SUNSET EVALUATION REPORT

Beauty Culture
Chapter 439, Hawaii Revised Statutes

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

Submitted by the
Legislative Auditor of the State of Hawaii

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FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

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 These programs are repealed unless they are specifically reestablished by the Legislature.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

This report evaluates the regulation of beauty culture under Chapter 439, Hawaii Revised Statutes. 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 It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of beauty culture is described in Chapter 1 of this report under "Framework for Evaluation." That framework also serves as the framework for conducting other sunset evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we apply is whether there exists an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. If the program does not meet this first test, then the other criteria for evaluation are not applied. However, if potential harm to public health, safety, or welfare exists, then the other evaluation criteria, as appropriate, are applied.

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

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Chapter 1

INTRODUCTION

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

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. This is our evaluation of Chapter 439, Hawaii Revised Statutes, on the licensing of cosmetologists, beauty shops, and beauty schools, which statute is scheduled by the Sunset Law to expire on December 31, 1980.

Objective of the Evaluation

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

Scope of the Evaluation

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

Organization of the Report

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

Framework for Evaluation

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

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

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

2. Even where regulation is reasonably necessary, government interference should be minimized; if less restrictive alternatives to full licensure are available, they should be adopted.

3. Regulation shall not be imposed except where necessary to protect relatively large numbers of consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service.

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

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

6. Regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

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

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

Licensing of an occupation or profession is warranted if:

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

2. The public that is likely to be harmed is a substantial portion of the consuming public.

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

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

5. Licensing is superior to other optional ways of protecting the public from the potential harm.

6. The benefits of licensing outweigh its costs.

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

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

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

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

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

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

The law further requires that the consuming public that may potentially be harmed be relatively large in number. This requirement rules out those situations where potential harm is likely to occur only sporadically or on a casual basis.

Consumer disadvantage. The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were

the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

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

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

Alternatives. Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, the posting of bond, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

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

Chapter 2

BACKGROUND

Legislation establishing a Hawaii Board of Cosmetology and regulating cosmetology was enacted in 1929. Act 145 of 1929 made it unlawful to practice as a hairdresser, cosmetician, or cosmetologist except in a hairdressing or cosmetology establishment, and unlawful to practice without a "certificate of registration" from the board.[1] The 1929 law also required beauty culture schools to be licensed by the Board of Cosmetology. This law has been amended numerous times since, essentially to broaden the scope of practices covered by the act, to raise the requirements for licenses, and to clarify the authority of the board.

The Practice of Cosmetology and the Development of Regulation

The practice of cosmetology includes the care of hair, scalp, skin, and nails. While the practice of cosmetology to camouflage or beautify is as old as recorded history, the licensing of the practice is relatively recent.

The 1920's was a period of rapid growth in the beauty industry. The expansion of the beauty industry during this period is attributed to several factors: a general economic boom, the increased liberation and employment of women, the development of the mass media to inform the public of trends and products, and technological developments in the cosmetic field. The latter included the introduction of: chemicals in hair wave preparations which eliminated the need for long and uncomfortable hot curls; soapless shampoos; cold wave permanents; and aniline dyes, which multiplied the range of hair dye colors.[2]

The widespread use of cosmetics in this period led to a growing awareness of some of their dangers. In the 1920's, medical practitioners warned of the harmful effects of mercury in such cosmetics as freckle removers, blemish removers, and hair dyes.[3] The medical examiner of New York City noted in 1926 that the custom of dyeing hair had

1. Although these are called certificates of registration in the statute, they are actually licenses since it is illegal to practice without such a certificate.

2. Michael Ash and Irene Ash, *Formulary of Cosmetic Preparations* (New York: Chemical Publishing Co., 1977), p. vii.

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

resulted in marked increases in infections of the scalp, face, and neck. The medical examiner cautioned that lead, mercury, and silver nitrate in cosmetic compounds were irritating as well as poisonous.[4] The American Medical Association supported the inclusion of cosmetic preparations under the federal Food and Drug Act to prohibit the use of the most harmful chemicals and to require naming of all poisonous ingredients in a cosmetic.[5]

Federal regulation of harmful cosmetics was enacted in 1938. Publicity on harmful cosmetics generated an atmosphere conducive to government regulation of professional beauticians. Professional cosmetology and trade associations, which emerged during the expansion period, advocated regulation of cosmetologists. Because negative publicity threatened the industry, these associations were organized to promote higher standards of work. Among their aims were promotion of uniform legislation and higher standards of skill and education.[6] The professional associations were, and still are, an influential force for regulating the beauty industry.

By the end of the 1930's, 43 states had enacted legislation creating cosmetology boards. These state boards of cosmetology regulate approximately 650,000 beauty care practitioners[7] and a minimum of 189,100 beauty shops with receipts of over $3 billion.[8] State statutes generally specify personal and training requirements, examinations, and fees for entry into the occupation as well as conditions for continued practice.

Regulation in Hawaii

Board of Cosmetology. Chapter 439, Hawaii Revised Statutes, authorizes a seven-member board to regulate the practice of cosmetology to protect "... the general public in its dealings with hairdressers, cosmeticians and cosmetologists."

The board is appointed by the Governor, and members serve terms of four years with staggered expiration dates. Each may serve a maximum of two terms. There are five positions on the board for licensed operators and two for nonlicensed persons who repre-

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

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

6. *Ibid.*, p. 135.

7. U.S. Department of Commerce, Bureau of Census, *Detailed Occupation of the Economically Active Population, 1900–1970*, Series D 233–682.

8. U.S. Department of Commerce, Bureau of Census, "Table 1480 Selected Services by Kind of Business: 1967 and 1972," *Statistical Abstract of U.S. 1978*, p. 851. The information is dated and those in the industry report that the business is growing. The census also does not include shops run as a part of another business, e.g., department stores which operate a beauty shop.

sent the general public. Currently, the board includes three shop owners, one former shop owner who is now a shop manager, and a former instructor who is an operator. These five are all members of the Hawaii State Association of Hairdressers and Cosmetologists.

The board is accorded rulemaking powers to carry out the purposes of Chapter 439. The board, any member of the board, or any person designated by the board, may investigate violations or suspected violations of this chapter. The board determines whether beauty shops and schools conform to requirements. It is authorized to issue, revoke, or suspend licenses, subject to conditions and procedures specified by statute.

The board is assisted by staff of the Department of Regulatory Agencies (DRA) in administering the beauty culture regulatory program.

Licenses. Licensing is required of beauty schools and beauty shops, cosmetology apprentices and students, and the following occupations: hairdresser, cosmetician, hair cosmetician, cosmetologist (hairdresser and cosmetician), electrologist, manicurist, beauty school instructor, and shop manager. Temporary certificates to practice are also required and authorized under certain conditions.

DRA reports that these licenses were in effect in the following skill areas as of September 1979.

Table 2.1

Board of Cosmetology
Category and Number of Licensees*

Beauty school	5
Beauty shop	678
Managing operator	1,632
Beauty instructor	79
Cosmetologist (hairdresser/cosmetician)	2,456
Hairdresser	248
Cosmetician	20
Manicurist	44
Electrologist	10
Others**	12
Students	1,211
Apprentices	79

*Excludes temporary licenses (496).

**Others include: facial cosmetician (3), Japanese hairdresser (5), permanent operator (1), hair cosmetician (1), managing manicurist (2).

Source: Department of Regulatory Agencies.

1. *Requirements.* For those wishing to engage in one of the beauty culture occupations, the basic prerequisites are: (a) 16 years of age, (b) four years of high school or its equivalent, (c) good moral character, and (d) payment of fees. Students and apprentices must meet these requirements and register with the board prior to beginning their training. Each of the occupational classifications has student and apprenticeship requirements. For example, to become a hairdresser, a person must have 1100 hours of student training or 2000 hours of apprenticeship. Upon completion of schooling or apprenticeship, the applicant is then examined by the board.

For beauty shops, they must: (a) meet standards of sanitation required by the Department of Health, (b) be managed by a registered operator who has practiced in the State for at least one year, (c) be adequately equipped for cosmetology, and (d) pay the fee.

For beauty schools, they must: (a) have a licensed physician "attached" to the staff; (b) employ a sufficient number of registered instructors; and (c) require a course of training for each classification approved by the board with the courses consisting of practical demonstrations, written and oral tests, and practical instruction in sanitation, sterilization, and use of antiseptics.

Additional detailed requirements for school licensure set by rules and regulations include standards for satisfactory school facilities and equipment, and evidence of need for the school and lack of available training.

2. *Procedures.* Applications for cosmetology licenses are distributed, received, and processed by the Licensing Branch of DRA. The applications are forwarded to the board for its approval.

The names of qualified applicants for examination are then sent to the Examination Branch of DRA. There are written and practical tests for the majority of applicants. The written test is administered by the Examination Branch, and the practical test is administered by the board. Complaints and appeals regarding the examinations are resolved by the executive secretary, if possible. If not, applicants may appeal to the board.

3. *Examinations.* Examinations are conducted three times a year, in January, May, and October. The number of candidates and the pass rates for the years 1974 to 1978 are shown in Table 2.2.

Table 2.2

Number of Examination Candidates
for Years 1974 Through 1978
Pass Rates for Each Exam

	Candidates	*January*	*May*	*October*
1974	238	77%	77%	70%
1975	277	67%	84%	81%
1976	313	83%	75%	72%
1977	414	78%	66%	47%
1978	514	78%	68%	56%

Source: Department of Regulatory Agencies, Board of Cosmetology.

There are written and practical examinations for hairdresser, cosmetician, manicurist, electrologist, hair cosmetician, and instructor licenses. The written tests, constructed by the Examination Branch of DRA, purport to examine knowledge of cosmetology and cosmetology laws of Hawaii. The passing score is 75.

The practical examination has changed little over the years. Operator applicants are expected to demonstrate basic skills. Cosmetology applicants, for example, are tested on such categories as scalp and hair treatment, shampoo, hairset, combout, haircut, permanent waving, fingerwave and pincurl, and manicuring. Board members grade the practical examination with standardized scoring sheets, and scores may range from 0 to 5 for poor to excellent. However, there are no standardized criteria for assigning a score.

The practical examination for instructor applicants involves the delivery of a lecture on a given subject. Board members grade the content, method, and delivery of the lecture, and the appearance of the candidate.

The rules state that a candidate who passes one test and fails the other is not required to repeat both the written and the practical examinations. The candidates may retake only the part which was failed at the next two scheduled examinations. If the candidate fails a third time, both parts must be retaken.

Chapter 3

EVALUATION OF THE NEED FOR REGULATION

This chapter contains our evaluation of the continuing need for the regulation of beauty culture under Chapter 439, Hawaii Revised Statutes, and our recommendations on the subject.

Summary of Findings

We find that:

1. The conduct of businesses and the pursuit of occupations related to beauty culture pose little potential harm to public health, safety, or welfare.

2. Such dangers as might exist, such as the potential of unsanitary conditions or the use of dangerous chemicals, are not within the purview of Chapter 439 or the Board of Cosmetology and are more appropriately dealt with by other laws and other regulatory and enforcement agencies.

The Purpose of Regulation

The drafters of the original cosmetology statute had an explicit purpose: the reduction of serious injuries from "too much carelessness and negligence on the part of inexperts."[1] A second purpose for regulation, adopted in 1949, is " . . . the protection of the general public in its dealings with hairdressers, cosmeticians, and cosmetologists."[2]

The original purpose, protection from injuries, is clear enough. The second purpose, protection of the public in its dealings with those engaged in beauty culture, is less clear. Presumably, the protection is beyond the original purpose of protection from injury and extends to such aspects as protection in the interest of consumer satisfaction.

Whatever the purpose, it is now legislative policy, under the Sunset Law, that certain criteria be met before regulation of a business, profession, or occupation is continued. The first and basic test is whether there exists an identifiable potential danger to public

1. Report on S.B. No. 48, Committee on Public Health, *Senate Journal 1929*, p. 257.

2. Section 439–7, Hawaii Revised Statutes.

health, safety, or welfare arising from the conduct of the business, profession, or occupation being regulated.

The potential danger identifiable with beauty culture centers around matters of public health. The potential health hazards include: (1) the transmission of disease from unsanitary equipment, workplace environment, and infected practitioners; and (2) illness or injury resulting from the application or use of dangerous cosmetics. In the remainder of this chapter, we evaluate whether these possible health hazards constitute significant danger to the public, and whether these hazards, and any other identifiable potential for public harm, justify regulation under Chapter 439.

Public Health

Disease transmission. By nature of the occupation and work environment, the cosmetologist is in regular physical contact with customers. The cosmetologist uses implements which, if not sterilized, may transfer infections from one customer to another. In addition to bacterial and viral infections, such as influenza, tuberculosis, and staph, there are some hair and scalp disorders which are communicable, such as tinea or ringworm, scabies, and head lice.

However, responsibility for control of these health problems lies with the Department of Health (DOH), not the Board of Cosmetology. In 1907, 18 years prior to enactment of the Board of Cosmetology statute, DOH was made responsible for the prescription and enforcement of rules and regulations to assure sanitary conditions and procedures in barber and hairdresser establishments.[3]

DOH's public health regulations contain detailed sanitation standards for barber and beauty shops. They specify physical requirements for shops and guidelines for sanitary practices. They prohibit persons with infectious diseases from working in a shop.

DOH inspects beauty schools and shops when they are new, when there is a transfer of ownership, and in response to complaints. It investigates complaints of unsanitary practices. In 1978, DOH made a total of 342 inspections of beauty and barber shops. Most inspections were for new or transferred shops and were not related to complaints.

3. Section 321–12, Hawaii Revised Statutes.

From the foregoing, we conclude that prevention of transmission of disease cannot be used as a justification for regulation of beauty culture under Chapter 439. It is an area more properly under the surveillance of the Department of Health.

Dangerous cosmetics. Some cosmetic formulas include harmful, irritating, poisonous or carcinogenic ingredients, e.g., metallic salt hair dyes, aniline hair dyes, mercury in eye makeup and thioglycolate acids in hair coloring or hair removal preparations. Reportedly, these substances may cause skin irritation, hair damage or loss, severe allergic reactions, or serious illness. Poisonous substances, such as lead and mercury, are absorbed into the system, and it has been reported that their continued use could lead to a life-threatening accumulation. Substances identified as being carcinogenic are included in some hair dyes.

The probability or incidence of serious illness from poisonous and carcinogenic substances in cosmetics is unknown. The effects may not appear until years after exposure and may be attributable to a variety of substances in the environment, diet, or household products. In any event, the issue is beyond the competence or authority of the Board of Cosmetology.

The federal government has the primary responsibility for assuring the manufacture of safe cosmetic compounds. In 1938 the federal Food and Drug Act was amended to include federal regulation of cosmetics. Regulations prohibit the use of certain chemicals, ban the sale and distribution of contaminated cosmetics, and require appropriate labelling and limited disclosures of ingredients.

Chapter 328, HRS, Part I, the Hawaii Food, Drug, and Cosmetic Act, prohibits the manufacture, sale, delivery, adulteration, and misbranding of cosmetics. DOH is responsible for enforcing the law and has the power to inspect and seize adulterated or misbranded merchandise.

The efforts of the Food and Drug Branch of DOH focus on local cosmetic manufacturers who are primarily perfume manufacturers. It leaves enforcement of cosmetics regulations for products in interstate commerce to the federal government.

This branch of DOH reports few injuries from cosmetics. It receives an average of two complaints a year, generally related to allergic reactions or false or misleading claims on products such as hair growth formulas, and wrinkle removers.

Thus, other agencies, the Food and Drug Administration at the federal level and

the Department of Health at the state level, are the agencies primarily responsible for overseeing and enforcing the manufacture, sale, and use of cosmetics. Regulation through Chapter 439 has little to do with the safety of cosmetics.

Electrolysis as a possible matter of special concern. The device and procedure for removal of hair by electrolysis were developed over a hundred years ago in the United States. The unskilled use of electrolysis for hair removal could result in skin damage and disfigurement. The procedure involves the insertion of a needle into the hair shaft and passing a light electric current through it. The hair then is easily removable by tweezers. If properly performed, with six or seven months of treatments, hair will not regrow in the area. If improperly done, hair will grow back. Unskilled hands could leave a patch of tiny puncture scars.

Although the potential for disfigurement exists, the incidence and severity of injury appear to be insignificant. In Hawaii, there have been no complaints related to injury from electrolysis. Twenty-three states do regulate the practice and there is a concerted effort by the National Association of Electrologists to establish licensing in all states. California and Tennessee are among those states which recently enacted licensing statutes for electrologists. However, in an evaluation of its new licensing program, Tennessee's evaluation agency concluded that there was no evidence of physical injury from the process and that termination of the board would not increase the risk to the public.[4]

None of the beauty culture schools in Hawaii teach electrolysis. The only three active practitioners were educated in other states. Electrolysis examinations have not been given in years for lack of applicants. In the opinion of an electrologist, the written examination does not test current knowledge.

Incidence of reported injuries. A review of complaints and insurance information in Hawaii shows a low incidence of physical injury among beauty shop patrons. Complaints registered with the Board of Cosmetology duplicate the majority of those filed with the Office of the Ombudsman and the Office of Consumer Protection. Table 3.1 summarizes the number and types of complaints received by the Board of Cosmetology in the past five years.

4. State of Tennessee, Comptroller of the Treasury, *Program Evaluation on the Department of Public Health, Division of Health Related Boards, Board of Electrolysis Examiners,* October 1979, p. 12.

Table 3.1

Complaints Data 1975 – 1979
Board of Cosmetology

	1975	1976	1977	1978	1979	Total
Beauty shops						
Hair or scalp damage				3		3
Injury on property		1				1
Unsatisfactory work	2	5	5	4		16
Unreasonable price, overcharge	1	1	2	2	1	7
False ads or misrepresentation				1	4	5
Failure to fulfill contractual obligation				14		14
Violation of board rules	1			1	1	3
Practice without license	1	1	3	4	5	14
Beauty schools						
Unsatisfactory work				1		1
Unethical personal conduct			1			1
Violation of board rules		4	3	1	1	9
Administrative problems				1	1	2
Total	5	12	14	32	13	76

Only three of 76 complaints filed with the Hawaii Board of Cosmetology during 1975–79 were related to damage to the hair or scalp. All three were dismissed by the board on grounds of "inconclusive evidence to establish a violation." Considering that hundreds of thousands of beauty treatments must have taken place during this period, the propensity for physical harm from such treatments can only be regarded as negligible.

Beauty shops generally carry malpractice insurance and settle claims brought against them. Insurance claims against beauty shop malpractice are low. One company reported that there are no more than five claims in a given year. The carrier for the Association of Hairdressers and Cosmetologists reported only seven claims for the past three years.

Other Possible Concerns

Beauty schools. Students of beauty schools are potentially vulnerable to some of the problems of students of other private schools; e.g., students may not receive services for which they have paid, may encounter difficulty in obtaining refunds, etc. However, there is no evidence that problems are greater in beauty schools. During the five-year period 1975–79, there were 13 recorded complaints involving beauty schools.

Beauty schools are subject to regulation not only by the Board of Cosmetology but the Department of Education's (DOE) Proprietary Trade and Vocational School Licensing Section and the Federal Trade Commission. The Board's licensure requirements and those of DOE are nearly identical. They both require evidence of financial stability and surety bonds, among other aspects. The Federal Trade Commission regulates the business practices of vocational and home study schools with rules on refunds and claims of job placement rates, etc.

Moreover, there are a number of other organizations exercising oversight of the schools. Beauty schools may choose to seek accreditation from a variety of national accrediting associations, e.g., National Association of Trade and Technical Schools, National Association of Cosmetology Schools. These accreditations are desirable because they are frequently required by the Department of Health, Education and Welfare for student financial aid funds. The Veterans' Administration also reviews and approves schools for their constituents and funds. These schools are also subject to Federal Trade Commission regulations on business practices and federal guidelines and rules.

The numerous agencies overseeing these schools and the paperwork and resources required to fulfill government requirements appear to be redundant, creating additional costs. There appears to be no reasonable basis, for example, to require beauty schools to post bonds with both DOE and the Board of Cosmetology.

Beauty shops. An argument advanced for the licensing of beauty shops, in addition to the beauty culture occupations, is that it deters charlatans from opening businesses and making misrepresentations to the public. However, in actual practice, the most significant effect of the licensing requirement is that it discourages competition.

The requirement that a shop manager have a Hawaii license for one year serves to exclude new residents from these positions. It discourages new arrivals from opening new or competing shops. While a newcomer may own a shop, the "one year" provision requires the hiring of a local practitioner. This is to the advantage of practitioners who have been in Hawaii at least a year, but imposes an unnecessary cost on new resident shop owners.

It retards the growth of new shops. A proprietor who wishes to open several shops must hire a licensed shop manager for each. Moreover, a newly licensed person cannot immediately open a shop as a sole proprietor and operator. The effect can be seen in

less populated areas of the State. The board has received and denied requests for exemptions from recently licensed neighbor island residents who wish to open their own businesses. This restriction reduces competition, adds needless personnel costs to shop owners, and results in increased costs to consumers.

Quality of service. It has been said that licensing of beauty culture occupations assures that only those with an acceptable knowledge and level of competence will enter the field. Presumably, this would lead to greater consumer satisfaction. Satisfaction of consumers probably means how pleased the patron might be with the aesthetic results of beauty treatments. However, it is questionable whether government should be in the business of determining which potential practitioners are likely to produce results which are aesthetically pleasing (and therefore should be given licenses) and which practitioners are likely to be less pleasing (and therefore should be denied licenses). Service quality is best left to the judgment of consumers and the marketplace.

Conclusion and Recommendation

Our evaluation of Chapter 439 and cosmetology regulations reveal they do not meet the Legislature's Sunset Law requirements for regulating an occupation. There is little evidence of danger to the public health, safety, or welfare from the beauty industry.

Even with the repeal of licensing, consumers would continue to receive protection under other statutes. The beauty shops and schools would still be subject to the sanitation regulations of DOH under Section 321–12, HRS. Schools would still conform to DOE's authority under Section 300–42 and Rule 46.21.

All businesses and beauty practitioners are subject to consumer action under general statutes regarding deceptive and fraudulent practices and tort liability. Section 663–1 permits individuals to sue for any tort such as fraud and deceit, malpractice, negligence, or any other wrongful act which may result in injury or damages to that individual.

Section 480–13 allows a consumer to sue for damages caused by "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ," and Chapter 481A provides remedies for damages caused by deceptive trade practices.

Additionally, Chapter 487 accords broad powers to the Office of Consumer Protection to protect consumers. The Attorney General has general powers to investigate,

detect, and prosecute violations of state law under Section 28–2 and Section 28–2.5, HRS.

The beauty schools must also comply with accreditation association's standards and Federal Trade Commission regulations governing proprietary trade and vocational schools. Those schools receiving federal financial aid must comply with rules of the various agencies, e.g., Health, Education and Welfare or the Veterans' Administration.

Recommendation. *We recommend that Chapter 439, HRS, be allowed to expire as scheduled on December 31, 1980.*