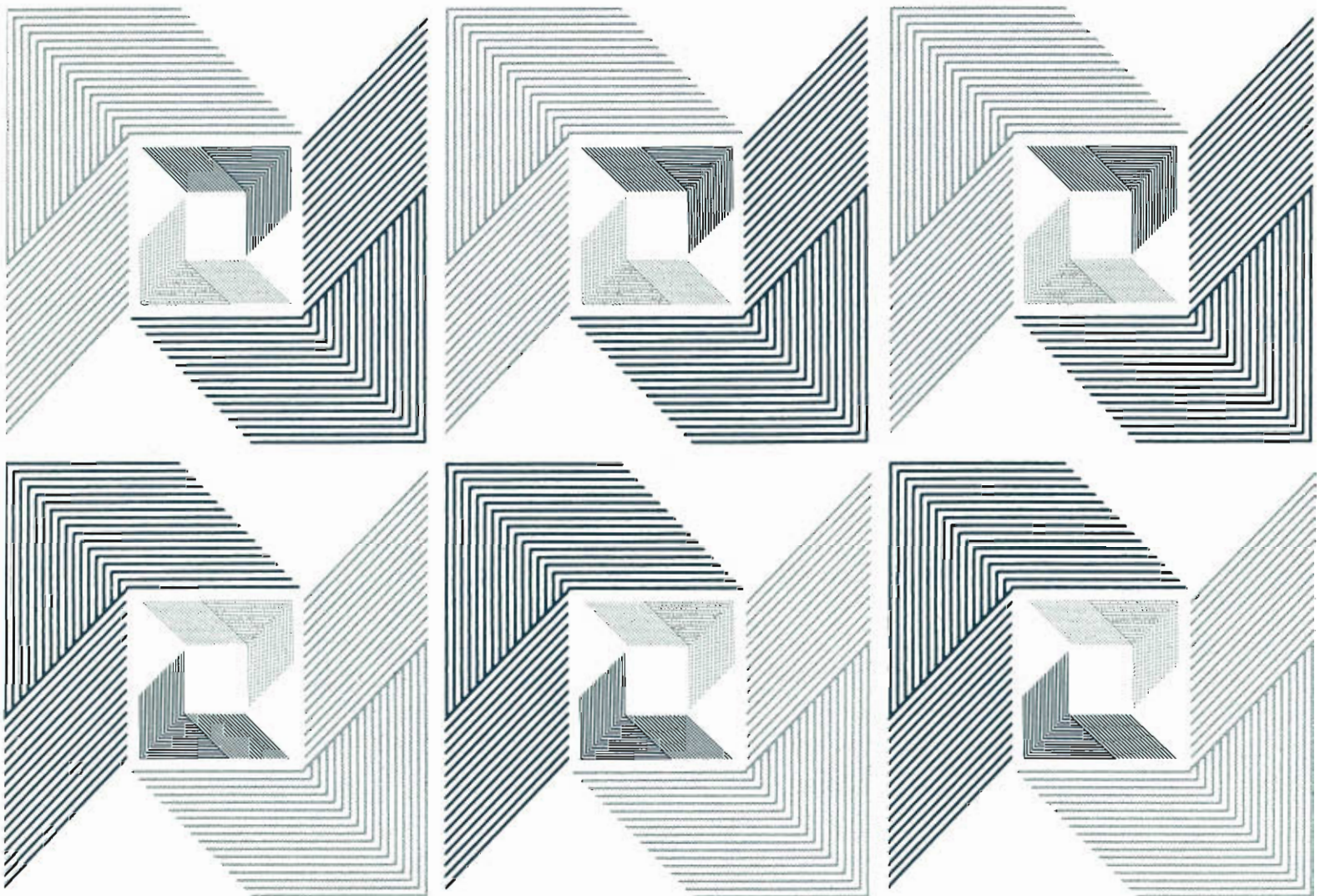


Report No. 89-19
December 1989

SUNSET EVALUATION REPORT REGULATION OF TATTOO ARTISTS, ELECTROLOGISTS AND SANITARIANS

A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII



SUBMITTED BY THE LEGISLATIVE AUDITOR OF THE STATE OF HAWAII

THE OFFICE OF THE LEGISLATIVE AUDITOR

The missions of the Office of the Legislative Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* are conducted of professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with a schedule and criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Legislative Auditor as to its probable effects.

5. *Health insurance analyses* are conducted on bills which propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Legislative Auditor for an assessment of the social and financial impact of the proposed measures.
6. *Special studies* are conducted when they are requested by both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Legislative Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Legislative Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

SUNSET EVALUATION REPORT: REGULATION OF TATTOO ARTISTS, ELECTROLOGISTS, AND SANITARIANS

Honolulu, Hawaii

December 1989

Summary

Tattoo artists create indelible marks and designs on the body and face by introducing pigments under the skin with electric needles. Electrologists remove unwanted hair by destroying the hair follicle with an electric current. Sanitarians inspect, sample, and test public swimming pools, food markets, restaurants, water systems, and other environmental areas that might harm the public.

In Hawaii, it is against the law to practice these occupations without a license from the Department of Health. The department now licenses 69 tattoo artists and 181 sanitarians. It will begin licensing electrologists after new rules are formally adopted.

An advisory committee administers the program for sanitarians.

As required by the Sunset Law, the auditor reviewed the need to regulate these practices. Tattooing and electrology are found to pose significant danger to the public from infection, disease, and disfigurement. Facial tattooing has seriously harmed people because tattoo artists lack the skills, knowledge, and training to do this safely. However, the licensing of sanitarians serves little purpose, and there is no evidence that the public will be harmed by unlicensed sanitarians. Many unlicensed sanitarians now work for government agencies, including the Department of Health.

FINDINGS

The practices of tattooing and electrology pose potential harm to the public, particularly from the use of unsterilized or contaminated needles. Facial tattooing should be limited to licensed physicians because of its obvious dangers and the high probability of violating the laws on controlled substances and the practice of medicine.

The statutes regulating tattoo artists and electrologists are outdated and should be replaced with new laws.

The department's regulatory program is weak. Among other problems, the sanitation branch staff lacks the expertise to develop rules; the exam for tattoo artists is not adequate; and the complaints system is confusing and unresponsive.

There is no evidence that the public would be endangered if sanitarians were not licensed.

RECOMMENDATIONS

1. The Department of Health should continue to regulate tattoo artists and electrologists, but under entirely new statutes which clearly establish guidelines and standards for licensure.
2. Regulation of sanitarians should not continue.
3. If regulation of tattoo artists and electrologists continues under current statutes, the statutes should be amended to clarify standards and guidelines for licensure. The department should also establish an advisory panel composed of licensees and physicians.
4. For tattoo artists, the department should amend its rules on sterilizing and discarding needles and should have a professionally developed licensing examination. The department should adopt the rules implementing the electrologists licensing program.

5. If these programs remain on the sunset schedule, the department should assess each licensee a compliance resolution fee and work out an agreement with the Department of Commerce and Consumer Affairs to handle complaints and cases of unlicensed activity.

RESPONSE

The Department of Health agrees that regulation of sanitarians should be terminated and that regulation of tattoo artists and electrologists should continue under new statutes. However, it believes that licensing of the two occupations should be handled by the Department of Commerce and Consumer Affairs.

**SUNSET EVALUATION REPORT
REGULATION OF TATTOO ARTISTS
ELECTROLOGISTS AND SANITARIANS**

.....

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

Submitted by

**Legislative Auditor of the State of Hawaii
Honolulu, Hawaii**

**Report No. 89-19
December 1989**

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are established by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules for termination 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 tattoo artists, electrologists, and sanitarians under Sections 321-13 to 321-15, 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 them to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. Draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Department of Health and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Newton Sue
Acting Legislative Auditor
State of Hawaii

December 1989

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Chapter 1

INTRODUCTION

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

In 1979, the Legislature amended the law (Chapter 26H, *Hawaii Revised Statutes*) to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The Legislature in 1988 added certain licensing programs administered by the Department of Health under Sections 321-13 to 321-15, HRS, to the Sunset review schedule. The objective of this 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.

Scope of the Evaluation

This report examines the history of the statute on licensing of tattoo artists, electrologists, and sanitarians 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 regulation.

Organization of the Report

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

Framework for Evaluation

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

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

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

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

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

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

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

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

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

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

Licensing of an occupation or profession is warranted if:

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

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

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

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

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

6. The benefits of licensing outweigh its costs.

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

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

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

that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

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

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

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

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex nature of an occupation is an illustration of occupational characteristic that may place the

consumer at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to be able to make judgments about the relative competencies and about the quality of services provided to them by the doctors and lawyers of their choice.

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

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

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

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained. The term "costs" in this regard means more than direct money outlays or

expenditure for a licensing program. "Costs" include opportunity costs or all real resources used up by the licensing program; they include indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Sections 321-13 to 321-15, *Hawaii Revised Statutes*, regulate, among other programs, the practices of tattoo artists, electrologists, and sanitarians. Section 321-14 makes it unlawful for any person to practice any of these occupations without a license from the Department of Health (DOH). According to the DOH there are 69 tattoo artists and 181 sanitarians with licenses. Electrologists are not currently being licensed by the department.

This chapter provides background information on the three occupations.

Tattoo Artists

Tattoo artists create indelible marks and decorative designs by introducing pigments under the surface of the skin with an electric needle.

Tattooing dates back at least 8,000 years. It includes both superficial body painting and permanent coloring of the skin. The earliest body markings were painted on the surface of the skin. Then, to make permanent colors and patterns, needle devices dipped in pigment were used to puncture the skin.

Today, some tattoos are elaborate designs applied to the body as a form of pictorial self adornment. Others are used to disguise scars or fill in spaces between hair transplants. The most popular forms of tattooing are permanent liners on the upper and lower eyelids, eyebrows, and lips.

There are no national standards for the education and training of tattoo artists in the United States. Most train under the supervision of an experienced tattoo artist.

States and local jurisdictions vary in their approach to tattooing. Some have laws or ordinances governing the practice. Other states and jurisdictions prohibit the practice entirely, while still others make it unlawful to tattoo persons under the age of eighteen.¹

Regulation of tattoo artists. In 1945, Act 140 authorized the Board of Health, with approval of the Governor, to establish rules of sanitation for several occupations, including tattoo artists. In 1947, the Legislature imposed a licensing fee. Then Act 19 in 1949 specifically placed tattoo artists under the regulatory authority of the Board of Health. The intent was to tighten the board's control over the qualifications, health, habits, and character of tattoo artists.² Since then, no substantive changes have been made to the law.

Licensing requirements. The DOH Sanitation Branch administers the licensing program for tattoo artists. The department's rules require all individuals who practice tattooing to be licensed, except physicians licensed to practice in the State. The branch accepts and processes applications, issues licenses, registers applicants, and investigates complaints. It also inspects tattoo shops annually.³

To be licensed as a tattoo artist, applicants must: file an application for license with the Sanitation Branch; pay an examination fee of \$75.00; pass the written examination with a grade of 70 percent; and undergo a physical examination, including a chest X ray or tuberculin skin test and a blood test for syphilis. License holders must reregister and undergo a physical exam annually.

Tattoo artists must also pay a fee of \$75 to register and obtain an operating permit for the

tattoo shop. The permit is issued after the Sanitation Branch inspects the shop and finds that it meets its sanitation standards, is adequately equipped, and managed by a licensed tattoo artist. The permit must be displayed in the place of business and is valid only for the location specified on the permit. Every tattoo artist must keep complete records of each customer for at least two years.

Revocation or suspension of license. The director of health may revoke or suspend a license or permit for violation of any rule by giving the person notice and a hearing in conformance with the Administrative Procedure Act (Chapter 91, HRS). The State may bring actions in a court of law for violations of the rules. Persons convicted are subject to a fine of not more than \$500 or imprisonment for not more than one year, or both.

Electrologists

Electrology is the practice of permanently removing superfluous or unwanted hair from the body. A needle is inserted into the hair follicle and the follicle is destroyed by direct electric current or short wave alternating current.

There are no uniform national standards for education, examination, or licensing for electrologists. They learn their trade through apprenticeships or by attending electrolysis school. Each school has its own course of instruction.

The oldest professional association is the American Electrology Association (AEA) comprised of state electrology association affiliates. The AEA is seeking approval from the U.S. Department of Education to become the accrediting body for the profession. It recognizes those who pass its certification examination as "Certified Professional Electrologists." The examination was developed by the Educational Testing Service.⁴

Twenty-six states, including Hawaii, license the practice of electrology.⁵ In the majority of these states, electrologists are regulated under state boards of cosmetology. In recent years, many states have moved the regulation of electrologists from cosmetology boards to health related agencies in the belief that the practice of electrology is more aligned with health issues than cosmetic issues.⁶ In 1986, Hawaii transferred the regulation of electrologists from the Department of Commerce and Consumer Affairs to the DOH.

Regulation of electrologists. Act 145, SLH 1929, made it unlawful for any person to practice as a cosmetician or cosmetologist without a license. Electrology was included in the practice of cosmetician and cosmetologist, which was defined as including the removal of unwanted hair from the body by the use of electricity or any other means.

A Territorial Board of Hairdressers, Cosmeticians, and Cosmetologists was established to issue, suspend, and revoke licenses. The board was later placed in the Department of Treasury and Regulation (now the Department of Commerce and Consumer Affairs) for administrative purposes.

In 1955, Act 198 increased licensing requirements for electrologists by requiring 600 hours of training under the supervision of a registered operator in addition to fulfilling the requirements for licensure as a cosmetologist or cosmetician.

In 1981, Act 47 separated electrologist licensing from cosmetician licensing so that persons could practice electrolysis without being first licensed as cosmeticians. The act also excluded electrolysis from the beauty shop licensing requirement.

The regulation of electrologists was transferred from the Department of Commerce and Consumer Affairs to the DOH by Act 140,

1986. This was based on the recommendation in the auditor's 1986 sunset review of beauty culture that responsibility for electrolysis should be transferred to DOH since DOH already regulated tattooing.⁷

The Sanitation Branch has developed rules, and public hearings on the proposed rules were held in June 1989. Until rules are formally adopted, DOH will not license or otherwise regulate electrologists.

Sanitarians

Sanitarians are environmental health practitioners whose principal activities are to inspect, sample, and test various aspects of the environment that might harm the public's health. They also enforce state and federal sanitary standards.

Sanitarians inspect, among other places, retail food markets, food manufacturing plants, food service establishments, public swimming pools, and water systems before issuing certificates of approval, licenses, permits, and other health clearances required by law. They participate in managing solid waste and sewage disposal and in evaluating subdivisions.

Most sanitarians specialize in one of 14 program areas, including air quality, food protection, hazardous substance and product safety, housing, land use, solid waste management, and water quality.⁸

Nationwide, the majority of sanitarians are government employees. In Hawaii, 118 (65%) of the 181 licensed sanitarians are employed by government agencies. Of the 118, 76 are employed by DOH, 11 work for other state agencies, 4 are employed by the counties, and 27 work for the federal government. Only 18 licensed sanitarians are employed in the private sector. The remaining 45 are either self employed, retired, or living in other states.⁹

The National Environmental Health Association (NEHA) is the major professional association for sanitarians. It has credentialing programs for environmental health technicians, health specialists, and waste specialists. To be registered by NEHA as an environmental health specialist/sanitarian, applicants must have a bachelor's degree in environmental health from an accredited institution and pass its Professional Examination Service test.¹⁰ NEHA allows other combinations of education and experience as substitutes for the bachelor's degree in environmental science. In Hawaii, only one registered sanitarian is an NEHA member.¹¹

Hawaii is one of 19 states that regulate the title of registered sanitarian and the practice of sanitarians. Seventeen states have voluntary credentialing programs for sanitarians.¹²

Regulation of sanitarians. Sanitarians became regulated in 1955 when Act 117 added them after tattoo artists to the list of occupations for which the Board of Health was authorized to prescribe rules. No significant amendments have been made to the sanitarian licensing law since then.

In 1959, DOH created a Board of Sanitarians and empowered it to issue, revoke, and suspend licenses. The board functioned as a licensing body until the end of 1978 when the Department of the Attorney General informed the director of health that "neither HRS section 32-113, 321-14, or 321-15, explicitly authorizes the director to delegate the licensing functions completely to another body." The AG found that without clear legislative authorization, the delegation of authority from the director to the board would be unconstitutional.¹³

In 1981, DOH adopted new rules for sanitarians and replaced the board with an advisory committee appointed by the director of health. The committee is composed of five registered sanitarians--two from Oahu and one each from Hawaii, Maui and Kauai. The

committee administers the licensing examination and makes recommendations to the director on such matters as the issuance, denial, suspension, or revocation of licenses.

The current rules define a registered sanitarian as "a person who meets the requirements of education, training or experience in sanitary science, is licensed in the State, and who may be engaged in the promotion and protection of the public health by applying technical knowledge to formulate and execute methods and procedures to control those factors of the environment which influences the health, safety and welfare of the public."¹⁴

No one may use the title "registered sanitarian" or perform any of the duties falling under the definition of registered sanitarian unless the person is licensed.

Licensing requirements. The licensing standards are basically equivalent to NEHA registration. Applicants must either:

(1) Hold a bachelor's degree in a biological, physical, or sanitary science and pass the written Professional Examination Service test

administered by the director's advisory committee; or

(2) Meet the requirements for national registration established by the National Environmental Health Association (NEHA) and obtain a passing score of at least 70 percent on the Professional Examination Service examination.

License holders must reregister and pay a fee annually. Failure to renew the license or pay the fee 30 days after the due date results in automatic forfeiture of the license. Those who fail to reregister after a period of more than one year must reapply and pass the licensing exam.

Denial, suspension, or revocation of licenses. The director has the authority to deny, suspend, or revoke the license of any person found guilty of fraud or misrepresentation in obtaining a license, misconduct in the practice of the profession, and other reasons detrimental to the performance of duties. Persons found to be in violation of the rules are guilty of a misdemeanor.

Chapter 3

EVALUATION OF THE REGULATION OF TATTOO ARTISTS, ELECTROLOGISTS, AND SANITARIANS

This chapter evaluates the three programs and includes our recommendations on continued regulation.

the use of the title "registered sanitarian." There is no evidence that the absence of licensure would endanger the public.

Summary of Findings

1. State regulation of tattoo artists and electrologists should be continued to protect the public from physical harm, particularly from the use of unsterilized or contaminated needles.

The DOH should strengthen the regulation of tattooing by restricting facial tattooing of eyelids, eyebrows, lips, and cheeks to licensed physicians.

2. The statutes establishing the licensing programs for tattoo artists and electrologists are inadequate, with outdated and irrelevant requirements. They should be replaced by new laws.

3. The DOH regulatory program is weak. The sanitation branch staff does not have the technical expertise to develop adequate rules; there are problems with the competency examination for tattoo artists; and the system for handling complaints is confusing and unresponsive to consumers.

4. Sanitarians should not be regulated. The DOH does not regulate their practice but only

Need to Regulate Tattoo Artists

Tattoo artists should be regulated to protect the public. Improperly sterilized needles and inadequate antiseptic practices may cause infections and spread diseases such as AIDS and hepatitis B. The use of contaminated or unapproved pigments and dyes can cause serious injuries and severe allergic reactions.

Restrictions on facial tattooing. Tattooing lines of colored pigment along the upper and lower lids and inserting pigments into eyebrows, lips, and cheeks are dangerous procedures which should be restricted to physicians. Eyelid and eyebrow tattooing carry a high degree of risk. If the tattooing is too deep, pigment can enter the tissue of the lid and cause a fan shaped pigment spread. It can also migrate into the nerves, muscles, and the lymphatic system and cause severe medical complications. If the needle is improperly angled, hair roots are destroyed. Even worse, the needle may scratch or puncture the eye and result in permanent damage. There is also the possibility of infections and allergic reactions.

The public has been harmed by tattoo artists who perform facial tattooing. Doctors have treated corneal abrasions caused by the tattoo needle; a variety of eye infections; allergic reactions to pigments and antibiotic ointments; and pigment spreads. Some have been successfully treated with eye and cosmetic

surgery. Others, such as allergic reactions on the lip area, cannot be treated since the pigment cannot be surgically removed from the area.

The tattoo machine is not designed for use on delicate facial skin. The machine is a hand held instrument that uses rapid firing needles to inject pigment into the skin. Control over the depth of the needles and the intensity with which the needles vibrate is extremely difficult. This has caused some tattoo artists to resort to homemade devices, such as tattoo needles tied to chop sticks. These primitive devices only increase the risk of injury to the eye area.

Tattoo artists lack the skills, knowledge, and training to perform facial tattooing safely. They are unable to identify and treat the various complications which may arise from these procedures.

Unlicensed medical practice. There is evidence that some tattoo artists are engaged in the unlicensed practice of medicine. Some tattoo artists are illegally dispensing prescription medications and administering local anesthetic injections because eyelid, eyebrow, and lip tattooing cause a high level of pain.

In 1985, the Regulated Industries Complaint Office (RICO) brought action against two tattoo artists who were administering prescription drugs and anesthetic injections as part of their procedures for eye, brow, and lip lining. The two individuals, licensed as tattoo artists and cosmetologists, were found guilty of the unlicensed practice of medicine and each was fined \$1,000.

RICO is currently involved in legal proceedings against two other tattoo artists for illegally using local anesthesia for eyelid tattooing.

Tattooing by physicians. Facial tattooing is performed by a number of licensed physicians

who are ophthalmologists, cosmetic surgeons, and dermatologists. These doctors are experienced in implanting pigment in the eyelids to simulate lashes lost from injuries, infections, and eyelid cancer surgery. They also apply permanent eyelid and browliner to patients on an elective basis. Most doctors will not tattoo lips and checks because the red pigments are known to cause severe allergic reactions.

All doctors perform the procedures under local anesthesia. They use an operating microscope and magnifying glasses to ensure precise placement of sterilized nontoxic pigments. They use a medically designed, sterile, disposable tattooing kit, and colors are limited to brown, charcoal or black. Other colors are not offered, since the chance of allergic reaction is greater.

Because of the dangers associated with facial tattooing and the high probability for abuse of the laws governing controlled substances and the practice of medicine, facial tattooing should be restricted to licensed physicians.

Need to Regulate Electrologists

Electrology can also endanger the public. Unsterilized needles may cause infections and spread diseases just as in tattooing. Improper insertion of the electrology needle can cause permanent scarring, pitting, and disfigurement.

The DOH became responsible for regulating electrologists three years ago. As of September 1989 it had not begun to regulate electrologists because rules have yet to be adopted. Since licensing programs affect the rights and procedures of the public, the department has a duty to adopt rules in accordance with the Hawaii Administrative Procedure Act (APA) before implementing its regulatory program. This must be done before the program can properly be

implemented. In the meantime, the practice of electrology has been unrestricted and in noncompliance with the law.

Rules have recently been prepared and public hearings were held in June 1989. The department plans to formally adopt rules by late 1989.

Statutes are Inadequate

Tattoo artists and electrologists are both regulated under Sections 321-13, 321-14, and 321-15, HRS. These statutes lack the standards and guidelines for establishing a regulatory program that would ensure safe practice.

Other occupational licensing statutes, ranging from those regulating acupuncture practitioners to veterinary medicine, define the scope of practice and the conditions for regulation. The statutes regulating tattoo artists and electrologists do not define what they do or their scope of practice. There are no guidelines on licensing requirements, minimum levels of education, or training or experience standards. There are no prohibited acts or practice restrictions to serve as grounds for disciplinary actions, and there are no penalties and fines for those found to be in violation.

Instead, the statutes allow DOH to determine the requirements for licensure, qualifications of applicants, maintenance of licenses, and causes for license revocation and suspension. Section 321-13, HRS, empowers the department to prescribe rules "as it deems necessary for the public health or safety" on the health, education, training, experience, habits, qualifications, or character of applicants. The department may also prescribe rules on the health, habits, character, practices, standards, or conduct of licensees. The absence of specific statutory standards and guidelines may have led to rules which are contrary to legislative intent and which are inappropriate and confusing.

Rules that may not reflect legislative intent. When electrologists were regulated under the beauty culture statute, the law exempted individuals who remove superfluous hair with electrical tweezers that do not touch or penetrate the skin. In 1978, the legislature amended the law to specifically exclude this activity from the practice of electrolysis reasoning that the use of electrical tweezers posed no threat to the health and safety of consumers.

Instead of excluding these tweezers from regulation, the department's proposed rules specifically prohibit the use of electronic tweezers and all non-needle methods--suggesting that non-needle methods pose a significant threat to consumers. This appears to be in direct conflict with the previous law regulating electrologists. However, without specific guidelines, the department is free to determine the scope of regulation.

Inappropriate requirements. As noted earlier, several of the current statutory provisions are inappropriate. Section 321-15, HRS, automatically forfeits a person's license for failing to reregister or pay the required reregistration fee after thirty days of delinquency. Since the courts have held that a license to practice cannot be taken away without first notifying the licensee in writing, a new law should require DOH to give delinquent licensees proper notice in writing prior to license forfeiture.

The law also allows the department to regulate the health, habits, and character of licensees. These kinds of requirements are outdated and irrelevant and should be deleted.

Confusing use of terms. The statutes mix up the terms "certificates," "certificates of registration," "permits" and "license." Certificates, certificates of registration, and permits refer to different, less restrictive forms of regulation. To be accurate and consistent, references to "certificates," and "certificates

of registration," and "permits" should be replaced with the term "license" when license is the proper term.

Need to enact new statutes. If regulation of tattoo artists and electrologists is continued, new statutes should be enacted for each occupation.

The new statutes should define the scope of practice, establish specific standards relating to the scope of practice, including the definition of the occupation and any exemptions from licensure; the requirements for education, training, and experience together with written examination requirements; and the powers and duties of the department to promulgate rules, and issue, renew, suspend, and revoke licenses. Prohibited acts and practices should be set forth along with penalties and fines.

Regulatory Program Weaknesses

The regulatory program is assigned to the department's Sanitation Branch. However, the Sanitation Branch staff are sanitarians who lack the appropriate technical expertise to regulate electrologists and tattoo artists. Their principal responsibility is to inspect businesses within the state to ensure compliance with sanitary requirements. They also review and approve building and air conditioning plans to ensure that buildings and ventilation systems conform to health standards and codes.

Staff members are not knowledgeable about tattooing and electrology, and they have been unable to develop adequate rules to regulate these occupations. The rules for tattoo artists omit some important matters and regulate some that are unnecessary. In addition, the competency examination for tattoo artists is of questionable validity. The proposed rules for electrologists also contain irrelevant licensing requirements and questionable testing standards. Finally, the department's complaints handling system is confusing and unresponsive to consumers.

Inadequate rules for tattoo artists. The rules regulating tattoo artists have some significant gaps. They do not prohibit the use of anesthetic injections and other medications and prescription drugs. The rules do not address the proper use of disposable needles that are designed for single use on one individual, nor do they specify how contaminated and damaged needles and other materials are to be discarded.

The rules outline the procedures for sterilizing equipment, including needles. However, they are silent on how sterile needles and other equipment are to be stored, or when, and under what conditions unused needles are to be resterilized.

If the public is to be protected against dangerous and injurious practices by tattoo artists, then the rules must be amended to address these deficiencies.

Unnecessary requirements. The rules require applicants for a tattoo license to submit (1) a doctor's report that they are free from any communicable disease, (2) a blood test report for syphilis, and (3) chest X ray or skin test for tuberculosis.

Tattoo artists who have communicable diseases such as the common cold, mumps, whooping cough, etc., are prohibited from working on customers and may be required to submit a certificate from their doctor before returning to work.

These requirements are unnecessary and unenforceable. The risk of transmitting communicable diseases in tattooing is no greater than that in electrology or any other occupation. The department's proposed rules for electrologists do not require them to present a doctor's certificate verifying that they are free of syphilis and tuberculosis before they are licensed.

Inadequate rules for electrologists. The proposed rules for electrologists also have

irrelevant licensing requirements and questionable testing standards.

Irrelevant requirements. The proposed rules require applicants to be 18 years of age and of good moral character. The age requirement is unnecessary because the rules also require applicants to be high school graduates or have completed equivalent education. The good moral character requirement should be eliminated as well because a determination of bad moral character would be questionable and tenuous grounds for denial of a license.

Minimum passing score. All applicants for licensure, other than those previously licensed by the Department of Commerce and Consumer Affairs (DCCA), will be required to pass the American Electrologist Association Certification Examination developed by the Educational Testing Service (ETS). The exam will be graded by ETS; however, the rules say that the minimum passing score will be determined by the department.

Instead of selecting some arbitrary number, DOH should permit ETS to designate the passing score. The department should use fully the professional expertise of the testing agency in developing a valid examination.

Problems with the examination for tattoo artists. There are several problems with the written examination for tattoo artists: (1) the examination is of questionable validity; (2) the same examination is used continuously; and (3) there is no basis for the passing score.

The examination, consisting of 40 questions, is essentially a test on the rules governing the practice of tattooing. It covers the licensing requirements and some sanitary techniques and practices. It does not test knowledge of basic bacteriology and aseptic techniques that applicants should have to prevent the spread of infections and contagious diseases.

The same examination has been used continuously since February 1987. Reusing the same questions compromises the integrity of the examination because some applicants may have prior knowledge of the questions. Since 1987, only one of 58 applicants has failed to pass the exam on the first attempt.

There is no assurance that the test is valid--that it actually measures the minimum competencies needed to protect the public. The test was not developed by testing professionals. The passing score for the examination was arbitrarily set at 70 percent. There is no evidence that this score has any significance in establishing a minimum level of competency for those who pass.

The Sanitation Branch is aware of these problems. On May 1, 1989, the branch informed the director of health that a new examination had to be developed and that it would cease to license tattoo artists until a new test is adopted. The branch has asked dermatologists, ophthalmologists, and plastic surgeons who perform facial and other forms of cosmetic tattooing to submit technical questions and answers for the new examination.

A valid and reliable test, however, involves more than simply incorporating questions developed by doctors and practitioners into a new test. The Sanitation Branch clearly needs help in developing a sound examination program.

Defensible examinations. The department should seek help from a professional testing organization. Licensing examinations must meet nationally established standards for validity, reliability, and fair administration. They must also be legally defensible in a court of law. For these reasons, licensing examinations are usually developed by testing professionals or national testing organizations such as the Professional Examination Service and the Educational Testing Service (ETS). These organizations research,

create, administer, and grade their exams. They set a passing score that reflects a minimum level of competency and maintain the integrity of each examination by selecting questions drawn from a large pool of test questions.

ETS recently developed a national certification examination for electrologists, and DOH should contract with ETS, or another testing service, to develop a tattoo artists examination for Hawaii. As part of its responsibilities, the testing service should also administer, grade, and designate the minimum passing score for the examination.

Possible solution. In regulating these occupations the Sanitation Branch needs the help of those with appropriate knowledge and skills. However, the creation of a board to regulate tattoo artists and electrologists is not feasible because of the small number of practitioners. Invariably, questions of conflict of interest will arise.

One possible solution would be for the director of health to appoint an advisory panel composed of licensed tattoo artists, electrologists, and physicians. The members of the advisory panel could advise the director on all matters relating to the practice of tattooing and electrology, including developing valid rules and licensing standards.

Confusing complaints handling system. The DOH has no unit designated to receive, arbitrate, investigate, and prosecute complaints on behalf of consumers. The few complaints that have been filed against tattoo artists have been resolved by the Sanitation Branch or the DCCA's Regulated Industries Complaints Office (RICO) or its Office of Consumer Protection (OCP). In a few cases, complaints have been filed directly with RICO or OCP. However, the majority are informally referred to these offices by the Sanitation Branch.

The branch restricts its complaints handling activities to possible violations of DOH rules, including unlicensed activities and improper sanitary practices. Complaints involving possible violations of the laws which apply to licenses issued by DCCA are referred to RICO for investigation and resolution. The use of controlled substances and anesthetic injections by persons who are not licensed physicians are examples of the kinds of complaints referred to RICO.

Complaints relating to unfair or deceptive practices in advertising or dissatisfaction with the quality of services are channeled to OCP.

This referral procedure developed because the Sanitation Branch lacks the staff to implement an effective consumer complaint resolution program. However, it is cumbersome, confusing, and unresponsive to consumers.

Need to centralize complaints. In order to make the system more efficient and responsive, the director of health should enter into an agreement with DCCA for RICO to investigate complaints against licensed and unlicensed tattoo artists and electrologists. RICO has greater resources and experience in handling complaints. It is staffed with investigators, attorneys, and clerical personnel.

There is a statutory basis for RICO to assume the complaint handling responsibility on behalf of DOH. In 1988, the Legislature amended Section 26H-4, HRS, to include tattoo artists, electrologists, and sanitarians under the Sunset Law. Section 26-9(m), of the Sunset Law states that "every licensed person *under any chapter* subject to Section 26H-4 shall pay upon issuance of a license, permit, certificate, or registration a fee of \$10 and a subsequent annual fee of \$10, which shall be collected biennially" and deposited into the compliance resolution fund (emphasis added). Penalties and fines assessed as a result

of actions brought by RICO are also deposited into the fund. These monies are used to defray the costs of attorneys, investigators, and other personnel employed by the office.

If these programs continue to be on the Sunset schedule, DOH should assess each licensee a fee for the compliance resolution fund and refer to RICO all consumer complaints against licensed tattoo artists and electrologists except those relating to permit violations and improper sanitary practices. The latter kinds of violations are routinely handled by the sanitation staff as part of their ongoing inspection program.

Sanitarians Need Not be Regulated

It is not necessary to regulate sanitarians to protect the public from health hazards and environmental disease. Licensing appears to serve little purpose. The rules broadly define a registered sanitarian as anyone meeting the requirements for licensing and engaged in the promotion and protection of the public health by applying technical knowledge to control those aspects of the environment that influence the health, safety, and welfare of the public. The rules say that it is unlawful for any person to perform any duties that fall within the scope of the definition of registered sanitarian, but this restriction is not enforced.

Unlicensed sanitarians can and do work in the environmental health field. Many sanitarians employed by DOH and other government agencies are not licensed. DOH only requires licensing for its sanitarian positions above the entry level in its Sanitation Branch. Licensing is not required for positions in other DOH branches, such as the Noise and Radiation Branch. These other sanitarians, known as "environmental health specialists," perform much the same kinds of duties as those performed by "registered sanitarians." They inspect facilities, sample and test levels of noise and radiation pollution, and enforce state and federal laws.

The acting branch chief acknowledges that the need for licensure is questionable since it is not essential for satisfactory performance of required duties and may restrict entry into certain positions within the branch.

There is no evidence that the public will be harmed or endangered by unlicensed sanitarians. Private industries, such as food manufacturing firms, employ unlicensed sanitarians. The public is protected by government health and sanitation codes which these industries must meet.

The current regulation of sanitarians is basically a title protection act. Individuals are prohibited from using the title "registered sanitarian" unless they meet certain requirements. Regulation to protect titles is useful when consumers need information about the qualifications of the people they hire. This is not necessary for sanitarians since most of them work for government agencies that have minimum hiring standards. Moreover, persons who wish to be recognized as "registered sanitarians" may obtain this title through the NEHA registration program.

Existing methods for regulating the profession provide adequate protection for the public and a growing number of states are questioning the need for licensure. In the last few years, seven states have repealed their sanitation regulations without noting any adverse effects.¹

Passing score. Applicants for licensure are required to take the national written examination prepared by the Professional Examination Service. PES grades the test; however, the DOH sanitarian advisory committee has retained the right to determine the passing score. Instead of the 70 percent passing score established by the Professional Examination Service and adopted by NEHA as the national standard, the committee determines the passing score by applying a formula to the national test results. This not only defeats the purpose of using a national licensing examination, it is unfair to applicants.

NEHA requires applicants to obtain a score of 175 correct answers out of a possible 250, i.e., 70 percent, to qualify for national registration.² DOH calculates the passing score by taking the national average score minus one national standard deviation unit. Because the national average score and standard deviation differ with each exam offering, the passing score for Hawaii applicants varies. For example, the passing score for the January 1988 exam was 139 correct answers. For June 1988, it was 145. An applicant taking the June examination would have failed with 144 correct answers, yet would have passed in January.

According to the Professional Examination Service, the method used by DOH is a "difficult to defend method because passing/failing test depends to a large degree on the relative ability of examinees with whom an individual is tested."³

If regulation is continued, DOH should use the national standard of 70 percent for the passing score.

Recommendations

1. Section 321-13, *Hawai Revised Statutes*, should be amended by deleting tattoo artists, electrologists, and sanitarians.
2. Regulation of sanitarians should not continue. Licensing will serve little or no purpose in protecting the public from health hazards and environmental disease.
3. Regulation of tattoo artists and electrologists should continue under entirely new statutes which clearly establish guidelines and standards for licensure. Each new statute should do the following:

- a. Define the health and safety purposes for regulation.

- b. Establish: (1) the scope of practice, including definition of terms and exemptions from licensure, (2) licensing requirements with education, training and experience qualifications, (3) powers and duties of the department to promulgate rules for things such as license revocation and suspension, (4) practice restrictions, prohibited acts, and (5) penalties and fines for violations of the law.

- c. Establish the use of national examinations and passing scores, or the use of exams and scores developed by testing professionals.

- d. Require proper written notification prior to license forfeiture.

4. If regulation of tattoo artists and electrologists is continued under the current statutes, the statutes should be amended to do the following:

- a. Define the scope of practice for tattoo artists and electrologists.

- b. Specifically prohibit tattoo artists from performing facial tattooing and restrict the procedure to licensed physicians.

- c. Eliminate the health, character, and habit requirement of applicants.
 - d. Require proper notification of licensees prior to forfeiture.
 - e. Replace the terms "certificates," "certificates of registration," and "permit" with the term "license," whenever "license" is the proper term.
5. If the current regulation of tattoo artists, electrologists and sanitarians is continued, we recommend that the Department of Health establish a tattoo artists and electrologists advisory panel composed of practicing licensees and physicians. We further recommend that the department:
- a. Amend its rules relating to tattoo artists by:
 - (1) prohibiting the use of anesthetic injections and all other medications and drugs on customers;
 - (2) requiring disposable needles to be for single use on one individual and that all needles, disposable and steel, be discarded in approved containers;
 - (3) specifying how sterile needles and other equipment should be stored and when, and under what conditions unused needles should be resterilized; and

(4) deleting the requirements for a doctor's report that the applicant is free of communicable disease, a blood test report for syphilis, and a chest X ray or skin test for tuberculosis. Also deleting the requirement that a tattoo artist with a communicable disease be prevented from tattooing and submit a doctor's clearance certificate before being allowed to return to work.

- b. Request the Educational Testing Service or another testing agency to develop a licensing examination for tattoo artists. The testing agency should also administer, grade and establish the minimum passing score for the exam.
- c. Adopt the rules and implement the electrologists licensing program. Also, eliminate the age and good moral character requirements from the proposed rules.
- d. Revise the rules relating to sanitarians to make it clear that it is regulating only the use of the title "registered sanitarian," and adopt the 70 percent passing score set by the Professional Examination Service as the passing score for the sanitarian examination.

-
6. *If the programs remain on the Sunset schedule, the department should assess each licensee a compliance resolution fee and establish an agreement with the Department of Commerce and Consumer Affairs for the handling of complaints and cases of unlicensed activity.*

NOTES

Chapter 1

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits," Section 14.
2. *Terr. v. Fritz Kraft*, 33 HAW. 397.

Chapter 2

1. Norman Goldstein, M.D., F.A.C.P., "Laws and Regulations Relating to Tattoos," *The Journal of Dermatologic Surgery and Oncology*, vol. 5, no. 11, November 1979, pp. 913-915.
2. House Committee Report on Public Health on House Bill 728, 1949, Territory of Hawaii.
3. Chapter 17, Tattoo Artists, *Hawaii Administrative Rules*.
4. American Electrology Association, "Regulation of Electrologists," Trumbull, Connecticut, October 1988, p. 2.
5. Letter to the Office of the Auditor, from Teresa E. Petricca, President, American Electrology Association, March 5, 1989.
6. American Electrology Association, "Regulation of Electrologists."
7. Hawaii, Legislative Auditor, *Sunset Evaluation Update, Beauty Culture, Chapter 439, Hawaii Revised Statutes*, Report No. 86-6, Honolulu, 1986.
8. National Environmental Health Association, "The Professional in Environmental Health: Responsibilities and Competencies, Denver, Colorado," 1987, p. 2.
9. Hawaii, Department of Health, Listing of Registered Sanitarians, Honolulu, 1989.
10. National Environmental Health Association, "National Registration by Examination," Denver, Colorado, February 1989.
11. Telephone interview with Terry L. Johnson, Credential Program Manager, National Environmental Health Association, April 20, 1989.
12. National Environmental Health Association, "Registration For Environmental Health Professionals in the United States--A Survey," Denver, Colorado, March 1989.
13. Memorandum to George Yuen, Director, Department of Health, from Lawrence K. Lau, Deputy Attorney General, subject: Proposed Provision to Chapter 32, Licensing of Sanitarians, December 12, 1978.
14. Section 11-18-2, *Hawaii Administrative Rules*.

Chapter 3

1. The states are Colorado, Florida, Illinois, Nevada, New Mexico, Pennsylvania, and Washington.
2. *National Registration By Examination, National Registration Without Taking Exam*, Denver, Colorado, National Environmental Health Association, 1989.
3. *Description of Common Standard Setting and Equating Methods*, New York, New York, Professional Examination Service.

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APPENDIXES

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APPENDIX A

COMMENTS ON AGENCY RESPONSE

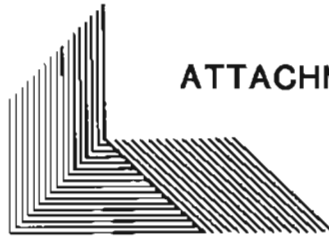
We transmitted a preliminary draft of this report to the Department of Health (DOH) on October 9, 1989. A copy of the transmittal letter to the department is included as Attachment 1 of this Appendix. The response from the department is included as Attachment 2.

The department indicates that it agrees with the majority of the findings and recommendations of the report. It agrees that regulation of sanitarians should be terminated and that tattoo artists and electrologists should continue to be regulated under new statutes. However, the department says that the report is unclear whether DOH or the Department of Commerce and Consumer Affairs (DCCA) should have the lead role in licensing and regulating tattoo artists and electrologists. The department feels that licensing should be handled by DCCA and that DOH should revert to its original role of regulating only the sanitation of the two occupations.

Transferring the licensing program from DOH to DCCA was neither discussed nor recommended in the report because we find the two regulatory programs to be appropriately placed within DOH. Although DOH has no expertise in tattooing and electrology, it has agreed to establish a tattoo artist and electrologist advisory panel which should provide the help it needs. We do acknowledge that while we did not recommend transferring the program to DCCA, there are no strong reasons why this could not be done.

ATTACHMENT 1

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



C O P Y

October 9, 1989

The Honorable John C. Lewin, M.D.
Director of Health
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

Dear Dr. Lewin:

Enclosed are three preliminary copies, numbered 4 through 6 of our **Sunset Evaluation Report, Regulation of Tattoo Artists, Electrologists, and Sanitarians.**

The report contains our recommendations relating to the regulation of the three occupations. If you have any comments on our recommendations, we would appreciate receiving them by November 8, 1989. 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,


Newton Sue
Acting Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
EPHSD/SAN

November 7, 1989

RECEIVED

Nov 9 8 58 AM '89

OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Newton Sue
Acting Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

Dear Mr. Sue:

RE: Sunset Evaluation Report - Regulation of Tattoo Artists, Electrologists and Sanitarians

Thank you for allowing us to review the draft report and provide comments. We agree with the majority of the findings and recommendations of this report. Additionally we find that the report provides the department with helpful suggestions to improve our regulations. However, we find that the report is unclear in certain areas. Hence, we request that the report's recommendation be more specific about identifying which agency (Department of Health - DOH or Department of Commerce and Consumer Affairs - DCCA) you think should have the lead role in licensing and regulating these professions (we feel that the report is recommending a dual role, i.e., DCCA to handle professional licensing and DOH to regulate the sanitation requirements of tattoo artists and electrologists). Our specific comments for each recommendation follows:

Recommendation 1. Section 321-13, Hawaii Revised Statutes, should be amended by deleting tattoo artists, electrologists, and sanitarians.

DOH Response - The department generally agrees with this recommendation to delete tattoo artists, electrologists and sanitarians.

Recommendation 2. Regulation of sanitarians should not continue. Licensing will serve little or no purpose in protecting the public from health hazards and environmental disease.

DOH Response - As stated in the previous paragraph, we agree.

Recommendation 3. Regulation of tattoo artists and electrologists should continue under entirely new statutes which clearly establish guidelines and standards for licensure. Each new statute should do the following: (includes recommendations 3a, 3b, 3c, and 3d).

DOH Response - The department agrees that the implementation of recommendation 3 will fill the gap created when recommendation 1 is implemented. However, we are uncertain about which agency will be responsible for this task. We hope that licensures (i.e. reviewing qualifications) will be handled by DCCA since this report confirms that the DOH does not have the expertise for this task. The DOH under this recommendation should revert to its original role as defined under Act 140, Session Law 1945, "to regulate the sanitation of tattoo artists and electrologists."

Recommendation 4. If regulation of tattoo artists and electrologists is continued under the current statutes, the statutes should be amended to do the following: (includes recommendations 4a, 4b, 4c, 4d and 4e).

DOH Response - Since the department agrees with recommendations 1, 2, and 3, this should not be necessary.

Recommendation 5. If the current regulation of tattoo artists, electrologists and sanitarians is continued, we recommend that the Department of Health establish a tattoo artists and electrologist advisory panel composed of practicing licensees and physicians.

DOH Response - The department agrees with this recommendation as an interim solution and will establish such an advisory panel.

Recommendation 5a. Amend its rules relating to tattoo artists by: (includes recommendations 5a(1), 5a(2), 5a(3) and 5a(4).

DOH Response - The department agrees to incorporate recommendations 5a(1)(2)(3) and delete 5a(4).

Recommendation 5b. Request the Educational Testing Service or another testing agency to develop a licensing examination for tattoo artists. The testing agency should also administer, grade and establish the minimum passing score for the exam.

DOH Response - The department agrees with this recommendation in principal; however, the costs to develop such a test is anticipated to be very high. Since we will be forming an advisory panel we may decide to use the advisory panel as a source of appropriate test questions as well as expertise to administer the exams.

Recommendation 5c. Adopt the rules and implement the electrologists licensing program. Also, eliminate the age and good moral character requirements from the proposed rules.

DOH Response - The department agrees to adopt and implement the electrologist rules that were public noticed and heard. We also agree to amend the rules at a later date to eliminate the age and good moral character requirements as recommended.

Mr. Newton Sue
November 7, 1989
Page 3

Recommendation 5d. Revise the rules relating to sanitarians to make it clear that it is regulating only the use of the title "registered sanitarians", and adopt the 70 percent passing score set by the Profesisonal Examination Service as the passing score for the sanitarian examination.

DOH Response - This is not necessary if we repeal the licensure requirement.

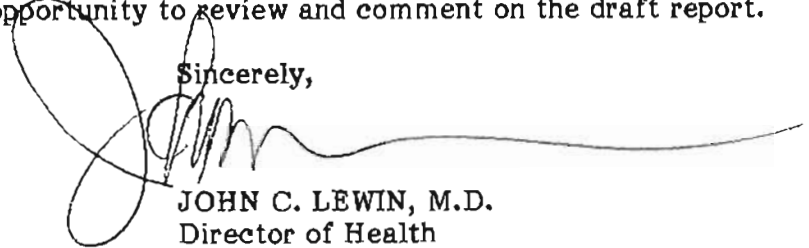
Recommendation 6. If the program remain on the sunset schedule, the department should assess each licensee a compliance resolution fee and establish an agreement with the Department of Commerce and Consumer Affairs for the handling of complaints and cases of unlicensed activity.

DOH Response - The department agrees with this recommendation.

The department appreciate this opportunity to review and comment on this draft report. We strongly recommend that the report be more specific about agency responsibilities and roles since we agree that our expertise is currently in sanitation and not with licensure of professionals.

Again, thank you for this opportunity to review and comment on the draft report.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John C. Lewin', with a long horizontal flourish extending to the right.

JOHN C. LEWIN, M.D.
Director of Health

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APPENDIX B

G0180-1

DIGEST: RELATING TO HEALTH

Repeals regulation of sanitarians. Extends regulation of tattoo artists and electrologists until 12/31/96.

Defines "tattoo artist" and "electrologist". Changes licensing related terminology such as "permit", "certificate", and "certificate of registration" to "license". Prohibits persons other than licensed physicians from engaging in facial tattooing. Requires notice to licensee prior to forfeiture for failure to register.

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The purpose of this Act is to implement the
2 recommendations of the legislative auditor in the report entitled
3 "Sunset Evaluation Report, Regulation of Tattoo Artists,
4 Electrologists and Sanitaricians".

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

7 "**§26H-4 Repeal dates.** (a) The following chapters are hereby
8 repealed effective December 31, 1990:

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

10 (2) Sections 321-13 to 321-15 (midwives, laboratory
11 directors, laboratory technologists, laboratory
12 supervisors, and laboratory technicians[, tattoo
13 artists, electrologists, and sanitaricians])

14 (b) The following chapters are hereby repealed effective
15 December 31, 1991:

16 (1) Chapter 447 (Dental Hygienists)

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

18 (3) Chapter 457 (Board of Nursing)

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

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

2 (6) Chapter 462A (Pilotage)

3 (7) Chapter 438 (Board of Barbers)

4 (8) Chapter 468K (Travel Agencies)

5 (c) The following chapters are hereby repealed effective
6 December 31, 1992:

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

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

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

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

12 (5) Chapter 461 (Board of Pharmacy)

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

14 (7) Chapter 463E (Podiatry)

15 (8) Chapter 467D (Social Workers)

16 (d) The following chapters are hereby repealed effective
17 December 31, 1993:

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

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

20 (3) Chapter 440 (Boxing Commission)

21 (4) Chapter 446 (Debt Adjusters)

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

1 (e) The following sections are hereby repealed effective
2 December 31, 1993:

- 3 (1) Sections 445-21 to 38 (Auctions)
- 4 (2) Sections 445-131 to 136 (Pawnbrokers)
- 5 (3) Sections 445-171 to 172 (Secondhand Dealers)
- 6 (4) Sections 445-231 to 235 (Scrap Dealers)

7 (f) The following chapters are hereby repealed effective
8 December 31, 1994:

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

19 (g) The following chapters are hereby repealed effective
20 December 31, 1995:

- 21 (1) Chapter 439 (Board of Cosmetology)
- 22 (2) Chapter 444 (Contractors License Board)

- (3) Chapter 448E (Board of Electricians and Plumbers)
- (4) Chapter 454 (Mortgage Brokers and Solicitors)
- (5) Chapter 454D (Real Estate Collection Servicing Agents)
- (6) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- (7) Chapter 466 (Board of Public Accountancy)
- (8) Chapter 467 (Real Estate Commission)

(h) The following chapters are hereby repealed effective December 31, 1996:

- (1) Sections 321-13 to 321-15 (tattoo artists and electrologists)

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

- (1) Chapter 463 (Board of Private Detectives and Guards)
- (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§321- Facial tattooing; restricted to licensed physician or surgeon. Application of facial tattoos shall be prohibited except by a physician licensed under chapter 453. A license to engage in the occupation of tattoo artist shall not include the

1 right to apply any facial tattoo.

2 As used in this section, "facial tattoo" means any tattoo
3 applied above the neck, including the eyelids, eyebrows, or
4 lips."

5 SECTION 4. Section 321-13, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§321-13 Regulation of certain other occupations. (a) The
8 department of health [with the approval of the governor, may],
9 pursuant to chapter 91, shall prescribe such rules as it deems
10 necessary for the public health or safety respecting:

11 (1) The occupations or practices of midwives, laboratory
12 directors, laboratory technologists, laboratory
13 supervisors, laboratory technicians, tattoo artists,
14 electrologists, [sanitarians,] asbestos inspectors,
15 asbestos management planners, and asbestos abatement
16 project designers;

17 (2) The [health,] education, training, experience,
18 [habits,] or qualifications[, or character] of persons
19 to whom [certificates of registration or permits]
20 licenses for [such] these occupations or practices may
21 be issued;

22 (3) The [health, habits, character,] practices, standards,

1 or conduct of persons holding [such certificates or
2 permits;] the licenses; or

3 (4) The grounds or causes for revoking or suspending [such
4 certificates or permits.] licenses.

5 [Such] The rules shall have the force and effect of law.

6 (b) It shall be unlawful for any person to engage in or to
7 attempt to engage in or to follow any of the occupations or
8 practices referred to in this section, unless the person first
9 obtains and holds a valid unrevoked [certificate of registration
10 or permit] license under [such] the rules [or regulations] as the
11 department shall prescribe.

12 (c) The department may revoke or suspend any [certificate
13 of registration or permit] license issued under this section or
14 issued prior to April 23, 1941, upon proof to its satisfaction of
15 a violation of any rule [or regulation] of the department on the
16 part of any person holding a [certificate or permit;] license;
17 provided that no [such certificate or permit] license shall be
18 revoked or suspended except upon due notice to the [person
19 holding the same] licensee and the [person] licensee shall be
20 given an opportunity to be heard and present evidence in the
21 person's own defense[.] pursuant to chapter 91.

22 (d) As used in this chapter:

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1 "Electrologist" means any person who removes hair from the
2 body using a needle inserted in the hair follicle and uses direct
3 electric current or shortwave alternating current to destroy the
4 follicle; it does not include any hair removal system that does
5 not penetrate the skin.

6 "Tattoo artist" means any person who creates indelible marks
7 or decorative designs by introducing pigments beneath the surface
8 of the skin."

9 SECTION 5. Section 321-15, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§321-15 Annual registration; fees, failure to register.**
12 Every person holding a license to practice any occupation
13 specified in section 321-13(a)(1) shall reregister with the
14 department of health, in accordance with the rules of the
15 department, [on or] before [January 31] February 1 of each year
16 and shall pay a reregistration fee. [The] Upon the failure[,
17 neglect, or refusal] of any person holding [such] a license to
18 reregister or to pay the reregistration fee[, after thirty days
19 of delinquency, shall constitute a forfeiture of the person's
20 license;] the department shall notify the person in writing
21 within ten days that failure to reregister or pay the fee after
22 thirty days of delinquency shall constitute a forfeiture of the

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1 person's license; provided that the license shall be restored
2 upon written application therefor together with a payment of all
3 delinquent fees and an additional late reregistration fee that
4 may be established by the director of health. Hearings on
5 license forfeitures shall be held under chapter 91."

6 SECTION 6. Statutory material to be repealed is bracketed.
7 New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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G0180(a)-1

DIGEST: RELATING TO HEALTH

Repeals regulation of sanitarians. Extends regulation of tattoo artists and electrologists until 12/31/96.

Defines "tattoo artist" and "electrologist". Changes licensing related terminology such as "permit", "certificate", and "certificate of registration" to "license". Prohibits persons other than licensed physicians from engaging in facial tattooing. Requires notice to licensee prior to forfeiture for failure to register.

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. The purpose of this Act is to implement the
2 recommendations of the legislative auditor in the report entitled
3 "Sunset Evaluation Report, Regulation of Tattoo Artists,
4 Electrologists and Sanitarians".

5 SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended
6 by adding a new part to be appropriately designated and to read
7 as follows:

8 "PART . TATTOO ARTISTS

9 §321- Purpose. The purpose of this part is the protection
10 of public health and safety through the licensing and regulation
11 of tattoo artists.

12 §321- Definitions. As used in this part:

13 "Department" means the department of health.

14 "Director" means the director of health.

15 "Facial tattoo" means any tattoo applied above the neck
16 including the eyelids, eyebrows, or lips.

17 "Tattoo artist" means any person who creates indelible marks
18 or decorative designs by introducing pigments beneath the surface
19 of the skin with the aid of needles.

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1 **§321- Regulation of tattoo artists.** The department shall
2 adopt rules under chapter 91 to implement this part. The rules
3 shall include but not be limited to:

4 (1) Prohibiting the use of anesthetic injections, other
5 medications, and prescription drugs;

6 (2) Prescribing procedures and conditions for
7 sterilization, storage of sterilized equipment,
8 resterilization, and disposal of discarded needles and
9 other equipment;

10 (3) Creating examination standards that meet nationally
11 established standards for validity, reliability, and
12 fair administration; and

13 (4) Fixing penalties and fines for violations of this part
14 or any of the rules adopted by the department.

15 **§321- License required; exemptions.** (a) Except as
16 otherwise provided by law, no person shall practice the
17 occupation of tattoo artist in this State either gratuitously or
18 for pay, or shall announce oneself either publicly or privately
19 as prepared or qualified to practice that occupation without
20 having a valid unrevoked license to do so.

21 (b) Physicians holding a valid unrevoked license under
22 chapter 453 are exempt from the requirements of this part.

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1 **§321- Examination, fees required.** No license shall be
2 issued unless the applicant takes a written examination as
3 prescribed by the director and receives a passing score. No
4 license shall be issued unless all fees required by the director
5 have been paid.

6 **§321- Prohibited acts.** Application of facial tattoos
7 shall be prohibited except by a physician licensed under chapter
8 453. A license to engage in the occupation of tattoo artist
9 shall not include the right to apply any facial tattoo.

10 **§321- Suspension or revocation of license.** The director
11 may revoke or suspend the license of any person licensed under
12 this part who:

- 13 (1) Is found guilty of any fraud, deceit, or misconduct in
14 the practice of the occupation of tattoo artist; or
15 (2) Violates this part or any of the rules adopted by the
16 department.

17 In every case where it is proposed to revoke or suspend a
18 license, the director shall give the licensee concerned notice
19 and a hearing. The notice shall be given in writing by
20 registered or certified mail with return receipt requested at
21 least fifteen days before the hearing. All hearings shall be
22 conducted pursuant to chapter 91."

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1 SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . ELECTROLOGISTS

5 §321- Purpose. The purpose of this part is the protection
6 of public health and safety through the licensing and regulation
7 of electrologists.

8 §321- Definitions. As used in this part:

9 "Department" means the department of health.

10 "Director" means the director of health.

11 "Electrologist" means any person who removes hair from the
12 human body using a needle inserted in the hair follicle and uses
13 direct electric current or shortwave alternating current to
14 destroy the follicle but does not include any hair removal system
15 that does not penetrate the skin.

16 §321- Regulation of electrologists. The department shall
17 adopt rules under chapter 91 to implement this part. The rules
18 shall include but not be limited to:

19 (1) Prohibiting the use of anesthetic injections, other
20 medications, and prescription drugs;

21 (2) Prescribing procedures and conditions for
22 sterilization, storage of sterilized equipment,

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1 resterilization, and disposal of discarded needles and
2 other equipment;

3 (3) Creating examination standards that meet nationally
4 established standards for validity, reliability, and
5 fair administration; and

6 (4) Fixing penalties and fines for violations of this part
7 or any of the rules adopted by the department.

8 **§321- License required.** Except as otherwise provided by law,
9 no person shall practice the occupation of electrologist in this
10 State either gratuitously or for pay, or shall announce oneself
11 either publicly or privately as prepared or qualified to practice
12 this occupation without having a valid unrevoked license to do
13 so.

14 **§321- Examination, fees required.** No license shall be issued
15 unless the applicant takes a written examination as prescribed by
16 the director and receives a passing score. No license shall be
17 issued unless all fees required by the director have been paid.

18 **§321- Suspension or revocation of license.** The director may
19 revoke or suspend the license of any person licensed under this
20 part who:

21 (1) Is found guilty of any fraud, deceit, or misconduct in

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1 the practice of the occupation of electrologist; or
2 (2) Violates this part or any of the rules adopted by the
3 department.

4 In every case where it is proposed to revoke or suspend a
5 license, the director shall give the licensee concerned notice
6 and a hearing. The notice shall be given in writing by
7 registered or certified mail with return receipt requested at
8 least fifteen days before the hearing. All hearings shall be
9 conducted pursuant to chapter 91."

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

12 "**§26H-4 Repeal dates.** (a) The following chapters are hereby
13 repealed effective December 31, 1990:

- 14 (1) Chapter 466J (Board of Radiologic Technology)
- 15 (2) Sections 321-13 to 321-15 (midwives, laboratory
- 16 directors, laboratory technologists, laboratory
- 17 supervisors, and laboratory technicians[, tattoo
- 18 artists, electrologists, and sanitarians])

19 (b) The following chapters are hereby repealed effective
20 December 31, 1991:

- 21 (1) Chapter 447 (Dental Hygienists)
- 22 (2) Chapter 453 (Board of Medical Examiners)

- 1 (3) Chapter 457 (Board of Nursing)
- 2 (4) Chapter 458 (Board of Dispensing Opticians)
- 3 (5) Chapter 460J (Pest Control Board)
- 4 (6) Chapter 462A (Pilotage)
- 5 (7) Chapter 438 (Board of Barbers)
- 6 (8) Chapter 468K (Travel Agencies)
- 7 (c) The following chapters are hereby repealed effective
- 8 December 31, 1992:

- 9 (1) Chapter 448H (Elevator Mechanics Licensing Board)
- 10 (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- 11 (3) Chapter 457B (Board of Examiners of Nursing Home
- 12 Administrators)
- 13 (4) Chapter 460 (Board of Osteopathic Examiners)
- 14 (5) Chapter 461 (Board of Pharmacy)
- 15 (6) Chapter 461J (Board of Physical Therapy)
- 16 (7) Chapter 463E (Podiatry)
- 17 (8) Chapter 467D (Social Workers)
- 18 (d) The following chapters are hereby repealed effective

19 December 31, 1993:

- 20 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- 21 (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- 22 (3) Chapter 440 (Boxing Commission)

1 (4) Chapter 446 (Debt Adjusters)

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

3 (e) The following sections are hereby repealed effective
4 December 31, 1993:

5 (1) Sections 445-21 to 38 (Auctions)

6 (2) Sections 445-131 to 136 (Pawnbrokers)

7 (3) Sections 445-171 to 172 (Secondhand Dealers)

8 (4) Sections 445-231 to 235 (Scrap Dealers)

9 (f) The following chapters are hereby repealed effective
10 December 31, 1994:

11 (1) Chapter 441 (Cemetery and Funeral Trusts)

12 (2) Chapter 443B (Collection Agencies)

13 (3) Chapter 452 (Board of Massage)

14 (4) Chapter 455 (Board of Examiners in Naturopathy)

15 (5) Chapter 459 (Board of Examiners in Optometry)

16 (6) Chapter 442 (Board of Chiropractic Examiners)

17 (7) Chapter 373 (Commercial Employment Agencies)

18 (8) Chapter 448 (Board of Dental Examiners)

19 (9) Chapter 465 (Board of Psychology)

20 (10) Chapter 468E (Speech Pathology and Audiology)

21 (g) The following chapters are hereby repealed effective
22 December 31, 1995:

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- (1) Chapter 439 (Board of Cosmetology)
- (2) Chapter 444 (Contractors License Board)
- (3) Chapter 448E (Board of Electricians and Plumbers)
- (4) Chapter 454 (Mortgage Brokers and Solicitors)
- (5) Chapter 454D (Real Estate Collection Servicing Agents)
- (6) Chapter 464 (Professional Engineers, Architects,
Surveyors and Landscape Architects)
- (7) Chapter 466 (Board of Public Accountancy)
- (8) Chapter 467 (Real Estate Commission)

(h) The following chapters are hereby repealed effective

December 31, 1996:

(1) Chapter 321, part (Tattoo Artists)

(2) Chapter 321, part (Electrologists)

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

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

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

SECTION 5. Section 321-13, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) The department of health, with the approval of the
governor, may prescribe such rules as it deems necessary for the
public health or safety respecting:

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- (1) The occupations or practices of midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, [tattoo artists, electrologists, sanitarians,] asbestos inspectors, asbestos management planners, and asbestos abatement project designers;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for [such] these occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding [such] these certificates or permits; or
- (4) The grounds or causes for revoking or suspending [such] these certificates or permits.

[Such] The rules shall have the force and effect of law."

SECTION 6. Statutory material to be repealed is bracketed.
New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: _____