

SUNSET EVALUATION UPDATE
BEAUTY CULTURE
Chapter 439, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 86-6
January 1986

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report updates our sunset evaluation of the practice of beauty culture under Chapter 439, Hawaii Revised Statutes, which was conducted in 1980. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate beauty culture to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

We acknowledge the cooperation and assistance extended to our staff by the Board of Cosmetology, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

January 1986

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Occupational Characteristics	7
	Statutory History	14
	Nature of Regulation	17
	Prior Sunset Evaluation	21
3	EVALUATION OF THE REGULATION OF BEAUTY CULTURE	25
	Current Findings	25
	Need for Regulation	26
	Licensing Program	37
	Examination Program	53
	Enforcement Program	66
	Board Organization and Operations	69
	An Alternative	72
	Recommendations	76
	Appendix: Responses of Affected Agencies	79

LIST OF TABLES

<i>Table</i>		<i>Page</i>
2.1	Number of Hours of Beauty School Training Required for Cosmetology, Skin Care, and Manicuring Licenses	13
2.2	Scope of Practice and Current Training Requirements for Beauty Operator Licenses	18
3.1	Number and Type of Beauty Complaints Filed With the Department of Commerce and Consumer Affairs Between January 1, 1981 and June 15, 1985	27
3.2	General Operator Licensing Statistics, 1981–1985	39
3.3	Current Training Requirements for Cosmetologists, Cosmeticians, and Manicurists in the Practice Area “Manicuring and Pedicuring”	41
3.4	Number of Limited Licenses Issued Between Calendar Years 1980 and 1984	42
3.5	Comparison of Current Training Requirements for Hairdressers, Cosmeticians, Cosmetologists, and Manicurists	51

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 439, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of beauty culture and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing programs. Unless reestablished, the programs disappear or "sunset" on a prescribed date.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires each occupational licensing program to be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare from the operation or conduct of the occupation or profession.

2. The public that is likely to be harmed is the consuming public.

3. The potential harm is one against which the public cannot reasonably be expected to protect itself.

4. There is a reasonable relationship between licensing and protection of the public from potential harm.

5. Licensing is superior to other alternative ways of restricting the profession or vocation to protect the public from the potential harm.

6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court ruled in 1935 that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law further states that for the exercise of the State's licensing powers to be justified, the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services

1. See discussion in *51 American Jurisprudence*, 2d., "Licenses and Permits," Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

provided by the regulated occupation. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services provided by the regulated occupation. Consumers do not have to purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion is met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer.

Consumer disadvantage. The exercise of the State's licensing powers is not warranted if the potential harm is one against which the consumers can reasonably be expected to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the providers of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex nature of an occupation is an illustration of occupational characteristic that may place the consumer at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to be able to make judgments about the relative competencies and about the quality of services provided to them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirements must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Licensing may not be the most appropriate method for protecting consumers. Instead, prohibiting certain business practices, governmental inspection, or the inclusion of the occupation within another existing business regulatory statute may be preferable, appropriate, or more effective in protecting the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained. The term "costs" in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" include opportunity costs or all real resources used up by the licensing program; they include indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Chapter 439, Hawaii Revised Statutes, establishes the Board of Cosmetology to regulate the practice of beauty culture in Hawaii. The board is authorized to issue licenses to hairdressers, cosmeticians, cosmetologists, hair cosmeticians, manicurists, electrologists, instructors, managing operators, apprentices, students, instructor-trainees, temporary operators, junior operators, temporary instructors, beauty shops, and beauty schools.¹

This chapter reviews the occupational characteristics of the beauty culture field and its regulation by the Board of Cosmetology.

Occupational Characteristics

The practice of beauty culture includes the care and treatment of the human scalp, hair, skin, and nails. Beauty operators shampoo, bleach, color, cut, wave, straighten, and style hair; give scalp and facial treatments; apply makeup; and manicure nails. Electrologists remove unwanted hair from the body through the use of electricity.

1. Chapter 439 uses the term "certificate of registration" instead of "license." However, certificates of registration *are* licenses because it is illegal to practice without them. We will use the more common term "license" throughout this report.

Nationally, there were approximately 1,563,000 licensed beauty operators in 1984² and more than 9,000 electrologists in 1985.³ As of October 1985, 4,617 beauty operators and 17 electrologists were licensed to practice in Hawaii.⁴

History. The use of cosmetics to beautify and camouflage is as old as recorded history. The Egyptians used henna rinses to color their hair and put green and gray paint around their eyes to enhance their appearance and reduce the glare of the sun. The Greeks coined the word "kosmetikis," which means "skilled in adornment" and is the origin of the term "cosmetology."

In the late 1800s, new methods of waving hair and the use of hydrogen peroxide and synthetic organic dyes to bleach and color the hair were introduced in the United States. An American eye doctor invented the practice of electrolysis in 1875.⁵ The increasing diversity of beauty practices led to the establishment of the first beauty schools in the 1890s.⁶ The first beauty salons were opened outside the home in the early 1900s.⁷

The discovery of new chemical methods of waving hair and new cosmetic products such as amino hair dyes, analine hair dyes, and soapless shampoos resulted in a rapid expansion of the American beauty industry in the early twentieth

2. Jacob Yahm, *Milady Cosmetology State Board Guide*, 28th ed., New York, Milady Publishing Company, 1985, p. 131.

3. Nancy Ledins, "Certification," *Electrolysis World*, Spring 1985, p. 9.

4. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.

5. Julius Shapiro, *Electrolysis*, New York, Dodd, Mead and Company, 1981, p. 64.

6. Anthony Colletti, *Cosmetology*, New York, Keystone Publications, 1972, p. 12.

7. "Cosmetologists," *Chronicle Occupational Brief*, New York, Chronicle Guidance Publications, 1983, p. 7.

century. The widespread use of cosmetics led to a growing awareness of their dangers. Medical practitioners began to warn of the harmful effects of mercury in products such as hair dyes and blemish removers.⁸

In 1926, the medical examiner of New York City noted that the custom of dyeing hair had resulted in a marked increase in the number of scalp, face, and neck infections. The medical examiner also cautioned that cosmetic ingredients such as lead, mercury, and silver nitrate were irritating and poisonous.⁹ The American Medical Association supported the inclusion of cosmetic products under the federal Food and Drug Act to require naming of all poisonous ingredients and prohibit the use of the most harmful chemicals.¹⁰ In 1938, Congress enacted the Food, Drug, and Cosmetic Act which established standards prohibiting the adulteration and misbranding of cosmetic products.

Many organizations were established during the early 1900s to protect and promote the interests of the beauty industry. The major trade organization is the National Hairdressers and Cosmetologists Association (NHCA), which was established in 1921 to promote uniform legislation, upgrade standards of skill and education in the beauty culture field, and educate the public about beauty services. NHCA was the major force behind the drive to license beauty operators in the United States.¹¹ It remains an influential force for regulating the beauty industry today.

8. "Medical Practitioners: Cosmetics Dangerous," *Current History*, 1927, p. 777.

9. "Poisonous Hair Dyes," *The Literary Digest*, May 8, 1926, p. 25.

10. Paul White, "Our Booming Beauty Business," *Outlook*, January 22, 1930, p. 157.

11. Lawrence Gelb, *Your Future in Beauty Culture*, New York, Richards Rosen Press, 1980, p. 65.

Wisconsin enacted the first state licensing law governing the practice of beauty culture in 1919. Similar laws were enacted in 19 additional states and territories during the 1920s. By 1938, 42 states and territories and the District of Columbia required beauty operators to be licensed. Today, the practice of beauty culture is regulated in all states and the District of Columbia.¹²

In Hawaii, the Department of Health (DOH) was first authorized to establish sanitary standards for beauty shops in 1907.¹³ The Honolulu Hairdressers and Cosmetologists Association was founded in 1924.¹⁴ Five years later, legislation was passed requiring beauty operators and electrologists to be licensed in order to practice for compensation.¹⁵

The Hawaii State Hairdressers and Cosmetologists Association was established in 1963 to promote uniform legislation throughout the State and to attend to other matters of mutual interest for beauty operators. This organization is affiliated with NHCA, and it engages in educational, promotional, charitable, and political activities. Total statewide membership in 1985 was about 400.¹⁶

In recent years, the hair care industry has undergone a restructuring and expansion due to changing American lifestyles and an increasing interest in beauty services. Since 1976, total annual sales for the beauty industry have tripled from \$5.5 billion to \$16.5 billion. At the same time, the number of beauty shops and

12. Yahm, *Milady Cosmetology State Board Guide*.

13. Act 70, SLH 1907.

14. "Hairdressers Shown Styles at 30th Anniversary Party," *Honolulu Star-Bulletin*, July 20, 1954.

15. Act 145, SLH 1929.

16. Interview with Lynnette McKay, President, Hawaii State Hairdressers and Cosmetologists Association, August 22, 1985.

barbershops has decreased from 200,000 to about 145,000. New "unisex" hairstyling salons that offer a wide range of beauty services to both men and women are becoming increasingly popular. In some cases, they are replacing traditional neighborhood beauty shops and barbershops.¹⁷

Education and training. There are no national standards for the education and training of beauty operators in the United States. Although several national agencies accredit public and private beauty schools, the curricula for these schools vary from state to state.

Beauty instruction generally includes classroom study, demonstrations, and practical work in hairdressing, skin care, and manicuring. Beginning students work on mannequins or on each other before they practice on customers in school clinics. Beauty training is also offered through apprenticeship programs sponsored by individual beauty shops. These programs enable individuals to earn some money while they learn a trade.

Electrologists learn their trade through apprenticeships or by attending electrolysis school. Each school develops its own course of instruction, and there are no uniform national standards for this occupation. However, the National Commission for Electrologist Certification was established in 1983 to begin developing national standards.¹⁸

Licensing. All states and the District of Columbia require beauty operators to be licensed in order to practice for compensation. However, there are no national licensing standards, and the types of licenses issued and their requirements vary greatly from state to state.

17. "Where Have You Gone, Joe the Barber?," *Boston Globe*, August 9, 1985.

18. "Certification Update," *The Hair Route*, no. 22, February 1985, p. 17.

All states issue a "cosmetology" license to persons who qualify to practice the aspects of beauty culture defined in their individual licensing statutes. The scope of practice for cosmetology usually includes hairdressing, skin care, and manicuring. A few states include electrolysis under the cosmetology license.

The four most common licensing requirements for cosmetologists are age, years of formal education, hours of beauty training, and examination.

Most states set 16 as the minimum age. Years of formal education required range from 0 to 12. All states require applicants for a cosmetology license to complete a specified number of hours of apprenticeship or beauty school training. The number of hours required for apprenticeships ranges from 1,500 to 4,000; the number of hours required for beauty school ranges from 1,000 to 2,500.¹⁹

Many states issue separate licenses for skin care and manicuring. Table 2.1 shows the number of states requiring different hours of beauty school training for the cosmetology, skin care, and manicuring licenses.

All states require applicants for cosmetology, skin care, and manicuring licenses to pass a written examination. The majority of states also require them to pass a practical examination.

Twenty-seven states license the practice of electrolysis. The number of hours of apprenticeship or beauty school training required for this license ranges from 100 to 1,100.²⁰

Other categories of licenses issued by various states include beauty instructors, managing operators, beauty shops, and beauty schools.

19. Yahm, *Milady Cosmetology State Board Guide*, pp. 132–133.

20. *Ibid.*, p. 135.

Table 2.1

**Number of Hours of Beauty School Training Required
for Cosmetology, Skin Care, and Manicuring Licenses**

<i>Cosmetology</i>		<i>Skin Care</i>		<i>Manicuring</i>	
<i>Hours</i>	<i>States</i>	<i>Hours</i>	<i>States</i>	<i>Hours</i>	<i>States</i>
1000	2	160	1	100	2
1200	2	300	4	125	1 & D.C.
1220	1	350	2	150	5
1250	1	450	1	160	1
1500	25 & D.C.	500	1	200	4
1550	1	550	2	250	1
1600	2	600	4	300	9
1650	1	750	2	320	1
1800	5	1000	1	350	8
2000	6	1500	1	400	1
2100	3			500	3
2500	1				

Source: *Milady Cosmetology State Board Guide*, New York, Milady Publishing Company, 1985; and Letter from Constance Hanna, Administrative Assistant, State Board of Cosmetology, Commonwealth of Pennsylvania, to Office of the Legislative Auditor, November 7, 1985.

Some states have begun to exempt or deregulate certain kinds of practices. Three states have deregulated facial treatments, eyebrow arching, shampooing, or makeup artistry. In addition, four states have completely deregulated manicuring, and two states have partially deregulated this practice by permitting unlicensed persons to manicure fingernails or permitting them to work under the direct supervision of a licensed cosmetologist.

Relationship between beauty operator and barber licenses. In recent years, a number of states have established regulatory programs that recognize the basic similarity between the practice of beauty culture and the practice of barbering. Oregon no longer issues separate licenses for the two occupations. Instead, it issues three separate licenses for hair design, cosmetology (skin care), and manicuring. Persons who hold these licenses may call themselves barbers or hairdressers or both. Connecticut has adopted a uniform curriculum for beauty and barber school training.

A number of states have also established "cross-over" programs that enable licensees in one occupation to qualify for a license in the other occupation more easily. They permit beauty operators to receive credit toward a barber license and barbers to receive credit toward a beauty operator license.

Ten states have also combined their boards of cosmetology and barbering in an effort to begin systematizing regulation of the two occupations.

Statutory History

In 1929, Act 145 made it unlawful for any person to engage for compensation in the practice of a hairdresser or "cosmetician and cosmetologist" without a license. The practice of a hairdresser was defined as any work on the hair of another person by any means. The practice of a cosmetician and cosmetologist was defined as skin care, manicuring, and the removal of unwanted hair from the body by any means.

A Territorial Board of Hairdressers, Cosmeticians, and Cosmetologists was established to enforce the provisions of this act. The board was authorized to issue, suspend, and revoke licenses for hairdressers, cosmeticians and cosmetologists, electrologists, instructors, and beauty schools. Apprentices and students were required to meet certain qualifications, but they did not have to register with the board.

Beauty shops were not regulated by the board. Instead, the Board of Health was authorized to establish rules of sanitation for beauty shops with particular reference to the precautions necessary to prevent the spread of infectious and contagious diseases.

Act 145 was passed to establish safeguards on the practice of beauty culture in Hawaii. The Senate Committee on Public Health noted in its report that serious

injuries had been caused by the carelessness and neglect of people who were not experts in the field. The measure was aimed at indiscriminate practice by irresponsible people.²¹

Since 1929, the beauty culture practice act has been amended more than 25 times. In general, these amendments have increasingly restricted the practice of beauty culture in Hawaii. Some of the more significant amendments are summarized below.

Act 238, SLH 1947, authorized the board to issue licenses to beauty shops. Licensed beauty shops had to be managed by an operator with at least one year of licensed experience in Hawaii. Act 238 also increased training requirements for beauty operators.

In 1949, Act 397 authorized the board to issue licenses to apprentices and students. The board was also authorized to establish equipment standards for beauty shops, and beauty shops were required to meet sanitary standards set by the Board of Health.

In 1955, Act 198 authorized the board to issue licenses to hair cosmeticians, manicurists who work in barbershops, and persons who demonstrate commercial beauty products or teach hairstyling. The board was also authorized to issue junior operator licenses to persons who had taken but not passed the board's examinations. Junior operators were permitted to work under the supervision of a licensed beauty operator as long as they continued to take each board examination in good faith. Licensing requirements for hairdressers, cosmeticians and cosmetologists, and electrologists were also substantially increased.

21. Senate Standing Committee Report No. 36 on Senate Bill No. 48, Regular Session of 1929.

The House Select Committee noted in its report that the purpose of Act 198 was "to restrict the practice of beauty culture and thereby protect the local operators." It also noted that the purpose of requiring individuals who demonstrate commercial beauty products or teach hairstyling to register with the board was "to cure existing law and thereby protect the local operators and instructors."²²

In 1965, Act 120 permitted manicurists to work in beauty shops, in their own shops, or in barbershops. The House Committee on Judiciary noted that limitations on where a manicurist can work were impractical and unduly restrictive, especially in the counties of Hawaii, Maui, and Kauai.²³

In 1978, Act 233 exempted individuals who remove unwanted hair from the body without touching or penetrating the skin from the requirement for an electrologist license. The Legislature stated that this activity did not constitute the practice of electrolysis and that the training requirements were unreasonable.²⁴

Act 47, SLH 1981, established the electrologist license as separate and distinct from the cosmetician license so that persons could practice electrolysis without being licensed cosmeticians. Act 47 also redefined beauty shops to exclude electrolysis shops from the requirement for a beauty shop license.

In 1983, Act 210 authorized the board to issue licenses to managing operators and instructor-trainees. It also required licensed managing operators to be placed in charge of beauty shops.

22. House Select Committee Report No. 45 on House Bill No. 1243, Regular Session of 1955.

23. House Standing Committee Report No. 792 on Senate Bill No. 467, Regular Session of 1965.

24. House Standing Committee Report No. 835 on Senate Bill No. 2154, Regular Session of 1978.

Nature of Regulation

The Board of Cosmetology. The board is composed of seven members. Five members must be licensed operators who have been actively and continuously engaged in beauty practice in Hawaii for five years. Two must be public members. No board member can be affiliated with a school that teaches beauty culture. Members serve without pay but they are reimbursed for their expenses.

The board is empowered to issue licenses to hairdressers, cosmeticians, cosmetologists, hair cosmeticians, manicurists, electrologists, instructors, managing operators, apprentices, students, instructor-trainees, temporary operators, junior operators, temporary instructors, beauty shops, and beauty schools.

The board has the authority to adopt, amend, and repeal rules. The board, any board member, and any person designated by the board may investigate violations or suspected violations of the beauty culture practice act. Each board member has the power to administer oaths in connection with investigations.²⁵

Licensing requirements. The law recognizes three beauty culture occupations: hairdresser, cosmetician, and electrologist. It is unlawful for any person to engage for compensation in these practices or advertise as being qualified to do so without a license issued by the board.

The numerous licenses issued to individuals by the board fall under two broad categories: (1) "general" licenses that allow individuals to practice independently, and (2) "limited" licenses that allow individuals to practice beauty culture under supervision or for a limited period of time.

25. In 1982, the board delegated its authority to conduct investigations to the Regulated Industries Complaints Office in the Department of Commerce and Consumer Affairs pursuant to Act 204, SLH 1982.

General operator licenses. The board issues eight different general licenses: hairdresser, cosmetician, cosmetologist, hair cosmetician, manicurist, electrologist, instructor, and managing operator.

In order to qualify for the first six licenses, applicants must be of good moral character, possess the equivalent of a high school education, complete a specified amount of training, and pass practical and written or oral examinations. The scope of practice and current training requirements for these licenses are summarized in Table 2.2.

Table 2.2
Scope of Practice and Current Training Requirements
for Beauty Operator Licenses

<i>Type of License</i>	<i>Scope of Practice</i>	<i>Training Requirements*</i>	
		<i>Apprenticeship</i>	<i>Beauty School</i>
Cosmetologist	Any of the practices of a hairdresser or cosmetician.	Not less than two years including 4,000 hours	1,800 hours
Hairdresser	Engage for compensation in one or more of the following classified practices: arrange, dress, curl, wave, cleanse, cut, singe, bleach, color, or similar work upon the hair of another person.	Not less than one year including 2,000 hours	1,250 hours
Cosmetician	Use hands or mechanical or electrical apparatus or appliances, or cosmetic products and engage for compensation in any one or more of the following practices: massage, cleanse, stimulate, manipulate, exercise, beautify, or similar work upon the scalp, face, neck, arms, bust, or upper part of the body, or manicure the nails, or remove superfluous hair about the body of any person by means other than electrolysis.	Not less than one year including 2,000 hours	550 hours
Hair Cosmetician	Use hands or mechanical or electrical apparatus or appliances, or cosmetic products and engage for compensation in any one or more of the following practices: massage, cleanse, stimulate, manipulate, exercise, or do similar work upon the scalp or hair of another person.	1,200 hours	600 hours
Manicurist	No definition.	700 hours	350 hours
Electrologist	Engage in the practice of removing superfluous hair by penetration of the skin through the use of electricity.	600 hours	—

*Applicants are required to fulfill *either* the apprenticeship *or* the beauty school training requirement.

Managers of beauty shops must have a managing operator's license. Applicants must have at least one year of experience as a licensed beauty operator in Hawaii. This experience requirement can be waived if it creates undue hardship for a beauty shop and if the applicant has equivalent experience.

Applicants for an instructor license must demonstrate good moral character, have at least three years of experience as a licensed beauty operator in Hawaii or another jurisdiction with substantially equivalent standards, complete a 600-hour course in the theory and practice of education in a licensed beauty school, and pass an examination.

Limited operator licenses. The board issues seven different limited licenses: apprentice, student, instructor-trainee, temporary operator, junior operator, temporary instructor, and technician.

In order to qualify for the first three limited licenses, applicants must be of good moral character, be at least 16 years old, and possess the equivalent of a high school education. Applicants for an instructor-trainee license must also have at least three years of experience as a licensed beauty operator in Hawaii.

The apprentice and student licenses permit individuals to practice beauty culture while learning to be a beauty operator. The instructor-trainee license enables individuals to train in a beauty school under the direct supervision of a licensed beauty instructor.

Temporary operator licenses are issued to those who are eligible to take the board's examination. Applicants must meet one of the following requirements: (1) graduate from a school and course that meets the standards set for schools in the State; (2) have lawfully engaged in the practice of beauty culture in another jurisdiction for three out of four years immediately preceding their application; or (3) hold a license from another jurisdiction that has standards substantially

equivalent to those in Hawaii. Temporary operators may practice beauty culture until the results of the next scheduled examination are issued.

Junior operator licenses are issued to individuals who have taken and failed their first examination. This license enables them to practice under the supervision of a licensed beauty operator as long as they continue to take each consecutive examination. Failure or refusal to take any of the required examinations may lead to revocation of this license.

Temporary instructor licenses are issued to individuals who hold instructor licenses from another jurisdiction that has standards substantially equivalent to those in Hawaii. Temporary instructors are permitted to: (1) commercially demonstrate trade name and trademark cosmetic products, or (2) instruct in hairstyling in a licensed beauty school or under the sponsorship of an organization approved by the board. These licenses are valid only until the next board examination.

Technician licenses are issued to individuals who are employed by firms or corporations for the sole purpose of demonstrating cosmetic products.

Beauty shop licenses. The board issues a license to beauty shops that meet sanitation standards set by DOH, are adequately equipped, and are managed by a licensed managing operator.

Beauty school licenses. The board issues licenses to beauty schools that offer a board-approved course of instruction. The curriculum must include practical demonstrations; written and oral tests; practical instruction on sanitation, sterilization, and the use of antiseptics; and instruction on state law and board rules. Beauty schools must offer an 1,800-hour course of instruction for the cosmetology license in order to qualify for licensure. They must also demonstrate that there is a need for the school, attach a licensed physician to their staff, be

adequately equipped, meet bonding requirements, and fulfill various information reporting requirements.

Disciplinary authority. The board may suspend or revoke licenses for various reasons, including professional misconduct, gross carelessness, or manifest incapacity; violation of the beauty culture act, board rules, or any other law which applies to the occupation; making false representations or dealing fraudulently or dishonestly; habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic drugs; and failing to display a license. The board may also refuse to grant, renew, reinstate, or restore licenses for the above reasons. Unlicensed practitioners are subject to fines up to \$100 or imprisonment for up to 90 days or both. Each day of violation constitutes a separate offense.

Prior Sunset Evaluation

In 1980, the Legislative Auditor completed a sunset evaluation of Chapter 439 (see Legislative Auditor, *Sunset Evaluation Report, Beauty Culture*, Report No. 80-6, February 1980). In the report, we recommended that Chapter 439 be allowed to expire as scheduled because: (1) the practice of beauty culture poses little potential harm to the public health, safety, or welfare; and (2) sanitary conditions and the use of dangerous chemicals are not within the purview of the Board of Cosmetology and are more appropriately dealt with by other regulatory agencies. We further noted that the practice of electrolysis could result in skin damage and disfigurement, but the incidence and severity of injuries appear to be insignificant.

Potential hazard of disease transmission. We found that although there is a potential for disease transmission in beauty culture practice, the responsibility for disease control rests with DOH and not the board. DOH has adopted rules

establishing sanitation standards for beauty shops and prohibiting persons with infectious diseases from working in beauty shops. DOH enforces its rules through routine inspections of beauty shops and in response to consumer complaints.

Potential hazard from the use of dangerous chemicals. We found that some cosmetic products contain ingredients that may cause skin irritation, hair damage or loss, severe allergic reactions, or serious illness. However, the responsibility for regulating cosmetic products rests not with the board but with other federal and state agencies.

In 1938, Congress enacted the Food, Drug, and Cosmetic Act administered by the U.S. Food and Drug Administration, which prohibits the use of certain dangerous chemicals, bans the sale and distribution of contaminated cosmetics, and requires appropriate labeling and limited disclosures of product ingredients.

Chapter 328 authorizes DOH to regulate the manufacture, sale, delivery, adulteration, and misbranding of cosmetic products. The food and drug branch of DOH inspects local cosmetic manufacturers, seizes adulterated or misbranded merchandise, and investigates consumer complaints.

Incidence of reported injuries. We found that the number of consumer injuries from the practice of beauty culture were negligible considering the large number of beauty treatments that are performed each year. Between 1975 and 1979, only three complaints were filed with the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) alleging damage to the hair or scalp by beauty operators. These complaints were all dismissed by the board due to insufficient evidence. Furthermore, liability insurance is readily available to beauty operators, and these policies provide an avenue for redress of consumer injuries.

Beauty schools. We found that beauty school students are potentially vulnerable to problems inherent in the operation of private trade schools such as

failure to receive training paid for or difficulty in obtaining refunds. However, board regulation of beauty schools is redundant since other agencies adequately protect the interests of students.

The Federal Trade Commission (FTC) has promulgated rules governing business practices of beauty schools, the Department of Education (DOE) licenses these schools, and many private agencies are involved in the accreditation of beauty school programs.

Beauty shops. We found that the board's regulation of beauty shops results in discouraging competition rather than protecting the public. In particular, the board's requirement that a licensed beauty operator with one year of experience in Hawaii be placed in charge of beauty shops discourages new arrivals from opening new or competing shops, adds needless personnel costs to shopowners, and results in increased costs to consumers.

Regulation of quality of service. We found that it is questionable whether government should be in the business of determining which beauty operators are likely to produce results that are aesthetically pleasing to customers (and therefore should be licensed) and which beauty operators are likely to be less pleasing (and therefore should be denied licenses). Service quality is best left to the judgment of consumers and the marketplace.

Impact of deregulation. We found that termination of Chapter 439 would not leave consumers and students unprotected. DOH would continue to regulate sanitary conditions in beauty shops and beauty schools. FTC, DOE, and other federal agencies would regulate beauty school practices. In addition, various other state laws would protect consumers and students.

Legislative action. In 1980, the Legislature held hearings to determine whether Chapter 439 should be extended or sunsetted. It decided to extend the

repeal date of the Board of Cosmetology to December 31, 1984. Legislative concerns about certain health and safety hazards relating to the use of chemicals and other substances and the impact of deregulation on the availability of malpractice insurance led to the decision to reenact Chapter 439. In 1981, the repeal date for Chapter 439 was extended to December 31, 1985, and in 1982, it was extended to December 31, 1986.

Chapter 3

EVALUATION OF THE REGULATION OF BEAUTY CULTURE

This chapter updates our 1980 sunset review findings on the regulation of beauty culture. It includes our assessment of the regulatory operations of the Board of Cosmetology and our recommendations on continued regulation of the beauty culture field.

Current Findings

We find as follows:

1. There is no danger to the public health or safety in the practice of beauty culture, and Chapter 439, Hawaii Revised Statutes, should be allowed to expire as scheduled.
2. The current licensing program is unnecessarily complex with the board issuing 20 different licenses to beauty operators, schools, and shops. In addition, many of the licensing standards are inconsistent, unreasonable, inequitable, or vague.
3. The board's practical examination program is indefensible and must be stopped immediately. The written examinations are inadequate and need revision.
4. Enforcement of the law by the Department of Commerce and Consumer Affairs (DCCA) and the board has been of little benefit to consumers. In addition, the board's inspections of beauty shops may have violated the rights of shopowners and beauty operators.
5. Our review of board operations indicates that the board has not always acted responsibly and in the public interest.

6. The current regulation of cosmetology (and barbering) is confusing and inefficient and does not take into account the changes that have taken place in the occupations.

Need for Regulation

In 1980, beauty operators testified against sunseting Chapter 439 for a variety of reasons. They were concerned that deregulation would expose consumers to a variety of health and safety risks such as communicable diseases, chemical burns, skin infections, allergic reactions, and accidental injuries. They were also concerned that deregulation would economically harm the local beauty industry by lowering standards and reducing the availability of liability insurance. They also said that beauty schools needed to be regulated by the board in order to protect student interests.

We find that the concerns expressed by beauty operators are unfounded. There is no need to regulate the practice of beauty culture. The potential for disease transmission is practically nil, consumers are exposed to no greater risks from chemicals or dangerous implements than they are in their homes, and the activities of the board are largely unrelated to protecting consumers from health and safety risks.

Table 3.1 shows the number and types of complaints relating to beauty culture that were filed with DCCA between January 1, 1981 and June 15, 1985. The majority of these complaints related to unlicensed activity, poor workmanship, technical violations of the law, and fee disputes. Only six complaints alleged personal injury such as scalp and neck burns, skin irritation, and loss of hair. Four of these complaints involved the use of chemicals to wave or relax the hair, one involved rough treatment during a hairset, and one involved the practice of

electrolysis. None of the alleged injuries were serious or caused any lasting damage. The rough treatment complaint was withdrawn when a refund was made to the consumer. The other five complaints were dismissed after investigations revealed no violations or insufficient evidence.

Table 3.1
Number and Type of Beauty Complaints Filed
With the Department of Commerce and Consumer Affairs
Between January 1, 1981 and June 15, 1985

<i>Type of Complaint</i>	<i>Beauty Operator/ Electrologist</i>	<i>Beauty Shop</i>	<i>Beauty School</i>	<i>Barber Shop</i>	<i>Total</i>
Personal injury	2	4	0	0	6
Poor workmanship	0	10	0	0	10
False advertising	1	2	0	0	3
Technical violations	2	7	6	0	15
Unlicensed activity	13	31	2	1	47
Fee dispute	0	7	1	0	8
No jurisdiction	0	1	0	0	1
TOTALS	18	62	9	1	90

Source: Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, consumer complaint files, January 1, 1981 through June 15, 1985.

Considering the millions of beauty treatments that were given during this four and a half year period of time, it is reasonable to conclude that the potential for consumer harm in the practice of beauty culture is remote.

Potential for disease transmission. Beauty operators say that the practice of beauty culture may lead to the transmission of communicable diseases such as Hepatitis B, Acquired Immune Deficiency Syndrome (AIDS), influenza, dandruff, head lice, scabies, ringworm, and conjunctivitis (pinkeye). The risks of transmitting these diseases in beauty shops is remote.

The responsibility for communicable disease control rests with the Department of Health (DOH). According to DOH, the risk of transmitting Hepatitis B through beauty culture practice is approaching zero. DOH points out that there have been no cases of Hepatitis B associated with beauty shops and that a routine epidemiological survey would be undertaken if an outbreak were suspected. This survey is standard procedure for all outbreaks of Hepatitis B.

DOH also reports that the risk of transmitting AIDS through beauty culture practice is practically nil. Recent guidelines issued by the U.S. Center for Disease Control state that there is no evidence that hairdressers, barbers, cosmetologists, manicurists, masseurs, and pedicurists have transmitted a single case of the disease in the course of their work.¹

DOH states that the risk of transmitting various airborne diseases such as influenza is no greater in beauty culture than in any other occupation. Common sense precautions such as good hygiene and sanitary procedures adequately protect the public from these diseases.

Dandruff is not an infectious disease but a condition of the scalp. It cannot be transmitted in a beauty shop.

Head lice are communicable, but no outbreaks of head lice have been traced to beauty shops. Head lice is not a serious health problem, and it is easily prevented by following sanitary procedures. Beauty operators report that they routinely refuse to work on customers with head lice and refer them to physicians for treatment.

Scabies, ringworm, and pinkeye are communicable, but they are also easily prevented by following sanitary procedures. There have been no complaints that beauty practices have caused any of these conditions.

1. "Government AIDS Guidelines Unveiled," *Honolulu Advertiser*, November 15, 1985.

Role of the Department of Health in preventing the transmission of communicable diseases. Most communicable diseases can be prevented by good hygiene and proper sanitary procedures. In Hawaii, DOH has the authority to promulgate and enforce sanitation standards for beauty shops. This authority was granted to the department in 1907 when the threat of infectious disease was much greater than it is today.

DOH has general authority to adopt regulations to protect the public health and safety and to require any permits or licenses that are necessary to regulate various establishments.² DOH also has specific authority to prescribe rules relating to hairdressers, cosmeticians, cosmetologists, and beauticians.³

DOH's sanitation rules currently require beauty operators to keep their premises clean and to follow good personal hygiene habits such as washing their hands before working on a customer and wearing clean clothes. They prohibit the use of certain equipment that may transmit disease such as powderpuffs. They require beauty operators to thoroughly clean and sanitize linens, uniforms, and equipment between each use according to DOH-approved methods and using DOH-approved sanitizing agents.⁴

In addition to these requirements, DOH's rules prohibit beauty operators who have communicable diseases from working on customers and require them to have a note from their physician before returning to work. Beauty operators are also forbidden to work on customers who have communicable diseases.

2. Section 321-11, HRS.

3. Section 321-12, HRS.

4. Section 11-11-3, Hawaii Administrative Rules.

DOH enforces these rules through beauty shop inspections and in response to consumer complaints. Between 1980 and 1984, 2,379 sanitary inspections of beauty shops and barbershops were conducted by the department, and 72 notices of violation were issued for unclean or unsanitary equipment.⁵

Act 84, SLH 1985, allows the department to issue a notice of violation and order to persons who violate the law. DOH can require violators to cease their illegal activities, pay a fine up to \$1,000 for each day of violation, correct the violation at their own expense, or appear for administrative hearings on the notice. The department may also take civil action to enforce its orders and apply for injunctive relief in addition to any other remedy or penalty imposed on violators.

Chapter 322 requires the department to examine all causes of sickness or disease which are dangerous or injurious to health and all conditions which cause or tend to cause sickness or disease or are dangerous or injurious to health. The department is authorized to abate, destroy, remove, or prevent these conditions. It may fine violators up to \$10,000 for each separate offense and order them to correct the violations at their own expense. It may also apply for injunctive relief to prevent violations.

DOH's statutes and rules adequately protect the public against the relatively minor health hazards in the practice of beauty culture. The department has an active enforcement program and the ability to take disciplinary action against persons who violate the law.

Negligible role of the board in preventing the transmission of communicable diseases. In contrast to DOH's broad ranging responsibilities and powers, the board

5. Hawaii, Department of Health, *Statistical Report*, Honolulu, 1980-1984.

is involved only peripherally in preventing the transmission of diseases through its supervision of student curricula, examinations, and inspections of shops.

Chapter 439 requires beauty schools to provide instruction in sanitation, sterilization, and the use of antiseptics. The board has not elaborated on these requirements, and it has not specified what should go into this instructional component.

The board administers practical and written or oral examinations to applicants. The board's practical examinations are more concerned with beauty techniques than sanitary procedures. A review of the board's written examinations reveals the same emphasis.

The board is authorized to inspect beauty shops to determine if they conform with the provisions of the beauty culture practice act. In practice, this involves determining if a beauty shop is properly licensed by DOH, if it has posted required documents and notices, and if it is properly licensed by the board. These functions have no direct relationship to protecting public health. For example, the posting of licenses and price lists has little relationship to public health and safety.

Potential hazards in the use of dangerous chemicals. Beauty operators also say that improper use of dangerous chemicals in products used to bleach, color, wave, and relax the hair may expose consumers to the risk of injuries such as chemical burns, skin irritation, allergic reactions, and even blindness. They contend that beauty operators must be trained to apply them safely and should know what first aid procedures to use in cases where accidental injuries occur.

There is some risk in the use of any chemicals on the body. Beauty products designed to bleach, color, wave, and relax the hair can be dangerous if they are misused. However, all of the chemicals used in professional beauty products are

also available in over-the-counter products generally available to consumers. These chemicals are closely regulated by federal and state agencies other than the board.

Role of the U.S. Food and Drug Administration in regulating beauty products.

The U.S. Food, Drug, and Cosmetic Act regulates the manufacture, distribution, and sale of cosmetic products to ensure that they are not adulterated or misbranded. The federal Fair Packaging and Labeling Act also sets standards for information that must be distributed with beauty products. Both laws are administered by the U.S. Food and Drug Administration (FDA).

Federal regulations prohibit the use of certain ingredients that are poisonous or deleterious to the health of consumers. These include ingredients such as mercury, vinyl chloride, halogenated salicylanilides, and zirconium.⁶ The regulations also list the color additives which may be used in cosmetic products and specify how these ingredients should be labeled and used.

Federal regulations require product labels to reveal the consequences that may result from cosmetic product use and to include warnings whenever necessary to prevent health hazards. Labels must list all ingredients in descending order of predominance and meet standards for the disclosure of such information as product size.

Conspicuous warning labels must be placed on all cosmetic products containing coal tar or lead acetate. For example, coal tar hair dye warning labels must state that the product may cause skin irritation, must not be used for dyeing the eyelashes or eyebrows (to do so may cause blindness), and caution users that a preliminary patch test must be administered before the product is used. Products containing lead acetate must have warning labels stating that the product is for external use

6. 21 CFR, Part 700—General, April 21, 1985 edition.

only, should be kept away from children, must not be used on skin which is cut or abraded, must not be used to color hair on parts of the body other than the scalp, and must not get into the eyes.

The federal law may be enforced in a variety of ways. FDA may request manufacturers to voluntarily recall cosmetic products which are adulterated or misbranded. It may initiate its own mandatory recall, issue public warnings about serious health hazards, and take administrative action against violators. Cosmetic manufacturers may also initiate their own voluntary recalls without FDA participation. In addition, interested persons may request advisory opinions and file petitions with FDA.

Products labeled "for professional use only." Beauty operators state that products labeled "for professional use only" or "for use only by professional cosmetologists" are potentially more dangerous to consumers than those available on the open market. However, federal officials state that professional beauty supplies contain the same chemicals as products available on the open market. There is no federal standard which regulates the use of this label, and cosmetic manufacturers may use this term at their discretion. The label may be used to restrict the sale of certain beauty products to professional operators for economic reasons or for liability protection. Manufacturers of these products are still required to conform with all laws on the disclosure of information.

Products which are labeled "for professional use only" are not restricted to experienced cosmetologists. Students can walk into a beauty supply company and purchase these products as soon as they enroll in beauty school. They need not have had any special training in the use of these products. Licensed barbers are also permitted to purchase these products. Since there are no uniform national standards for the licensing of cosmetologists and barbers, individuals with a wide range of training and expertise are permitted to use these products.

In the absence of federal regulation on the use of this label, it is not necessary to license beauty operators so they can use these products.

Role of the Department of Health in regulating beauty products. State legislation has also been enacted to protect consumers who use cosmetic products in the home or in beauty shops and beauty schools. DOH has the authority to adopt rules to protect the public from cosmetics, poisons, or hazardous substances which may cause substantial personal injury or illness. The department can also require licenses, certificates, or permits to regulate their use.⁷

DOH also administers the Hawaii Food, Drug, and Cosmetic Act, which prohibits the adulteration or misbranding of cosmetic products. This law complements the U.S. Food, Drug, and Cosmetic Act. It covers all cosmetic products whether they are manufactured, distributed, sold, or used by beauty shops or the general public.

Cosmetics are considered to be adulterated or misbranded when they contain poisonous or deleterious substances which may injure users under usual and customary conditions of use.

DOH is authorized to enter and inspect cosmetic product establishments and to secure and examine samples of cosmetic products. It may file complaints; investigate consumer complaints; report cosmetics that are adulterated, impure, or unwholesome; and publicize hazardous conditions. It may also impose administrative penalties on violators and fine them up to \$10,000 for each separate offense.

In the five years prior to July 1985, DOH received four complaints relating to cosmetic products. Only two complaints alleged personal injury. The department

7. Section 321-11, HRS.

also completed inspections of three cosmetic product establishments during this period. All the establishments passed the inspections.

Negligible role of the board in regulating the use of beauty products. Here again, the board's role is negligible. The board's recommended curricula include instruction on bleaching, coloring, waving, and relaxing the hair, and safety precautions. However, they do not focus specifically on the use of chemicals. The board's written examinations include some questions on the use of chemical substances, but the practical examinations do not require candidates to demonstrate that they know when and how to test for possible skin sensitivity or allergic reactions. In addition, candidates are not required to mix or use real chemicals.

The board has the power to discipline beauty operators who misuse dangerous chemicals, but no complaints of misuse have been substantiated.

Potential for harm from the use of dangerous equipment. Beauty operators have expressed concern that the use of dangerous implements, such as scissors and curling irons, may expose consumers to potential harm. However, no injuries have been reported. Consumers are taught from an early age to use dangerous equipment in the home with care, and to follow instructions and warnings attached to these products. Licensing based on the use of dangerous equipment is not justified.

Buyer beware. Chapter 439 is not needed to protect consumers. All of the beauty treatments given by licensed beauty operators can be performed in the home using cosmetic products and equipment that are available on the open market. Federal and state laws minimize the risks of illness and injury inherent in the use of beauty products and equipment. These laws apply to all products and equipment whether they are used by the general public or by professional beauty operators.

No law can fully protect consumers against adverse reactions or accidents due to the use of cosmetic products and equipment. The FDA points out that *any*

ingredient in *any* product may cause an allergic reaction in some sensitive persons.⁸ The caveat "buyer beware" applies to beauty supplies just as it applies to all other products in general use. It is in the interest of beauty shopowners to supervise and control the use of potentially harmful products and equipment so that accidents and adverse reactions do not occur. Beauty shops depend on return business for their financial success, and a shop with a bad track record will not survive in the marketplace.

Consumers who are dissatisfied with the results of beauty treatments have several recourses. They can request corrective beauty treatments at no charge, request a refund, or choose not to return to the beauty operator. In addition, they can take their disputes to neighborhood justice centers or small claims courts.

Consumers may also file civil lawsuits under general tort laws against beauty operators to recover damages due to malpractice, negligence, or wrongful acts resulting in injury or damage to the person. Beauty shops are legally responsible for the negligent acts of their employees.⁹ This legal remedy can protect consumers from isolated injurious acts by beauty operators.

Impact of deregulation. Deregulation might affect the economic viability of some beauty businesses. However, the purpose of regulation is to protect consumers and not to protect businesses against competition and market forces. Some beauty operators are concerned that deregulation might affect the price and availability of liability insurance policies. However, interviews with major beauty operators

8. "Questions of Substance(s) Concern Cosmetic Users," *FDA Consumer*, April 1984 [HHS Publication No. (FDA) 84-1110].

9. The doctrine of "respondeat superior" is a well-established principle of law which holds employers liable for the wrongful acts of their employees when the employees are acting within the course and scope of their employment.

indicate that this is not a real concern. Insurance is currently available from a wide variety of carriers at a reasonable cost.

The objective of beauty treatments is to enhance the appearance of consumers. Only consumers can judge the results. The State should not become involved in disputes over a subjective concept that is valid only in "the eye of the beholder." Therefore, Chapter 439 should be allowed to expire as scheduled.

Beauty schools. If Chapter 439 is sunsetted, beauty schools will continue to be regulated under Chapter 300, HRS, which will automatically require beauty schools to obtain a license to operate from the Department of Education (DOE). DOE currently licenses all private trade, technical, and vocational schools except for beauty schools and real estate schools.

We believe that regulation by DOE instead of the board would be beneficial both for beauty schools and for students. DOE has greater expertise in this area, and one of its concerns is protecting students' rights. Student interests would also be protected by numerous federal programs relating to financial aid which will continue to apply to beauty schools. Currently, all beauty schools in Hawaii participate in federal financial aid programs and comply with federal standards.

Licensing Program

The beauty culture practice act has been amended more than 25 times. These amendments were made piecemeal without an overall view of their cumulative impact on the regulation of beauty culture. As a result, Chapter 439 and the board's rules establish a tangled web of regulations that defy rational administration.

The regulatory program is outdated and replete with inconsistencies and anomalies that result in unfair treatment of beauty operators. There are so many

problems that should the Legislature decide to continue regulating beauty culture, Chapter 439 should still be repealed and replaced by a coherent new law.

The most severe problems in the program are:

- . the numerous, unnecessary licensing categories that are now in effect. Some of these categories are not authorized by statute, others are protective, and many create unnecessary costs and hardships for those who wish to work in this field;
- . the licensing of certain activities that are better regulated by another state agency; and
- . the inconsistent, improper, inequitable, unnecessary, and vague licensing standards that are imposed on various categories of licensure.

Licensing categories. The board currently licenses 18 different categories of beauty operators. These are "general" licenses that entitle holders to practice without restriction and "limited" licenses that permit holders to practice under supervision or for a limited period of time. The board also licenses beauty shops and beauty schools.

The many different licenses issued by the board serve no useful consumer protection purpose. They create unnecessary barriers to practice by qualified persons, expenses for applicants, and administrative workload for the department.

If the Legislature decides to continue the regulation of beauty culture, only the hairdresser, cosmetician, and cosmetologist licenses should be retained. The responsibility for regulating electrologists, instructors, beauty shops, and beauty schools should be transferred to other state agencies. The remaining licensing categories should be eliminated, and certain activities should be exempted from the scope of practice for beauty culture.

Unnecessary general licenses. The board currently issues eight general licenses to beauty operators. In the past, it has also issued licenses to permanent wave operators, Japanese hairdressers, and facial cosmeticians. Table 3.2 shows the number of licenses that were issued between fiscal years 1981 and 1985 and the number of licenses that were current as of October 1985.

Table 3.2
General Operator Licensing Statistics
1981-1985

<i>Type of License</i>	<i>No. of Licenses Issued Between Fiscal Years 1981 and 1985</i>	<i>No. of Current Licenses as of October 1985</i>
Hairdresser	256	335
Cosmetician	69	67
Cosmetologist	906	2,292
Permanent wave operator	0	1
Japanese hairdresser	0	2
Facial cosmetician	0	1
Hair cosmetician	0	0
Manicurist	65	73
Electrologist	11	17
Instructor	18	73
Managing operator*	238	1,846
TOTALS	1,563	4,707

*Includes managing manicurists.

Source: Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, annual statistical reports, 1981-1985, and *Geographic Report*, October 9, 1985.

Permanent wave operator, Japanese hairdresser, and facial cosmetician licenses. The board has issued licenses to permanent wave operators, Japanese hairdressers, and facial cosmeticians. These licenses are questionable because they are not specifically authorized in the statutes. In addition, there are no rules delineating the scope of practice or entrance requirements for the three licensing categories.

Hair cosmetician and manicurist licenses. Act 198, SLH 1955, authorized the board to issue licenses to hair cosmeticians and manicurists. According to House Select Committee Report No. 45 on House Bill No. 1243, the general purpose of this legislation was "to restrict the practice of beauty culture and thereby protect the local operators." The statute sought to accomplish this by establishing unreasonably high licensing standards for activities that pose little danger to the public.

These provisions clearly violate the Sunset Law which states that:

"The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation."¹⁰

In 1964, the board adopted a rule defining a hair cosmetician as a person who massages, cleanses, stimulates, manipulates, exercises, or does similar work upon the scalp or hair of another person. In other words, hair cosmeticians shampoo hair and do scalp massages.

Despite this limited scope of practice, hair cosmeticians are required to have 1,200 hours of apprenticeship or 600 hours of beauty school training in order to qualify for a license. Not surprisingly, there were no licensed hair cosmeticians in October 1985.

Manicurists cleanse, shape, and polish nails. They also rub lotions on hands and feet and massage these parts of the body. Since people routinely give themselves manicures and pedicures, there is no need for the State to regulate this activity. However, the law requires manicurists to complete 700 hours of apprenticeship or 350 hours of beauty school training in order to qualify for a license.

10. Section 26H-2(1), HRS.

To make the situation worse, there are different training standards for manicurists, cosmeticians, and cosmetologists to perform manicures and pedicures despite the fact that all three groups are supposed to be able to perform at the same entry-level standard of practice. Table 3.3 shows the current training requirements for the three licensing categories. Cosmetologists can manicure and pedicure after only 150 hours of apprenticeship or 50 hours of beauty school training. However, manicurists must have twice the amount of apprenticeship training or three times the amount of beauty school training in order to engage in the same activity. The effect of these training requirements is to restrict entry into the practice by manicurists.

Table 3.3
Current Training Requirements for Cosmetologists,
Cosmeticians, and Manicurists in the Practice Area
"Manicuring and Pedicuring"

<i>Type of License</i>	<i>Number of Hours of Training</i>	
	<i>Apprenticeship</i>	<i>Beauty School</i>
Cosmetologists	150	50
Cosmeticians	300	125
Manicurists	300	150

Source: Department of Commerce and Consumer Affairs, Board of Cosmetology, "Curriculum of Courses," August 1979, and Apprentice Progress Report," January 1985.

There is no need for the State to regulate shampooing, scalp massages, manicures, or pedicures. If the Legislature continues regulation, these activities should be exempted from the scope of practice for beauty culture.

Managing operator license. The law requires beauty shops to be run by a licensed managing operator who qualifies by having at least one year of experience as a licensed beauty operator in Hawaii. This requirement may be waived if it

creates undue hardship for a beauty shop and if an applicant has "equivalent" experience.

The experience requirement serves primarily to shield local beauty shops from competition by newly licensed operators. It serves no useful consumer protection purpose as it applies equally to newly licensed beauty operators and those who have had years of successful management experience in another state. Thirty-two states do not require such a license.¹¹ Neither does the Board of Barbers require licensed managing operators to manage barbershops.

Unnecessary limited licenses. The board issues seven limited licenses to beauty operators. Table 3.4 shows the number of licenses issued between calendar years 1980 and 1984. There were over 4,500 of these licenses, and it is evident that they are a major workload for DCCA.

Table 3.4
Number of Limited Licenses Issued
Between Calendar Years 1980 and 1984

Type of License	Number of Licenses Issued					Total
	1980	1981	1982	1983	1984	
Apprentice	56	29	36	39	38	198
Student	383	404	418	406	475	2,086
Instructor-trainee	11	9	8	4	5	37
Temporary operator	275	223	219	271	300	1,288
Junior operator	92	98	98	126	191	605
Temporary instructor	4	3	4	1	3	15
Technician	71	49	70	75	61	326
TOTALS	892	815	853	922	1,073	4,555

Source: Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, licensing logs, 1980-1984.

11. Jacob Yahm, *Milady Cosmetology State Board Guide*, 28th ed., New York, Milady Publishing Company, 1985, pp. 136-137.

None of these licenses are necessary because most limited licensees work under the supervision of licensed operators or perform innocuous tasks such as demonstrating beauty products or teaching hairstyling. All of these activities should be exempted from licensing.

Apprentice, student, and instructor-trainee licenses. The board issues licenses to apprentices, students, and instructor-trainees. In order to qualify for these licenses, applicants must be at least 16 years old, have good moral character, and have a high school education or its equivalent. In addition, instructor-trainee applicants must have three years of experience as a licensed beauty operator.

None of these licensing categories is necessary to protect the public since apprentices, students, and instructor-trainees work under supervision. In addition, instructor-trainees are already licensed beauty operators. The student licensing category is highly unusual since even medical students can attend school without a license. No complaints have been filed against apprentices, students, or instructor-trainees.

Temporary operator and junior operator licenses. The board issues two different licenses to persons who are eligible to take its examinations. The temporary operator license permits applicants who are taking the examination for the *first* time to practice until the results of the examination are posted. The junior operator license enables applicants who have *failed* the examination to practice under the supervision of a licensed beauty operator until the results of the next examination are posted. The board requires applicants to file new license applications after every unsuccessful examination.

The reason for two different licenses for exam-eligible applicants is unclear since the qualifications of both groups are exactly the same. In addition, there is no justification for restricting the licenses to one examination period. This means that

applicants who fail an exam must submit a new application and pay fees every three to four months.

The board's rules state that failure to take an examination *shall result in forfeiture* of the licenses unless it is due to illness or other similar cause. Some of DCCA's instructions to applicants also state that failure to appear will result in forfeiture or denial of future licenses.

These policies deny applicants due process since they are not notified of their right to an administrative hearing on the denial of their licenses. Instead, DCCA decides when licenses should be denied, or the board takes up individual cases at its monthly meetings.

The board's requirement that applicants must have a valid excuse in order to retain their licenses creates another problem. The board has never defined clearly what a valid excuse would be. As a result, applicants are afraid to miss any examination for any reason since they do not know what the board will consider to be a "valid" excuse.

The department has been forced to develop an elaborate system to administer the two licensing categories. Extensive and wasteful staff time is spent on considering requests for postponements and extensions and in processing the applications.

Temporary instructor license. Temporary instructor licenses are issued to applicants who are licensed as beauty instructors in another jurisdiction with standards substantially equivalent to those in Hawaii. Temporary instructors are permitted to: (1) commercially demonstrate trademarked hair or cosmetic products, or (2) teach hairstyling in a licensed beauty school or under the sponsorship of any organization approved by the board. This license is valid only until the next instructor's examination is given by the board.

According to House Select Committee Report No. 45 on House Bill No. 1243, Regular Session of 1955, the purpose of this licensing category is "to cure existing law and thereby protect the local operators and instructors." This protectionist purpose violates criteria established by the Sunset Law.

Local beauty operators are allowed to demonstrate beauty products and teach hairstyling with much lower standards. For example, a temporary instructor must have a beauty operator license *plus* three years of experience and 600 hours of training in the theory and practice of education in order to demonstrate beauty products. Locally-licensed cosmeticians can do the same thing with no additional experience or training.

Technician license. The board issues a technician license to applicants who plan to demonstrate the use of hair or cosmetic products for commercial purposes. Technicians must be employed by a firm or corporation; however, they are not required to meet any other licensing standards. Technician licenses are valid for one calendar year, and they may be renewed.

This licensing category was established by the board in 1966. It is not authorized by the statute. The license is unenforceable since the department cannot visit every site where beauty product demonstrations are given. It is also unnecessary since technicians work under the supervision of employers. They have safely demonstrated beauty products for years without meeting any specific licensing requirements.

Activities more appropriately regulated by other agencies. Several activities that are currently under the board's jurisdiction would be regulated with greater expertise by other state agencies. These activities include electrolysis, beauty shops, and beauty schools.

Electrologist license. The board licenses electrologists even though electrolysis is generally not considered to be a beauty culture service. Some board members have recommended that this responsibility be removed from the board.

Currently, DOH licenses tattoo artists, and no one may practice as a tattoo artist unless they are licensed by DOH.¹² Both tattooing and electrolysis involve inserting a needle superficially into the skin. Since the potential for harm from the practice of electrolysis is similar to that from tattooing, this licensing responsibility should be transferred to DOH.

Beauty shop license. In order to be licensed, beauty shops must have a sanitation clearance from DOH, be adequately equipped, and place a licensed managing operator in charge of their operations. In addition, shops must post their licenses in a conspicuous location.

The board has adopted rules requiring beauty shops to post a notice informing consumers that a price list is available upon request and to employ only licensed beauty operators. No standards have been set for equipping these shops.

These licensing requirements serve no useful consumer protection purpose. The sanitation clearance requirement duplicates DOH's regulatory responsibilities. It is not necessary for the board to set equipment standards for beauty shops that have already met DOH's sanitation standards. In addition, there is no need for a licensed managing operator or for shops to post licenses and price lists. We conclude that beauty shop licensing by the board is unnecessary and should be left to DOH.

12. Section 321-14, HRS.

Beauty school license. Until recently, both the board and DOE were authorized to license beauty schools. In 1982, Act 188 made DOE regulation of beauty schools optional, and DOE discontinued its regulation of these schools.

We believe that regulation of beauty schools by the board is inappropriate for two reasons: (1) its current licensing requirements are unreasonable and unenforceable, and (2) the board does not have the necessary educational expertise to regulate beauty schools.

Unreasonable and unenforceable licensing requirements. The law requires beauty schools to offer an 1,800-hour training course for cosmetologists in order to qualify for a license. As a result, beauty schools that only want to offer specialized training courses for hairdressers, cosmeticians, or manicurists cannot do so because less than 1,800 hours of training are needed. The requirement restricts competition with established beauty schools and may curtail the number of specialty beauty operators that enter practice.

To be licensed, beauty schools must also demonstrate that there is a need for the school and that current training opportunities are inadequate. However, the board has no criteria for determining whether there is a need for a beauty school. In discussing two recent beauty school applications, the board decided that it could not enforce this rule.

Unreasonable requirements for instructor license. The board also licenses beauty school instructors. Applicants must be licensed beauty operators, have at least three years of experience, complete 600 hours of training in the theory and practice of education, and pass an examination.

The board's rules require beauty operators to obtain their instructor's training from a licensed beauty school. This restriction prevents beauty operators from using other avenues of educational training.

Comparable DOE licensing requirements for vocational school instructors are much less restrictive. For example, the three-year experience requirement can be waived, there is no training requirement, and the examination requirement is optional. In addition, DOE permits persons who do not meet its licensing requirements to teach for up to six months.¹³

Until recently, DOE licensed beauty school instructors along with all other vocational school instructors in the State. However, Act 188, SLH 1982, permitted DOE to stop regulating beauty school instructors because they are also licensed by the board.

Board's lack of expertise. The board has not updated its rules since assuming sole responsibility for regulating beauty schools. As a result, there are serious gaps in the protection offered to students. For example, the board requires beauty schools to post only a \$5,000 bond which is sufficient to cover only *one* tuition deposit from a cosmetology student. DOE regulations had required beauty schools to post a \$50,000 bond.

DOE has greater expertise in licensing private trade, technical, and vocational schools. It currently regulates all such schools except for beauty schools and real estate schools. DOE's rules are also more sensitive to issues relating to student protection. For example, they set detailed guidelines relating to tuition, fees, and other charges, and they require schools to comply with explicit standards on the disclosure of information.

Board members are not qualified educators, and they are not knowledgeable about important aspects of educational program administration. They cannot keep abreast of changing federal regulations affecting the operation of beauty schools. It

13. Hawaii, Title 8, Board of Education, Rule 46. Relating to the Licensing of Private Trade, Vocational or Technical Schools.

would be more appropriate for DOE to assume this regulatory responsibility as part of its general authority to regulate private trade, technical, and vocational schools under Section 300-41, HRS.

Licensing standards. In addition to problems created by the large number of licensing categories, many of the board's licensing standards are inconsistent, improper, inequitable, unnecessary, or vague. This is partly due to the fact that the statutes have not been updated in a timely manner. The board's rules have not been substantively revised since 1970.

Inconsistent training requirements. Licenses are issued to hairdressers, cosmeticians, and cosmetologists. Hairdressers arrange, dress, curl, wave, cut, color, and do similar work on the hair. Cosmeticians massage, cleanse, beautify, work on the scalp, face, arms, and upper part of the body, and manicure nails. Cosmetologists are qualified to work both as a hairdresser and a cosmetician.

The board has adopted a detailed list of subjects that must be taught in training programs for the three licensing categories. Since cosmetologists perform the same work as hairdressers and cosmeticians, logic would dictate that their training requirements would be the same as those for hairdressers and cosmeticians. However, this is not the case.

The total number of training hours for cosmetologists is equivalent to the total number of training hours for hairdressers plus cosmeticians. However, cosmetologists are required to take a different number of hours of training in most subjects than hairdressers and cosmeticians.

For example, cosmetology students must take 110 *more* hours of training in six hairstyling subjects than hairdressing students. However, they can take 200 *fewer* hours of training in two skin care subjects than cosmetician students. Similar inconsistencies are found in subject matter training requirements for apprentices.

Another inconsistency in training requirements is the amount of time that is left "unassigned" in each licensing category. For example, the curriculum for hairdressing students leaves only 8 percent of the total training time unassigned while the curriculum for cosmetician and cosmetology students leaves 18 percent unassigned. The training program for hairdressing apprentices leaves only 5 percent unassigned time while the training program for cosmetician apprentices has 40 percent of the time unassigned.

If regulation of beauty culture is continued, beauty schools should be allowed to develop their own training programs. Regulation should extend only to establishing guidelines for training that are related to health and safety issues.

Improper training requirements for hairdressers and cosmeticians. The current training requirements for hairdressers and cosmeticians are unofficial and improper. In 1966, the board adopted rules requiring hairdressing students to take 1,100 hours of training and cosmetician students to take 700 hours. However, in 1979, the board established a policy (but *not* by rule) changing the requirements for hairdressing students to 1,250 hours of training and cosmetician students to only 550 hours. The department currently requires applicants to meet the new standards even though they contradict the board's rules.

Unfair training requirements for apprentices. The apprenticeship pathway to licensure is important. It allows those who cannot afford to attend beauty school to prepare for a career in the field. It also permits licensed barbers to qualify for a beauty operator license while continuing to practice.

Current apprenticeship training requirements are inconsistent and inequitable. For example, hairdressing *apprentices* are required to take 60 percent more training than hairdressing *students*, and cosmetician *apprentices* are required to take

264 percent more training than cosmetician *students*. There is no rationale for these training requirements. Table 3.5 shows the hours of apprenticeship training compared with hours of beauty school training currently required for hairdresser, cosmetician, cosmetologist, and manicurist licenses.

Table 3.5
Comparison of Current Training Requirements for
Hairdressers, Cosmeticians, Cosmetologists, and Manicurists

<i>Type of License</i>	<i>Number of Hours</i>		<i>Percent Additional Training Required for Apprentices</i>
	<i>Beauty School</i>	<i>Apprenticeship</i>	
Hairdresser	1,250	2,000	60
Cosmetician	550	2,000	264
Cosmetologist	1,800	4,000	122
Manicurist	350	700	100

Source: Department of Commerce and Consumer Affairs, Board of Cosmetology, "Curriculum of Courses," August 1979, and "Apprentice Progress Report," January 1985.

There are no national standards that establish equivalencies between beauty school and apprenticeship training programs. A review of state regulations on apprenticeships shows that two states and the District of Columbia require the same number of hours of training for apprentices and students. Four states require between 25 percent and 67 percent more training for apprentices. Nine states require 100 percent more training. And only seven states require more than 100 percent more training.¹⁴ Training requirements for barber apprentices in Hawaii are the same as those for barber students. Applicants must have six months of training whether they go through an apprenticeship or barber school.

14. Yahm, *Milady Cosmetology State Board Guide*; and Letter from Constance Hanna, Administrative Assistant, State Board of Cosmetology, Commonwealth of Pennsylvania, to Office of the Legislative Auditor, November 7, 1985.

Apprentices are further discriminated against since the law requires that there be three licensed beauty operators for every apprentice. This requirement prevents small beauty shops from training new operators, and it restricts competition with larger beauty shops and beauty schools. In contrast, the Board of Barbers requires only one supervising barber per apprentice.

The board has also established many unnecessary reporting requirements for apprenticeship programs. For example, beauty shops are required to submit quarterly progress reports and notify the board within 15 days when an apprenticeship is terminated. Apprentices are required to file the names and addresses of their employers with the board. These reporting requirements create unnecessary paperwork. It would be more reasonable to simply require employers to verify the amount of training that apprentices have received at the time they apply for licensure.

If regulation is continued, consistent and rational training requirements should be set for apprentices, the ratio of licensed beauty operators to apprentices should be reduced, and all reporting requirements should be eliminated.

Unnecessary licensing requirement for beauty operators. The statutes require beauty operators to have a high school education in order to qualify for a license. There are no national standards for the amount of general education that should be required for beauty operators. In 1984, only 11 states required a high school education or its equivalent.¹⁵ There is no education requirement for the practice of barbering and no evidence that such a requirement is necessary to protect the public. Since there is no rational basis for the high school education requirement, it should be eliminated.

15. Yahm, *Milady Cosmetology State Board Guide*, p. 132.

Vague licensing requirement. Applicants for apprentice, student, instructor, and instructor-trainee licenses must demonstrate good moral character. This requirement is vague and unenforceable since good moral character cannot be measured. It is not required for other licensing categories, and the department has discontinued enforcement of this requirement. It should be eliminated.

Examination Program

We find severe problems with the board's examination program, particularly its practical examinations. The problems are so egregious that the practical examinations should be discontinued immediately. Grading and scoring of the October 1985 practical examinations were grossly deficient and highly irregular. Therefore, the board should undertake an immediate review of the failed examinations and take the needed corrective actions to ensure fair treatment of applicants.

There are three main reasons for the current problems in the practical examinations:

- . The examinations serve no health and safety purpose. They are wasteful and needlessly expose the State to liability.
- . Grading and scoring are completely arbitrary and without rationale.
- . Administration of the practical examinations is unfair and subject to bias.

Because of these deficiencies, qualified applicants have been unfairly denied the right to practice their occupation.

Practical examinations. The board has developed practical examinations for hairdressers, cosmeticians, cosmetologists, manicurists, electrologists, and instructors. Between January 1984 and October 1985, 1,161 applicants were examined with an overall passing rate of only 65 percent. This means that hundreds

of individuals were not allowed to work as beauty operators for inconsequential reasons.

The content of these examinations borders on the absurd. For example, cosmetologist applicants are tested on their ability to perform such innocuous procedures as shampooing, cutting, and combing hair; giving facials; applying makeup; and giving manicures. They are graded on such factors as how well they roll a pincurl, arch an eyebrow, and hold a nail file. The State should not use such standards to determine whether applicants should be allowed to pursue the occupation of their choice. It is ludicrous and wasteful for the State to use its police powers to such frivolous ends.

The examinations also expose the State to liability should applicants decide to file a lawsuit challenging the tests in court. The State has already been faced with one federal lawsuit challenging the administration of the dental board's practical examination. That case cost the State more than \$475,000. It resulted in substantial changes in the dental board's examination program. Unfortunately, there are similar and worse problems in the beauty culture practical examinations. It is probable that these testing deficiencies will lead to license appeals and possibly federal lawsuits if the practical examination program is continued.

Reconsiderations, complaints, and appeals. Numerous complaints have already been filed about the board's practical examinations. Between 1980 and 1984, 86 applicants filed appeals with the board asking for reconsideration of grades. The board adjusted grades in 35 cases, and 30 of these applicants ended up passing their examinations.

The board handled these requests informally. It generally left the decision to adjust a grade up to the examiner who gave a test instead of being an impartial arbitrator of disputes. In addition, when a grading deficiency was identified, the

board did not routinely review the grading of other applicants to determine if the same deficiency resulted in others failing the examinations.

In March 1985, the board reviewed the grades of some cosmetology applicants who had failed the January 1985 examination by only one to four percentage points. The board's handling of these cases was arbitrary and capricious. Three other applicants had also failed by one to four percentage points but were not included in the review. The board adjusted the grades of two applicants to passing. One set of grades was adjusted because the examiner forgot to give reasons for deducting points. This same problem occurred in three other examinations but was not identified and reviewed by the board.

Several complaints have also been filed with the Office of the Ombudsman alleging discrimination in testing or unfair and inequitable testing conditions in the practical examination program.

In 1985, three applicants filed appeals with the hearings office of DCCA. In all three cases, grades were adjusted to passing, and licenses were issued to the applicants. These cases had been reviewed and denied by the board in March 1985. The hearings would not have been necessary if the board had handled its review more responsibly. The cases required a great deal of state time and money. Each case was worked on by two attorneys from the Regulated Industries Complaints Office (RICO) and a DCCA hearings officer (who is also an attorney). In addition, the department's licensing examiner was called upon to testify.

A review of these cases is instructive. The issues in the three appeals cases were petty. The first petitioner challenged an examiner's deduction of two points on a scalp treatment test because: "Sectioning and parting for brushing and application of gell was sloppy." The petitioner also challenged the deduction of

points on a manicure test for bubbles in nail polish, pushing the cuticle dry, and folding a towel improperly.

The hearings officer found that based on the board's rules and grading guidelines, some of the points had been deducted properly. However, she also found that the grading system for the manicure test was mathematically flawed. The manicure test had a total of five points. However, examiners were supposed to consider 25 factors in grading an applicant and they could deduct one point for each missed factor. Consequently, applicants could theoretically receive a score of minus 20 points on the five-point test. The hearings officer concluded that the grading system should be revised to equate the number of factors to be considered with the number of points available for the test. She recommended that the applicant's score on the manicure test be raised based on a corrected grading system.

The second applicant challenged the deduction of points on a manicure test, because polish was applied irregularly around the cuticle and polish was left around the cuticle. The hearings officer recommended that the examination be rescored because of the same mathematical flaw that was noted in the first appeals case.

The third applicant challenged the deduction of points on a facial test because eyebrow manipulations were given in the wrong direction, the skin was not stretched during eyebrow arching, and the applicant's nails were too long. Points were also deducted on a makeup test, because a lip outline was uneven and no eyeliner was put on the upper lid. One point was deducted on a manicure test, because the towel that was to serve as a cushion for the model's arm was not properly folded.

The hearings officer found that the deductions on the facial test were valid. He also found that the applicant failed to prove by a preponderance of evidence that the lip outline was even. However, he recommended that the applicant's grade be raised by two points because the eyeliner and cushion deductions were invalid.

Beauty operators may have very clear ideas about what constitutes adequate performance on these tests. However, these procedures have *no* substantive bearing on public *health or safety*. It is totally unjustified for an applicant to have to prove by a preponderance of evidence that a lip outline was even or a towel properly folded. It is even more absurd for the State to have to use the time of four attorneys plus staff to make this determination.

Despite the findings by the hearings officers, the board did not rescore the tests of other applicants who had also had points deducted unfairly. Had the board done so, nine applicants who were denied a manicurist license on the January 1985 examination would have passed.

Arbitrary grading methods. As a direct result of the three successful appeals cases, the board established a new grading system for the hairdresser, cosmetician, cosmetologist, and manicurist examinations. This new system was implemented in October 1985.

Although the board went to much effort to improve the examination program, the October 1985 examinations were still graded in an arbitrary manner. As a result, passing or failing these examinations had no significance in terms of meeting any standard of performance.

The new grading system consists of two components: (1) grading guidelines which list factors that examiners are to consider in evaluating performance on various test items, and (2) a scoring system which translates these evaluations into scores for applicants. The grading guidelines are much too complex and were not always followed by examiners. The scoring system is completely arbitrary and not thought through. Each component is unworkable by itself and the two of them used in conjunction make no sense at all.

Grading guidelines too complex. Each practical examination consists of a number of different tests such as shampoo, hairset, and combout. Each test includes a number of "test items" that must be graded, and the new grading guidelines list numerous "factors" that must be considered in grading each test item.

For example, "scalp and hair treatment" is the first test on the cosmetologist examination. There are five test items to be graded: preparation, brushing, application of gel, manipulation, and safety and sanitation. There are 20 factors for examiners to consider in grading the test items: 1 under preparation; 10 under brushing; and 3 each under application of gel, manipulation, and safety. These factors include such things as brushing and parting the hair properly.

The new grading system does not correct the problems pointed out by the hearings officers. Instead it creates numerous other problems.

In October 1985, 15 examiners administered 175 examinations to 38 hairdresser, 11 cosmetician, 112 cosmetologist, and 14 manicurist applicants. The examiners were required to consider nearly 300 factors in evaluating applicants' performances. They recorded more than 9,000 grades on all the examinations. The department had to calculate more than 11,000 scores by hand to arrive at final grades on the examinations.

This unnecessarily complicated grading system is prone to errors. There were *numerous* instances where the examiners completely forgot to record a grade or to record a reason for giving an unsatisfactory grade or to sign their names on the grading sheets. In addition, the grading system was costly in terms of staff time spent in calculating examination results.

Grading guidelines were not always followed. The examiners' reasons for deducting points should be limited to factors listed in the grading guidelines. However, examiners deducted points for extraneous reasons. For example, more

than half of the deductions in a sample of 24 manicure tests were for reasons not listed in the grading guidelines. In addition, one examiner deducted points because an applicant could not speak English well enough to follow instructions.

Arbitrary scoring system. Under the new scoring system, examiners grade an applicant's performance as excellent (E), good (G), fair (F), or unsatisfactory (U). Excellent performances are awarded 100 percent of the points allocated to a test item. Good performances receive 85 percent, fair performances receive 75 percent, and unsatisfactory performances receive 74 percent. The board's rule sets 75 percent as the passing score for all examinations.

All of the values assigned to the various grades as well as the 75 percent passing score are arbitrary. They have no reference to any standard of performance. There is no particular reason why a good (G) grade has a value of 85 percent or a fair (F) grade a value of 75 percent.

Examiners are given no criteria or guidelines on the kinds of performance that justify a good grade rather than a fair grade. The grading guidelines are supposed to lend a semblance of objectivity to the grading but they have no relationship to the letter grades.

Scoring still mathematically flawed. The scoring system still does not equate the number of factors examiners must consider with the number of points allocated to a test item. This is the same flaw noted in the hearings officers' reports on the January 1985 manicure test.

To illustrate, the new manicure test includes five items: preparation, procedure, hand and arm manipulations, application of nail polish, and safety and sanitation. Each test item is worth one point. A perfect score on the entire test is five points.

The grading guidelines contain 14 factors for examiners to consider in grading the first item, preparation, which is worth one point. If the hearings officers' recommendations had been followed, the examiners should deduct one-fourteenth of a point for each missed factor. Instead, examiners gave unsatisfactory grades when applicants missed just one of the 14 factors.

The scoring system did not equate the factors listed in the grading guidelines with the E, G, F, and U grading system. It is not clear what the correspondence is between the two. Examiners are supposed to be evaluating each test item on whether they are E, G, F, or U at the same time that they are deducting points for the various factors. What the relationship is between the two is anyone's guess.

Failing grades not justified. The new scoring system gives too much weight to an unsatisfactory performance. For example, four fair grades and one unsatisfactory grade would result in an applicant failing the test.

Even though a "U" score is valued at 74 percent, it is still possible for applicants to fail an examination on tenuous grounds. This actually happened to one cosmetician applicant who failed the examination with a score of 74.9 percent even though she received 17 fair grades and only *one* unsatisfactory grade. The reason for the unsatisfactory grade was an "uncertain" eyebrow manipulation on the facial test.

Examiners awarded very few excellent or good grades. A review of 4,000 randomly selected grades revealed that only 4 percent were excellent, 14 percent were good, 63 percent were fair, and 19 percent were unsatisfactory.

We also noted earlier that sometimes examiners forgot to record grades. When a grade is not entered on the grading sheets, the examination branch automatically gives applicants a fair grade. This means that they could receive a lesser score due to an examiner's omission.

Problems in test administration. Performance tests must be carefully administered. They must be standardized and properly supervised so that all applicants are given the same set of tasks and the same instructions. Carefully defined performance criteria must be followed to guard against subjectivity and differences among evaluators. The anonymity of applicants must be protected to guard against bias and to make sure that evaluators are not influenced by race, sex, and other factors. The beauty culture practical examinations do not meet these standards.

The responsibility for test administration is divided between the board and DCCA. The board appoints examiners, sets the testing schedule, and supervises the testing process. Board members also serve as examiners. The examination branch of DCCA hires board-appointed examiners as independent contractors, trains the examiners, arranges for testing sites, and arranges for the distribution and control of testing materials.

The board has not administered the examination properly. There are serious logistical problems, a lack of proper supervision, arbitrary time limits, and other irregularities that result in unfair treatment of applicants.

Logistical problems. The complexity of the practical examinations and the large number of applicants who are tested at any given time create logistical problems that must be resolved if applicants are to be tested under standardized conditions. Instead, we find the testing conditions to be confused and stressful.

On Oahu, examinations are administered at Honolulu Community College. The cosmetologist and cosmetician applicants are divided into small groups that rotate among several stations to take different tests. The hairdresser and manicurist applicants remain at one station throughout the examination. Examiners are usually

assigned to grade a different group of applicants every hour. During one day, examiners usually rotate among four or more groups of applicants.

The practice of rotating examiners and applicants from station to station creates numerous problems. Applicants are permitted to move to a new station as soon as they finish a test. Examiners at the new station may be completing their grading of a group of applicants and preparing to rotate to another station. They may decline to grade the newly-arrived applicants.

Most examiners try to be in the right place at the right time. However, an examiner who has a slow group of applicants often has to stay overtime at one station in order to finish grading. This causes a jam in the grading of other applicants because examiners do not arrive at their new stations on time.

Applicants report that they do not know who is grading them at any given time during the examination. We observed numerous cases where applicants began a test in good faith only to discover that no one was grading their performance. These applicants were treated unfairly when new examiners came along and told them to redo their work.

Lack of proper supervision. Since the examinations are not anonymous, special precautions should be taken to reduce bias in grading. There should be procedures to protect the identity and background of applicants. Examiners should be advised on appropriate behavior and cautioned not to introduce bias into the testing situation. During the examinations, proper testing procedures should be adhered to and enforced. However, neither the board nor the department took steps to do so.

The department gives each applicant an identification number at the start of testing. Applicants are also advised to remove all personal identification from their clothing and supplies. The department also advises examiners to restrict their

comments to testing matters and to disqualify themselves from grading applicants with whom they are acquainted.

There were several instances where applicants did not remove their names, the names of their beauty schools, or various professional insignia from their clothing and supplies. In addition, one applicant wore a uniform advertising the name of a local employer and spoke frequently with an examiner who worked for the same employer (although the examiner did not grade any of her tests).

On numerous occasions, examiners initiated personal conversations with applicants whom they were grading. For example, one examiner asked an applicant where she went to beauty school, and another examiner offered to help an applicant get started in the beauty business in Honolulu. Some examiners heavily criticized applicants' performances during the examination or lectured them about the "proper" way to perform various beauty procedures. Such unwarranted interactions could have unnerved the applicants and adversely affected the outcome of their examinations.

Proper grading procedures not followed. In order to reduce bias in grading, the department has recommended that more than one examiner grade each examination. The department also recommends that two examiners grade each facial test. Instead, in May 1985, two examiners left the testing site early because they were tired, and the remaining examiner graded all the examinations. We also identified 15 facial tests that were graded by only one examiner in October 1985. In at least one case, the lack of a second grader may have caused an applicant to fail the examination by only 0.001 points.

The examiners did not always follow test instructions. For example, the same examiner is supposed to grade the hairset and combout tests on each cosmetologist

and hairdresser examination. A review of grading sheets reveals that approximately 18 percent of these tests were graded by two different examiners in October 1985.

The instructor's examination is presented to a panel of examiners who are supposed to act as "students." There is no set policy about how many examiners should grade each applicant. As a result, applicants are not always subjected to the same testing conditions. For example, at one examination three examiners were present, at another five examiners were present, and at still another there were six examiners.

Arbitrary time limits. The board has established time limits of 5.5 hours for cosmetologists, 4.5 hours for hairdressers, 2.5 hours for cosmeticians, and 1.5 hours for manicurists. These time limits are arbitrary. There are no factors in the grading guidelines relating to time.

In addition, cosmetologist applicants are given *less* time to perform a hairset, combout, and manicure than other applicants. There is no rational basis for making cosmetologist applicants perform their work more quickly.

The examiners also varied in the way they enforced the time limits. On one day, all applicants were permitted to complete their work even though they went over the time limit. On another day, the time limits were strictly enforced, and some applicants were not permitted to complete their work.

On the instructor's examination, applicants have a time limit of one hour to give a lecture and demonstration. Examiners deduct points if the time limit is not met *exactly*. There is no reason to enforce such a time limit since no issues of health or safety are involved if a lecture does not end exactly on time. In addition, examiners have deducted a variable number of points for failing to meet the time limit. On one examination, the applicant had one, two, and five points deducted by three different graders.

Problems with the written examinations. The board has developed written examinations for hairdressers, cosmeticians, cosmetologists, manicurists, electrologists, and instructors. Between January 1984 and October 1985, 1,054 applicants were examined with an overall passing rate of 77 percent.

There are serious problems with these examinations. They are of questionable validity, because they are not based on current job analysis surveys. There are no test specifications to ensure that different forms of an examination are consistent with a definite plan and include all significant topics. As a result, there is no evidence that the tests are valid or reliable in assessing competency to perform at the entry level.

The cosmetologist, hairdresser, and manicurist examinations were updated in October 1985. The revised examinations contain more emphasis on health and safety issues than previous versions. However, they still include a large number of questions that bear no relationship to public health and safety such as questions on artistic techniques.

There also may not be enough questions in the test bank to construct different versions of each test. The department's examination branch reports that there are fewer than 600 questions for all the beauty operator examinations. There have been recent discussions at board meetings about the need to add more questions to the test bank. However, in the absence of any current job analysis or test specifications, it is doubtful that efforts to expand the number of questions in the test bank will serve any useful purpose.

If regulation is continued, the Legislature should define the health and safety reasons for regulation. The department should then conduct job analysis surveys, develop test specifications, and implement new written examinations that focus

solely on health and safety issues. Questions relating to artistic technique should not be included in the licensing examinations.

Enforcement Program

Trivial complaints. DCCA must enforce the beauty culture practice act. This represents a waste of state time, money, and effort, given the triviality of many of the complaints.

Ninety complaints were filed between January 1, 1981 and June 15, 1985. (See Table 3.1.) Only six alleged personal injury from the practice of beauty culture, and all of these cases were closed due to no violation or insufficient evidence.

Twenty-two complaints related to issues that are not properly within the scope of a licensing law. Ten cases relating to poor workmanship were disputes between customers and beauty operators that should be handled informally or through avenues such as neighborhood justice centers. Eight cases relating to fee disputes would also be better handled informally between the parties or through such avenues as Small Claims Court. Three cases relating to false advertising were insignificant, and none were filed by aggrieved customers. One case was outside the jurisdiction of the department, because it was filed by a customer who wanted to force a beauty operator to cut her hair.

Sixty-two complaints alleged unlicensed activity or technical violations of the law such as failing to post a license or failing to notify the department of a change in address. Forty-eight of these complaints were filed by beauty operators, board members, or staff. None of these complaints was filed by a customer or alleged any harm to a customer. In November 1985, RICO's legal staff reported that they were handling seven staff-initiated complaints. All of these cases related to unlicensed activity or technical violations of the law.

The trivial nature of complaints filed with the department does not justify the amount of staff time that is invested in the cosmetology enforcement program. In addition, it appears that this program is being used more to harrass the competitors of beauty operators than to protect the public.

Beauty shop inspection program. Section 439-8, HRS, authorizes the board to conduct inspections of beauty shops, and to appoint assistants to help in carrying out this responsibility. The board has yet to adopt rules setting guidelines for the inspection program.

Despite the absence of rules, the board has conducted inspections of beauty shops in the community. Between May and August 1985, two board members visited six beauty shops, and they recorded their findings on an old inspection form prepared by the department. According to the inspection reports, some shops allegedly failed to post required documents; some failed to comply with the apprentice-beauty operator ratio; some were engaged in unlicensed activity; and some did not appear to be in sanitary condition.

The board requested RICO to investigate the six beauty shops based upon its findings. RICO declined to pursue these cases because the inspections were not conducted systematically according to established procedures. RICO officials pointed out that any proceedings growing out of the inspection visits might be called into question by the beauty shops because of questions of due process and equal protection under the law. For example, it was not readily apparent why the board members selected the particular six shops instead of any of the other 800 licensed establishments in the State.

In August, an attorney for one of the inspected beauty shops wrote to the department on behalf of his clients. The attorney noted that a board member had entered the shop on two separate occasions and announced his intention to further

review the premises. The attorney stated that the visits caused much turmoil and may have violated the civil rights of his clients.

The attorney concluded that since there were no outstanding complaints against the shop, it appeared that the board member was conducting an independent review not sanctioned by the board. The attorney also concluded that since the board member had proprietary interests as a licensed beauty operator, it could only be inferred that his visits were made to gain trade secrets and to otherwise gain unfair advantage in his business. The attorney demanded that the department have the board member cease and desist from the actions he had undertaken.¹⁶

The department subsequently met with the board member who agreed not to make any more visits to the beauty shop. DCCA also advised the board that it should develop guidelines for selecting shops to be inspected and the manner in which the inspections would be carried out.

In September 1985, a meeting was held of a "cosmetology inspection committee" established by the board. The committee decided to try to delegate the inspection function to the Hawaii State Hairdressers and Cosmetologists Association (HSHCA) since this organization has members on all islands and can provide the necessary personnel to conduct inspections. The committee also agreed that guidelines on the conduct of inspectors should be finalized. The board has expressed a desire to meet with its attorney and RICO investigators to complete the arrangements for an inspection program. However, this meeting had not been held at the time our report was finalized.

It is highly inappropriate for board members or representatives of private professional organizations to conduct beauty shop inspections since they might have

16. Letter from Keith Matsuoka, Esq., to Alvin Yamamoto, Executive Secretary, Board of Cosmetology, August 15, 1985.

proprietary interests in the outcome of any review. Moreover, *shop inspections are not necessary* since DOH already carries out this function for sanitation-related issues and RICO responds to complaints filed about unlicensed activity or technical violations. The board's effort duplicates existing programs and serves no useful purpose.

The board should *not* have the authority to conduct beauty shop inspections. This activity exposes the State to potential litigation, and no incidents of consumer harm justify such a program. Industry officials who are concerned about the conditions in beauty shops can develop their own private certification program for these business establishments.

Board Organization and Operations

Our review of board operations indicates that the board tends to act in the interests of the industry. The board has not always acted responsibly and with good judgment.

Improper recommendations by the rules committee. The board's approach to rules revision demonstrates its protectionist position. A committee of the board has been meeting to revise the current set of rules and regulations for Chapter 439, primarily to bring them into conformance with current board practices.

In general, the committee's proposals increase restrictions on the practice of beauty culture. Some of the proposals also contradict statutory provisions in Chapter 439. The following are some examples of the committee's proposals:

- . provide for automatic revocation of a junior operator license when an applicant fails the board's examination three times and require them to take 200 hours of additional *formal schooling* before they are eligible to retake the examination for a fourth time (Chapter 439 does not provide

for automatic revocation of the junior operator license after three unsuccessful examinations or require any additional training for them to retake the board's examination a fourth time);

- . amend the rules to prohibit individuals from being simultaneously licensed as students and apprentices (this prevents some individuals from undertaking two training programs at the same time and denies them the right to choose the manner of their training);
- . require apprentices to complete their training within 24 months of licensing (there is no comparable requirement for students);
- . provide for automatic forfeiture of any credit earned on a previous examination if an applicant fails to provide a valid excuse for missing a scheduled examination; and
- . continue the technician licensing category despite the absence of any basis for this license in the statutes.

Improper restrictions on beauty school advertising. The board has also sought to restrict competition. In 1985, a local beauty school wrote to the board for permission to advertise its beauty services. It proposed running the following advertisement:

"First perm at regular price, second perm at 1/2 off (same price perm).
School of beauty culture. Work done by students under supervision."¹⁷

The board's executive secretary initially approved the request. However, the board overturned his decision on the following grounds:

17. Letter from Randy Milhem, Owner, Hollywood Beauty College, to State Board of Cosmetology, December 7, 1984.

"[A] beauty school should not compete with a beauty shop for customers; and that a beauty school is not in the business of providing beauty culture services to customers."¹⁸

This decision is suspect because it prohibits free speech and honest advertising by beauty schools. It may violate the First Amendment of the U.S. Constitution, and federal and state antitrust laws. The board's prohibition of this particular advertisement should be rescinded.

Failure to comply with the State Sunshine Law. The board did not comply with the provisions of the State Sunshine Law in carrying out its responsibilities for the examination program. As a result, there is no record of meetings held by board members between August and November 1985 to revise the beauty operator practical examination program. This is a serious omission, because the background on decisions relating to examinations must be documented in order to withstand possible legal challenges.

Questionable relationship between the board and the Hawaii State Hairdressers and Cosmetologists Association. In view of the possible sunseting of Chapter 439, the board and the Hawaii State Hairdressers and Cosmetologists Association (HSHCA) have been working together closely. HSHCA officials have become involved in many aspects of the board's operations. For example, the majority of new examiners appointed by the board in October 1985 are HSHCA officers or former officers of the association. HSHCA members have begun to sit on the board's rules committee, and a board committee has recommended that the beauty shop inspection program be delegated to HSHCA.

It has been disclosed that a DCCA computer print-out with the names and home addresses of licensees was transmitted to HSHCA by a board member. We

18. Letter from Alvin Yamamoto, Executive Secretary, Board of Cosmetology, to Randy Milhem, Principal, Hollywood Beauty School, March 18, 1985.

understand that the print-out is being used as a mailing list for HSHCA to use in its lobbying efforts. Personal records maintained by the State are confidential under the State Privacy Act. The release of confidential information to private parties not only violates the State Privacy Act, but it may also violate the State Ethics Code.

Failure to act in a responsible manner. Many of the problems noted in this sunset evaluation report derive from the board's failure to act in a responsible manner. It has not updated the statutes in a timely manner, it has failed to consider important issues in reviewing the rules, and it has consistently been self-serving. The board has allowed the licensing program to degenerate into a maze of contradictory policies and procedures that defy rational explanation and result in unfair and inequitable treatment of applicants and licensees.

If the Legislature decides to continue regulation of beauty culture, it should repeal the current licensing statute and enact a new statute that removes the board and places the responsibility for the regulatory program under the Director of DCCA.

An Alternative

We recommend that Chapter 439 be sunsetted because regulation serves no consumer protection purpose. It is important, however, that a decision on whether to sunset Chapter 439 be made together with the decision on whether to continue or sunset Chapter 438 on the regulation of barbering. To sunset one and continue the other would create numerous problems. We strongly recommend that both statutes be allowed to expire.

However, if the Legislature decides that beauty operators and barbers should continue to be regulated, one alternative would be to combine the regulation of

cosmetology and barbering under the Director of DCCA or under a single board. Chapters 439 and 438 would be repealed and replaced by a new regulatory program administered by the department or a single board.

Historically, the beauty culture and barbering occupations developed separately because beauty operators served women with a wider variety of services, and barbers served men.

During the past 20 years, however, the practices of beauty culture and barbering have changed significantly. Unisex hairstyling salons offering a variety of services to both men and women have become commonplace, and barbers today perform almost the entire range of services traditionally reserved for beauty operators. Beauty operators and barbers serve customers of both sexes, and men are increasingly using such traditionally feminine beauty services as hair coloring, permanent waving, and makeup application.

The statutory scope of practice for barbers differs from that of cosmetologists (hairdressers and cosmeticians) in only minor aspects. Both occupations may shampoo, clean, arrange, dress, curl, or wave hair, and do similar work. Barbers may apply tonics or other preparations to the hair. Although they are expressly forbidden to "permanently wave" hair, they "body process" hair. The use of tonics and other preparations by barbers has been interpreted to include bleaching, coloring, and other chemical services on the hair.

Cosmetologists are authorized to remove superfluous hair about the body using mechanical or electrical apparatus such as straight-edge razors (which are mechanical devices) and electrical shavers.

Both barbers and cosmetologists may massage and cleanse the skin. The scope of practice for barbers is limited to the face, scalp, and neck while the scope of

practice for cosmetologists includes the arms, bust, and upper body. Both barbers and cosmetologists may use cosmetics, antiseptics, tonics, lotions, or creams to stimulate, manipulate, exercise, beautify, or do similar work upon the skin.

Despite the commonality of practice between the two occupations, Hawaii statutes have not been updated to reflect the changing environment. In addition to creating unnecessary barriers to entry into the two occupations, separate licensing programs create unnecessary administrative workload for DCCA.

The department must staff two separate boards consisting of 14 persons, develop and process separate license application forms even if a person is qualified for both licenses, and develop and administer two separate examination programs. These restrictions on entry and unnecessary administrative expenses could be minimized if the two licensing programs were combined.

If the Legislature believes that the practice of hairstyling/haircutting or skin care warrants regulation, then it should consider a single regulatory program administered either by the department or by a single board.

While a single board is preferable to two boards, we believe that it is not necessary to have a board for effective regulation of beauty culture. Board members have few functions to perform, particularly if the practical examination requirement is eliminated and the responsibility for developing and administering written examinations is assigned to DCCA. The program could be administered directly by the Director of DCCA who can appoint an advisory committee of beauty operators for help when needed.

If a board is deemed necessary, the new board should provide for representation of beauty operators, barbers, and the public. If the board feels that additional expertise is necessary, it can also establish committees of professionals to advise on various aspects of the regulatory program.

The enactment of a new licensing statute will have the added benefit of eliminating archaic, outdated, confusing, and restrictive provisions in the existing statutes. In this regard, we recommend that the Legislature consider issuing unified licenses for hairstyling/haircutting or skin care. Under this approach, individuals who are licensed as hairstylists/haircutters or skin care specialists would be able to call themselves beauty operators or barbers or other titles as they wish. The State, however, would only be responsible for determining their qualifications under one set of standards.

Licensing requirements should be liberalized and reduced to make them comparable between the two occupations. Since beauty operators and barbers engage in similar practices, the least restrictive licensing requirements should be adopted. For example, barbers are not required to have a certain fixed number of hours of training to become licensed. Under a single license system, neither should beauty operators.

Changes should also be made in the examination program. The new statute should limit examinations to written tests that cover only topics relating to public health and safety. Professional organizations that are concerned about the artistic techniques employed by beauty operators and barbers would be free to establish private certification and award programs that test these skills. The State should not participate in this area of testing as it does not relate to public health and safety.

We also recommend that the responsibility for the examination program be assigned to DCCA. The department can draw on beauty operators and barbers in developing, administering, and grading licensing examinations if needed. But the sole responsibility for the examination program should rest in a body that has the technical expertise to carry out a fair and equitable testing program.

Recommendations

We recommend that:

1. *Chapter 439, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1986.*

2. *If the Legislature decides to continue regulation, we recommend that it still repeal Chapter 439 and replace it with an entirely new statute that establishes a more streamlined regulatory program by making the following changes:*

- . establishing the health and safety purposes for regulation;*
- . eliminating the board and placing all regulatory responsibilities under the Department of Commerce and Consumer Affairs;*
- . exempting the following persons from licensing:*
 - persons who shampoo the hair, give scalp massages, and give manicures or pedicures;*
 - persons who study beauty culture or who work under the supervision of a licensed beauty operator; and*
 - persons who demonstrate beauty products or teach hairstyling under the sponsorship of a firm, corporation, or professional organization;*
- . eliminating all licensing categories except for the hairdresser, cosmetician, and cosmetologist licenses;*
- . establishing consistent and rational training requirements for students and apprentices;*
- . eliminating the high school education and good moral character requirements;*
- . eliminating requirements for practical and oral examinations and limiting written examinations to health and safety issues;*

- . *reducing the ratio of beauty operators to apprentices;*
- . *transferring responsibility for regulating electrologists to the Department of Health; and*
- . *deleting the authority to inspect beauty shops, thereby leaving inspection responsibility for health and safety purposes solely with the Department of Health.*

3. *The Board of Cosmetology immediately review the failed October 1985 practical examinations and take the necessary corrective actions to ensure fair treatment of applicants.*

4. *If regulation is continued, we recommend that the Department of Commerce and Consumer Affairs do the following:*

- . *discontinue immediately the practical examinations;*
- . *develop new written examinations based on current job analysis surveys and limited to health and safety issues; and*
- . *continue to place a low priority on enforcement actions that are not related to public health and safety.*

5. *If the Legislature deems it necessary to continue regulating beauty operators (and concludes likewise with respect to barbers), it might consider enacting a new statute creating a single regulatory program for both beauty operators and barbers. This program could be administered by the Director of the Department of Commerce and Consumer Affairs or by a new, single board which would include beauty operators, barbers, and public members. Under such a program, unified licenses could be issued to both beauty operators and barbers using a single set of standards.*

APPENDIX

RESPONSES OF AFFECTED AGENCIES

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 12, 1985 to the Board of Cosmetology and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

The Board of Cosmetology disagrees with some of the recommendations, including the principal recommendation to sunset the regulation of beauty culture. The board also states that it is in "the process of introducing legislation to correct many, if not all, of the shortcomings" mentioned in the report.

The Department of Commerce and Consumer Affairs is in general agreement with our observations and evaluation of the Board of Cosmetology. The department agrees that there were problems with the practical examinations and states that it will continue to take steps to improve the practical examinations as well as to revise the written examination.

ATTACHMENT 2



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF COSMETOLOGY

STATE OF HAWAII

PROFESSIONAL & VOCATIONAL LICENSING DIVISION

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

P. O. BOX 3469

HONOLULU, HAWAII 96801

January 22, 1986

RECEIVED

JAN 22 4 27 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on the subject report. We commend your office for a very thorough report and our board offers the following comments:

1. We do not agree that Chapter 439, Hawaii Revised Statutes should be allowed to expire. The Chapter insures that the safety, health and welfare of consumers are provided for. It further assures the consumer that qualified persons are working in the profession by the criteria that has been established under this chapter.
2. We do not agree that the board should be eliminated and all regulatory responsibilities placed under DCCA. We feel that the board serves a necessary function and its performance and its duties are not in conflict or redundant. We also feel that the professionals who compose the board are those with the profession at heart and best interest of the consumers as foremost.
3. We believe that cosmetologist, cosmeticians, hairdressers, manicurist, instructors, and electrologist should be licensed for the safety, health and welfare of the consumers. We agree that we should not continue with the licensing of hair cosmeticians, permanent wave operators, Japanese hairdresser, and facial cosmeticians.

4. We agree that the wording "good moral character" should be removed from our chapter and will introduce legislation to have it removed.
5. In a profession where almost 100 percent of the service is performed by the "hands on" method, is it realistic to discontinue the evaluation of an applicant's ability to perform? We must recognize the fact that it is possible for an applicant for license with reasonable intelligence to study a cosmetology textbook for a relatively short period of time and receive a passing grade on a written examination. The possibility exists that a license may be issued to an applicant who has never picked up a comb, brush or scissors. Without a practical "hands on" examination of the applicant's manual dexterity, do we really know whether he or she can perform adequately in the beauty salon?

The board with the above in mind, cannot consciously agree that the practical examination should be eliminated.

6. We do not agree that the ratio of three operators per apprentice should be reduced on the following grounds: First of all, the apprentice is getting his or her formal education in a "hands on" environment; and we are cognizant of this fact and, therefore, require a longer period of training before he or she is allowed to take the license test. We are also aware that to ensure the apprentice that he or she will have adequate training that he or she should be allowed to work with as many operators as reasonably feasible to ensure the apprentice exposure to a variety of processes.
7. We are introducing legislation to remove the responsibility of shop inspection from our chapter, not removing this section earlier was an oversight on our part.
8. We believe that for the continued safety, health and welfare of the consumers that

January 22, 1986

although there are similarities between our profession and the barbers, that there exist serious considerations and differences that make these two professions miles apart from each other and that there should not be a combination of the two professional boards. Knowledge of the differences of the profession of barbers and cosmetology would have precluded your recommendation of a unified license and a single set of standards.

We realize that this opportunity to respond to your audit report is brief and greatly summarized and perhaps inadequate in addressing all of your concerns, feel assured that we are in the process of introducing legislation to correct many, if not all, of the shortcomings that you have mentioned herein. We again want to extend to your staff a note of appreciation for a report "well done" and your recommendations have been noted.

If you have any questions regarding our response, feel free to call on me.

Very truly yours,



Rick Hoo, Chairman
Board of Cosmetology

ATTACHMENT 3



GEORGE R. ARIYOSHI
GOVERNOR

RUSSEL S. NAGATA
Director
COMMISSIONER OF SECURITIES

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

ROBERT A. ALM
DEPUTY DIRECTOR

January 10, 1986

RECEIVED

JAN 13 3 51 PM '86

OFF. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Suite 500
Honolulu, HI 96813

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Update Beauty Culture."

The Department of Commerce and Consumer Affairs is in general agreement with the observations and evaluation you have made of the Board of Cosmetology.

We would like to comment on the recommendations directed to the department as follows:

"Discontinue immediately the practical examinations."

Unless the department is delegated the responsibility to develop and administer the examinations, we do not believe we have the authority to discontinue the practical examinations. We agree that there were problems with the practical examinations and for that reason made revisions to the October 1985 examination. We acknowledge that the October 1985 examination was not problem-free; however, we have since then made further improvements to the examination and met with the examiners to ensure greater consistency and reliability with regard to grading. We expect to continue to refine the practical examination over time, whether it be in cooperation with the board or as a responsibility independent of the board, so that there is less question of its reliability and validity. Also, steps will be taken to improve other areas relating to the examination which require attention.

"Develop new written examinations based on current job analysis surveys and limited to health and safety issues."

Mr. Clinton T. Tanimura
January 10, 1986
Page 2

We do not necessarily agree that new written examinations should be implemented, but are in general agreement that the current written examination needs to be revised. We had given priority to revising the practical examinations, after which focus would be made on the written examinations. Examination branch resources permitting and with diligent cooperation by the board, job analysis surveys can be produced which would be a substantial step towards improving the written examinations.

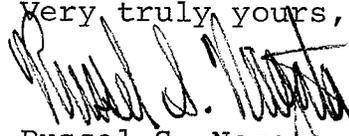
Other alternatives which are usually considered by the department in the examination area are the possible use of "national" examinations (provided one is in existence and is valid and reliable), contracting with a testing agency to develop the examinations, or utilizing a test and measurement expert as a consultant to work with the examination branch and the board to improve the current examinations. Cost considerations may be a factor but we are prepared to pursue any avenue regardless of where examination responsibilities rests.

We agree that greater emphasis should be placed on health and safety issues in general with regard to regulation of the beauty culture industry and that the written examinations should similarly focus on such issues. We do not necessarily agree that the examination should be "limited" to health and safety issues since other knowledge and skills may be pertinent to test that are necessary for entry-level practitioners to know.

We would note that while we do not entirely share the overall negative view of the examinations, we do appreciate your detailed comments and will continue to give our attention to the improvement of the licensure examinations.

You and your staff should be commended for the thorough assessment of the board and the regulation of beauty culture.

Very truly yours,



Russel S. Nagata
Director