

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
Legislative Auditor of the State of Hawaii
Honolulu, Hawaii

Report No. 88-18
November 1988

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific 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 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 These programs are repealed unless they are specifically reestablished by the Legislature.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 1986. 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 It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

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. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

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November 1988

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SUNSET EVALUATION UPDATE

Chapter 1

BACKGROUND

This report evaluates the regulation of beauty culture under Chapter 439, Hawaii Revised Statutes. This chapter provides some background on the practice of beauty culture and its regulation, summarizes the information contained in the 1980 and 1986 Sunset evaluation reports on beauty culture,¹ and updates the information in the 1986 report.

Background on the Practice of Beauty Culture

Cosmetology, also known as beauty culture, is an ancient profession that embraces the entire field of beautification including the care and treatment of hair, skin, scalp, and nails.² The practice of cosmetology to camouflage or adorn predates recorded history. Prehistoric people painted and tattooed their bodies and, presumably, even “styled” their hair. Hairpins and hair ornaments have been uncovered from the New Stone Age which began about 8000 B.C.³ Egyptians used perfumes and anointing oils as early as 4000 B.C. The first cosmetics in North America were the animal fats used by the Indians as a base for their body paint and for protection from insects and the cold.⁴

The modern beauty shop industry began during the 1870s with the introduction of the marcel wave originated by a French hairdresser named Marcel Grateau.⁵ Another French hairdresser, Alexandre F. Godefroy, invented the hairdryer.⁶ The 1890s witnessed the openings of the first schools for cosmetology students and of teachers for beauty schools.⁷

The practice of cosmetology has continued to evolve. Today, beauty operators curl, wave, shampoo, singe, bleach, color, and style hair; give scalp, facial, and upper body treatments; apply makeup; and manicure nails.

Nationally, there were about 1,634,000 licensed cosmetologists in 1986, an increase of 5 percent over 1984. Most of the beauty operators work in one of the estimated 276,000 beauty shops or salons.⁸ Others are employed in “unisex” salons, barber shops, and department stores. Industry growth is projected to outpace the average for all occupations through the mid-1990s.⁹

In Hawaii, paradoxically, both the number of beauty operators and the number of beauty shops have declined. There were 4,617 beauty operators and 875 beauty shops in October 1985.¹⁰ Today, there are 4,385 licensed operators and 795 beauty shops.¹¹

The Regulation of Beauty Culture

Wisconsin became the first state to regulate the practice of beauty culture in 1919 followed by Louisiana in 1924. By 1963, all states and the District of Columbia had enacted licensing laws. Concerns about sanitary conditions and the use of potentially harmful chemicals served as the impetus for the licensing of cosmetologists.¹²

The driving force behind regulation was the National Cosmetology Association (NCA), the largest and most important trade organization.¹³

In 1929, the Hawaii Territorial Legislature enacted Act 145 which made it illegal to practice as a hairdresser, cosmetician, or cosmetologist without a license. Regulation was aimed at protecting the public “against the indiscriminate practice of irresponsible persons”¹⁴ It was argued that serious injuries had resulted because of carelessness and negligence on the part of inexperts.

The Board of Cosmetology. The practice of beauty culture is regulated under Chapter 439 by a Board of Cosmetology composed of five licensed beauty operators and two public members. The board is empowered to issue licenses; adopt, amend, and repeal rules; and to suspend or revoke licenses for various reasons including professional misconduct, gross carelessness, or manifest incapacity.

The board issues two types of licenses: a “general” license which allows persons to practice independently and a “limited” license that permits persons to practice the profession under supervision or for a prescribed period of time.

General licenses. There are five types of general licenses: cosmetologist, hairdresser, cosmetician, manicurist, and instructor. Although these are referred to as certificates of registration in the statute, licenses would be a more proper term since it is unlawful to practice without such certificates.

To qualify for the first four licenses, applicants must be at least 16 years old, possess the equivalency of a high school education, complete a specified amount of training, and pass an examination.

To receive an instructor’s license, an applicant must complete a 600-hour course in the theory and practice of education in cosmetology, serve actively as a licensed beauty operator for at least three years in Hawaii or in another jurisdiction with substantially equivalent licensing standards, and pass an examination.

Limited licenses. The board issues five types of limited licenses: apprentice, instructor-trainee, temporary operator, temporary instructor, and technician.

To qualify for an apprentice or instructor-trainee license, applicants must be at least 16 years old and possess the equivalent of a high school education. Applicants for an instructor-trainee license must also have three years of experience as a licensed beauty operator.

Temporary operator licenses are issued either to applicants approved to take the board's examination or to applicants who have failed to pass the board's examination but remain eligible to participate in the examination process. Applicants failing the examination after the third attempt are disqualified from holding temporary licenses. They continue, however, to qualify for licensure if examination requirements are satisfied. In addition, applicants may be issued a temporary license by meeting one of several conditions. For example, an applicant may be issued a temporary license if the person has been lawfully engaged in beauty culture in another jurisdiction for three of the four years immediately preceding application.

The board may issue temporary instructor licenses to applicants holding an instructor's license from another jurisdiction having standards comparable to Hawaii's. These licenses are valid until the next board examination. Temporary instructors are allowed to demonstrate any hair or cosmetic preparation. They may also teach hairstyling in a school or under the sponsorship of any board approved organization.

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

Beauty shop and beauty school licenses. The board issues licenses for beauty shops and beauty schools. Beauty shops must provide a clearance from the Department of Health (DOH) showing that they have complied with standards of sanitation, are adequately equipped, and have a licensed beauty operator in the appropriate licensure category in charge of the shop.

Beauty schools must have a licensed physician attached to their staff, maintain a sufficient number of licensed instructors, and offer a board-approved curriculum consisting of practical demonstrations and written and oral tests. Schools must also provide evidence of need for the school, post a surety bond, be appropriately equipped, and meet certain standards governing enrollment, school hours, and the maintenance of a library.

**Findings and Recommendations
In Previous Sunset Evaluation Reports
Concerning Continued Regulation**

Need for regulation. When we examined the regulation of beauty culture in 1980, we recommended that the chapter be allowed to expire. Our finding was that the profession presented little harm to the public health, safety, or welfare. We noted that any dangers arising from unsanitary conditions or from the use of hazardous chemicals were more appropriately handled by other laws and other regulatory and enforcement agencies.

Our 1986 evaluation update reached a similar conclusion and additionally found that: (1) the licensing program was unwieldy with the issuance of 20 different licenses and with faulty standards; (2) the board's practical examination program was indefensible and the written examination required considerable revision; (3) consumers hardly benefited from the enforcement of the law by the Department of Commerce and Consumer Affairs (DCCA); (4) the board did not always act responsibly; and (5) the regulation of cosmetology (and barbering) was confusing and obsolete.

The case for regulation had traditionally centered on concerns that deregulation would expose the public to health and safety risks--specifically, the threat of communicable diseases and the harm resulting from the use of hazardous chemicals. In both reports, we concluded that responsibility for disease control and prevention rested more properly with the DOH and that fears over the potential harm in the use of dangerous chemicals were baseless.

Disease transmission. We found that although transmission of bacterial and viral infections and communicable hair and scalp disorders was possible, there was little chance of actual occurrence. The DOH protected the public health and safety through its rules and through the enforcement of sanitation standards. The board played only a peripheral role in the prevention of diseases through its supervision of student curricula, examinations, and inspections of shops. The relationship between the board's activities and the prevention of disease transmission was extremely limited.

Dangerous cosmetics. We found little relationship between Chapter 439 and protecting the public from dangerous chemicals. All of the chemicals used in professional beauty products were available in over-the-counter products. These chemicals were regulated by federal and state agencies, not by the board.

The regulation of beauty products generally fell under two federal laws. The U.S. Food, Drug, and Cosmetic Act regulated the manufacture, distribution, and sale of cosmetic products. The Fair Packaging and Labeling Act established standards for information that had to be distributed and placed on beauty products. The U.S. Food and Drug Administration administered both laws.

The State played a role in regulating beauty products as well. The DOH had the authority to adopt rules to protect the public from cosmetics or other hazardous substances that could endanger public health. The board's role in regulating the use of beauty products was negligible. For instance, board-recommended curricula did not focus specifically on the use of chemicals.

Impact of deregulation. We found that deregulation would not significantly lessen consumer protection. Consumers performed beauty treatments at home using cosmetic products and equipment found in beauty shops. If dissatisfied with the results of beauty treatments, consumers could attempt to personally resolve the problem, seek redress through the neighborhood justice centers or small claims courts, or file civil lawsuits.

Deregulation would also have no impact on beauty schools. We noted that, even if deregulated, beauty schools would still be required to obtain an operator's license from the Department of Education (DOE) under Chapter 300, HRS.

Minimal number of complaints. We found that when measured against the hundreds of thousands of beauty treatments that were performed annually, the likelihood for physical harm was slight. Of 76 complaints filed with the Department of Regulatory Agencies (now the Department of Commerce and Consumer Affairs) between 1975-1979, only three were related to hair or scalp damage. All three were eventually dismissed by the board because of inconclusive evidence. Of the 90 complaints filed between 1981-1985, only six involved personal injury. Five of those complaints were dismissed with the finding of no violations or insufficient evidence. The other complaint was withdrawn.

Other Findings and Recommendations in the 1986 Sunset Evaluation Report

Licensing program. Our 1986 report found the regulatory program outdated and full of inconsistencies that resulted in unfair treatment of beauty operators. The more serious problems included: (1) the numerous and unnecessary licensing categories; (2) the unnecessary licensing of certain activities that were better regulated by other state agencies; and (3) the inconsistent, improper, and inequitable standards imposed on various categories of licensure.

Unnecessary licenses. The board issued eight unrestricted type licenses: hairdresser, cosmetician, cosmetologist, hair cosmetician, manicurist, electrologist, instructor, and managing operator.

We found no justification for the licensing of hair cosmeticians and manicurists. Hair cosmeticians essentially shampooed and performed scalp massages. Manicurists cleansed, shaped, and polished nails and treated the hands and feet of the body. Neither occupation posed a danger

to the consumer. If regulation were retained, we recommended that activities relating to shampooing, scalp massages, manicures, or pedicures be exempted from the scope of practice for beauty culture.

We found that provisions governing the management of beauty shops hindered competition and served no useful consumer purpose. Beauty shops were required to be managed by a licensed managing operator with at least one year of experience as a licensed beauty operator in Hawaii. Restrictions in the law excluded new residents from these positions, retarded the growth of new shops, and increased the personnel costs to shop owners.

There were seven limited licenses issued by the board: apprentice, student, instructor-trainee, temporary operator, junior operator, temporary instructor, and technician. None was needed because most persons holding limited licenses were either supervised by licensed operators or performed nonthreatening tasks such as demonstrating beauty products. We recommended that all be exempted from licensing.

Activities better regulated by other agencies. We found that activities such as electrolysis, beauty shops, and beauty schools under the board's control could be more appropriately regulated by other state agencies.

Electrolysis, or the practice of removing superfluous hair by penetrating the skin through the use of electricity, was not generally considered a beauty culture service. Since the DOH already regulated a closely related activity, tattooing, we recommended that responsibility for electrolysis be transferred to the DOH as well.

We pointed out that the regulation of beauty schools was duplicative and better suited to the DOE. A collection of various federal, state, and private agencies watched over the interests of students. In addition, the board's licensing requirements were unreasonable, unenforceable, and restrictive. Compared to the DOE, the board lacked the expertise to regulate beauty schools.

Licensing requirements for beauty school instructors were also unreasonable, and their regulation would be more appropriate with the DOE.

Licensing standards. We found the board's licensing standards to be deficient. Failure to update the statutes and the board's rules in a timely manner had contributed to this problem.

Training requirements for hairdressers, cosmeticians, and cosmetologists were inconsistent. For example, although cosmetologists performed the same work as hairdressers and cosmeticians, their training requirements differed without reason.

Apprenticeship training requirements were also incongruent and inequitable. *First*, there was no rationale for the training requirements imposed. *Second*, the requirement calling for three licensed beauty operators for every apprentice discriminated against small beauty shops and

restricted competition with larger beauty establishments and beauty schools. *Third*, there were many extraneous reporting requirements for the apprenticeship programs.

We recommended that if regulation were to be continued, meaningful training requirements be established for apprentices, the ratio of licensed beauty operators to apprentices reduced, and all reporting requirements eliminated.

The law required beauty operators to have the equivalent of a high school education to qualify for licensure. We found no basis for this requirement and recommended removal.

Applicants for apprentice, student, instructor, and instructor-trainee type licenses were required to be of good moral character. Aside from being vague, good moral character was impossible to measure and, therefore, unenforceable. As we have with other licensing programs, we recommended that the requirement be eliminated.

Examination program. We found numerous problems with the board's examination program, particularly with its practical examination. The practical examination: (1) served no health and safety purpose; (2) was graded and scored arbitrarily; and (3) had been administered unfairly and was subject to bias. Because of the seriousness of the deficiencies, we recommended that the practical examination be discontinued immediately.

Similar problems were identified with the written examinations. The board had developed written examinations for hairdressers, cosmeticians, cosmetologists, manicurists, electrologists, and instructors. Uncertainty over validity and reliability cast serious doubts on the examinations' ability to assess performance competency at the entry level. The examinations were not based on current job analysis surveys. No test specifications existed to ensure that various forms of the examination were consistent and included all significant subjects.

If regulation were to be continued, we proposed that the health and safety purposes for regulation be established. Once completed, we recommended that the department have job analysis surveys conducted, test specifications constructed, and new written examinations devised that focused entirely on health and safety issues.

Enforcement program. Trivial complaints. We found that given the triviality of the complaints, DCCA's enforcement of the beauty culture practice act was a waste of time, money, and effort. Only six of the 90 complaints filed between January 1981 and June 1985 alleged personal injury. All six were dismissed with the finding of no violation or insufficient evidence. We recommended that DCCA place a low priority on enforcement actions that did not relate to public health and safety.

Beauty shop inspection program. We found the beauty shop inspection program unnecessary and unnecessarily exposed the state to potential liability problems. Under the law, the board was

authorized to inspect beauty shops. Despite the lack of rules, the board conducted inspections of beauty shops. The DCCA's Regulated Industries Complaints Office (RICO) and private attorneys questioned the legality of these inspections. This eventually led to the proposal that the inspection function be turned over to the Hawaii State Hairdressers and Cosmetologists Association (HSHCA). We thought it improper for either board members or representatives of professional organizations to become involved in shop inspections since they could have economic interests in the outcome.

Board organization and operations. We found that the board tended to act in the interests of the industry. For example, the board's proposed revision to the rules generally made the practice of beauty culture more restrictive. Some proposals even contradicted the law. The board also restricted competition by prohibiting beauty schools from advertising their beauty services. We recommended that improper restrictions on advertising be deleted.

An alternative. We reported that the decision to continue regulating beauty culture must be made together with the decision on whether to continue or repeal Chapter 438 on the regulation of barbering. We recommended that both statutes be sunsetted. However, if the Legislature decided otherwise, we suggested that the regulation of both professions be combined under the Director of DCCA or under a single board.

Over the past 20 years, the differences in services offered by barbers and beauty operators had narrowed considerably. The scope of practice as defined by the law for the two occupations was virtually the same. Nevertheless, the statutes had not been updated to reflect the convergence. Separate licensing programs not only created unnecessary barriers to entry, but created an unnecessary workload for DCCA. Instead of a board, the program could be administered just as effectively by the Director of DCCA who, if needed, could appoint an advisory committee of beauty operators. If a board was judged necessary, we recommended that the new board be composed of beauty operators, barbers, and the public.

A new licensing statute would have the added benefit of eliminating vague, outdated, and restrictive provisions in the existing law. Accordingly, we recommended that: (1) the Legislature consider issuing unified licenses for hairstyling/haircutting or skin care; (2) licensing requirements between beauty operators and barbers be made comparable; (3) examinations be limited to written tests that cover topics relating to public health and safety; and (4) DCCA oversee the examination program.

The Department of Commerce and Consumer Affairs generally agreed with our observations and evaluation of the Board of Cosmetology.

The Board of Cosmetology opposed our recommendation to terminate Chapter 439. The board responded that the law provided for the safety, health, and welfare of consumers and that regulation would assure consumers that only qualified persons were working in the profession.

Legislative Actions

In 1986, the Legislature held hearings to decide on the question of regulation. The Board of Cosmetology testified in favor of continued regulation. The board said that continuation of Chapter 439 would protect the health, safety, and welfare of consumers.

Beauty operators, professional lobbyists, and private citizens spoke in favor of regulation citing dangers from the careless use of sharp and electrical instruments, the misuse of chemicals, unsanitary working conditions, and the spread of various diseases. Deregulation was claimed to make the purchase of liability insurance extremely difficult or unaffordable. Finally, several persons testified against the combining of the Board of Cosmetology with the Board of Barbers. The barbers were apprehensive that merging the boards would effectively abolish their profession.

The Legislature decided that deregulation would expose consumers to various health and safety risks such as infectious diseases, chemical burns, and skin infections. At the same time, the Legislature shared some of the concerns raised by our sunset report. In order to provide enough time for the board to act on some of the recommendations made, the Legislature extended the board until December 31, 1989. The Legislature required the board to submit progress reports annually for the ensuing three years.

The Legislature also made numerous changes to the law. The more substantive amendments: (1) eliminated the good moral conduct requirement; (2) removed the board's authority to inspect beauty shops; (3) reduced the ratio of beauty operators to apprentices to a one to one ratio; (4) transferred the regulation of electrologists from the DCCA to the DOH; (5) reduced the number of licensing categories; (6) mandated the board to contract with a professional testing service to prepare examinations; and (7) authorized the board to request appropriate medical clearance tests to be taken by licensees to protect the public health.

In 1987, the Legislature further streamlined and clarified the law by: (1) inserting a statutory definition of "beauty operators" to encompass cosmetologists, hairdressers, cosmeticians, and manicurists; (2) allowing the practice of barbering in a beauty shop; (3) limiting examinations to those applying to be cosmetologists, hairdressers, cosmeticians, manicurists, and instructors; (4) prohibiting cosmeticians from using a mechanical or electrical apparatus or medical

prescriptive type appliances; (5) establishing licensing requirements for cosmetologists, hairdressers, cosmeticians, and manicurists; and (6) refining licensing requirements for beauty schools.

Other amendments eliminated the need for students to register, restricted the effectiveness of temporary permits to two years, and allowed persons affiliated with beauty schools to be appointed to the board providing that disclosure of the association was made.

Chapter 2

EVALUATION OF THE REGULATION OF BEAUTY CULTURE

This chapter presents the findings and recommendations from our current evaluation of the regulation of beauty culture. It includes our assessment of the need to continue to regulate the profession, the adequacy of regulatory operations, and our recommendations.

Summary of Findings

We find the following:

1. Regulation of the practice of beauty culture under Chapter 439 is not warranted as the practice poses little danger to the public health, safety, and welfare.
2. If the Legislature decides to reenact Chapter 439, changes should be made to correct the following shortcomings:
 - inadequate and inappropriate provisions relating to board composition and confusing statutory terminology;
 - licensing standards which are obsolete, unfair, unnecessary, irrelevant, or restrictive, such as the provision requiring beauty schools to have a physician attached to their staff, the requirement for a high school education, and the prevention of licensure through credentials for qualified and licensed out-of-state beauty operators.
3. The regulation of beauty culture does not recognize the convergence that has occurred in beauty culture and barbering. The same activity is being regulated by two separate statutes which have inconsistent licensing requirements.

Need for Regulation

Licensing of a profession is justified if: (1) its unlicensed practice imperils the public health, safety, and welfare; (2) the consuming public cannot be reasonably expected to judge the quality of the services rendered or to evaluate the qualifications of those performing the services; and (3) the benefits to the public clearly outweigh any of the costs of regulation.

There is no new or additional evidence to change the findings reached in our two previous reports. The practice of beauty culture does not endanger the public health or safety to the

degree that would warrant regulation. The potential for disease transmission remains remote as does the harm caused from the use of chemical products. The consuming public is able to distinguish a “good” beauty operator from a “bad” one.

Disease transmission. Communicable diseases said to be potentially spread through the practice of beauty culture include: Hepatitis B, Acquired Immune Deficiency Syndrome (AIDS), ringworm, head lice, scabies, anthrax, eczema, conjunctivitis (pinkeye), and influenza. However, the probability of disease transmission is very low. Of the 77 complaints filed with the department’s Regulated Industries Complaints Office (RICO) between 1985 and mid-April 1988, none relates to the transmission of diseases.¹ Officials from the Department of Health (DOH) also report that no diseases have been traced to beauty shops. The absence of any disease transmission is likely the result of better public education and health awareness. Practitioners follow better sanitation and sterilization techniques as a matter of common sense, professional responsibility, and economic self-interest. Customers are less likely to patronize unclean or unsanitary shops.

Board activities have little relationship to preventing disease. Health regulation rests with the DOH. Under the law, the DOH is authorized to adopt regulations to protect the public health and safety and to require any permits or licenses necessary to regulate various establishments. The law also grants the DOH authority to establish rules relating to hairdressers, cosmeticians, cosmetologists, and beauticians. These provisions adequately protect the public against the relative minor risks associated with the practice of beauty culture.

Dangers related to the use of hazardous chemicals. Some of the chemicals used in hair care products may be harmful to the skin, eyes, and hair by causing chemical burns, allergic dermatitis, or hair damage. However, licensing based on the use of chemicals is unnecessary because federal and state laws protect consumers from unsafe cosmetic products, whether these are used professionally or purchased over the counter.

Role of the Federal Food and Drug Administration. The Food and Drug Administration (FDA) is responsible for protecting consumers from unsafe and hazardous cosmetic products and cosmetic ingredients. We asked the FDA to comment on the dangers of the various chemical applications used in the hair care industry and to evaluate current regulatory efforts. In response, the FDA made the following points:

- Cosmetic products transported in interstate commerce are subject to the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act ensures that cosmetics are safe, made from appropriate ingredients, and that all labeling is truthful and not deceptive. Cosmetic products offered for sale to the consuming public, including those sold in beauty

salons, are subject to the Fair Packaging and Labeling Act (FPLA) as well. The FPLA requires that cosmetic products sold to the public bear an ingredient declaration.

- The FD&C Act and FPLA do not prohibit the retail sale of beauty products labeled “for professional use” (or bearing similar language) nor does such a designation confer a special status on cosmetics.
- The safety requirements and ingredients of professional cosmetic products are the same as the safety requirements for products offered for sale over the counter. Professional use products may be more concentrated; however, if used properly, they present no significant safety issues.
- They are not aware of any serious harm caused by the professional use of cosmetic products. The FDA’s Center for Food Safety and Applied Nutrition generally receives less than 250 allergic adverse reaction reports annually for all cosmetic products.²

The FDA’s ongoing program ensures the safety of cosmetic products and ingredients and that they are truthfully labeled and packaged. The FDA accomplishes this by: evaluating consumer complaints of cosmetic-related injuries; analyzing cosmetics for harmful ingredients and contaminants; conducting toxicological, microbiological, and clinical studies; maintaining registries of cosmetic formulations, consumer adverse reactions, and manufacturing establishments; inspecting cosmetic plants and products; providing guidance to the cosmetic industry on product manufacturing practices; and taking regulatory action against products and ingredients found hazardous.³

Role of the Department of Health. Besides federal oversight, the state has a role in regulating beauty products. The FDA’s counterpart on the state level, the DOH, administers the Hawaii Food, Drug, and Cosmetic Act, which prohibits the adulteration or misbranding of cosmetic products.

Safety record. The National Commission on Product Safety once estimated that approximately 60,000 people each year are injured by cosmetics and toiletries seriously enough to restrict their activities for one day or require medical attention. Large as this number may seem, the incidence rate equates to not more than four injuries per million packages sold based on the fact that the cosmetic industry distributes no less than 15 billion packages annually.⁴

Lack of complaints relating to injury. Of the 77 complaints filed with RICO since 1985, only four cases, or 5 percent, involved personal injury. In three of the cases, no violation was found. A monetary settlement was reached in the fourth case.⁵

Summary. For all the foregoing reasons, we find that regulation by the Board of Cosmetology under Chapter 439 is unnecessary. The public will still be protected by agencies such as the FDA

and the DOH. The former oversees the safety of cosmetic products. The latter regulates public health and safety including sanitation and disease control.

Overview of the Board of Cosmetology

Overall, board operations have shown marked improvement since our 1986 report. The number of licensing categories have been reduced; the board has contracted with a professional testing agency to develop and administer its examination; the severely criticized practical examination was eliminated; the proposed rules are generally fair and nonprotectionist; the board, with the assistance of individuals in the profession, developed an apprenticeship program; and board members appear conscientious and committed.

The new examination has resulted in noteworthy improvements. Since a testing service assumed responsibility for preparing the board's examination, the percentage of candidates passing the exam has increased dramatically. From FY 1980-81 to 1986, the pass rate averaged 52 percent. Since October 1986, when the testing service administered its first exam, the pass rate has risen to 84 percent.⁶ Entry into the occupation is no longer as difficult as it was previously.

Operations of the Board of Cosmetology

The operations of the Board of Cosmetology were examined to evaluate the effectiveness and efficiency of its practices and policies. Should the Legislature decide to reenact Chapter 439, changes should be made to correct deficiencies in the following areas:

- board composition;
- statutory terminology;
- proposed rules; and
- licensing requirements.

Board composition. The law does not require neighbor island representation on the board. Until the appointment of a beauty operator from Kauai in the fall of 1986, no one can remember when the neighbor islands last had a representative on the board. Without representation, the special needs and interests of beauty operators outside Oahu may be ignored or not fully considered.

For example, a bill submitted in the 1987 Legislature proposed to abolish the apprenticeship program. Entry into the field would have been limited to training received at a beauty school.

This would have created a hardship for interested persons living on an island without a beauty school (Kauai, Molokai, and Lanai). The neighbor island board member effectively articulated these concerns, and the bill was not reported out of committee.⁷ At least one of the five professional board member positions should be designated for a neighbor island beauty operator.

Prior to 1987, persons affiliated with a beauty school were forbidden to serve on the board. This prohibition was removed by Act 154, SLH 1987. When the repeal of the prohibition was proposed, the board favored retaining the existing prohibition because of questions of possible conflict of interest.⁸ The board establishes entry level qualification standards, and persons attached to schools would have economic interests in such matters. The model cosmetology bill prepared by the National Cosmetology Association also prohibits the appointment of persons connected with a beauty school.⁹ We believe that the statute should be amended to reimpose the prohibition.

Confusing terminology. In Chapter 439, the terms “registered” and “certified” are often used incorrectly for “licensure.” To achieve clarity and consistency, all references to “registration” and “certification” should be replaced with the term “licensure” whenever such terms denote “licensure.”

Beauty operators are currently being regulated through licensure since the practice is restricted to persons who meet certain qualifications such as passing an examination. Registration and certification are terms denoting less restrictive forms of regulation in which individuals merely list their names with a government agency or are recognized by a government or professional agency while allowing unregistered and uncertified individuals to practice.

Confusion arises when Section 439-2, HRS, uses the term “registered” to describe persons licensed to practice the profession. Another section uses the term “certification” to delineate the various license categories.¹⁰ In these two instances, “registration” and “certification” are used incorrectly for licensure. If regulation is continued, the correct terms should be used in the statute.

Proposed rules. At the time of our review, the board was finalizing its amendments to the rules. Our review of the rules indicates that a statutory change may be required to support a proposed rule to allow the practice of the profession outside of a beauty salon.

Practice outside of a beauty salon. The proposed rules sanction the practice of cosmetology outside the setting of a beauty shop. Procedures require that the arrangement be made through a beauty shop, a record of the arrangement kept, and compliance with the standards of sanitation established by the Department of Health. This rule may conflict with Section 439-2(b), HRS, which restricts the practice of cosmetology to licensed beauty shops except for educational

purposes; at health care, nursing, mental, or correctional facilities; or at charitable events. The law should be amended to reflect the board's proposal to allow greater flexibility. Such a change would also be in agreement with the practice of barbering which allows licensees to practice in private homes, offices, or hotel rooms.¹¹

Unnecessary licensing requirements. There are a number of licensing requirements that are either outdated, restrictive, unnecessary, unfair, or more appropriately regulated by other agencies. These include requirements for: (1) licensed physician, (2) technician, (3) managing operator, (4) instructor and instructor-trainee, (5) beauty shop, (6) beauty school, (7) education, and (8) licensure by credentials.

Licensed physician. Applicants for a school license must attach to their staff a regularly licensed physician. When enacted in 1929, health and safety concerns and the apparent high incidence of injuries may have justified the need for a physician. Today, the danger to the public health and safety is minimal and medical care is readily available. The requirement for a physician is no longer necessary and should be removed. We understand that the board intends to recommend that the Legislature delete this requirement.

Technician license. The board has issued technician licenses to applicants employed by a firm or corporation who intend to demonstrate hair or cosmetic products. The board now plans to delete the technician category of licensure by amending its rules.¹² However, licensure of technicians continues to be a statutory requirement according to Section 439-2(a), HRS, which states: "No person shall for commercial purposes demonstrate any hair or cosmetic preparations or products. . . unless registered with and holds a certificate from the board authorizing the person to do so." This provision should be repealed.

If the technician license is eliminated, the provision which permits persons with temporary instructor licenses to demonstrate hair or cosmetic products will also be unnecessary. It too should be removed.

Managing operator license. The law previously required beauty shops to be run by a managing operator who qualified by having at least one year of experience as a licensed beauty operator in Hawaii. Act 154, SLH 1987, supposedly eliminated the managing operator license, but references to this category of licensure remain in the law.¹³

Section 439-17 (a), HRS, contains language concerning waiver of the one-year experience requirement for "registered managing operators." To avoid any misunderstanding or confusion and to preclude any possible legal challenges, the law should be amended to be consistent with Act 154. We understand that the board will recommend that the obsolete provisions of the law be removed.

Instructor-trainee license. The law requires the registration of instructor-trainees. This requirement is unnecessary. *First*, a person may be trained to become an instructor only through a school. Verification, if necessary, may be obtained through the institution. *Second*, in 1987, the Department of Commerce and Consumer Affairs (DCCA) supported deleting the registration requirement for beauty school students. Registration was unnecessary, it said, since beauty schools and instructors were licensed by the board.¹⁴ Subsequently, the law was amended to remove the requirement for students to register. The same reasoning can be applied to the registration of instructor-trainees since they are also a category of students. *Third*, instructor-trainees work under supervision. *Finally*, registration does not enhance the public health, safety, or welfare. It only serves to increase the cost of regulation by adding on another layer to the licensing process. If regulation continues, this requirement should be eliminated.

Experience requirement for instructors and instructor-trainees. Applicants for an instructor's or an instructor-trainee's license must have at least three years of experience as a registered beauty operator. A bill was proposed during the 1988 Legislature which would lower the experience requirement from three years to one year. In testifying for the measure the board said that reducing the amount of experience did not diminish the quality of instructors.¹⁵ We also find the three-year experience requirement to be unreasonable and agree that it should be lowered.

Beauty shop license. Applicants for a beauty shop license must have an adequately equipped shop and a sanitation clearance from the DOH. The requirement for beauty shop licensure under Chapter 493 is duplicative, serves no consumer protection purpose, and adds unwarranted regulatory expenses. In actual practice, the board exerts little regulatory control over beauty shops. For one, it has no standards for equipping beauty shops. For another, beauty shops fall under the regulatory control of the DOH with respect to public health and safety. If regulation is continued, we recommend that this requirement be removed.

Regulation of beauty schools. The board is also responsible for licensing beauty schools. We feel that these functions are inappropriately placed with the board and should be moved to an agency with the necessary expertise.

Until the early 1980s, beauty schools were regulated by the board and the Department of Education (DOE). In 1982, Act 188 gave the DOE the option of regulating schools also licensed by the DCCA. On July 1, 1982, the DOE discontinued its regulation of beauty schools.¹⁶ However, the DOE continues to license 41 other private trade, technical, and vocational schools and their instructors.

Regulation of trade schools should logically be carried out by an agency with the expertise to develop and administer vocational education programs, namely, the DOE. This viewpoint is supported by licensing experts who recommend that: "Schools offering training in licensed occupations and teachers in such schools should be regulated by the state department of education rather than by the board which licenses practitioners in each occupation."¹⁷ They go on to note that most board members are not professional educators and, therefore, do not have the background that would qualify them in areas such as facility standards, teacher competency, and curriculum.¹⁸

Officials from the DOE report, however, that they do not have the staffing or the expertise to resume regulation of beauty schools and beauty school instructors. The department wants to be relieved of responsibility for the licensing of all private vocational schools. It plans to ask the 1989 Legislature for a study to determine the agency best suited to administer this function.

However, pending the outcome of such a study, we believe that it would be appropriate for the DOE to resume regulation of beauty schools as part of its responsibility for overseeing private vocational schools.

Education requirement. Applicants for a beauty operator's license are required to have a high school education. We find no rational basis for this requirement, and it acts as a barrier to licensure for certain applicants. Minimum educational requirements vary considerably from state to state, ranging from no formal education requirement to high school or its equivalent. As of March 1988, only nine other states required a high school education or its equivalent.¹⁹ The education requirement is defended on the grounds that it "appears necessary for comprehension of cosmetology training and practices."²⁰ However, barbers perform similar services without an education requirement. It is also an anomaly to have a minimum age requirement of 16 years while at the same time requiring a person to have an education equivalent to four years of high school.

In addition, applicants have to pass an examination to demonstrate their competence. If the test is an objective standard that distinguishes the competent applicant from the unqualified, then passing the exam should be a sufficient measure of a person's ability.

Licensure by credentials. Currently, licensed beauty operators from other states cannot obtain a license to practice in Hawaii through reciprocity or through licensure by credentials. Under licensure by credentials, the State would honor the license of another jurisdiction if that jurisdiction's standards are determined to be comparable with Hawaii's. Licensed out-of-state beauty operators are now required to pass the state written examination, like other unlicensed candidates. This makes it more difficult for operators from elsewhere to enter into local markets, which in turn could have the effect of reducing market competition and increasing prices.

Hawaii is among only one of four states that does not recognize some form of licensure by credentials.²¹ We believe that it is in the public's best interest to permit licensure by credentials when the State's standards are met. Reciprocity is also supported by the National Cosmetology Association.²²

Combine Regulation of Barbering and Beauty Culture

Our 1986 report recommended that if the Legislature decided to continue regulation of beauty operators and barbers, an alternative would be to combine the two under the director of DCCA or under a single board. We again recommend that this alternative be considered. There is no rational basis to have two inconsistent regulatory programs for the same activity. The inconsistencies also lead to unfair licensing requirements.

Beauty culture and barbering are similar. The lines that once separated barbers from beauty operators are becoming increasingly blurred. Unisex hairstyling salons catering to both male and female customers are commonplace. This is not a recent development. Nearly a decade ago, *Modern Salon* magazine predicted that unisex salons would represent 75 percent to 80 percent of total salon business by 1990.²³

With minor exceptions, the statutory scope of practice of cosmetology and barbering is similar. Differences have diminished further in the last two years. Act 154, SLH 1987, amended the law to allow the practice of barbering in beauty shops. Likewise, Act 246, SLH 1987, provided for the practice of cosmetology in barber shops. When the professions were reviewed in 1986, barbers were prohibited from permanent waving hair. This restriction was lifted in 1986 by Act 138 which expanded the scope of practice for barbering to include permanent waving and hair coloring.

The commonality of the two professions is recognized nationally. A task-oriented job analysis of the functions performed by Virginia barbers and hairdressers found that the job tasks are essentially the same.²⁴ Another job analysis conducted in Connecticut comparing barbers with cosmetologists reached the same conclusion.²⁵

Hawaii's laws should be updated to reflect today's environment. Two studies in California concluded that its Board of Barber Examiners and Board of Cosmetology should be combined.²⁶ The model bill drafted by the National Cosmetology Association includes barbering under the cosmetologist licensing category.²⁷

So far, eleven states successfully license both professions through a single board.²⁸ Several states (e.g., Alaska, Colorado, Connecticut, New Hampshire, and Washington) have merged the two boards while maintaining separate licensure for barbers and cosmetologists. Others (e.g.,

New Jersey, Oregon, and Utah) have consolidated both boards and licensure. Most states seem to be highly satisfied with the results. West Virginia, with a unified board since its inception in 1934, reports no administrative or operations problems.²⁹ Officials in Washington State say that, on the whole, they are pleased with the program's current performance, describing it as "efficient" and "effective."³⁰ The program in Oregon is largely problem free although consolidation has hampered reciprocity with other states and the licensing of out-of-state applicants.³¹ Utah, with one curriculum, one examination, and one board, observes that the program is much easier and more efficient to operate administratively. They state: "The majority of applicants and licensees prefer the combined license."³²

Unfair licensing requirements. The scope of practice for barbers and beauty operators is very similar, but qualification requirements differ substantially. As a result, there are two different sets of standards basically covering the same activities. Both barbers and hairdressers provide just about any service with the hair including arranging, dressing, curling, waving, shampooing, coloring, cutting, and singeing. Barbers may also massage, cleanse, or apply preparations to the face, scalp or neck.

Although barbers perform a greater number of tasks, qualification standards for hairdressers are more stringent. Table 2.1 summarizes these requirements. A hairdresser applicant is required to be at least 16 years old, have an education equivalent to the completion of high school, and either 2,500 hours (or about 16 months) of training as an apprentice or 1,250 hours (or about eight months) of beauty school training. A barber applicant has to be 17 years old and have at least six months experience as a barber or apprentice. Barbers have no education requirement, nor does barbering distinguish between training received as an apprentice or in school.

Table 2.1

Comparison of Licensing Requirements for
Hairdressers and Barbers

<u>Licensing Requirements</u>	<u>Hairdresser</u>	<u>Barbers</u>
Age	16	17
Education	High School	None
Training		
Apprentice	2,500 hrs. (16 mos.)	6 mos.
School	1,250 hrs. (8 mos.)	

Source: Section 439-12 (c) (1) (2), HRS and Section 438-8.

There is no rationale for these disparities. Entry standards should be based on minimum skills, knowledge, abilities, or other characteristics necessary to practice. The variations in minimum standards depending on who is performing the service creates unfair and artificial barriers to entry. If a barber can safely and competently practice with much lower qualification standards, then the standards for hairdressers are set too high.

There is a need for the licensing boards of the two professions to get together and, based on a careful analysis of all licensing categories, determine the minimum standards necessary to practice.

Concluding comment. In the 1986 session of the Legislature, the barbers strongly opposed any move toward consolidation fearing that it would mean the demise of their profession. This could easily be dealt with legislatively by retaining barbering as one of the licensing categories.

As in our 1986 evaluation, we believe that a board is not necessary. The director of DCCA could administer the program directly. If assistance from the profession is needed, the director could appoint an advisory committee. We still believe that this is the best approach should regulation continue. However, if a combined board is deemed necessary, it should be composed of beauty operators, barbers, and the public.

Recommendations

We recommend that:

- 1. Chapter 439, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1989.*
- 2. If the Legislature decides to continue Chapter 439, we recommend that the following amendments be made to the law:*
 - require that one of the licensed beauty operators on the board be from a neighbor island and prohibit a person affiliated with any school of cosmetology from serving on the board;*
 - replace the terms “registration” and “certification” with “licensure” whenever “licensure” is the correct term;*
 - allow the practice of cosmetology outside the setting of a beauty salon;*
 - remove the requirement that beauty schools have a regularly licensed physician attached to their staff;*
 - eliminate the technician, instructor-trainee, and beauty shop licenses;*
 - delete all references to “registered managing operators”;*
 - delete or reduce the experience requirement for instructors and remove the provision which allows persons holding temporary instructor licenses to commercially demonstrate hair or cosmetic products;*
 - delete the board’s authority to license beauty schools and beauty school instructors and reassign the responsibility to the Department of Education;*
 - delete the high school education requirement; and*
 - provide for licensure by credentials by licensing qualified and licensed beauty operators from other jurisdictions whose licensing requirements are equivalent or more stringent than Hawaii’s.*
- 3. If Chapter 439 is reenacted, we recommend that the Board of Cosmetology:*
 - in conjunction with the Board of Barbers, review the requirements for licensure and determine the minimum standards necessary to practice.*
- 4. If the Legislature deems continued regulation to be necessary, it consider the following: enacting a new statute creating a single regulatory program for both beauty operators and barbers. The program could be administered either by the Director of Commerce and Consumer Affairs or*

a new board composed of beauty operators, barbers, and public members. Should the Legislature so decide, we recommend that it direct the Department of Commerce and Consumer Affairs to work with the Board of Cosmetology and the Board of Barbers to develop a proposal for a single regulatory program.

NOTES

Chapter 1

1. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Beauty Culture, Chapter 439, Hawaii Revised Statutes*, Report No. 80-6, Honolulu, February 1981; and Hawaii, Legislative Auditor, *Sunset Evaluation Update, Beauty Culture, Chapter 439, Hawaii Revised Statutes*, Report No. 86-6, Honolulu, January 1986.
2. Anthony B. Colletti, *Cosmetology, The Keystone Guide To Beauty Culture*, 7th ed., New York, Keystone Publications, 1981, p. 11.
3. Vidal Sassoon, "Hairdressing," *The World Book Encyclopedia*, 1987 edition.
4. Kathryn R. Colton, "Cosmetics," *The World Book Encyclopedia*, 1987 edition.
5. Florida, The Senate Economic, Community, and Consumer Affairs Committee, *A Review of Chapter 476, Florida Statutes, Barbering and Chapter 477, Florida Statutes, Cosmetology*, Tallahassee, January 1985, p. 46.
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7. Colletti, *Cosmetology, The Keystone Guide To Beauty Culture*, p. 12.
8. Jacob J. Yahm, *1987 Milady Cosmetology State Board Guide*, 30th ed., New York, Milady Publishing Company, 1987, p. 131; and U.S., Department of Labor, *Occupational Outlook Handbook, 1986-87 Edition*, Washington D.C., U.S. Government Printing Office, April 1986, p. 325.
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10. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, October 9, 1985.
11. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report*, Honolulu, May 27, 1988.
12. Benjamin Shimberg et al., *Occupational Licensing: Practices and Policies*, Washington, D.C., Public Affairs Press, 1973, p. 127.
13. Lawrence Gelb, *Your Future in Beauty Culture*, New York, Richard Rosen Press, 1980, p. 65.

14. Senate Committee on Public Health, Report No. 36 on S.B. No. 48, 1929, Hawaii Territorial Legislature.

Chapter 2

1. Hawaii, Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, consumer complaints files, January 1, 1985 through April 19, 1988.
2. Letter from Charles H. Pogue, Assistant to the Director, Division of Federal-State Relations, Food and Drug Administration, Department of Health and Human Services, May 18, 1988.
3. *Ibid.*
4. R. Karunanithy, PH.D., and C. L. Low, "The Safety Aspects Of Cosmetics," *Drug & Cosmetic Industry*, Vol. 141, No. 6, December 1987, pp. 44-45.
5. Hawaii, Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office, consumer complaints files, January 1, 1985 through April 19, 1988.
6. Hawaii, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, "Record of Candidates Examined By Fiscal Year" and Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, "May 21, 1988 Cosmetology Examination Results."
7. Testimony on House Bill 1533 presented by Carol Suzawa to the Hawaii House Committee on Consumer Protection and Commerce, March 5, 1987.
8. Board of Cosmetology, Minutes of Meeting, Honolulu, March 25, 1987; and Board of Cosmetology, Minutes of Meeting, Honolulu, January 14, 1987.
9. National Cosmetology Association, Inc., *Model Bill*, St. Louis, July 20, 1987, p. 5.
10. Hawaii Revised Statutes, Section 439-12.
11. Hawaii Revised Statutes, Section 438-2 (c).
12. Letter from Ester C. Izu, Chair, Board of Cosmetology, to The Honorable Speaker and Members of the House of Representatives, Fourteenth State Legislature, November 24, 1986; and proposed amendments to Section 16-78-36, Hawaii Administrative Rules.
13. House Standing Committee Report 1071 on House Bill 520, H.D. 1, Fourteenth State Legislature, 1987, State of Hawaii; and letter from Ester C. Izu, Chair, Board of Cosmetology, to The Honorable Speaker and Members of the House of Representatives, Fourteenth State Legislature, March 2, 1988.

14. Hawaii, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, "Justification Sheet," August 28, 1986.
15. Statement on House Bill 2251 submitted by the Board of Cosmetology to the House Committee on Consumer Protection and Commerce, 1988.
16. Letter from Donnis H. Thompson, Superintendent, Department of Education, June 29, 1982.
17. Benjamin Shimberg et al., *Occupational Licensing: Practices and Policies*, Washington, D.C., Public Affairs Press, 1973, p. 235.
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20. Statement on House Bill 520 submitted by the Board of Cosmetology to the House Committees on Consumer Protection and Commerce and Judiciary, March 5, 1987.
21. Jacob J. Yahm, *Milady Cosmetology State Board Guide*, 13th ed., Bronx, New York, Milady Publishing Corporation, 1987, pp. 140-141.
22. National Cosmetology Association, Inc., *Model Bill*, p. 13.
23. Michael Jacobsen, "The Hair Care Market," *Household & Personal Products Industry (HAPPI)*, Vol. 18, no. 11, November 1981, p. 40.
24. Illinois, Bureau of the Budget, in conjunction with Department of Registration and Education, *Governor's Sunset Report on the Illinois Barber and Beauty Culture Acts*, March 1984, p. 3.
25. Arizona, Office of the Auditor General, *A Performance Audit of the Board of Cosmetology*, Report 83-5, Phoenix, March 1983, pp. 25-26.
26. Commission on California State Government Organization and Economy ("Little Hoover Commission"), *Comments and Recommendations Regarding Professional and Business Licensing*, January 1979; and California State Department of Consumer Affairs, *Regulatory Review Task Force Report F-29*, May 31, 1978, as quoted by Crystal Crawford, "Barber or Cosmetologist? Only Your Hairdresser Knows For Sure," *The California Regulatory Law Reporter*, Vol. 7, No. 1, Winter 1987, pp. 1 and 6.
27. National Cosmetology Association, Inc., *Model Bill*, pp. 2-3 and 13.
28. Crawford, *The California Regulatory Law Reporter*, p. 4.
29. Letter from Thedford L. Shanklin, CPA, Director, Legislative Postaudit Division, West Virginia Legislature, March 29, 1988.

30. Letter from Cynthia J. Jones, Program Manager, Professional Programs Management, State of Washington Department of Licensing, March 23, 1988.
31. Letter from Susan K. Wilson, Administrator, State of Oregon Department of Human Resources, Health Division, Board of Barbers and Hairdressers, July 5, 1988.
32. Letter from Dave Fairhurst, Licensing Coordinator, State of Utah Department of Business Regulation, March 24, 1988.

APPENDICES

APPENDIX A

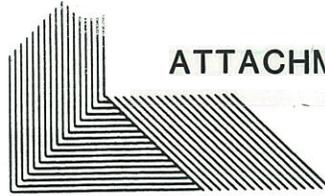
COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on September 26, 1988 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 department did not comment on the report. The response from the board is included as Attachment 2.

The board does not agree that Chapter 439, HRS, should be allowed to expire as scheduled on December 31, 1989. The board states that regulation is needed to ensure consumer protection by the setting of minimum entry level standards.

The board agrees with our recommendations on requiring a neighbor island licensee on the board, the consistent use of the term licensure, and the removal of several requirements relating to beauty shops and instructors. However, it disagrees with our to eliminate beauty shop licenses. The board states that the primary reason for shop licensure is to assure that the operators are duly qualified and licensed. We note, however, that this is unnecessary since the law already mandates responsibility for such matters to the beauty shop owner. The board also disagrees with our recommendation to delete the high school requirement. Finally, the board feels that developing a single regulatory program combining the practice of barbering and cosmetology may be premature but it is willing to review licensure requirements with the Board of Barbers.

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



ATTACHMENT 1

CLINTON T. TANIMURA
AUDITOR

September 26, 1988

COPY

Ms. Carol Suzawa, Chairperson
Board of Cosmetology
Department of Commerce and Consumer Affairs
State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Suzawa:

Enclosed are seven preliminary copies, numbered 4 through 10, of our *Sunset Evaluation Update, Beauty Culture, Chapter 439, Hawaii Revised Statutes*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of beauty culture. If you have any comments on our recommendations, we would appreciate receiving them by October 27, 1988. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
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

October 27, 1988

RECEIVED

OCT 27 3 41 PM '88

OFFICE OF THE AUDITOR
STATE OF HAWAII

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

Dear Mr. Tanimura:

The Board of Cosmetology acknowledges receipt of your "Sunset Evaluation Update" report which is comprehensive and notes deficiencies of the board and Chapter 439, HRS.

One of the first recommendations made is to sunset the board and the chapter because of those noted deficiencies. The board takes a more positive view that the noted deficiencies should be addressed and corrected, rather than do away with the law and board. The board feels that a large class of consumers would go unprotected without regulation. The board is aware of new and diversified services that evolved from the basic cosmetology skills such as acrylic nails and cosmetic tatoos. The mentioned agencies in your report (Department of Health and FDA) regulate premises and products but do not address the individual's qualification to provide cosmetology services. The board has worked hard to set minimum entry level standards to ensure consumer protection.

Also, insurance carriers that provide malpractice coverage to beauty shops which includes qualified operators play a big role in the industry. The carriers indicate that malpractice insurance coverage in Hawaii is based on licensure. Without licensure, the insurance carriers will have a difficult time in providing the necessary coverage to qualified shops and operators, and generally will increase costs to shops which will be passed on to consumers. Perhaps, this reflects on RICO having minimal number of complaints because shops have malpractice coverage to handle dissatisfied customers. The board feels and will continue to assure the protection of consumers through minimum entry level competency.

Your report indicates a decline in licensed beauty operators and beauty shops as a possible reason to sunset the board and Chapter 439, HRS. However, the board's review indicates an increase in total licensees. We offer the following statistics in support of our position:

<u>Date</u>	<u>Total Operators</u>	<u>Total Shops</u>
* 10/85	N/A	N/A
+ 9/87	5,342	976
+ 1/88	5,403	986
* 5/88	5,636	1,032
+ 8/88	5,706	1,045

* Figures in Sunset Evaluation
 + Figures from DCCA Geographic Report
 N/A = Not Applicable

With regard to the recommendations to amend Chapter 439, HRS, we would like to respond first to those that we are in agreement with.

Board composition: The board agrees with the recommendation to require at least one licensed beauty operator be designated from a neighbor island, and to prohibit a person affiliated with a beauty school to serve on the board.

Use of terminology: The board is in support of using the term "licensure" in lieu of "registration" and "certification". Should this change be made throughout Chapter 439, HRS, then the board's rules, which has incorporated the term "licensure" will be consistent with the statute.

Licensing Requirements: The board is in agreement with the recommendation to remove the requirement that beauty schools have a regularly licensed physician attached to their staff. It further supports the recommendation to eliminate the licensure and regulation of technicians and instructor-trainees. Please note, however, that the board does not support elimination of licensing beauty shops and shall address this issue separately. The board agrees to the deletion of the managing operator provision and all reference in Chapter 439, HRS, to "registered managing operator". Moreover, the board supports reducing (but not deleting) licensure requirements for instructors. Further, it agrees to remove the provision which allow persons holding temporary instructor licenses to commercially demonstrate hair or cosmetic products and to recognize the credentials of

out-of-state licenses to qualify for Hawaii licensure. A 1989 Administration Bill has been prepared and will be introduced covering all the issues discussed herein, except for the elimination of the instructor-trainee registration.

Having covered all the recommendations the board supports, we would now like to turn our attention to those that we disagree with and explain our opposing position.

First, the board agrees that there is a conflict between Section 439-2(b), HRS, and the proposed rule provision allowing the practice of cosmetology in an outside setting of a beauty shop. However, the board does not agree that the law be changed. To alleviate the conflict, the board acted to delete the rule provision until the board is better prepared to address the matter.

Second, the board is not in support of eliminating the licensure and regulation of beauty shops. A great majority of jurisdictions require beauty shop license.

The main reason for the shop license is to protect the consumer by assuring that there are qualified and licensed operators offering the appropriate services in the premise. As pointed out earlier in this response, the board and not the Department of Health or the FDA assures that shops have qualified operators. Also, shop licenses issued by the board assures that insurance carriers are providing the necessary malpractice coverages.

Third, the board is not opposed to the Department of Education assuming jurisdiction of licensing beauty schools and instructors; however, according to your report, the DOE who once regulated schools, relinquished this responsibility and currently wishes to be relieved of licensing all private vocational schools. Unless, there can be acceptance and a commitment to regulate beauty schools by the DOE, the board foresees this function eventually return to its jurisdiction. The board does not wish to have this important form of regulation and licensure passed around until it eventually finds its proper place. Should it be necessary, the board is willing to continue its responsibility in this area. It has called for assistance from the necessary agencies and individuals to be sure it is not operating in a vacuum. This past year, the board had valuable input from representatives of schools, professional organizations and industry persons in proposing an updated curriculum for schools, minimum equipment (and supply) at schools, and instructor requirements. The board will continue to review and improve in this area.

Third, the board is opposed to the deletion of the high school education requirement. At the 1987 Legislative Session, the board addressed many minimum entry level requirements to ensure the health, safety and welfare of the consumer. The high school education requirement was one of issues that the board as well as the industry and beauty schools agreed was necessary. The Legislature also agreed, and retained the requirement with some modification. According to the 1988 Milady Cosmetology State Board Guide, only four out of 49 jurisdictions do not have any general education of requirement. The other jurisdictions have a general educational requirement as follows: Eleven require high school education or equivalent; sixteen require tenth grade education; twenty-one require eighth or ninth grade education; one requires 7th grade education; and one requires elementary school education. Therefore, it appears that a majority of jurisdictions that have cosmetology licensure, 45 out of 49, have a general education requirement.

Lastly, the board feels that it may be too premature to develop a single regulatory program combining the practice of barbering and cosmetology. Further discussion and study may be necessary to explore other options that are available to continue separate regulations and provide more recognition of each other's requirement.

The Board of Cosmetology is open and willing to review licensure requirements with the Board of Barbers.

In closing, your report indicates the effort of the board and the administration resulted in many positive actions taken for effective cosmetology regulations with special emphasis on the health, safety, and welfare of the consumers. The board feels committed to continue to have an effective cosmetology licensing program.

The board appreciates the opportunity to express its views. We trust that our comments will be given consideration along with your report.

Very truly yours,



CAROL E. SUZAWA, Chairman
Board of Cosmetology

CES/AY:rh

APPENDIX B

DIGEST

A BILL FOR AN ACT RELATING TO BEAUTY CULTURE

Makes following changes to laws regulating cosmetology:

- (1) Requires board of cosmetology to include at least 1 licensee from a neighbor island;
- (2) Substitutes term "licenses" for "certificates of registration" and other like terms;
- (3) Allows practice of cosmetology outside beauty shops;
- (4) Eliminates high school education requirements for license applicants;
- (5) Allows licensing by credentials for persons licensed in states having comparable or stricter requirements;
- (6) Prohibits persons affiliated with cosmetology schools from being appointed to board;
- (7) Eliminates technician, instructor trainee, and beauty shop licenses;
- (8) Deletes references to registered managing operators;
- (9) Changes responsibility for licensing beauty schools and instructors to department of education.

A BILL FOR AN ACT

RELATING TO BEAUTY CULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this bill is to implement the
2 findings and recommendations made by the legislative auditor in
3 its "Sunset Evaluation Update Report" regarding chapter 439,
4 Hawaii Revised Statutes, which regulates the practice of beauty
5 culture (more commonly known as cosmetology). The legislature
6 agrees with the auditor's findings that many of the regulatory
7 provisions of chapter 439 are either unnecessary or
8 inappropriately placed under the authority of the board of
9 cosmetology.

10 SECTION 2. Section 26H-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§26H-4 Repeal dates. (a) The following chapters are
13 hereby repealed effective December 31, 1989:

- 14 (1) Chapter 444 (Contractors License Board)
15 (2) Chapter 448E (Board of Electricians and Plumbers)
16 (3) Chapter 464 (Board of Registration of Professional
17
18

1 Engineers, Architects, Surveyors and Landscape
2 Architects)

3 (4) Chapter 466 (Board of Public Accountancy)

4 (5) Chapter 467 (Real Estate Commission)

5 [(6) Chapter 439 (Board of Cosmetology)

6 (7)] (6) Chapter 454 (Mortgage Brokers and Solicitors)

7 [(8)] (7) Chapter 454D (Mortgage and Collection Servicing
8 Agents)

9 (b) The following chapter and sections are hereby repealed
10 effective December 31, 1990:

11 (1) Chapter 466J (Board of Radiologic Technology)

12 (2) Sections 321-13 to 321-15 (midwives, laboratory
13 directors, laboratory technologists, laboratory
14 supervisors, laboratory technicians, tattoo artists,
15 electrologists, and sanitarians)

16 (c) The following chapters are hereby repealed effective
17 December 31, 1991:

18 (1) Chapter 447 (Dental Hygienists)

19 (2) Chapter 453 (Board of Medical Examiners)

20 (3) Chapter 457 (Board of Nursing)

21 (4) Chapter 458 (Board of Dispensing Opticians)

22 (5) Chapter 460J (Pest Control Board)

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1 (6) Chapter 462A (Pilotage)

2 (7) Chapter 438 (Board of Barbers)

3 (8) Chapter 468K (Travel Agencies)

4 (d) The following chapters are hereby repealed effective
5 December 31, 1992:

6 (1) Chapter 448H (Elevator Mechanics Licensing Board)

7 (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

8 (3) Chapter 457B (Board of Examiners of Nursing Home
9 Administrators)

10 (4) Chapter 460 (Board of Osteopathic Examiners)

11 (5) Chapter 461 (Board of Pharmacy)

12 (6) Chapter 461J (Board of Physical Therapy)

13 (7) Chapter 463E (Podiatry)

14 (e) The following chapters are hereby repealed effective
15 December 31, 1993:

16 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)

17 (2) Chapter 437B (Motor Vehicle Repair Industry Board)

18 (3) Chapter 440 (Boxing Commission)

19 (4) Chapter 446 (Debt Adjusters)

20 (5) Chapter 436E (Board of Acupuncture)

21 (f) The following sections are hereby repealed effective
22 December 31, 1993:

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- 1 (1) Sections 445-21 to 38 (Auctions)
- 2 (2) Sections 445-131 to 136 (Pawnbrokers)
- 3 (3) Sections 445-171 to 172 (Secondhand Dealers)
- 4 (4) Sections 445-231 to 235 (Scrap Dealers)
- 5 (g) The following chapters are hereby repealed effective

6 December 31, 1994:

- 7 (1) Chapter 441 (Cemetery and Funeral Trusts)
- 8 (2) Chapter 443B (Collection Agencies)
- 9 (3) Chapter 452 (Board of Massage)
- 10 (4) Chapter 455 (Board of Examiners in Naturopathy)
- 11 (5) Chapter 459 (Board of Examiners in Optometry)
- 12 (6) Chapter 442 (Board of Chiropractic Examiners)
- 13 (7) Chapter 373 (Commercial Employment Agencies)
- 14 (8) Chapter 448 (Board of Dental Examiners)
- 15 (9) Chapter 465 (Board of Psychology)
- 16 (10) Chapter 468E (Speech Pathology and Audiology)

17 (h) The following chapter is hereby repealed effective

18 December 31, 1995:

19 (1) Chapter 439 (Board of Cosmetology)

20 [(h)] (i) The following chapters are hereby repealed
21 effective December 31, 1997:

22 (1) Chapter 463 (Board of Private Detectives and Guards)

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1 (2) Chapter 471 (Board of Veterinary Examiners)."

2 SECTION 3. Section 439-1, Hawaii Revised Statutes, is
3 amended as follows:

4 1. By amending the definition of "beauty operator" to read
5 as follows:

6 ""Beauty operator" means one of the following
7 [certification] licensure categories: cosmetologist;
8 hairdresser; cosmetician; or manicurist."

9 2. By amending the definition of "cosmetology" to read as
10 follows:

11 ""Cosmetology", also known as beauty culture, means the art
12 and science of beauty care of the skin, hair, scalp, and nails,
13 and includes any one or a combination of the [certification]
14 licensure categories if they are performed on a person's head,
15 face, neck, shoulders, arms, hands, legs, or feet for cosmetic
16 purposes."

17 3. By amending the definition of "instructor" to read as
18 follows:

19 ""Instructor" means a person who teaches any of the
20 [certification] licensure categories; provided that the term
21 shall not be taken to include an operator who teaches apprentices
22 in a beauty shop."

1 SECTION 4. Section 439-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§439-2 [Registration] License; required. (a) No person
4 shall for commercial purposes [demonstrate any hair or cosmetic
5 preparations or products or] practice as a beauty operator,
6 apprentice, or instructor or operate a school [or beauty shop] or
7 announce or advertise as being prepared or qualified to do so
8 unless the person is [registered with and holds a certificate
9 from the board authorizing the person to do so;] licensed as
10 required by this chapter; provided that this chapter shall not
11 affect the right of any person licensed by the State to engage in
12 any other occupation from doing any of the acts properly
13 authorized by the person's license. The [certificate] license of
14 a beauty operator[, instructor, apprentice, shop, or school]
15 shall be displayed in a conspicuous place in the office[,] or
16 place of business or employment[, or school] of the holder
17 [thereof].

18 (b) The practice of cosmetology shall be carried on only by
19 persons duly [registered] licensed to practice in this State [and
20 only in registered beauty shops]; provided a [registered]
21 licensed beauty operator may practice cosmetology [at any place
22 for educational purposes or upon persons at a health care,
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1 nursing, mental, or correctional facility, at a barber shop, and
2 at a charitable event.] outside of a beauty shop if:

- 3 (1) The arrangement is made through a beauty shop;
4 (2) A record of the arrangement is kept; and
5 (3) The place at which the beauty operator practices
6 cosmetology complies with the standards of sanitation
7 established by the department of health."

8 SECTION 5. Section 439-3, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§439-3 Cosmetology board; appointment; qualifications;
11 terms. (a) There shall be a board of cosmetology consisting of
12 seven members, who shall be appointed, and may be removed, by the
13 governor in the manner provided in section 26-34.

14 (b) Five of the members of the board, at least one of whom
15 shall be from an island other than Oahu, shall be beauty
16 operators who have been [registered] licensed to practice in the
17 State for at least five years and have been actively and
18 continuously engaged in the practice of cosmetology for that
19 period and two shall be public members. No member shall be a
20 member of nor affiliated with any school teaching any of the
21 classified occupations.

22 [(c) Board members affiliated with any school teaching any
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1 of the classified occupations shall disclose that affiliation and
2 shall at all times adhere to the provisions of chapter 84 and the
3 interpretations of that chapter by the state ethics commission.]"

4 SECTION 6. Section 439-10, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§439-10 Apprentices [and instructor-trainees]. All
7 apprentices [and instructor-trainees] shall be registered upon
8 payment of application and registration fees and submission of
9 evidence satisfactory to the board that the applicant is[:

10 (1) At] at least sixteen years of age [and possessed of an
11 education equivalent to the completion of high school;
12 and

13 (2) In the case of an instructor-trainee, has the required
14 three years of experience as a registered beauty
15 operator]."

16 SECTION 7. Section 439-12, Hawaii Revised Statutes, is
17 amended to read as follows:

18 §439-12 Requisites for admission to examination. (a) The
19 executive secretary of the board shall determine the sufficiency
20 of the preliminary qualifications of applicants for admission to
21 examinations; provided that the [certification] licensure

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1 categories shall be limited to cosmetologist, hairdresser,
2 cosmetician, and manicurist[, and instructor]. The preliminary
3 qualifications for admission to examination shall be as provided
4 in this section.

5 (b) A cosmetologist applicant shall be at least sixteen
6 years old and have [an education equivalent to the completion of
7 high school and] either:

8 (1) Three thousand six hundred hours of training as an
9 apprentice under the supervision of a [registered]
10 licensed cosmetologist; or

11 (2) One thousand eight hundred hours of training in a
12 [registered] licensed beauty school.

13 (c) A hairdresser applicant shall be at least sixteen years
14 old and have [an education equivalent to the completion of high
15 school and] either:

16 (1) Two thousand five hundred hours of training as an
17 apprentice under the supervision of a [registered]
18 licensed cosmetologist or hairdresser; or

19 (2) One thousand two hundred fifty hours of training in a
20 [registered] licensed beauty school.

21 (d) A cosmetician applicant shall be at least sixteen years
22 old and have [an education equivalent to the completion of high
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1 school and] either:

2 (1) One thousand one hundred hours of training as an
3 apprentice under the supervision of a [registered]
4 licensed cosmetologist or cosmetician; or

5 (2) Five hundred fifty hours of training in a [registered]
6 licensed beauty school.

7 (e) A manicurist applicant shall be at least sixteen years
8 old and have [an education equivalent to the completion of high
9 school and] either:

10 (1) Seven hundred hours of training as an apprentice under
11 the supervision of a [registered] licensed
12 cosmetologist, cosmetician, or manicurist; or

13 (2) Three hundred fifty hours of training in a [registered]
14 licensed beauty school.

15 [(f) An instructor applicant may apply in any of the
16 practices of cosmetology if the applicant has completed a course
17 satisfactory to the board in the theory and practice of education
18 in cosmetology consisting of six hundred hours and has served
19 actively for a period of at least three years as a registered
20 beauty operator in the State or in another jurisdiction having
21 standards for registration as a beauty operator substantially
22 equivalent to those of the State; provided that the board may at
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1 its discretion and without regard to the requirements of this
2 section, issue and revoke a temporary permit to any person
3 holding a valid existing instructor's registration in another
4 jurisdiction having standards substantially equivalent to those
5 in force in the State at the time of the registration, for the
6 limited purpose of either:

7 (1) Commercially demonstrating in the State, any hair or
8 cosmetic preparations or products identifiable by a
9 trade name or trademark; or

10 (2) Instructing in hairstyling in a school or under the
11 sponsorship of any organization approved by the board
12 until the next following instructor's examination given
13 by the board. Instructors duly registered under
14 chapter 453, need not be holders of instructors
15 certificates.]"

16 SECTION 8. Section 439-15, Hawaii Revised Statutes, is
17 amended by amending its title and subsections (a) to (d) to read
18 as follows:

19 "§439-15 [Certificates of registration,] License, fees.

20 (a) The board shall issue a [certificate of registration]
21 license as a beauty operator[, or instructor, as the case may
22 be,] to each person who passes the required examination, pays the
23 proper fees, and meets all of the other requirements of this
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1 chapter. The [certificate] license shall state specifically the
2 [certification] licensure category for which the person is
3 [registered] licensed and shall be signed by the chairperson and
4 executive secretary and impressed with the seal of the board.

5 (b) All [certificates] licenses issued by the board expire
6 on December 31 of each odd-numbered year.

7 (c) Every [registered] licensed beauty operator [and
8 instructor] shall pay to the board by December 31 of each
9 odd-numbered year a biennial renewal fee. The payment of the
10 renewal fee shall entitle the [registrant] licensee to renewal of
11 the [certificate.] license.

12 (d) Failure or refusal to renew the [certificate] license
13 by December 31 of each odd-numbered year shall constitute a
14 forfeiture of the [certificate.] license. The [certificate]
15 license shall be reinstated upon payment of all delinquent fees
16 and a penalty fee if application is made within three years after
17 lapse."

18 SECTION 9. Section 439-16, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§439-16 Temporary permits. The board may issue temporary
21 permits to qualified applicants approved to be examined to
22 practice cosmetology under supervision of a [registered] licensed
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1 beauty operator until the results of the examination [has] have
2 been published. Applicants who have not successfully passed the
3 examination as prescribed by the board but continue to satisfy
4 the requirements of section 439-14(c) may be issued temporary
5 permits; provided that applicants shall pass the third
6 examination as consecutively scheduled by the board. After
7 failing to pass the third examination, applicants that satisfy
8 the requirements of section 439-14(c) shall continue to qualify
9 for examination and [registration] licensure but not for the
10 privilege of temporary permits. The permits may be issued upon
11 application for examination and payment of the required fees. In
12 addition to those applicants who satisfy the requirements of
13 section 439-14(c), an applicant [who possesses one of the
14 following qualifications] may be issued a temporary permit[:] if
15 the applicant:

- 16 (1) Is a graduate of a school and course which meet the
17 standards established for schools in the State; or
18 (2) Has been, for three out of the four years immediately
19 preceding the date of the application, lawfully engaged
20 in another state, territory, or country in the
21 occupation covered by the certificate sought[; or
22 (3) Holds a valid and existing license to engage in the
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1 occupation covered by the certificate sought in a
2 state, territory, or country having standards for
3 registration substantially equivalent to those in force
4 in the State at the time of the application]."

5 SECTION 10. Section 439-17, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§439-17 Beauty shops.** (a) A [certificate of registration
8 of a] beauty shop [may be secured by filing an application and
9 paying the application and registration fees and showing that the
10 shop has been inspected not more than one year before the
11 application was filed and meets] shall meet the standards of
12 sanitation required by the department of health, [that] and a
13 [registered] beauty operator in the appropriate [certification]
14 licensure category [is] shall be in charge of the shop[, and that
15 it is adequately equipped for the practices in which it engages.
16 The board may waive the requirement that the registered managing
17 operator has practiced in the State, for at least one year, upon
18 a showing that the person has had other experience as a managing
19 operator equivalent to one year's practice in this State and upon
20 further showing that the aforesaid requirement creates undue
21 hardship on the shop].

22 [(b) All certificates shall expire on December 31 in each
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1 odd-numbered year. Certificates may be renewed by payment of a
2 biennial fee prior to the date of expiration. A lapsed
3 certificate may be reinstated upon payment of all delinquent fees
4 and a penalty fee.

5 (c)] (b) Nothing in this chapter shall prohibit
6 [registered] licensed beauty operators within a beauty shop from
7 teaching any of the practices of cosmetology in which the beauty
8 operator is [registered] licensed in the regular course of
9 business; provided that the owners or beauty operators do not
10 hold themselves out as a school, and do not hire or employ or
11 teach, regularly, at any one time, more than one apprentice
12 unless there is one beauty operator regularly employed in the
13 business for each apprentice.

14 [(d)] (c) The beauty shop owner shall be responsible for
15 all operations of the shop and shall be responsible to see that
16 only currently [registered] licensed individuals are performing
17 cosmetology practices in the shop."

18 SECTION 11. Section 439-18, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§439-18 Schools. (a) [Any person may apply to the board
21 for a certificate of registration as a school in the practice of
22 cosmetology, upon the payment of application and initial
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1 registration fees. Thereafter an annual registration fee shall
2 be based on student enrollment.

3 (b) No school shall be granted a certificate of
4 registration unless it attaches to its staff a regularly licensed
5 physician and employs and maintains a sufficient number of
6 registered instructors, and requires a course of training of a
7 proportioned number of hours as approved by the board, for any of
8 the certification categories, to include both practical
9 demonstrations, written and oral tests, and practical instruction
10 in sanitation, sterilization, and the use of antiseptics
11 consistent with the practical and theoretical requirements
12 applicable to the practice of cosmetology.

13 All certificates shall expire on December 31 next following
14 the date of issue, but may be renewed by payment of the annual
15 registration fee prior to the date of expiration. A lapsed
16 certificate may be reinstated upon the payment of all delinquent
17 fees and a penalty fee.] All schools and instructors shall be
18 licensed by the department of education. Any certificate of
19 registration issued by the board under this chapter to any school
20 or instructor which was in effect on the effective date of this
21 Act shall remain in effect until:

22 (1) July 1, 1991; or

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1 (2) A license is issued by the department of education;
2 whichever is earlier.

3 (b) The department of education shall consult with the
4 board as needed to ensure that curriculum and other requirements
5 are adequate to meet the requirements for licensure under this
6 chapter."

7 SECTION 12. Section 439-19, Hawaii Revised Statutes, is
8 amended by amending its title and subsection (a) to read as
9 follows:

10 "**§439-19 Refusal to grant and revocation and suspension of**
11 **[certificates.] licenses.** (a) The board may take disciplinary
12 action against any [certificate or registration] license issued
13 under this chapter, including but not limited to revocation,
14 suspension, fine, or a combination thereof, or refuse to grant or
15 renew any [certificate or registration] license for any of the
16 following causes:

- 17 (1) Procuring a [certificate] license through fraud,
18 misrepresentation, or deceit;
- 19 (2) Professional misconduct, gross carelessness, or
20 manifest incapacity;
- 21 (3) Permitting an [uncertified] unlicensed person to
22 perform activities which require a [certificate]
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1 license under this chapter;

2 (4) Violation of this chapter or the rules adopted pursuant
3 thereto;

4 (5) Making any false representation or promise through
5 advertising or otherwise;

6 (6) Failing to display the [certificate] license as
7 provided in this chapter;

8 (7) Any other conduct constituting fraudulent or dishonest
9 dealings;

10 (8) Failing to comply with a board order; or

11 (9) Making a false statement on any document submitted or
12 required to be filed by this chapter.

13 SECTION 13. Section 439-20, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§439-20 Hearing. In every case where it is proposed to
16 revoke or suspend [the exercise of a certificate] a license for
17 any of the causes enumerated in section 439-19, the person
18 concerned shall be given notice and opportunity for hearing in
19 conformity with chapter 91. Any person aggrieved by the denial
20 or refusal of a [certificate] license by the board, shall submit
21 a request for a hearing pursuant to chapter 91 within sixty days
22 of the date of the denial or refusal. The notice of hearing
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1 shall be given at least five days before the hearing.

2 In all proceedings before it, the board and each member
3 thereof shall have the same powers respecting administering
4 oaths, compelling the attendance of witnesses, and the production
5 of documentary evidence, and examining witnesses, as are
6 possessed by circuit courts. In case of disobedience by any
7 person of any order of the board, or any member thereof, or of
8 any subpoena issued by it, or any member, or the refusal of any
9 witness to testify to any matter regarding which the witness may
10 lawfully be questioned, any circuit judge, on application by the
11 board, or any member thereof, shall compel obedience as in the
12 case of disobedience of the requirements of a subpoena issued by
13 a circuit court, or a refusal to testify therein."

14 SECTION 14. Section 439-22, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§439-22 Penalty. Any person who practices cosmetology,
17 maintains a school [or a beauty shop,] or acts in any capacity
18 wherein a [certificate] license is required, without a
19 [certificate] license as provided in this chapter, shall be fined
20 not more than \$100, or imprisoned not more than ninety days, or
21 both. Each and every day of violation shall be a separate
22 offense."

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1 SECTION 15. Chapter 439, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§439- Licensure by credentials; reciprocity. Any beauty
5 operator who is licensed under the laws of any state, territory,
6 or country having licensure qualifications which equal or exceed
7 those of this State shall be eligible for licensure in this State
8 provided that the beauty operator possesses a current valid
9 license to engage in the occupation by the license sought."

10 SECTION 16. Statutory material to be repealed is bracketed.
11 New statutory material is underscored.

12 SECTION 17. This Act shall take effect upon its approval.

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