

**SUNSET EVALUATION UPDATE**  
**PRACTICE OF BARBERING**  
**Chapter 438, Hawaii Revised Statutes**

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

**Submitted by the**  
**Legislative Auditor of the State of Hawaii**

**Report No. 86-2**  
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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. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report updates our sunset evaluation of the practice of barbering under Chapter 438, Hawaii Revised Statutes, which was conducted in 1980. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate barbering to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

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

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Sunset Evaluation Update  
PRACTICE OF BARBERING

This report evaluates the regulation of barbering under Chapter 438, Hawaii Revised Statutes, to determine whether the public interest is best served by reenactment, modification, or repeal of the statute. An evaluation of the regulation of barbering was first conducted by this office in 1980. Our findings and recommendations were reported in the *Sunset Evaluation Report, Practice of Barbering, Chapter 438, Hawaii Revised Statutes*. This update summarizes the information contained in the 1980 report, updates the information in that report, and presents the findings and recommendations from our current evaluation of the practice of barbering.

**Background on the Practice of Barbering**

Barbering is an ancient profession that has undergone many changes. At one time, barbers were also medical practitioners who pulled teeth, performed surgery, treated certain diseases, and dressed wounds. The red and white barber pole is said to be a symbol of the bandages formerly used by barbers. After the eighteenth century, barbers discontinued their surgical practice.<sup>1</sup>

In this century, the practice of barbering has continued to evolve. Today, in addition to haircuts for men, barbers style hair for both men and women. An increasing number of barbers work on both men and women in unisex salons. Barbers

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1. Linda Naley, *Cosmetology*, Minneapolis, Dillon Press, 1974, p. 95.



also color, wave, or straighten hair and give shaves, scalp treatments, and facial massages.

There has been a steady decline in the number of barbers nationally. In 1966, there were about 250,000 barbers. By 1982, the number had declined to 115,000 barbers.<sup>2</sup> In Hawaii, the number of barbers and the number of barbershops have also declined. There were 1,022 licensed barbers and 362 barbershops in 1979.<sup>3</sup> Today, there are 919 licensed barbers and 306 barbershops.<sup>4</sup>

**The regulation of barbers.** The practice of barbering was first regulated in Oregon in 1899. Concern about sanitary conditions in barbershops appears to have been the impetus behind regulation.<sup>5</sup> Today, all states except Alabama regulate the practice of barbering. However, states vary in their requirements for licensure.<sup>6</sup>

In 1907, the Hawaii Territorial Legislature enacted Act 70 empowering the Board of Health to adopt rules establishing standards of sanitation for barbershops and beauty salons. It was not until 1947 that Hawaii began to license the practice of barbering. Under Act 194, SLH 1947, the Legislature made it illegal for anyone to engage in the practice of barbering without a certificate of registration from the Board of Barbers or to operate a barbershop without first registering the barbershop.

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2. U.S., Bureau of Labor Statistics, *Occupational Outlook Handbook, 1984-85 Edition*, Washington, D.C., U.S. Government Printing Office, April 1984, p. 244.

3. Data from Hawaii, Department of Regulatory Agencies, Licensing Branch, September 30, 1979.

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

5. Benjamin Shimberg et al., *Occupational Licensing: Practices and Policies*, Washington, D.C., Public Affairs Press, 1973, p. 126.

6. National Association of Barber Styling Schools, Inc., *State Barber Laws*, Research Report No. 3A, Lincoln, Nebr., Revised April 1, 1984.

The law defines the practice of barbering as "any combination of the following practices for remuneration: shaving, cutting, trimming, singeing, shampooing, arranging, dressing, curling, or waving (other than permanent waving) the hair or beard or applying tonics or other preparation thereto; massaging, cleansing, or applying oils, creams, lotions, or other preparation to the face, scalp, or neck, either by hand or by mechanical appliances. . . ."<sup>7</sup>

The practice of barbering is regulated under Chapter 438 by a Board of Barbers consisting of five licensed barbers and two public members. The board has the authority to give examinations for licensure and to suspend or revoke licenses for those found guilty of fraud in passing the examination or grossly unprofessional or dishonest conduct, or addicted to liquor or drugs to such a degree as to render that person unfit to practice barbering.

The board issues two types of licenses: an apprentice license and a barber license. Although these are called "certificates of registration" in Chapter 438, licenses would be a more proper title as they confer a right to practice the occupation only to those who have the "certificate." These certificates of registration will be referred to as licenses in this report. In the field of occupational regulation, "registration" usually means a system of regulation where practitioners merely list their names and addresses with a government agency without necessarily having to meet age, education, training, or examination requirements. Nonregistrants may also be allowed to practice.<sup>8</sup>

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7. Section 438-1(1), HRS.

8. Benjamin Shimberg, *Occupational Licensing: A Public Perspective*, Princeton, N.J., Center for Occupational and Professional Assessment, Educational Testing Service, 1980, p. 18.



To qualify for an apprentice license, applicants must: (1) be at least 16 years of age, (2) be free from any infectious disease, and (3) pass a written examination on Chapter 438 and rules relating to the practice of barbering. At one time, applicants also had to be of good moral character, temperate habits, and have an eighth grade education or its equivalent. The Legislature eliminated these last three requirements in 1979.

Barbers qualify for licensure if they: (1) are at least 18 years of age, (2) are free of infectious or contagious disease, (3) have practiced as an apprentice barber for at least six months, and (4) pass a practical examination given by the board.

The board also approves licenses for barbershops. Barbershops must submit an application and license fee to the Department of Commerce and Consumer Affairs (DCCA) together with a clearance from the Department of Health (DOH) showing that the shop has met standards of sanitation. DCCA issues a license to the shop which is later ratified by the board.

The board is authorized to issue temporary permits to licensed apprentices and barbers from other jurisdictions with requirements comparable to those in Hawaii. Barbers who have had five years of experience in another state or country immediately prior to applying in Hawaii qualify for a temporary permit as a barber. Individuals with temporary permits may practice until the next scheduled barber examination.

Applicants who fail the examination may extend their apprentice license or temporary permits until the next scheduled barber examination. Should they fail three times, they are no longer allowed to practice barbering in the State.

Barbering is also regulated by the DOH under Sections 321-11 and 321-12, HRS, which authorize DOH to prescribe rules for public health and safety relating to

the occupations of barbers, cosmeticians, cosmetologists, hairdressers, and beauticians.

DOH rules for barbershops and beauty shops include general sanitation standards requiring shops to be kept in good repair, properly lighted and ventilated, and with adequate sanitary facilities. DOH rules also include sanitary practice requirements such as requiring operators to use sanitized instruments and sanitized towels, to cover headrests with clean towels or clean sheets of paper, and prohibiting certain practices such as removing moles and pimples. Operators with infectious diseases are prohibited from working and clients with infectious diseases are prohibited from receiving barbering services. The sanitation branch of DOH enforces these sanitation rules by conducting inspections of barbershops.

DOH is also responsible for enforcing the Hawaii Food, Drug, and Cosmetic Act which, among other requirements, prohibits cosmetic products from being adulterated or misbranded.

#### Findings and Recommendations in the 1980 Sunset Evaluation Report

When we evaluated the regulation of barbers in 1980, we found that Chapter 438 is no longer needed. There was no threat to public health, safety, or welfare that would justify continued regulation of barbers.<sup>9</sup>

The case for regulating barbering has traditionally been based on the need to prevent the spread of head lice, ringworm, and contagious or infectious diseases.

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9. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Practice of Barbering, Chapter 438, Hawaii Revised Statutes*, Report No. 80-4, Honolulu, February 1980, p. 11.

Since they work directly on a person, barbers contend that this direct contact makes it possible to transmit contagious diseases.

We found that regulation was not warranted for two main reasons: (1) there is minimal danger from contagious and infectious diseases in the practice of barbering, and (2) Chapter 438 regulates activities that have little to do with preventing the spread of disease.

**Minimal danger.** There were no outbreaks of diseases that could be attributed to the practice of barbering. At the time of our evaluation, there had been only 23 complaints over a period of seven years. None of the complaints involved the spread of disease. Most of them related to unlicensed practice.

The absence of a threat of disease was also true nationally. There had been no outbreaks of any serious disease anywhere in the United States that could be attributed to barbers in recent years.

**Protection not provided by Chapter 438.** We found that there was very little relationship between Chapter 438 and protecting the public from communicable diseases. Instead, the statute establishes a Board of Barbers whose primary purpose is to examine applicants for licensure based on their skills in haircutting and shaving. The only mention in the law of infectious disease is the requirement that applicants submit a doctor's certificate stating that they are free of infectious diseases at the time they apply for licensure. After the initial licensure, the board has no further requirements relating to communicable diseases.

Chapter 438 requires barbershops to be licensed but neither the board nor DCCA is responsible for assessing or enforcing sanitary conditions in shops. This is done by the DOH.

**Role of the Department of Health.** The threat of the spread of head lice, other infestations, and contagious diseases is met by health regulations adopted by



the DOH. Since 1907, the DOH has been responsible for ensuring sanitary conditions in barbershops and beauty shops. It has adopted rules on sanitation for these shops, and it inspects shops to ensure compliance.

**Restrictive impact of regulation.** We found that the main impact of regulation was to restrict entry into the occupation, and the major obstacle was the practical examination given by the board to applicants for the barber license. The average passing rate for the seven-year period from 1972 to 1979 was 57 percent or only slightly more than half the applicants. In 1976-77, the passing rate fell to a low of 37 percent of the applicants.

We reported that the practical examination was deficient in several respects. It was largely unrelated to questions of public health and safety. Instead, it was primarily a test of skills in standard haircutting, shaving, facials, and scalp manipulation. Sanitation was a minor aspect of the test. Scoring of the examination was based on the subjective judgment of examiners who were without any standard criteria for grading the performances. Moreover, the grading system was heavily weighted towards failing the applicants.

The members of the board acknowledged that the examinations controlled entry into the occupation. They justified this on the grounds that they needed examination and licensing to ensure competent haircutting skills. However, we concluded that a satisfactory haircut was a matter that could easily be judged by the consumers themselves and that the practice of barbering should best be left to competition and the workings of the marketplace.

Therefore, our 1980 report recommended that Chapter 438 be allowed to expire as scheduled on December 31, 1980.



### Subsequent Developments

In 1980, the Legislature held hearings to determine whether Chapter 438 should be extended or allowed to expire. The Board of Barbers testified in favor of continued regulation. The board said that it protected the public by serving as a deterrent against unscrupulous or untrained persons in the trade. The board testified that it examined all applicants to ensure that only the qualified are licensed, thereby maintaining high standards of performance in the industry.

Other barbers also testified in favor of continued regulation, citing dangers from unsanitary conditions, the possible spread of diseases, cuts from razors and scissors by unskilled barbers, and the misuse of caustic chemicals. They said that improper use of chemicals could cause loss and damage of hair, skin irritation, and even blindness.

The Legislature decided that the practice of barbering did entail certain safety hazards and that the public interest would be served by continuing to regulate the competency and proficiency of barbers. However, instead of extending Chapter 438 another six years, the Legislature decided to require another evaluation of the regulation of barbering in four years.<sup>10</sup>

### Current Findings and Recommendations

Our current evaluation of the regulation of barbering results in the following findings:

1. Regulation of the practice of barbering under Chapter 438 is not justified as the practice poses little danger to the public. In addition, the public is protected

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10. The evaluation of barbers was postponed from 1984 to 1986 by Act 87, SLH 1981, and Act 110, SLH 1982, which revised the sunset review schedule.

against infestations and communicable diseases by sanitation standards enforced by the Department of Health.

2. If the Legislature decides to reenact Chapter 438, changes should be made to correct the following deficiencies:

- . the scope of practice is restrictive in not allowing barbers to do permanent waving and hair coloring;
- . certain licensing standards are unnecessary, such as the requirements for a medical certificate and good moral character;
- . the written apprentice examination is unnecessary and the validity and reliability of the barbering examination are questionable;
- . disciplinary provisions need to be clarified; and
- . the current regulation of barbering (as well as cosmetology) does not take into account the significant changes which have taken place in both occupational fields.

### The Need for Regulation

Barbers supported continued regulation under Chapter 438 at legislative hearings in 1980. They testified that regulation is needed to protect the public from unsanitary conditions, diseases, infestations of head lice, and the misuse of caustic chemicals.

It is apparent from the testimony that there was substantial confusion about the actual functions and responsibilities of the Board of Barbers and the manner of its regulation.

Those who testified appeared to be unaware that barbering is regulated by two separate state agencies under several statutes: (1) the Board of Barbers and (2) the Department of Health.

Functions of the Board of Barbers. Chapter 438 authorizes the board to regulate the practice of barbering. This includes shaving, cutting, trimming, singeing, shampooing, arranging, dressing, or waving the hair and massaging, cleansing, and applying creams and lotions to the face, scalp, or neck of customers.

The primary functions of the board are to examine applicants in their competence in performing the above tasks and to suspend and revoke licenses for misconduct on the part of licensees. Board members say that they ensure a standard of performance for the industry.

The activities supervised by the board pose little danger to public health and safety. Shaving, cutting, trimming, shampooing, dressing, curling, waving, massaging, and cleansing are activities that are routinely performed by most people in their homes. No special training is required to do these safely.

At the same time, there is no question that barbering is a skill that is learned and acquired through experience and practice. There are those who do not know how to give a proper taper to a haircut or those who give an uneven haircut. This is the area of competence regulated by the Board of Barbers. However, there is little justification for the State to use its powers to prevent those without special training or skill from performing these tasks. They pose little danger to consumers. The quality of a haircut and consumer satisfaction with barbering services are aesthetic judgments that are best left to the consumer.

Functions of the Department of Health. In addition to Chapter 438, barbering is regulated by the DOH. Section 321-12, HRS, authorizes the DOH to prescribe whatever rules it deems necessary to protect public health and safety relative to barbers, hairdressers, cosmeticians, cosmetologists, and beauticians.

Section 321-11, HRS, authorizes the DOH to make regulations necessary for public health and safety in such matters as the laundering and sterilization of linens



and uniforms used in barbershops. The department is further authorized to require certificates, licenses, and permits as it deems necessary to regulate these businesses.

DOH has adopted rules to provide minimum standards of sanitation to protect public health and welfare and to minimize safety hazards. These rules require barbershops to comply with: (1) general sanitation requirements such as hot and cold running water, cleanliness, and proper ventilation; (2) sanitary practice requirements including prohibiting the use of alum; removal of moles, warts, or pimples; use of unsanitized instruments; and improper use and storage of linens and materials that come into contact with the customer's skin; (3) precautions against contagious and infectious diseases such as prohibiting individuals with infectious and contagious disease from working in barbershops or beauty shops; and (4) prohibitions on practice outside of registered shops.

Although the Board of Barbers has incorporated these DOH rules into its own rules, the board does not enforce these rules. The responsibility for enforcing these health and sanitation rules rests with the sanitation branch of DOH.

Under the Hawaii Food, Drug, and Cosmetic Act, DOH is also responsible for ensuring that cosmetics are not adulterated or misbranded. The manufacture, sale, delivery, holding, or offering for sale of any cosmetic that is adulterated or misbranded is prohibited. False advertising and misleading guarantees are also prohibited under the Act. The Director of Health is authorized to inspect, demand records, and seize products deemed to be adulterated or misbranded. Violators are subject to fines of \$10,000 for each separate offense.

Those testifying at the hearings on Chapter 438 in 1980 were under the misapprehension that if Chapter 438 were sunsetted, there would be no regulation of barbering thereby subjecting customers to unsanitary conditions, possible infestation

by head lice and other parasites, infectious diseases, and misuse of chemicals. As will be discussed below, these concerns are not valid.

**Unsanitary conditions.** Without Chapter 438, sanitary conditions in barbershops would remain unchanged as the same DOH rules that are now in effect would remain in effect. Barbershops must continue to meet these standards or be forced to close or pay a fine.

Currently, barbershops are licensed by the DCCA upon the submission of an application together with a sanitation clearance from the DOH. The DCCA license is later ratified by the board. The DOH clearance is the basic authorizing document for barbershops to operate. Should it wish to do so, DOH has the authority to license barbershops.

DOH routinely inspects barbershops to make sure that they remain in compliance. According to the sanitation branch of DOH, violations of sanitation standards are rare. In 1984, DOH found only one barbershop that was not properly sanitizing its implements. DOH also investigates complaints relating to sanitary conditions in barbershops. DOH reports that there have been few such complaints.

DOH's enforcement powers were greatly expanded in 1985. Act 84, SLH 1985, gave the DOH the power to issue notices and orders to those who violate statutes and rules relating to public health and safety. The department can order violators to pay a penalty of \$1,000 for each day of violation, correct the violation at the violator's own expense, or appear before the Director of Health to answer to charges.

**Infestation by head lice and other parasites.** No outbreak or cases of head lice have been traced to services in barbershops. According to the sanitation branch of DOH, there have been no complaints regarding head lice in barbershops. Shops do not serve customers with head lice as the shop would face possible ruin should word



get out. It is simply not a good business practice. Head lice is not a serious health problem, and the likelihood of contracting head lice in barbershops is remote. In addition, infestation by head lice is easily prevented by sanitizing brushes, combs, and other implements in accordance with DOH sanitation rules.

Barbers say that scabies is a potential health threat. This condition is usually transmitted through skin to skin contact or contact with garments and bedclothes contaminated by infected persons. Scabies is easily prevented through properly sanitizing implements and linens. Again, no cases of scabies have been traced to barbershops.

**Infectious diseases.** Barbers testified that customers would be exposed to ringworm (*tinea capitis*) and other infectious diseases such as Hepatitis B and Acquired Immune Deficiency Syndrome (AIDS). Ringworm is a fungal infection that is found primarily in the young. Most adults are immune to the infection. Although it is possible for the disease to be transmitted through combs, brushes, and other implements, there has been no evidence that this has occurred.

According to the Communicable Disease Division of DOH, the potential for transmitting Hepatitis B and AIDS through barbering is practically nil.

Recent guidelines issued by the U.S. Center for Disease Control state that there is no evidence that hairdressers, barbers, cosmetologists, masseurs, and pedicurists have transmitted a single case of AIDS in the course of their work.<sup>11</sup>

At one time, anthrax was a health threat. This bacterial infection is transmitted through contact with the tissues of an animal dying of the disease or the products of such animals (e.g., bristles on hair brushes from an animal that had died of the disease). The disease has largely been controlled through international

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



measures such as sterilization and disinfection of imported animal products and vaccination of animal populations.<sup>12</sup>

In any event, the activities of the Board of Barbers have no relationship to protecting the public from these diseases. This responsibility rests with the Communicable Disease Division of DOH.

The Communicable Disease Division of DOH is responsible for communicable disease surveillance, investigation, and prevention as well as intervention in order to minimize any outbreaks or epidemics that might occur. Physicians and laboratories are required to report certain communicable diseases to the DOH. These responsibilities of the DOH for identifying and controlling diseases would remain unchanged should Chapter 438 be sunsetted.

**Misuse of cosmetic products.** Some barbers use cosmetic products that contain chemicals that can be potentially harmful if used improperly. These include chemicals that are found in hair coloring products, bleaches, and hair straightening and curling products. These chemicals can cause allergic reactions, skin irritations, burns, and sight impairment or blindness. Careless use of thioglycolic acid, which is used in hair processing, can result in the release of a poisonous gas.<sup>13</sup>

The activities of the Board of Barbers are not related to protecting the public from the dangers of the misuse of chemicals. The board does not regulate these products, it has no training requirements for the use of the products, and the board does not test applicants in their knowledge of these chemicals or examine their competence in their use.

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12. Abram S. Benenson, ed., *Control of Communicable Diseases in Man*, 14th ed., Washington, D.C., American Public Health Association, 1985, pp. 341-343.

13. Pennsylvania Legislative Budget and Finance Committee, *A Sunset Performance Audit of the Pennsylvania State Board of Barber Examiners*, Harrisburg, July 1983, p. 14.

The safety of cosmetic products is regulated by the U.S. Food and Drug Administration (FDA) under the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Federal law prohibits the adulteration or misbranding of cosmetic products. Cosmetic manufacturers are not allowed to make false and misleading representations about cosmetic products. Each cosmetic product is required to be properly labeled with a listing of the name of each ingredient in descending order of predominance.<sup>14</sup>

Each ingredient used in a cosmetic product must be adequately tested for safety prior to marketing. Any product whose safety has not been adequately substantiated must carry a warning statement saying the safety of the product has not been determined.<sup>15</sup> Cosmetic products that may be associated with a health hazard must also carry a warning label.

According to the FDA, "Generally speaking, permanent wave products present no hazard to the consumer when used according to directions on normal healthy hair and scalp, although some consumers may occasionally experience minor itching and scalp reddening, or in some cases, an allergic reaction."<sup>16</sup>

Coal tar hair dyes are exempt from the adulteration and color additive provisions of the federal Food, Drug, and Cosmetic Act if the label bears a warning label stating: "Caution—this product contains certain ingredients which may cause skin irritation on certain individuals and a preliminary test according to

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14. 21 CFR, Part 701—Cosmetic Labeling, April 1, 1985 edition.

15. 21 CFR, Part 740—Cosmetic Product Warning Statements, April 1, 1985 edition.

16. "Questions of Substance(s) Concern Cosmetic Users," *FDA Consumer*, April 1984.

accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness."<sup>17</sup>

Hawaii's Food, Drug, and Cosmetic Act complements the federal statutes and prohibits the use of adulterated or misbranded cosmetics. DOH has the power to impose fines of \$10,000 for each offense as a penalty for violations of the act.

There are certain products that manufacturers label "for professional use only" or "for use only by professional cosmetologists." These are products used for curling, relaxing, bleaching, or coloring hair. These products contain the same chemicals as those available on the open market. However, some are in concentrated form or must be mixed prior to use.

According to an interview with an FDA official, the federal government has no legal definition or restrictions pertaining to the use of the term "professional" in this context. There is also no standard nationwide manufacturers' definition of the term "professional." The sale of these products is not carefully restricted. Licensed barbers, cosmetology students, and beauty operators in Hawaii are all allowed to purchase these products despite the variation among them in their training and experience in the use of chemicals.

We find that barbers who do body processing work on hair, such as curling or straightening hair, are allowed to purchase these products from wholesale cosmetic product distributors even when the product is labeled "for use only by professional cosmetologists." It may be that manufacturers use the label "for professional use only" in an effort to limit their liability should the product be misused or not perform as expected.

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17. *Ibid.*



There have been no reports of injuries by barbers who do body processing or hair coloring. Those who wish to provide these services can take classes or workshops given by manufacturers' representatives to learn how to get the best results from these products.

Barbershops police themselves in the interests of protecting their own liability. State intervention is not needed. Barbershops depend on repeat business to survive financially. It is in their self-interest to use appropriate care when applying chemicals. While there is a possibility that these chemicals could be misused, there is no reason to expect these products to be more hazardous when used by professionals than in the hands of the general public. In any event, this is not an area that is currently regulated by the board.

**Use of sharp and dangerous instruments.** Scissors and straight razors are sharp instruments. One barber testified that they could be a deadly weapon in the hands of an unskilled worker. However, the danger that barbers will injure customers with scissors and razors is remote. There have been no complaints in Hawaii of injury from scissors or razors used in haircuts or shaves. Moreover, barbers report that customers rarely ask for shaves today.

The Pennsylvania Legislative Budget and Finance Committee reviewed sunset reports on the regulation of barbering from 20 other states. Only one report pointed out the need for competency to perform shaves. There were no reports of serious harm to customers from the use of these implements. At worst, the customers may suffer a nick or a slight cut.<sup>18</sup>

**Trivial complaints.** Complaint records at the Regulated Industries Complaints Office (RICO) of DCCA substantiate our finding that Chapter 438 is not necessary.

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18. Pennsylvania Legislative Budget and Finance Committee, *A Sunset Performance Audit*, p. 15.

Between 1981 and 1985 there were a total of 20 complaints. Seventeen of these dealt with allegations of unlicensed practice. Twelve of these complaints were brought either by DCCA staff or by the Board of Cosmetology. Only three complaints were from consumers. Two complaints were for poor workmanship: one customer complained about getting a "skinhead" haircut and the other about a poor permanent. The third complaint was about an overcharge of 50 cents.

As long as Chapter 438 is in effect, these complaints must be investigated by RICO. Investigations are costly. They involve work by RICO intake staff who receive and log in the complaint; investigation of the complaint by a RICO investigator; a write-up of the results of the investigation; and on occasion, the involvement of the board's executive secretary and a letter from the secretary to the respondent. There is little justification for expending state resources and funds on complaints such as a 50-cent overcharge or a poor haircut and others that have no bearing on public health, safety, and welfare.

**Changing times.** It may be that at one time barbering was more dangerous than it is today and there was greater potential for transmitting diseases and infections in barbershops. For example, barbers formerly removed warts and moles. Today, facial moles are removed by a surgeon. Some occupations that used to be regulated at the turn of the century no longer pose a danger and need not be regulated today. The evidence is that barbering is one of those occupations.

The standards of sanitation and the sanitizing products that are available today are vastly different from those in the 1940s. New laws have been enacted to protect the public such as the state and federal Food, Drug, and Cosmetic Acts. Cosmetic products are safer. Practices have changed. Customers are more knowledgeable about their rights and the recourses that are available to them under tort laws. The Small Claims Court offers another avenue for unhappy consumers.

For all of the foregoing reasons, we believe that regulation by the Board of Barbers under Chapter 438 is unnecessary. If Chapter 438 is allowed to expire, all the necessary sanitation, disease control, and other health and safety measures are and will continue to be adequately regulated by the Department of Health.

#### **Operations of the Board of Barbers**

We examined the operations of the Board of Barbers to evaluate the effectiveness and efficiency of its practices and policies. Should the Legislature decide to reenact Chapter 438, changes should be made to correct deficiencies in the following:

- . the scope of practice;
- . licensing requirements;
- . examinations;
- . disciplinary provisions; and
- . board composition.

**Scope of practice.** The scope of practice defined in Chapter 438 should be expanded to reflect current practices. Today, barbers routinely perform "body processing." Body processing consists of waving and straightening hair. The practice is identical to that used for permanent waving and the same chemicals are used. However, Chapter 438 specifically prohibits barbers from providing permanent waves. Permanent waving is restricted to cosmetologists and hairdressers under Chapter 439, HRS, which regulates the practice of beauty culture. The term "body processing" is used simply to get around the prohibition in the law.



Today, barbers also color hair. Chapter 438 is silent on whether barbers may color hair although it permits barbers to apply oils, creams, lotions, or other preparations to the face, scalp, or neck of the customer.

Since barbers are doing body processing and hair coloring without any complaints from consumers and without any evidence of harm, the law should be amended to delete the prohibition against permanent waving and to add hair coloring to the scope of practice. The prohibition is not enforceable and serves no consumer protection purpose.

**Unnecessary licensing requirements.** There are several licensing requirements that are unnecessary and should be eliminated or clarified. These include the requirements for: (1) a medical certificate, (2) good moral character, and (3) information on criminal history.

**Medical clearance.** Applicants for an apprentice license must submit a statement not more than 12 months old signed by a licensed physician that they are free from infectious or contagious diseases. Applicants for a barber license must also submit a medical statement if the one they had submitted with the apprentice application is more than 12 months old.

The board recently received an inquiry from a physician's office on what infectious diseases it wanted applicants to be clear of. Depending on the disease, the board was informed that different kinds of tests would be required. Board members agreed that the requirement is no longer useful. This one-time certification imposes an unnecessary cost to applicants and should be removed.

**Good moral character.** Act 8, SLH 1979, specifically amended Section 438-8, **Requisites for admission to examinations and registration**, to delete the requirement that applicants for an apprentice or a barber license be of good moral character and temperate habits. The board testified that these terms were undefinable, and the

Legislature found that the requirements were not reasonably related to the practice of barbering.

However, through an apparent oversight, Section 438-7, **Applications**, continues to require applicants to submit satisfactory proof of good moral character.

The licensing branch of DCCA does not require applicants to submit proof of good moral character. However, in 1984, the executive secretary of the board informed an applicant that the board would not process the applicant's application for examination and license because the applicant had recently been indicted for a criminal offense. The secretary cited the requirement that applicants be of good moral character as grounds for the refusal to process the application.

The applicant had also submitted a request for a temporary permit in order to practice until he could take the barber examination. He had previously been licensed as a barber but had not renewed his license since 1978. The application for a temporary permit was also denied.

Although the board's rules require the applicant to be notified of his right to a hearing, this was not done. The applicant's rights were apparently violated. The applicant brought suit in Circuit Court seeking a temporary restraining order preventing the board from interfering with and restricting his right to practice barbering and from denying him a temporary certificate to practice barbering.

The court issued a temporary restraining order and the board agreed to process the application for examination and a temporary license.

The case was resolved when the applicant and the board reached an agreement that the applicant would be issued a license. At the same time, the applicant agreed to certain conditions, including the board's right to revoke the license at any time should he be arrested for any felony involving state or federal laws or should he engage in any activity that might demonstrate a lack of good moral character.



Although an agreement was reached in the above case, Section 438-7 should be amended to remove the requirement for good moral character. The requirement has been removed from many occupational licensing statutes because of problems in interpreting and enforcing the provision. As noted in one study on occupational licensure, the terms "good moral character" and "moral turpitude" have been criticized because of their inherent vagueness. The requirements allow boards to make arbitrary decisions to exclude persons. There are no adequate definitions or precise guidelines available to enforce these requirements properly.<sup>19</sup>

*Criminal history.* There is no statutory authority for DCCA to ask applicants for an apprentice or barber license the following question on the application form: "During the past 20 years have you ever been convicted of a crime in which a jail sentence was imposed and where there has not been any order annulling or expunging the sentence?" In addition, the board has no guidelines to assist it in deciding how the information is to be used should any applicant answer "yes."

Section 831-3.1, HRS, expressly forbids the State from using criminal records in connection with any application for a license unless the offense relates directly to the applicant's possible performance in the occupation, trade, or business for which the license is to be employed. The intent of this is to remove obstacles to an ex-offender's right to work and to protect the ex-offender's employment rights.

If the board and the department believe that information on criminal history is essential, they should seek to amend Chapter 438 to give them this authority and adopt rules to clarify what types of criminal offenses would be grounds for denying a license. Unless and until this is done, inquiry into an applicant's possible criminal history should cease.

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19. Benjamin Shimberg, *Occupational Licensing: A Public Perspective*, p. 51.

**Restrictive requirements.** There are two restrictive requirements that should be removed: (1) the requirement for an apprentice license, and (2) requiring barbers to work only in licensed barbershops.

*Apprentice license unnecessary.* There is no evidence that apprentices need to be licensed to protect the public. To be licensed as an apprentice in Hawaii, applicants must be at least 16 years of age, present a doctor's certificate saying that they are free of infectious diseases, and pass a written examination on Chapter 438, the board's rules, and sanitary practices. These requirements are not necessary to protect public health, safety, and welfare.

The one-time physician's certificate is irrelevant in terms of protecting the public from infectious or contagious diseases. The examination is discriminatory and unnecessary as licensees from other states are allowed to practice under a temporary permit and to apply for a barber license without taking the written examination.

Instead of requiring apprentices to be licensed, Chapter 438 could be amended to exempt students and apprentices who work under the supervision of a licensed barber.

*Barbers restricted to barbershops.* Section 438-2(b) states that it shall be unlawful for a person to operate a barbershop in the State without first registering the barbershop. To this, the board has added two rules stating the following:

- . Section 16-73-4, "The practice of barbering shall be carried on *only in a barber shop and barbering school*, provided, that registered barbers may engage in such practice in a hospital, private home or hotel room when requested to do so, [Emphasis added.]" and



- . Section 16-73-37(1), "No person shall operate a barber shop in connection with any other business or dwelling unless there is *substantial dust or odor-proof partition from the floor to the ceiling separating the shop from such other business* or dwelling. [Emphasis added.]"

These rules prohibit barbers from working in beauty shops and require barbers and cosmetologists to be separated by a partition if they work in the same establishment since barbering and cosmetology are considered to be separate businesses. A shopowner who employs both barbers and cosmetologists must also get two licenses: a barbershop license and a beauty shop license.

In 1984, the DCCA requested an opinion from the Department of the Attorney General on the constitutionality of the rule. RICO had been concerned with the validity of the rule and had been reluctant to pursue complaints of cases where individuals operate both a barbershop and a beauty shop in the same establishment.

The deputy attorney general responded that the rule is of questionable validity because the Hawaii Regulatory Licensing Reform Act requires a strong public welfare/consumer protection purpose behind licensing statutes and regulations. The deputy attorney general stated,

"Given this mandate, we have serious reservations regarding the validity of section 16-73-37(1). We do not believe that the rule can be justified merely upon a finding that barbering is a different business than cosmetology, since the services provided are somewhat similar. The concern becomes particularly acute in light of the fact that neither the Department of Health nor the Board of Cosmetology prohibits the operation of a barber shop and beauty shop within the same establishment.

"If section 16-73-37(1) is to survive judicial review, a stronger consumer protection interest must be advanced. No such purpose has been articulated. Accordingly, we believe that the rule is of questionable validity under Chapter 26H."<sup>20</sup>

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20. Letter from Randall Y. Iwase, Deputy Attorney General, to Honorable Russel S. Nagata, Director of Commerce and Consumer Affairs, April 18, 1984.

RICO subsequently informed the Board of Cosmetology and the Board of Barbers that,

"Subsequent to careful review and interpretation of the existing statutes and rules of both boards, no legally precise difference between the basic service provided by the two professions could be discerned,

"In short, until either or both boards can show a 'stronger consumer related reason' why both professions cannot operate within the same 'shop' provided that *they are appropriately licensed and also meet applicable Department of Health rules*, it does not appear judicious to continue citing the aforementioned rule violations."<sup>21</sup>

In effect, this means that RICO will no longer require a shop that employs both barbers and cosmetologists to construct a partition to separate barbers and cosmetologists. Barbers and cosmetologists will be allowed to work in the same establishment if the shop has both a barbershop license and a beauty shop license.

While RICO's position is a step in the right direction, more needs to be done. Unless the board's rules are changed, barbers are still restricted to working in barbershops. To satisfy this rule, a shop that employs both barbers and beauty operators still must get two separate licenses: a barbershop license and a beauty shop license. This creates an unnecessary workload for DCCA as well as an unnecessary expense for the shopowner who must get two separate licenses for the same establishment.

There is little rationale for this as DOH does not distinguish between barbershops and beauty shops. It uses the same standards for both and issues the same clearance for both. Upon the issuance of a sanitation clearance from DOH, a shop should be allowed to operate as a barbershop and as a beauty shop employing either barbers or beauty operators or both.

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21. Memorandum to the Board of Cosmetology and the Board of Barbers, via Michael Machado, Executive Secretary, from Alfred G. Costa, Complaints and Enforcement Officer, Regulated Industries Complaints Office, Subject: Attorney General's Opinion, May 23, 1984.



Although Chapter 438 requires barbershops to be licensed, it does not require the board to do this. Some consideration should be given to allowing DOH to issue permits or licenses for shops to operate once they receive a DOH sanitation clearance. Under Section 321-11, HRS, DOH has the authority to require permits or licenses to regulate barbershops and beauty shops. This would reduce the workload for DCCA.

**Examinations.** Two types of examinations are given to applicants: (1) the written examination for applicants to become licensed as apprentices, and (2) the practical examination for applicants to become licensed as barbers. There are problems with both types of examinations.

*The written examination.* The written apprentice examination consists of 40 multiple choice questions. These questions are drawn from a pool of 120 questions dealing with Chapter 438, rules relating to barbering, and general sanitation.

The test contains primarily questions that have no relationship to public health and safety, such as questions on the role and purpose of the board, and the requirements for licensure and practice. For example, there are questions on how many apprentices may work in a shop or how old an apprentice must be. Other questions are on the definition of terms such as "sanitation" or "hygiene." Many questions are ambiguous and of questionable accuracy.

The written apprentice examination is also discriminatory to Hawaii residents. Barbers who are licensed or who have practiced in other places are given a temporary certificate and allowed to practice without having to take the written test. They need only take and pass the barber practical examination to become licensed.

The examination serves no valid purpose and should be eliminated. It does not assess knowledge that is essential for ensuring public health and safety.

*The barber practical examination.* Table 1 shows the items that are tested in the practical examination, the number of points assigned to each item tested, and the scoring method.

There are two parts to the practical examination. Part I, the standard haircutting section, tests applicants on haircutting, scalp manipulation, shaving, facials, and sanitation. Part II was added to the practical examination in 1980 and tests applicants on hairstyling. Haircutting involves the use of shears on dry hair while hairstyling is done with scissors on dampened hair.

The haircutting and hairstyling parts of the examination are each broken down into a number of separate items that have a given number of points in the examination. For example, the haircut category consists of a total of 60 points of which 2 points are for the preparation of the patron, 18 points for shear and comb technique, 20 points for edging and tapering, and 20 points for the final appearance.

Examiners grade performances as E (excellent), G (good), F (fair), and U (unsatisfactory). Each letter grade is assigned a percentage value: E = 100 percent, G = 90 percent, F = 75 percent, and U = 40 percent. Thus, if an applicant is graded G on preparation of patron, the applicant receives a score of 1.8 ( $2 \times 0.9$ ) for that test item. The scores are totaled for all the items tested to give each applicant a total score for Part I and another total score for Part II. Applicants must have a score of at least 75 points on each part of the examination to qualify for a barber license. They may retake the part failed without having to retake both parts of the barber practical examination.



**Table 1**  
**Grading System for Practical Examinations**

Test Item	No. of Points Available Per Item	Scoring System*			
		E	G	F	U
<b>Part I—Haircutting</b>					
Haircut					
Preparation of patron	2	2.00	1.80	1.50	0.80
Shear and comb technique	18	18.00	16.20	13.50	7.20
Edging, tapering	20	20.00	18.00	15.00	8.00
Final appearance	<u>20</u>	20.00	18.00	15.00	8.00
TOTAL	60				
Scalp Manipulation					
Preparation of patron	2	2.00	1.80	1.50	0.80
Movements	<u>3</u>	3.00	2.70	2.25	1.20
TOTAL	5				
Shave					
Preparation of patron	2	2.00	1.80	1.50	0.80
Hone, strop	2	2.00	1.80	1.50	0.80
Technique	6	6.00	5.40	4.50	2.40
Smoothness	<u>10</u>	10.00	9.00	7.50	4.00
TOTAL	20				
Facial					
Preparation of patron	2	2.00	1.80	1.50	0.80
Application of creams	2	2.00	1.80	1.50	0.80
Movements	<u>6</u>	6.00	5.40	4.50	2.40
TOTAL	10				
Sanitation	<u>5</u>	5.00	4.50	3.75	2.00
GRAND TOTAL—Part I	100				
<b>Part II—Hairstyling</b>					
Sanitation and preparation	10	10.00	9.00	7.50	4.00
Use of implements	25	25.00	22.50	18.75	10.00
Hairstyling technique	25	25.00	22.50	18.75	10.00
Final appearance	<u>40</u>	40.00	36.00	30.00	16.00
GRAND TOTAL—Part II	100				

\*E (or excellent) = 100 percent of total number of points possible per item

G (or good) = 90 percent

F (or fair) = 75 percent

U (or unsatisfactory) = 40 percent



Each candidate is graded by five examiners who are licensed barbers. The examiners say that they watch practices such as whether applicants wash their hands before working on the patron or whether applicants put a clean strip of tissue or towel around the neck of the patron so that the apron will not come into direct contact with the customer's skin or the way that applicants handle and use the implements.

*Need for testing expertise.* Occupational licensing tests have come under increasing scrutiny in recent years. Formerly, licensing boards had a relatively free hand in deciding what and how to test applicants for licensure. Today, licensing tests are increasingly being managed by testing professionals because of greater technological knowledge about testing, development of professional standards and legal requirements for tests, and the desire to limit the states' liability for deficient tests.

The trend among regulatory agencies in the United States is to develop either in-house testing expertise, use national tests developed and administered by national professional associations, or contract with professional testing companies such as the Educational Testing Service to develop and administer occupational licensing tests. The objective of these changes is to ensure that licensing tests are legally defensible in the courts.

Although the board makes every effort to be fair and to have a good examination, they are not experts in testing. The reliability and validity of the barber practical examination are questionable, there is no rationale for the cutoff score of 75, and the grading system is unnecessarily complicated and weighted towards failing the applicant.

*Validity and reliability.* The purpose of any licensing test is to determine whether an applicant can perform at a minimal level of competency. Decisions

must be made on what to test and to determine how the test relates to critical job skills.

New standards issued and adopted in 1985 by the American Educational Research Association, the American Psychological Association, and the National Council on Measurements in Education state the following for licensing examinations:

"The content domain to be covered by a licensure or certification test should be defined clearly and explained in terms of the importance of the content for competent performance in an occupation. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for competent performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted."<sup>22</sup>

The barber practical examination is not based on a job analysis or a determination of minimal levels of performance in these tasks. For example, barbers say that they seldom do shaves any more, but shaves make up 20 percent of the score in Part I of the examination. Barbers say that they *do* provide body processing and hair coloring services. However, they are not asked to demonstrate any proficiency in the use of chemicals needed for these services.

There is also little evidence that the practical examination is reliable. Reliability refers to the extent to which applicants would score consistently if they were retested. Reliability also refers to the extent to which examiners agree in their grading of applicants.

There appears to be substantial disagreement among the examiners on what constitutes an acceptable level of competency. In the July 1985 barber practical

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22. American Educational Research Association, American Psychological Association, National Council on Measurement in Education, *Standards for Educational and Psychological Testing*, Washington, D.C., American Psychological Association, 1985, p. 64.



examination, there was no agreement on which candidates should fail Part I of the haircutting portion of the examination. The examiners were able to agree on the haircutting competence of only 3 of the 18 applicants.

The examiners are licensed barbers who are current or former members of the board. They have been given no orientation on the proper conduct of the examination or its grading. The examiners have no written guidelines or agreed upon criteria on how to grade performances. For example, some examiners say that it really does not matter how applicants hold the shears while another examiner says that the way applicants manipulate the implements is important. DCCA is in the process of developing suggested grading guidelines but these remain vague and largely subjective.

*Questionable test content.* The two principal tests that applicants must pass are haircutting and hairstyling. Applicants must demonstrate their proficiency in performing these tasks. Most applicants are able to pass the hairstyling test. The standard haircut is more difficult. Applicants must demonstrate sufficient skill in using shears to give an even taper to a haircut.

The examiners consider the evenness of the taper to be critical in deciding whether an applicant should become licensed. However, this is not a skill that has any bearing on public health and safety.

If the Legislature deems it necessary to continue to license barbers, some determination should be made of the health and safety reasons for such regulation. DCCA should then be assigned the responsibility for developing a test to measure minimal levels of competency to perform those tasks that are specifically related to health and safety.

*Invalid cutoff score.* The board has adopted a rule setting the passing score at 75 for each part of the practical examination. This score has no demonstrated



validity in terms of establishing a minimum standard of competency to practice the occupation. It is a completely arbitrary cutoff point. Suggested guidelines for licensing tests point out that, "In setting the standard for the test, it is critical for the fairness and legal defensibility of the licensing process that there be a documented rationale for whatever standard is set. The use of the traditional academic standard of 70 percent correct to pass the test, if it has no other rationale to support it, is not professionally defensible and is vulnerable to legal challenge."<sup>23</sup>

*Poor grading system.* The grading system used to arrive at an applicant's score is weighted towards failure and is unnecessarily complex.

The grade of E or 100 percent is almost never awarded. The grade of U has a percentage value of only 40 percent. This means that if a candidate receives only a single "unsatisfactory" on a two point item such as honing and stropping and grades of "fair" or passing on every other item, the single U will pull the candidate's score below the statutorily set passing score of 75.

The grading system is also unnecessarily complex. The examiners assign letter grades to each of the 18 items on the test for each applicant. The examination branch then takes the letter grades and converts them into point values for each item before totaling them up. (See Table 1.) This system invariably results in errors. In the July 1985 examination, five errors were made in calculating the scores.

The current barber practical examination is no longer as restrictive as it was, but not significantly so. Between 1981-82 and 1984-85, 251 applicants took the

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23. Richard L. Burns, "Guidelines for Developing and Using Licensure Tests," in Jim C. Fortune and Associates (ed.), *Understanding Testing in Occupational Licensure*, San Francisco, Jossey-Bass Publishers, 1985, p. 36.

barber examination. Of these, 170 or 68 percent passed. In 1980, we found the average passing rate for a seven-year period to be 57 percent. Despite the improvement in passing rate during the past four years, 81 individuals were denied the right to pursue an occupation of their choice based on a test of questionable validity and reliability and on such grounds as an uneven haircut and other skills that are unrelated to public health and safety.

*Need for policies for the administration of examinations.* DCCA must develop policies on the administration of examinations to protect the examiners and the rights of applicants. There appears to be no standardized procedures for administering the barber practical examination.

As noted earlier, examiners are given no orientation prior to actually functioning as graders at licensing examinations. They are not instructed on such matters as the need to grade independently or to refrain from talking to applicants. During the October 1985 examination, the examiners commented among themselves about the performance of various applicants, some instructors gave advice or reassurance to some applicants, or informed other applicants of what they should or should not do. These activities introduce bias or unfair advantages into the testing situation.

The department did have staff present to proctor the examination. However, the staff also had no clear instructions on how the practical examination should be conducted. No effort was made to protect the anonymity of applicants. Examiners were allowed to see the application forms and the names of the applicants.

To protect the rights of applicants and to ensure their fair treatment, the department must develop standardized procedures for administering the examination.

*Proposed theory examination.* Finally, the board's rules require applicants to pass an examination on the theory of barbering. The examination branch of DCCA



is currently conducting a survey of barbering practices to develop a theory examination. Such an examination has never been given before, and there is no evidence that it is needed. The rule should be revised to delete this requirement.

**Discipline.** Section 438-5 states that the board may suspend or revoke a license for grossly unprofessional or dishonest conduct; addiction to liquor or drugs to such a degree as to render that person unfit to practice the occupation; false and deceptive statements; or fraud in passing the examination.

So far, the board has never had occasion to revoke or suspend a license. However, should regulation be continued, the board should develop some guidelines as to what it would consider grossly unprofessional or dishonest conduct and consider various degrees of sanctions that would correspond to the varying severity of offenses.

#### **An Alternative**

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

However, should the Legislature decide that barbers and beauty operators should continue to be regulated, one alternative would be to combine the regulation of barbering and cosmetology under the Director of DCCA or under a single board. Chapters 438 and 439 would be repealed and replaced by a new regulatory program administered by the department or a single board.



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

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

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

Both barbers and cosmetologists may massage and cleanse the skin. The scope of practice for barbers is limited to the face, scalp, and neck while the scope of practice for cosmetologists includes the arms, bust, and upper body. Both barbers and cosmetologists may use cosmetics, antiseptics, tonics, lotions, or creams to stimulate, manipulate, exercise, beautify, or do similar work upon the skin.

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

The department must staff two separate boards consisting of 14 persons, develop and process separate license application forms even if a person is qualified for both licenses, and develop and administer two separate examination programs. These restrictions on entry and unnecessary administrative expenses could be minimized if the two licensing programs were combined. If the Legislature seriously believes that the practice of haircutting/hairstyling or skin care warrant regulation, then it should consider a single regulatory program administered either by the Director of DCCA or by a single board.

We believe that it is not necessary to have a board for effective regulation of barbering. Board members have few functions to perform, particularly if responsibility for examinations is assigned to DCCA. The program could be administered directly by the Director of DCCA who can appoint an advisory committee of barbers for help when needed.

If a board is deemed necessary, the new board should be comprised of cosmetologists, barbers, and public members. If the board feels that additional expertise is necessary, it also can establish committees of professionals to advise on various aspects of the regulatory program.

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

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

Changes should also be made in the examination program. The new statute should limit examinations to tests that cover only topics relating to public health and safety.

Professional organizations that are concerned about the artistic techniques employed by beauty operators and barbers would be free to establish private certification and award programs that test these skills. The State should not participate in this area of testing as it does not relate to public health and safety.

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

### *Recommendations*

*We recommend that:*

1. *Chapter 438, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1986.*

2. *If the Legislature decides to reenact Chapter 438, we recommend that the following amendments be made to the law:*

- . expand the scope of practice to include permanent waving and hair coloring;*



- . delete the requirements for good moral character and proof of being free from infectious or contagious diseases;
- . eliminate the apprentice license and provide for exemptions for students and those who work under the supervision of a licensed barber;
- . allow a barbershop to be licensed as a barbershop and beauty shop; and
- . eliminate the requirements for written, practical, and oral tests and delegate examination responsibilities to the Department of Commerce and Consumer Affairs.

3. If Chapter 438 is reenacted, we recommend that the Board of Barbers make the following improvements:

- . delete the rule requiring barbers to work only in barbershops;
- . delete the rule setting the passing score at 75 and the rule requiring a theory examination;
- . amend its rules to delegate all responsibility for examinations to the Department of Commerce and Consumer Affairs; and
- . adopt guidelines on the kinds of actions that would be considered subject to disciplinary action and develop appropriate sanctions for the various offenses.

4. If Chapter 438 is continued, we recommend that the Department of Commerce and Consumer Affairs do the following:

- . remove the question on criminal history from the application forms;
- . issue a single license to both barbershops and beauty shops or leave it to the Department of Health to issue a permit to operate for both kinds of shops;

- . develop a barber examination based on a job analysis and which focuses on issues of health and safety; and
- . develop standardized procedures for test administration.

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

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**APPENDIX**

**RESPONSES OF AFFECTED AGENCIES**

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## COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on December 11, 1985 to the Board of Barbers and to the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The responses from the board and the department are included as Attachments 2 and 3.

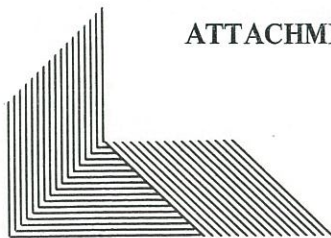
The board did not agree that Chapter 438, HRS, should be allowed to expire as scheduled on December 31, 1986. The board stated that the statute should be reenacted with amendments. It agreed that regulatory operations of the board could be improved with statutory and rule changes such as deleting requirements for good moral character and a medical clearance and having one license for both beauty shops and barbershops. The board also agreed to eliminate the apprenticeship examination but feels it necessary to continue its involvement in the examination program instead of delegating this responsibility to the department.

The Department of Commerce and Consumer Affairs is in general agreement with our evaluation of the board. On a specific point, the department does not agree with our recommendation to remove the question on criminal history from the application forms. It stated that it had received a legal opinion that it is legal and permissible to ask such a question. However, the problem is that the board has no rules on how information on criminal history is to be used and what kinds of criminal offenses would be grounds for refusing a license. Until this is done, inquiry into an applicant's criminal history serves no purpose and should not be made.

The department does not agree with the overall negative evaluation of the examination program but agrees that improvements should be made in the examination and in test administration. The department also agrees that depending on the outcome of the repeal or reenactment of Chapter 438 or the enactment of a single regulatory program for both barbers and cosmetologists, serious consideration should be given to the issuance of a single license to both barbershops and beauty shops or leaving it to the Department of Health to issue a permit for both kinds of shops.

ATTACHMENT 1

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



CLINTON T. TANIMURA  
AUDITOR

December 11, 1985

*COPY*

Mr. Donald F. Kaye, Chairperson  
Board of Barbers  
Department of Commerce and Consumer Affairs  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Mr. Kaye:

Enclosed are eight preliminary copies, numbered 4 through 11, of our *Sunset Evaluation Update, Practice of Barbering, Chapter 438, 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 Russel Nagata, Director, Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of barbering. If you have any comments on our recommendations, we would appreciate receiving them by January 10, 1986. 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

GEORGE R. ARIYOSHI  
GOVERNOR



RUSSEL S. NAGATA  
DIRECTOR

NOE NOE TOM  
LICENSING ADMINISTRATOR

BOARD OF BARBERS

STATE OF HAWAII  
PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

January 9, 1986

RECEIVED  
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OFC. OF THE AUDITOR  
STATE OF HAWAII

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

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Update Practice of Barbering." We found the report comprehensive and agree that regulatory operations of the Board of Barbers could be improved by implementing statutory and/or rule changes in several key areas. At this time, we are prepared to offer comments on three of the recommendations which you have proposed.

First, we are not in accord with your recommendation that Chapter 438, HRS, should be allowed to expire as scheduled on December 31, 1986.

Second, we are in accord with your recommendation that Chapter 438, HRS, be reenacted with amendments to the law. The board is in agreement with deleting the "moral character" and "medical clearance" requirements, and having only one barber and beauty shop license. However the board feels it is necessary to continue their involvement in the examination program. The examination program could be revised to give a journeyman written and practical examination to those applying for a license. Further, the board is in agreement to eliminate the apprentice examination but continue the apprentice permit requirement.

Third, we are in general agreement with your recommendation of improving the board's rules. The board will review and make any necessary amendments to the rules in the near future.

With regards to your recommendation of adopting a disciplinary action guideline, the department has, as part of

Mr. Clinton T. Tanimura

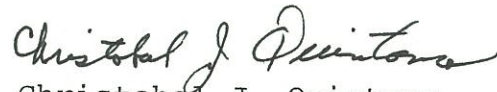
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January 9, 1986

its administrative packet, submitted a bill to provide for the kinds of action that would be subject to disciplinary action.

Thank you for permitting us the opportunity to express our views. We trust that our comments will be given consideration along with your report.

Very truly yours,



Christobal J. Quintana  
Vice Chairman  
Board of Barbers

ATTACHMENT 3

GEORGE R. ARIYOSHI  
GOVERNOR



RUSSEL S. NAGATA  
Director  
COMMISSIONER OF SECURITIES

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

ROBERT A. ALM  
DEPUTY DIRECTOR

January 8, 1986

RECEIVED

JAN 9 3 54 PM '86

OFF. OF THE AUDITOR  
STATE OF HAWAII

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

Dear Mr. Tanimura:

Thank you for the opportunity to comment on your "Sunset Evaluation Update Practice of Barbering".

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

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

"Remove the question on criminal history from the application forms"

In 1982 we had evaluated similar concerns which your office had raised in its Evaluation of the Professional and Vocational Licensing Program of the Department of Regulatory Agencies, Report No. 82-1. Subsequently we sought and received a legal opinion that the question, which you refer to in your report on the barber's application, was permissible and fully complied with the limitations contained in Section 831-3.1, Hawaii Revised Statutes. We therefore adopted the question and have used it in the barber's applications as well as many other professional and vocational licensing applications. We believe that we have evaluated the permissibility and legality of asking such question and are not in agreement with the recommendation that this question be removed from the application.

"Issue a single license to both barber and beauty shops or leave it to the Department of Health to issue a permit to operate both kinds of shops"



Mr. Clinton T. Tanimura  
January 8, 1986  
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Depending on the outcome of the repeal or reenactment of Chapter 438, or the enactment of a single regulatory program for both barbers and cosmetologists, we agree that serious consideration should be given to this recommendation.

"Develop a better examination based on a job analysis and which focuses on issues of health and safety"

We agree with this recommendation and have already taken steps to improve the barber's examination by recently completing a task analysis.

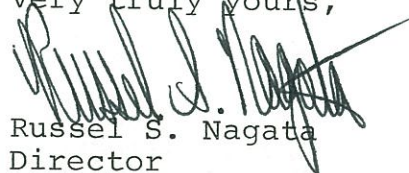
"Develop standardized procedures for test administration"

We agree with this recommendation and will take the necessary steps to implement such guidelines as soon as possible, examination branch resources permitting.

We would want to note that we do not share your overall negative view of the examination, a view we will expand on during the course of hearings on this matter. We do however appreciate your comments and will continue to give our attention to the continued improvement of the licensure examination.

You and your staff should be commended for the thoughtful assessment of the regulation of barbers.

Very truly yours,



Russel S. Nagata  
Director