

BEFORE THE BOARD OF BARBERING AND COSMETOLOGY

In the Matter of the Approval of Online)
Course of)
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 of)
)
 HONOLULU NAIL ACADEMY, LLC,)
 dba HONOLULU NAILS &)
 AESTHETICS ACADEMY)
_____)

MEMORANDUM IN LAW IN SUPPORT

Comes now Applicant HONOLULU NAIL ACADEMY, LLC, dba HONOLULU NAIL & AESTHETICS ACADEMY (“HNA”), by and through its attorney, submits a memorandum in support of the Board’s approval of a fully online training program for students called “HNA Interactive Multimedia Checkpoint System (“IMCS”).”

I. FACTS

HNA currently has an approved Online Nail program (2017). HNA added the Esthetics program in 2020 during the Pandemic. HNA has a proven track record of safely and successfully implementing our esthetic program over the past three years until it was halted. The numerous benefits and safety measures of this program. The new system has been enhanced for better performance.

HNA has maintained all conversations with a previous executive officer: (“EO’). See, Timeline submitted in the last meeting. HNA continuously worked with the EO to complete IMSC system because HNA made a large investment to make the system. EO noted that HNA’s document detailing appropriate safeguards was significantly similar to your online nail program previously approved by the Board at its May 22, 2017 meeting.

It is highly likely the Board will approve your attached program (4/27/2020).

HNA's apprentice manual, in the pertinent part, provides the following instructions to the students;

Beauty shop responsibility

2. Space and Facilities

- a. The beauty shop shall be adequately equipped and maintained to provide the apprentice with a station/practical work area to include space for personal items and for the theory study;
- b. The beauty shop shall have sufficient electrical outlets and a first aid kit for emergency use; and
- c. The beauty shop shall comply with the sanitation requirements of the Department of Health.

3. Instructional Material

The beauty shop shall have an adequate supply. Of authoritative and instructional materials and training aids to train in each certification category offered. The beauty shop shall provide the apprentice with a list of equipment and supplies. (similar to a beauty kit) necessary for the desired certification category at a reasonable cost but shall not exceed the wages earned by the apprentice, which shall include but not be limited to the following:

- a. Ch78 and Ch439
- b. A textbook (ex: milady)
- c. Necessary professional and personal electrical equipment which shall be in good working order;
- d. Beauty shop supplies that shall be of a professional nature and necessary to that certification category; and
- e. The apprentice shall have a mannequin and a holder of good quality, if appropriate to that certification category.

4. Supervising operator

Part of the designated supervising operator's responsibility shall include assurance of the apprentice's training through instruction, demonstration, direction, counseling, and disciplining.

The supervising operator shall be responsible for the accumulated training records which will contain:

- a. Daily attendance and running monthly total of accumulated hours titled "Apprentice Daily Attendance Report"
- b. Theory instruction and mannequin work; and
- c. Practical experience verification; and
- d. Completion verification of each task, subject, or work process.

II. ARGUMENTS

A. LAW DOES NOT REQUIRE PHYSICAL FACILITIES AND EQUIPMENT TO BE PHYSICALLY AT THE SCHOOL

Hawaii Revised Statutes, Chapter 439A does not prohibit online training programs.

§439A-11 Beauty schools

(a) Any person may apply to the board for a license as a beauty school upon the payment of application and license fees.

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

(c) All beauty schools shall have **sufficient equipment** and **adequate facilities** as prescribed by the rules of the board. [L 2022, c 73, pg of §1]

Hawaii Revised Statutes, Section 439A-11[Emphasis supplied]

Hawaii Revised Statutes, Section 439A-11 does not provide that it prohibits “online courses.” Section 439A-11 does not state that beauty schools must have their students receive lessons at their physical facilities. The administrative rules mirror this.

§16-78-48 Schools.

No license for a beauty school shall be issued unless the applicant presents evidence - to the board that the applicant has **satisfactory school facilities and equipment**, meets all of the requirements of the board and is qualified to offer a course of study as provided by the board.

Hawaii Administrative Rules, §16-78-48 [Emphasis Supplied]

Therefore, if HNA shows that it has satisfactory online line course facilities and the program provides proper equipment to students, then the Board must grant such an online program under the Hawaii Revised Statutes, Section 439A-11 and Hawaii Administrative Rules, §16-78-48.

In this case, HNA does have physical facilities as determined when the beauty school license was issued and has maintained such facilities. Furthermore, school facilities can include online facilities to provide “online courses” which include the server, software, and intellectual property to provide education.

B. HNA HAS SHOWN IT HAS ADEQUATE ONLINE FACILITIES

In the Hawaii Administrative Rules, there is a rule regulating school facilities.

§16-78-57 School facilities.

The room or rooms where work is done on customers shall not be used as a class or lecture room when customers are present. **There shall be adequate facilities for classroom use, appropriately equipped.** There shall also be sufficient lockers available for students' private property.

Hawaii Administrative Rules, §16-78-57 [Emphasis Supplied]

HNA has physical facilities and online facilities to teach students online. The students will be using their homes as their own facilities.

C. HNA HAS SHOWN PROVIDE SUFFICIENT EQUIPMENT FOR STUDENTS IN THEIR ONLINE PROGRAM

In the Hawaii Administrative Rules, there is a rule regulating school equipment. It provides:

§16-78-58 Equipment.

(a) The school shall maintain at least the following minimum equipment for every twenty-five students enrolled:

* * *

(3) Sufficient reclining chairs for facials (purees are acceptable);

* * *

(5) One chair and dresser the station for each student;

(6) Mannequin for each student with first-quality hair for use in practicing the art of cosmetology (mannequins shall be placed on firm stands);

(7) Wet sterilizers (sufficiently large to accommodate the instruments used by twenty-five students);

(8) Electrical appliances for the proper training of beauty culture; and

(9) X-ray equipment shall not be used.

(b) The requirement of subsection (a) shall be standard beauty equipment and maintained in good working condition.

Hawaii Administrative Rules, §16-78-58 [Emphasis Supplied]

In the case of online programs, the students will be using their own facilities usually at their homes, HNA has required students to have adequate buy equipment and HNA provides all supplies, types of equipment, and safety products, so it may comply with the “sufficient equipment” and “adequate facilities” requirements under Hawaii Revised Statutes, Hawaii Revised Statutes, Section 439A-11.

D. HNA HAS SATISFIED THE ADEQUATE INSTRUCTOR REQUIREMENT AND THE LAW DOES NOT REQUIRE INSTRUCTORS TO BE PRESENT NEXT TO STUDENTS

HNA has complied with adequate instructor requirements. The pertinent rule provides:

§16-78-54 Instructor-student ratio.

The instructor-student ratio shall be **one instructor for every twenty-five students**. A school shall have a minimum of two licensed instructors, which may include the principal, provided the principal is a licensed instructor.

Hawaii Administrative Rules, §16-78-54 [Emphasis Supplied]

Neither Hawaii Revised Statutes, Section 439A-11 nor Hawaii Administrative Rules, §16-78-54 regulate how the instructor should teach the instruction. The only requirement under the law is the “sufficient number” requirement which is 1-25 instructor to student ratio. While the instructor cannot be physically be next to the student in online courses, this fact cannot be ground to deny the approval of online courses because there nothing in the statutes or rule requiring that the teacher be there. In this case, HNA will be maintaining this ratio for online students, so there would be no issues here.

E. ONLINE COURSES WOULD BE AVAILABLE TO STUDENTS AT LEAST SIXTEEN YEARS OF AGE

§16-78-59 Enrollment

A beauty school shall enroll only students who are at least sixteen years of age and who have an education equivalent to the completion of his school **or** grade twelve.

Hawaii Administrative Rules, §16-78-59 [Emphasis Supplied].

HNA will be coordinating with the State of Hawaii's Department of Education to have high school students at least 16 years old and have education of at least grade twelve. There is nothing wrong with this. There is not requirement that students must have a diploma finishing high school or GED equivalent for enrollment to the school and is program.

F. ONLINE COURSES WOULD HAVE RESTRICTION ON HOURS OF INSTRUCTION

§16-78-60 School hours.

The program of instruction for any instructor or student shall not exceed forty hours per week or more than eight hours in any one day.

Hawaii Administrative Rules, §16-78-60.

The online course can have an hour limitation to instruction be set to the program this requirement should not be a hurdle.

G. HNA HAS ITS LIBRARY ONLINE AND THIS REQUIREMENT IS SATISFIED

§16-78-63 Library.

Each school shall maintain a reasonably adequate library of books relating to the science and art of beauty culture.

Hawaii Administrative Rules, §16-78-63.

HNA's library is online and this requirement is satisfied.

H. HNA DOES NOT OFFER ADVANCED PROGRAMS AND ONLY SAFE CHEMICALS ARE USED

HNA does not offer any advanced program in this course. The chemicals provided to students are safe and MSDS sheets are provided. The students start practicing with the mannequin first. The students cannot move forward to the next step until approved by instructors. HNA's IMCS system will control this process manually. Upon approval, students will practice with a model.

I. SANITATION RESTRICTION DO NOT APPLY TO ONLINE COURSES

There are sanitation requirements for barber shops and beauty parlors but such requirements do not apply to students at their homes, but the HNA system will follow the requirements at student's homes to make sure the facility is clean and sanitary. The Department of Health rules provide:

§11-11-3 Barber shops and beauty parlors.

(a) General sanitation requirements.

- (1) No person shall operate a shop in connection with any other business or dwelling unless there is a partition from the floor to the ceiling, separating the shop from such other business or dwelling. Nothing here shall prohibit the sale of tobacco, newspapers, or shoe shining in shops.
- (2) No shop shall be used as a living, cooking, or sleeping facility, nor shall any such facility adjoining a shop have a direct opening into such shop.
- (3) "abbreviation"
- (4) The walls, floors, ceilings, furniture and fixtures, and all other parts and surfaces of every shop shall be kept clean at all times.
- (5) Every shop shall be kept in good repair and shall be properly and adequately lighted and ventilated. Shops utilizing mechanical ventilation shall not be connected to a centralized air conditioning system.
- (6) Every shop shall be provided with adequate sanitary facilities, including toilets, hot and cold running water, and sinks or wash basins. Plumbing shall comply with the applicable county plumbing code. Toilets shall be located in suitably and properly ventilated toilet rooms with self-closing doors.

(b) Sanitary practice requirements.

(4) All such instruments, included in paragraph 3 above, and those used in massaging, shall be thoroughly cleaned and sanitized by a method approved by the director. After sanitization, instruments shall be stored in a manner to prevent contamination or be sanitized again immediately before re-use. All sanitizing agents shall be approved by the director.

(6) Every operator shall wash his or her hands thoroughly with soap and hot water and dry his or her hands with sanitary towels or approved hand-drying devices immediately before attending any person and shall wear at all times a clean uniform or outer coat or apron.

(7) Towels or other fabrics that come in contact with the skin or hair of a customer shall not be used on more than one customer without being laundered in an acceptable manner and either subjected to a sanitizing process that will hold such laundry for at least twenty minutes at a temperature of at least one hundred eighty degrees Fahrenheit or sanitized by other methods approved by the director before again being used on a customer.

(8) Prior to serving any customer, the headrest of any chair to be used by said customer shall be covered with a clean towel or a clean sheet of paper.

(9) All towels and other linens used in any shop shall be kept in a closed cabinet at all times when not in use.

(10) All creams, tonics, cosmetics, and other applications used for customers shall be kept in clean closed containers.

(11) A clean strip of cotton, towel, or paper band shall be placed around the neck of each customer served, so that at no time will hair, cloth, or cape come in contact with the neck or skin on the patron.

(12) No person shall commit any unsanitary practice or act in a shop sink or wash basin, such as brushing teeth, expectorating, gargling, or washing diapers.

(C) Contagious and infectious diseases.

(1) Operators afflicted with a contagious or infectious disease in a communicable form shall not attend any person in any shop, nor shall any person afflicted with such disease in a communicable form receive any treatment in any such establishment.

(2) Any operator afflicted with any such disease shall return to work in a shop only upon a written statement from a physician that it is safe for him to return to work.

(d) Practice outside of the shop. No person shall practice barbering for fee in any place other than a shop, except that he may practice on sick or infirm persons, who are not afflicted with a contagious or infectious disease, in hospitals or in the private homes of such persons, or in hotel rooms. [Eff. DEC 26, 1981] (Auth: HRS §§321-10, 321-11, 321-12) (Imp: HRS §§321-11, 321-12)

The Department of Health restriction does not apply to online courses because student's homes are not beauty shops or beauty parlors. However, HNA's IMCS system teaches sanitation and disinfection and verifies whether the students followed sanitation procedures correctly through the HNA's IMCS system and grades it.

J. LETTER IN SUPPORT ADDRESSED TO THE BOARD FROM HNA GRADUATES AND OTHERS

HNA has about 150 graduates and others who have signed for the HNA IMCS system to request approval. A list will be available only upon request. It is expected some of them will attend the meeting as public testimonies or offer their review of the videos.

K. BEFORE THE HEARING CONFLICT OF INTEREST DISCLOSURE IS REQUESTED

Respectfully, HNA's request for a conflict-of-interest disclosure, if any, is by the Board in accordance with Hawaii Revised Statutes, Section 439A-4.

439A-4 Board of barbering and cosmetology.

(a) There is established the board of barbering and cosmetology placed within the department pursuant to sections 26-9. The board shall consist of seven members who shall be appointed and may be removed by the governor pursuant to section 26-34, except as otherwise provided by law. The members shall be residents of the State, of which:

- (1) Two members shall possess a current and active license as a barber;
- (2) Two members shall possess a current and active license as a beauty operator; and
- (3) Three members shall be private citizens not connected with the industry.

(b) Board members affiliated with any school teaching the practice of barbering or the practice of cosmetology, or any apprenticeship or other barbering or cosmetology program, shall disclose that affiliation and at all times shall adhere to Chapter 84 and the interpretations of Chapter 84 (Attached) by the state ethics commission. [L 2022, c 73, pt of §1]

Hawaii Revised Statutes, Section 439A-4 [Emphasis Supplied].

III. CONCLUSION

Based on the forgoing law and authority, it is respectfully requested that this Board approve the online program, HNA Interactive Multimedia Checkpoint System.

Dated Honolulu, Hawaii, February 2, 2024.

/s/ Junsuke Aaron Otsuka

Attorney for Applicant
HONOLULU NAILS ACADEMY, LLC