

CHAPTER 439
BEAUTY CULTURE

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Note

Source notes for certain sections of this chapter start with L 1949, c 397, which completely amended this chapter.

Cross References

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

" **§439-1 Definitions.** As used in this chapter:

"Beauty apprentice" means a person who is engaged in a beauty or barber shop in learning to be a beauty operator and while so doing assists in any of the practices of cosmetology under the supervision of a licensed beauty operator or licensed barber for the hairdresser category.

"Beauty apprentice permit" means a permit issued by the board, upon registration and payment of application and registration fees, to an apprentice who is under the supervision of a licensed beauty operator or licensed barber for the hairdresser category.

"Beauty operator" means one of the following licensure categories: cosmetologist; hairdresser; esthetician; or nail technician.

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

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

"Cosmetologist" means a person who engages in the practices of a hairdresser, an esthetician, and a nail technician for compensation.

"Cosmetology", also known as beauty culture, means the art and science of beauty care of the skin, hair, scalp, and nails, and includes any one or a combination of the licensure categories if they are performed on a person's head, face, neck, shoulders, arms, hands, bust, upper part of the body, legs, or feet for cosmetic purposes.

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

"Esthetician" means any person who, with hands or nonmedically prescribed mechanical or electrical apparatus or devices or by use of cosmetic preparations, antiseptics, tonics, lotions, or creams, engages for compensation in any one or any combination of the following practices:

- (1) Massaging, cleansing, stimulating, manipulating, exercising, beautifying, or doing similar work on the scalp, face, neck, hands, arms, bust, upper part of the body, legs, or feet;
- (2) Cleansing, exfoliating, wrapping, or doing similar work upon the entire body, without direct contact by the hands and utilizing gloves, loofah mitts, or brushes; or
- (3) Removing superfluous hair about the body of any person by means other than electrolysis.

"Hairdresser" means any person who for compensation engages in any one or any combination of the following practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of another person.

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

"Nail technician" means any person who for compensation engages in the practice of:

- (1) Cutting, trimming, polishing, coloring, cleansing, or otherwise treating a person's fingernails and toenails;
- (2) Applying artificial fingernails and toenails; and
- (3) Massaging and cleansing a person's hands, arms, legs, and feet.

"School", unless the context clearly indicates otherwise, means a school engaged in teaching cosmetology.

"Student" means a person who is engaged in a school in learning to be a beauty operator and while so doing does or assists in doing any act involved in the practice of cosmetology.

"Temporary permit" means a permit allowing a qualified applicant to practice as a beauty operator or instructor for a period of time covering the three consecutive examinations offered by the board after the permit's date of issuance. [L 1949, c 397, pt of §1; am L 1955, c 198, §1; RL 1955, §59-1; am L 1963, c 111, §1; HRS §439-1; am L 1981, c 47, §1; am L 1986, c 139, §2; am L 1987, c 154, §3; am L 1989, c 153, §2; am L 1991, c 180, §1; am L 1997, c 87, §9; am L 1998, c 187, §1]

Cross References

Electrologists, see chapter 448F.

" **§439-2 License; required.** (a) No person shall for commercial purposes practice as a beauty operator, apprentice,

or instructor or operate a school or beauty shop or announce or advertise as being prepared or qualified to do so unless the person is licensed as required by this chapter; provided that this chapter shall not affect the right of any person licensed by the State to engage in any other occupation from doing any of the acts properly authorized by the person's license. The license of a beauty operator, instructor, shop, or school and the permit of an apprentice or temporary permittee shall be displayed in a conspicuous place in the office, place of business or employment, or school of the holder.

(b) The practice of cosmetology shall be carried on only by persons duly licensed to practice in this State and only in licensed beauty shops; provided a licensed beauty operator may practice cosmetology at any place for educational purposes or upon persons at a health care, nursing, mental, or correctional facility, at a barber shop, and at a charitable event. [L 1949, c 397, pt of §1; am L 1955, c 198, §2; RL 1955, §59-2; HRS §439-2; am L 1983, c 210, §1; am L 1987, c 154, §4; am L 1989, c 153, §3]

" **§439-3 REPEALED.** L 1997, c 87, §12.

" **§439-4 REPEALED.** L 1992, c 202, §188.

" **§439-5 REPEALED.** L 1997, c 87, §13.

" **§439-6 REPEALED.** L 1992, c 202, §189.

" **§439-7 REPEALED.** L 1997, c 87, §14.

" **§439-8 REPEALED.** L 1987, c 154, §23.

" **§439-9 REPEALED.** L 1992, c 202, §190.

" **§439-10 REPEALED.** L 1997, c 87, §15.

" **§439-11 Application for examination.** Each person who desires to practice or instruct as a beauty operator or instructor shall file with the board a written application on a form prescribed and supplied by the board and shall submit satisfactory proof of the required age and qualifications specified in section 439-12 and pay the required application and examination fees. [L 1949, c 397, pt of §1; RL 1955, §59-12; am L 1967, c 102, §3; HRS §439-11; am L 1986, c 139, §5; am L 1987, c 154, §11; am L 1997, c 40, §4]

" **§439-12 Requisites for admission to examination.** (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examinations; provided that the licensure categories shall be limited to cosmetologist, hairdresser, esthetician, nail technician, and instructor. The preliminary qualifications for admission to examination shall be as provided in this section.

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

- (1) Three thousand six hundred hours of training as a beauty apprentice in a beauty shop under the supervision of a licensed cosmetologist or in a barber shop under the supervision of a licensed barber for the hairdresser training only; or
- (2) One thousand eight hundred hours of training in a licensed beauty school.

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

- (1) Two thousand five hundred hours of training as a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist or hairdresser or licensed barber for the hairdresser training; or
- (2) One thousand two hundred fifty hours of training in a licensed beauty school.

(d) An esthetician applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) One thousand two hundred hours of training as a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist or esthetician; or
- (2) Six hundred hours of training in a licensed beauty school.

(e) A nail technician applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Seven hundred hours of training as a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist, esthetician, or nail technician; or
- (2) Three hundred fifty hours of training in a licensed beauty school.

(f) An instructor applicant may apply to teach in any of the practices of cosmetology if the applicant has:

- (1) Completed six hundred hours of a board approved course in the theory and practice of teaching; and
- (2) Served actively for a period of at least one year as a licensed beauty operator in the State or in another jurisdiction having standards for beauty operators substantially equivalent to those of this State.

(g) The board shall recognize beauty training obtained in another jurisdiction which is substantially equivalent to the training available in this State. If such training is not equivalent, the board shall make a determination as to whether or not to recognize the training by evaluating the type and duration of the training and the experience required to obtain a license in the other jurisdiction.

(h) The board, as prescribed by rules, may recognize training obtained under a licensed barber to fulfill the hairdresser training requirement. [L 1949, c 397, pt of §1; am L 1955, c 198, §3; RL 1955, §59-13; am L 1961, c 142, §2(b), (c); am L 1965, c 120, §1; HRS §439-12; am L 1978, c 233, §1; am L 1981, c 47, §2; am L 1983, c 210, §8; am L 1984, c 7, §10; am L 1986, c 139, §6; am L 1987, c 154, §12; am L 1989, c 153, §6; am L 1997, c 87, §10; am L 1998, c 187, §2]

" **§439-12.5 Medical clearance.** The board, at its discretion, may require any operator to submit to such medical clearance tests, including blood tests, as the board deems appropriate to protect the public health. [L 1986, c 139, §10]

" **§439-13 Admission to examination.** If the board finds that the applicant has met the qualifications necessary for admission to the examination, the board shall admit the applicant to examination. [L 1949, c 397, pt of §1; RL 1955, §59-14; HRS §439-13; am L 1987, c 154, §13]

" **§439-14 Examination.** (a) 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 of the occupations as provided by this chapter. The examinations shall be given on a regular basis or whenever is appropriate, and be updated and revised based on the current job analysis surveys and other data and information relevant to the practice of cosmetology.

(b) 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. The examination

fee may be paid directly to the professional testing service by the director or the examinee or deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(c) An applicant who fails an initial examination thereafter may file another application for examination with the professional testing service and pay the examination fee for any subsequent examination.

(d) A temporary permit may be issued upon request, to an applicant required to be examined as prescribed in section 439-16. [L 1949, c 397, pt of §1; RL 1955, §59-15; HRS §439-14; am L 1986, c 139, §7; am L 1987, c 154, §14; am L 1989, c 153, §7; am L 1997, c 232, §3]

Cross References

Disposal of examination papers, see §94-5.

" **§439-15 License, fees.** (a) The board shall issue a license as a beauty operator, or instructor, as the case may be, to each person who passes the required examination, pays the proper fees, and meets all of the other requirements of this chapter. The license shall state specifically the licensure category for which the person is licensed and shall be signed by the chairperson and executive secretary and impressed with the seal of the board.

(b) All licenses issued by the board shall expire on December 31 of each odd-numbered year.

(c) Every licensed beauty operator and instructor shall pay to the board by December 31 of each odd-numbered year a biennial renewal fee. The payment of the renewal fee shall entitle the licensee to renewal of the license.

(d) Failure or refusal to renew the license by December 31 of each odd-numbered year shall constitute a forfeiture of the license. The license shall be restored upon payment of all delinquent fees and a penalty fee if application is made within three years after lapse; provided that the board may consider restoration beyond this period as prescribed by rules of the board. [L 1949, c 397, pt of §1; am L 1955, c 198, §4; RL 1955, §59-16; am L 1961, c 142, §2(d), (e); HRS §439-15; am L 1975, c 118, §5; am L 1983, c 210, §9; am L 1984, c 7, §11; am L 1987, c 154, §15; am L 1989, c 153, §8; am L 1992, c 202, §41; am L 2004, c 13, §1]

" **§439-16 Temporary permits.** The board may issue a temporary permit to a qualified applicant approved for examination. 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 or teach cosmetology under the supervision of a licensed beauty operator or licensed instructor, and shall be effective for the period of time covering the three consecutive examinations offered by the board after the permit's date of issuance. An applicant who fails to pass the third examination but who satisfies the requirements of section 439-14(c) shall continue to qualify for examination and licensure but not for the privilege of a temporary permit. [L 1949, c 397, pt of §1; RL 1955, §59-17; am L 1965, c 278, §1; HRS §439-16; am L 1983, c 210, §10; am L 1984, c 7, §12; am L 1987, c 154, §16; am L 1989, c 153, §9; am L 1991, c 180, §3]

" **§439-17 Beauty shops.** (a) A license for a beauty shop may be secured by filing an application and paying the application and license fees and showing that the shop has been inspected not more than one year before the application was filed and meets the standards of sanitation required by the department of health, that a licensed beauty operator in the appropriate licensure category shall be in charge of the shop, and that it is adequately equipped for the practices in which it engages.

(b) All licenses shall expire on December 31 in each odd-numbered year. Licenses may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed license may be restored upon payment of all delinquent fees and a penalty fee.

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

(d) The beauty shop owner shall be responsible for all operations of the shop and shall be responsible to see that only currently licensed individuals, apprentices, or temporary permittees are practicing in the shop.

(e) Transfer of ownership, change in beauty shop name, and relocation of a beauty shop shall require filing of an application together with required fees.

(f) The beauty shop shall maintain records of appointments and services offered to clients, as prescribed by the rules of the board, for a period of three years.

(g) All beauty shops shall have equipment and facilities as prescribed by the rules of the board. [L 1949, c 397, pt of

§1; RL 1955, §59-18; am L Sp 1959 2d, c 1, §19; am L 1961, c 142, §2(f), (g); HRS §439-17; am L 1980, c 15, §2; am L 1981, c 47, §3; am L 1983, c 210, §11; am L 1984, c 7, §§13, 14; am L 1986, c 139, §8; am L 1987, c 154, §17; am L 1989, c 153, §10; am L 1991, c 180, §4; am L 1992, c 202, §42; am L 1997, c 87, §11]

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

(b) No school shall be granted a license unless it employs and maintains a sufficient number of licensed instructors, and requires a course of training of a proportioned number of hours as approved by the board, for any of the licensure categories, to include both practical demonstrations, written and oral tests, and practical instruction in sanitation, sterilization, and the use of antiseptics consistent with the practical and theoretical requirements applicable to the practice of cosmetology.

(c) All licenses shall expire on December 31 following the date of issue, but may be renewed by payment of the annual license fee prior to the date of expiration. A lapsed license may be restored upon the payment of all delinquent fees and a penalty fee.

(d) All schools shall have sufficient equipment and adequate facilities as prescribed by the rules of the board. [L 1949, c 397, pt of §1; RL 1955, §59-19; am L 1961, c 142, §2(h); HRS §439-18; am L 1983, c 210, §12; am L 1984, c 7, §15; am L 1987, c 154, §18; am L 1989, c 153, §11; am L 1992, c 202, §43]

" **§439-19 Refusal to grant and revocation and suspension of licenses.** (a) In addition to any other actions authorized by law, the board may take disciplinary action against any license issued under this chapter, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to grant or renew any license for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an unlicensed person to perform activities which require a license 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 the license as provided in this chapter;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failing 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. [L 1949, c 397, pt of §1; RL 1955, §59-20; HRS §439-19; am L 1974, c 205, §2(6); am L 1983, c 210, §13; am L 1987, c 154, §19; am L 1989, c 153, §12; am L 1992, c 202, §44]

" **§439-20 Hearing.** In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board or any member thereof, or of any subpoena issued by it or any member, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the board or any member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein. [L 1949, c 397, pt of §1; RL 1955, §59-21; am L 1965, c 96, §42; HRS §439-20; am L 1973, c 31, pt of §21; gen ch 1985; am L 1987, c 154, §20; am L 1989, c 153, §13; am L 1992, c 202, §45]

Rules of Court

Subpoenas, see HRCF rule 45.

" **§439-21 Board to aid prosecution.** The board shall aid prosecuting officers in the prosecution of persons charged with violations of this chapter. [L 1949, c 397, pt of §1; RL 1955, §59-22; HRS §439-21; am L 1987, c 154, §21]

" **§439-22 Penalty.** Any person who practices cosmetology, maintains a school or a beauty shop, or acts in any capacity wherein a license is required, without a license as provided in this chapter, shall be fined not more than \$100, or imprisoned not more than ninety days, or both. Each and every day of violation shall be a separate offense. [L 1949, c 397, pt of §1;

RL 1955, §59-23; HRS §439-22; am L 1987, c 154, §22; am L 1989, c 153, §14]

Cross References

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

" **[§439-23] Right of injunction.** The department, in addition to any other remedies available, may apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter. [L 1987, c 154, §1]

" **[§439-24] Cumulative remedies.** 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 1987, c 154, §2]