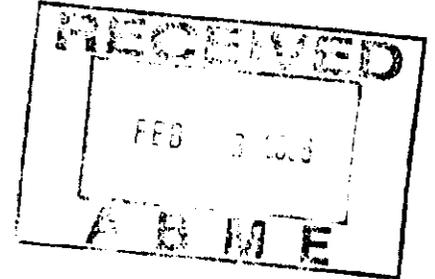
cc: Patricia E. Shaner, Esq.
General Counsel



STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH

Donald E. Williamson, MD
State Health Officer

January 24, 2006



Patricia E. Shaner, Esq.
General Counsel
Alabama Board of Medical Examiners
P.O. Box 946
Montgomery, AL 36101-0946

Dear Ms. Shaner:

As we discussed on the telephone, the Alabama Department of Public Health ("the Department") seeks an opinion from the Board of Medical Examiners based upon the following facts.

Physician, a plastic surgeon, has a primary office in Birmingham, Alabama. Said physician also serves as the medical director for a "day spa" located in Cullman, Alabama, which offers a permanent cosmetic procedure to its clients.¹ Pursuant to rules of the State Board of Health ("the Board"), this procedure is considered as "cosmetic tattooing," defined as "a tattoo procedure designed primarily to place a permanent color or pigment in or under the skin or mucosa and that is intended to be used in lieu of cosmetic make-up, such as permanent eyeliner or lip color." See Rule 420-3-23-.02(7), Ala Admin. Code. A facility offering this cosmetic tattooing service would normally be required to be licensed as a body art facility pursuant to rules of the Board. See Rule 420-3-23.01, et seq., Ala. Admin Code.

The physician claims that the day spa is exempt from the Board's body art rules and the necessity of a license based upon the following exemption contained in those rules:

"Physicians - Physicians licensed by the State of Alabama who perform body art procedures as a part of patient treatment are exempt from these rules."

Rule 420-3-23.04(1), Ala. Admin. Code.

¹The physician also uses the Cullman day spa location as a satellite office for the convenience of his plastic surgery patients who live north of Birmingham.

Based upon the foregoing facts, the Department seeks the Board of Medical Examiners' opinion on the following issues:

1. Does the cosmetic tattooing offered by the day spa constitute a body art procedure that can be considered to be a part of patient treatment?
2. If the preceding is answered in the affirmative, would the physician be required to personally perform the cosmetic tattooing procedure to claim an exemption from the Board's body art rules, or is this a procedure that the physician can properly delegate to his/her staff to perform?

Thank you for your assistance with this matter. Please contact me if further information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Brian Hale". The signature is stylized with large, bold letters and a prominent horizontal stroke across the middle.

P. Brian Hale
Assistant General Counsel
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bhale@adph.state.al.us