

CHAPTER 438
BARBERING, PRACTICE OF

Section

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Cross References

Sunset evaluations modified, see §§26H-4 and 26H-5.

" **§438-1 Definitions.** For the purpose of this chapter:

"Barber" is a person who is licensed to practice barbering.

"Barber apprentice" is a person who is engaged in learning or acquiring the practice of barbering within a barbering or beauty shop and while learning assists in any of the practices mentioned herein under the immediate direction and supervision of a barber or beauty operator with hairdresser qualifications.

"Barber shop" means any establishment or place of business wherein the practice of barbering is engaged or carried on and is the primary purpose of that establishment or business; provided that the practice of cosmetology is allowed in that establishment or place of business.

"Board" means the board of barbering and cosmetology as established pursuant to sections 438-3, 438-5, and 438-6.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Practice of barbering" means any combination of the following practices for remuneration: shaving, cutting, trimming, singeing, shampooing, arranging, dressing, curling, waving, or coloring the hair or beard or applying tonics or other preparation thereto; massaging, cleansing, or applying oils, creams, lotions, or other preparation to the face, scalp, or neck, either by hand or by mechanical appliances; provided that nothing in this chapter shall be construed as applicable to those persons licensed under chapter 439 to practice the occupations named therein.

"Student" is a person who is engaged in learning to be a barber in a barber school and while so doing assists in doing any act involved in the practice of barbering under the supervision of an instructor. [L 1947, c 194, §1; RL 1955, §58-1; HRS §438-1; am L 1986, c 138, §2; am L 1987, c 246, §1; am L 1997, c 87, §2]

" **§438-2 License required.** (a) It shall be unlawful for any person in the State to engage in the practice of barbering for compensation unless the person has first obtained a license, apprentice permit, or temporary permit.

(b) It shall be unlawful for any person to operate a barber shop in the State unless the person has first obtained a license for the barber shop.

(c) The practice of barbering shall be carried on only by persons holding a license, apprentice permit, or temporary permit to practice in this State and only in licensed barber shops, except that a duly licensed barber may practice barbering at a health care, nursing, mental or correctional facility, barber school, beauty shop, charitable event, or a person's private home, office, or hotel room when requested to do so. [L 1947, c 194, §2; RL 1955, §58-2; HRS §438-2; gen ch 1985; am L 1987, c 246, §2; am L 1993, c 264, §1]

" **§438-3 Board of barbering and cosmetology.** (a) There shall be a state board of barbering and cosmetology consisting of seven members who shall be appointed and may be removed by the governor. The members shall be residents of the State, of which:

- (1) Two members shall be barbers licensed under chapter 438 who have been licensed to practice for at least five years and have been actively and continuously engaged as licensees for that period;
- (2) Two members shall be beauty operators licensed under chapter 439, who have been licensed to practice for at least five years and have been actively and continuously engaged as licensees for that period; and
- (3) Three shall be public members.

Each member shall serve for a term of four years, and until the member's successor is appointed and qualified.

(b) Board members affiliated with any school teaching any of the classified occupations shall disclose that affiliation and at all times shall adhere to chapter 84 and the interpretations of that chapter by the state ethics commission. [L 1947, c 194, §3; RL 1955, §58-3; am L Sp 1959 2d, c 1, §5; HRS §438-3; am L 1978, c 208, §1; am L 1983, c 240, §1; am L 1992, c 202, §35; am L 1993, c 322, §2; am L 1997, c 87, §3]

" **§438-4 REPEALED.** L 1993, c 264, §13.

" **§438-5 Powers and duties of the board.** (a) In addition to any other powers and duties authorized by law, the board may give examinations for the issuance of licenses to practice barbering and cosmetology; issue apprentice permits or temporary permits; grant, revoke, or suspend licenses, apprentice permits, or temporary permits; and establish, subject to chapter 91 and with the approval of the governor and the director, rules governing the practice of barbering and cosmetology that shall have the force and effect of law.

(b) The board may require the attendance of witnesses and the production of books, records, and papers as it or any person

involved may desire at any hearing of any matter which the board has authority to investigate, and for that purpose may require the executive secretary to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers directed to the sheriff or chief of police of the county where the witness resides or is found which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage shall be paid from the funds in the state treasury for the use of the board in the same manner as other expenses of the board.

(c) Any investigation, inquiry, or hearing which the board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of the board or an appointed hearings officer and the finding or order of that member, members, or hearings officer shall be deemed to be the finding or order of the board when approved and confirmed by it.

(d) The board, as prescribed by rules, may recognize the equivalency of barber and hairdresser practices to allow training of an apprentice by either licensee in order for the apprentice to fulfill training requirements. [L 1947, c 194, §5; RL 1955, §58-5; am L 1965, c 96, §40; HRS §438-5; am L 1974, c 205, §2(5); am L 1983, c 240, §3; am L 1986, c 138, §7 and c 211, §4; am L 1987, c 246, §3; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1992, c 202, §36; am L 1993, c 264, §2; am L 1997, c 87, §4]

" **§438-6 Appeal from actions of the board.** (a) An appeal may be taken from a final action of the board suspending or revoking a license, apprentice permit, or temporary permit for the causes mentioned in section 438-14 or 439-19 to the circuit court of the circuit in which the person whose license, apprentice permit, or temporary permit has been suspended or revoked resides. The judgment of the circuit court may be reviewed by the intermediate appellate court, subject to chapter 602.

(b) Any person aggrieved by the denial or refusal of a license, apprentice permit, or temporary permit by the board shall submit a request for a hearing pursuant to chapter 91 within sixty days of the date of notification of the denial or refusal. [L 1947, c 194, §6; RL 1955, §58-6; HRS §438-6; am L 1987, c 246, §4; am L 1993, c 264, §3; am L 1997, c 87, §5; am L 2006, c 91, §4]

Rules of Court

Appeal to circuit court, see HRCP rule 72; appeals, see Hawaii Rules of Appellate Procedure.

" **§438-7 Applications.** (a) Each person who desires to practice as a barber or as a barber apprentice or to operate a barber shop shall first file with the board a written application on a form prescribed and supplied by the board, deposit with the board the required fees, and satisfy the applicable qualification requirements specified in this section.

(b) An applicant for a barber's license shall:

(1) Be at least seventeen years of age;

(2) Have a total of fifteen hundred clock hours of barber training through the following or a combination thereof:

(A) As a barber apprentice, holding a barber apprentice permit; or

(B) As a student enrolled in a school that has a barbering curriculum; provided that only classes related to barbering shall be applied towards the accumulation of clock hours;

the board shall adopt rules pursuant to chapter 91 to implement this paragraph; and

(3) Take and pass an examination for licensure.

(c) An applicant for a barber apprentice permit shall:

(1) Be at least seventeen years of age; and

(2) Provide proof that the applicant will be training in a licensed barber shop, or beauty shop under supervision of a licensed barber, or licensed beauty operator with hairdresser qualifications.

(d) An applicant for a barber shop license shall:

(1) Meet the standards of sanitation required by the department of health and as prescribed by the rules of the board;

(2) Identify at least one licensed barber at the barber shop to qualify the barber shop for licensure;

(3) Identify the owner of the barber shop who shall be responsible for all operations of the barber shop and who shall ensure that only currently licensed barbers, barber apprentice permittees, barber temporary permittees, or beauty operators, beauty operator temporary permittees, or beauty operator apprentice permittees practice in the barber shop;

(4) Identify the name and location of the barber shop;

(5) Demonstrate that the applicant has adequate equipment and facilities for the practice of barbering as prescribed by the rules of the board; and

(6) Provide a statement that the applicant shall allow only qualified licensees who have at least one year's

experience to train apprentices as prescribed by the rules of the board.

(e) Any barber applicant who has not obtained licensure after four consecutive examinations offered by the board shall be required to apply and train as an apprentice barber for six months before qualifying for another series of examinations.

(f) Any transfer of ownership of a barber shop, change in a barber shop name, or relocation of a barber shop shall require the filing of a new application for licensure together with the required fees.

(g) The board, as prescribed by rules, may recognize training obtained under a licensed beauty operator with hairdresser qualifications to fulfill the barber training requirement. [L 1947, c 194, §7; RL 1955, §58-7; HRS §438-7; am L 1983, c 240, §4; am L 1986, c 138, §3; am L 1987, c 246, §5; am L 1993, c 264, §4; am L 1994, c 124, §2; am L 1997, c 40, §3 and c 87, §6]

" **§438-8 Requisites for admission to examinations.** (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of barber applicants for admission to examinations.

(b) The board shall contract with a professional testing service to have the testing service prepare and provide examinations for applicants as may be required for the purposes of this chapter. The examinations shall not be confined to any specific system or method, and the examinations shall be consistent with the practical and theoretical requirements as provided by this chapter.

(c) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. [L 1947, c 194, §8; RL 1955, §58-8; am L 1967, c 96, §1; HRS §438-8; am L 1979, c 8, §1; am L 1983, c 240, §5; am L 1986, c 138, §4; am L 1987, c 246, §6; am L 1993, c 264, §5]

Cross References

Disposal of examination records, see §94-5.

" **[§438-8.5] Medical clearance.** The board, at its discretion may request any barber to submit to such medical clearance tests, including blood tests, as the board deems appropriate to protect the public health. [L 1986, c 138, §8]

" **§438-9 Issuance and display of licenses or permits.** (a) A barber license shall be issued to each applicant who satisfies

the application requirements, passes the examination, and pays the required fees. The license shall be conspicuously displayed adjacent to or near the person's work station.

(b) A barber shop license shall be issued to each applicant who satisfies the application requirements and pays the required fees. The license shall be displayed in a conspicuous place in the barber shop.

(c) A temporary permit may be issued to a qualified applicant approved for examination who pays the required fees. The temporary permit shall be conspicuously displayed adjacent to or near the person's work station.

(d) An apprentice permit shall be issued to an applicant who satisfies the application requirements and pays the required fees. The apprentice permit shall be conspicuously displayed adjacent to or near the person's work station. [L 1947, c 194, §9; RL 1955, §58-9; HRS §438-9; am L 1983, c 240, §6; am L 1987, c 246, §7; gen ch 1992; am L 1993, c 264, §6]

" **§438-10 Temporary permits; apprentice permits.** (a) A temporary permit may be issued upon application for examination and payment of the required fees. The temporary permit shall allow the qualified applicant to practice barbering under the supervision of a licensed barber or beauty operator with hairdresser qualifications and shall be effective for the period of time covering four consecutive examinations offered by the board after the permit's date of issuance. If the applicant has not obtained licensure after four consecutive examinations offered by the board, the applicant shall be required to apply and train as an apprentice for six months before qualifying for another series of examinations.

(b) An apprentice permit shall be used by the apprentice to obtain the hours of training needed to qualify for a barber's license. An apprentice shall obtain an apprentice permit before beginning apprenticeship training. [L 1947, c 194, §11; RL 1955, §58-10; HRS §438-10; am L 1979, c 8, §2; am L 1983, c 240, §7; am L 1987, c 246, §8; am L 1993, c 264, §7; am L 1997, c 87, §7]

" **§438-11 Fees.** (a) Applicants for licensure and renewal of licensure under this chapter shall pay the required fees.

(b) Applicants for temporary permits or apprentice permits shall pay application and permit fees.

(c) A duplicate license or permit may be issued upon the filing of a written request and the payment of a duplicate fee.

(d) All fees required by this chapter shall be as provided in rules adopted by the director pursuant to chapter 91 and shall be deposited with the director to the credit of the compliance resolution fund established pursuant to section 26-

9(o), except that the examination fee required in section 438-8 may be paid directly to the professional testing service by the department or examinee. [L 1947, c 194, §12; RL 1955, §58-11; am L Sp 1959 2d, c 1, §§14, 15; am L 1961, c 142, §1 and c 184, §6(a); am L 1963, c 114, §§1, 3; HRS §438-11; am L 1975, c 118, §4(1); am L 1983, c 240, §8; am L 1984, c 7, §8; am L 1987, c 246, §9; am L 1993, c 264, §8; am L 1997, c 232, §2]

" **§438-12 Renewal of licenses.** The holder of a barber or barber shop license issued by the board who continues in active practice shall biennially, on or before December 31 of each odd-numbered year, renew the license and pay the renewal fee. A license that has not been renewed shall be considered forfeited. A forfeited license may be restored within three years after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable fees; provided that the board may consider restoration beyond this period as prescribed by rules of the board. [L 1947, c 194, §13; RL 1955, §58-12; HRS §438-12; am L 1975, c 118, §4(2); am L 1983, c 240, §9; am L 1993, c 264, §9; am L 1997, c 87, §8]

" **§438-13 Penalties.** Any person who practices barbering, operates a barber shop, or acts in any capacity wherein a license, apprentice permit, or temporary permit is required, without a license, apprentice permit, or temporary permit as provided in this chapter shall be fined not more than \$100, or imprisoned not more than six months, or both. Each day of violation shall be a separate offense. [L 1947, c 194, §15; RL 1955, §58-13; am L 1961, c 184, §6(b); HRS §438-13; am L 1987, c 246, §10; am L 1993, c 264, §10]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§438-14 Disciplinary actions.** (a) In addition to any other actions authorized by law, the board may take disciplinary action against any person to whom a license, apprentice permit, or temporary permit has been issued under this chapter, including but not limited to revocation of the license, apprentice permit, or temporary permit, suspension, fine, or a combination thereof, or may refuse to grant or renew any license, apprentice permit, or temporary permit for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license, apprentice permit, or temporary permit through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross negligence, or manifest incapacity;
- (3) Permitting a person without a license, apprentice permit, or temporary permit to perform activities which require a license, apprentice permit, or temporary permit under this chapter;
- (4) Violation of this chapter or the rules adopted pursuant thereto;
- (5) Making any false representation or promise through advertising or otherwise;
- (6) Failing to display a license, apprentice permit, or temporary permit as provided in this chapter;
- (7) Any conduct constituting fraudulent or dishonest dealings;
- (8) Failure to comply with a board order; or
- (9) Making a false statement on any document submitted or required to be filed by this chapter.

(b) Any person who violates this chapter or the rules adopted pursuant thereto shall be fined not less than \$100 nor more than \$1,000 for each violation.

(c) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [L 1986, c 138, §5 and c 211, §2; am L 1992, c 202, §37; am L 1993, c 264, §11]

" **§438-15 Right of injunction.** The department may, in addition to any other remedies available, apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter. [L 1986, c 138, §6 and c 211, §3; am L 1993, c 264, §12]