

# Splitting Hairs Over Cosmetology Laws

by Erin Rooney<sup>1</sup>  
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## Executive Summary

Regardless of the intent motivating the 1927 Kansas Legislature to create the Board of Cosmetology, the Board has become a bureaucratic conglomeration of rules and regulations that extend far beyond the Board's mission to protect public health. Mandates by the state have become burdensome and irrelevant, entrepreneurship has been stifled and freedoms have been trampled. "Splitting Hairs over Cosmetology Laws" explains why the State needs to get out of its citizens' hair and allow individuals, such as the Kansas City Renaissance Festival's Braidin' Maidens, the freedom to make an honest living.

## Background

Debra Jennings and Wendy Moody never imagined that braiding hair could be considered to be a crime. Especially since a "Braidin' Maidens" booth had been a part of the Kansas City Renaissance Festival for almost 23 years. Jennings and Moody had worked the booth for more than five years each and never had any reason to believe they were criminals.

But the state of Kansas had other ideas. During the second weekend of the fall festival in 1999, the Kansas Board of Cosmetology threatened the women that harsh fines might have to be paid and jail time might have to be served if they did not shut down their booth. Not wanting to go to jail, the women closed up shop and waited for a judge to rule in their case.

The State claimed that the women were illegally operating without cosmetology licenses and were not working in a licensed salon. Braiding hair, as the State defines, is an act of cosmetology, and the braiders were acting as black-market cosmetologists.

This obscure case begs the question of when is government too much government. The Board of Cosmetology's mission is "to regulate the profession of cosmetology, tattooing, and body piercing, including the cosmetology schools and tanning facilities in order to protect the health and safety of the licensees and the general public."<sup>2</sup> But with the Braidin' Maidens' case, one can clearly see that this is an issue of protecting economic turf, with only a minimal intent of protecting public health.

## Many Mandates are Burdensome and Irrelevant

Most mandated hours of course work at cosmetology schools have nothing to do with health and safety, but, instead, teach other skills useful for practicing this career. A licensed

cosmetologist must complete 1,500 hours of education, including classes in "care of hair pieces", "blow dry styling" and "salesmanship."<sup>3</sup> These state-mandated classes go far beyond the Cosmetology Board's mission.<sup>4</sup>

In addition, schools must devote 50 hours of class time simply educating cosmetology students about the laws regulating their profession. To put this into the perspective of a cosmetology student, one hour of class time, each day, for **10 weeks**, is spent learning Kansas cosmetology statutes. If the government didn't regulate beauticians so heavily, then, instead of spending 50 hours learning statutes, students could actually be learning how to style hair.

It should also be noted that just because someone has a cosmetology license does not ensure customers will be happy with haircuts they receive. A cosmetology license merely means that the beautician has

managed to jump through multiple hoops and spent a lot of money while jumping. Kansas statutes dictate that police officers only need 320 hours of training, emergency medical technicians are required to have 90 hours of training, and a hunting license may be obtained after only a 10- or 12-hour course. Thus, an individual can learn how to protect life, save life and end life in less than a third of the time that is required to become a beautician.<sup>5</sup>

There are hundreds of provisions in Kansas laws that regulate the cosmetology profession. A few examples demonstrate these laws' negative impact.

### **Regulations Stifle Entrepreneurship**

The Braidin' Maidens quickly learned that the laws governing cosmetology in Kansas do not exist solely to protect public health. In fact, as the statutes currently read, if the Maidens had continued braiding hair at the Renaissance Festival for free, they would not have been in violation of the statutes, for the laws only apply if they charge money for their services. What better evidence could there be that the law's real purpose is economic protectionism?

A number of years ago, Monique Landers, then a 15-year-old student, opened her own hair-braiding business. While she won an award from the National Foundation for Teaching Entrepreneurship for her ingenuity, the State quickly shut her down for practicing without a cosmetology license. According to Monique, "The [Kansas Cosmetology] Board won't let me earn my own money, and won't let kids like me learn how to take care of ourselves. I think owning your own business is a way of being free. If more kids knew they could grow up to be their own boss they would be more responsible and cause less trouble."<sup>6</sup>

If the Board were simply trying to secure health and safety, then Landers could have stayed in business. Many individuals who perform traditional African-styled hair braiding have also run into obstacles in other states. Because cosmetology schools do not teach this form of hair braiding, it should lead Landers to support the eloquent statement by a businessman concerned with similar regulatory burdens in Washington, D.C. "How do you license what you do not teach? How do you teach what you do not know?"<sup>7</sup>

### **Requirements Harm Both Customers and Cosmetologists, Physically and Financially**

Current laws forbid beauticians from being able to visit the residence of a typical senior citizen to cut their hair.<sup>8</sup> According to Kansas law, a beautician can work only in a licensed beauty shop, nursing home, hospital, or in a rest home or invalid's home. In the middle of January, many Kansans, especially the elderly who live in their own homes, might prefer to stay inside rather than fight the weather in order to get to their beauticians. As one beautician observed, "I think there's a lot of business out there. I get a lot of phone calls, not only from invalids, but from people who don't want to get out of their homes."<sup>9</sup>

This regulation also prevents cosmetologists from serving their most lucrative potential client base: men and women who would be willing to pay for the convenience of having someone visit their home or office.

### **Remove Barriers to Entry**

A person wanting to become a beautician can expect to pay thousands of dollars for his or her training. Not including books, supplies or enrollment fees, tuition at a Kansas cosmetology school can cost up to \$8,500.<sup>10</sup> (Remember, the education at a licensed school is mandated by the state of Kansas.) Over the next six years, he or she would also have to pay the Board for a state examination (\$50), a license application fee (\$45), two license renewals (\$90), and possibly two statutes and regulations books to help with the renewal exams (\$10).<sup>11</sup> The Board also has authority to increase these fees, subject to limitations.<sup>12</sup>

In contrast, an individual who pursues an Associate's Degree at a community college in Kansas can spend less money on tuition for their two-year program. Furthermore, most Kansas students could complete roughly three full years at a public university for the same price.

### **Licensure Can Harm Minorities**

In 1923, laws that once excluded females from cutting hair were lifted and women flooded into the workforce as hairdressers.<sup>13</sup> While this was a major victory, some analysts conclude that licensing boards continue to have a discriminatory impact on the profession. According to Dan Hogan, "The reliance of licensing laws on academic credentials — which are less frequently possessed by the poor, minorities, women, and the elderly — has a deeply pernicious and discriminating effect, especially when evidence does not exist that these credentials are positively correlated with competence."<sup>14</sup>

Randall Collins reached a similar conclusion. "Since the evidence strongly shows that credentials do not provide work skills that cannot be acquired on the job, and that access to credentials is inherently biased toward particular groups, the case for discrimination is easy to make."<sup>15</sup> Economist Stuart Dorsey took this one step further and concluded specifically that, "written licensing examinations for cosmetology licenses appear to be biased against the less educated, apprentices, blacks, and non-natives."<sup>16</sup>

### **Licensure vs. Freedom**

The state is also denying individuals the ability to seek an honest living. As U.S. Supreme Court Chief Justice John Marshall concluded in *Ogden v. Saunders*, "Individuals do not derive from government their right to contract, but bring that right with them into society."<sup>17</sup> In contrast to Chief Justice Marshall's view that individuals are free to do business with whomever they please, the state cosmetology board routinely denies Kansans the freedom to contract.

In a case similar to that of the Braidin' Maidens, JoAnne Cornwell, a professor at San Diego State University who practices a form of ethnic hair braiding, was shut down by the California Board of Cosmetology for braiding hair without a license. In Professor Cornwell's case, however, a U.S. District Judge corrected this stifling of freedom when he said that California's requirement of 1,600 hours "may work against the State's professed interest in health and safety,"<sup>18</sup> a ruling very similar to Chief Justice Marshall's.

While on the surface the Cornwell case may sound like a minor victory for hair braiders, it could have truly profound Constitutional implications, for the ruling held that there was no *rational basis* for California's onerous cosmetology regulations.<sup>19</sup> The *rational basis* test is a critical gauge in deciding whether a law complies with the Constitution's Due Process requirement. Historically, the Supreme Court has been extremely liberal in giving state legislatures the benefit of doubt that there is *some good* reason for their enactments. Perhaps now, humble hair braiders can bring some meaningful limit to this presumption.

### **Who Does the Board Represent?**

While regulatory agencies, such as the State Cosmetology Board, are intended to protect consumers, the reality is very different. For example, membership on the Kansas Board of Cosmetology consists of four licensed cosmetologists, two of whom must operate a salon, a licensed tattoo artist or body piercer, and only two representatives of the general public. Not even one public health official has a seat on the board that is supposed to protect the health and safety of the general public.<sup>20</sup>

This lopsided board membership is another way for individuals already in the industry to restrict others from joining their profession. Nobel prizewinning economist Milton Friedman and his wife Rose explain this phenomenon in their book *Free to Choose*. "The *justification* offered is always the same: to protect the consumer. However, the [real] *reason* is demonstrated by observing who lobbies at the state legislature for the imposition or strengthening of licensure. The lobbyists are invariably representatives of

the occupation in question rather than of the customers."<sup>21</sup>

This point is further emphasized by the case of the Braidin' Maidens. It was not a physically-harmed customer who made a complaint to the board against the hair braiders; rather, it was a licensed cosmetologist who complained that the women were violating state law because they didn't have a license and weren't operating in a licensed salon.<sup>22</sup>

## Empower Cosmetologists and Their Customers

A 1987 review of a wide variety of occupational licensing restrictions found that "licensing has, at best, a neutral effect on quality and may even cause harm to consumers."<sup>23</sup> When it comes to hair care, surely Kansans are equipped to take care of themselves. As two Arizona researchers observed, "walking down the aisle of any drugstore -- or driving past any high school -- shows the wide range of dyes, gels, creams and appliances you can use on your hair without the supervision of a government employee or even an adult."<sup>24</sup>

The Board of Cosmetology may have been created with good intentions, to protect the people of Kansas. The board has evolved, however, into a bureaucratic conglomeration of rules and regulations that go far beyond protecting public health and safety. At the bare minimum, cosmetology laws need to be trimmed so that their authority doesn't extend beyond public health issues. The best plan, though, would be to give authority back to Kansans by eliminating the 1927-era cosmetology board and getting the government out of its citizens' hair.<sup>25</sup>

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### NOTES:

1. Erin Rooney is Director of Policy Studies for the Kansas Public Policy Institute.
2. *The Governor's Fiscal Year 2000 Budget Report, volume 2*, p. 513
3. Kansas Board of Cosmetology, "Cosmetology School Course Curriculums," Approved by the Kansas Board of Cosmetology on September 26, 1995, effective June 1, 1996.
4. *The Governor's Fiscal Year 2000 Budget Report, volume 2*, p. 513
5. Kansas Statutes Annotated (K.S.A.) 74-5604a, Kansas Administrative Regulations (K.A.R.) 109-11-7, and an October 18, 1999, interview with the Kansas Department of Wildlife and Safety.
6. *Cascade Update*, Cascade Policy Institute, Spring/Summer 1994, p. 2
7. "Hair Raising," *The Wall Street Journal*, September 1, 1999. Taalib Din-Uqdah is a Washington, D.C. businessman who testified in the United States District Court of Southern California for the case of Cornwell vs. Hamilton. Case No. 97 CV 138-B (POR). Uqdah's quote may be found in footnote 50 of the Judge's ruling.
8. K.A.R. 69-6-3.
9. September 1, 1997 interview.
10. Telephone survey conducted of a random sampling of cosmetology schools in Kansas by the Kansas Public Policy Institute on October 28, 1999. Tuition costs ranged from \$2,400 to \$8,500. This information, according to the office of the Board of Cosmetology, is not kept on record by the State.
11. K.A.R. 69-11-1, and interview with the Kansas Board of Cosmetology October 27, 1999.
12. 1998 Kansas Session Laws, Chapter 160, substitute for House Bill No. 2609.
13. *Litigation Backgrounder*, Institute for Justice, May 2, 1997, p. 4.
14. Hogan, Dan B., *The Regulation of Psychotherapists, vol. I: A Study in the Philosophy and Practice of Professional Regulation* (Cambridge, Mass.: Ballinger Publishing, 1979), p. 282, in Stanley J. Gross, "Professional Licensure and Quality: The Evidence," *Cato Institute Policy Analysis No. 79*, December 9, 1986, p. 27.
15. Collins, Randall, *The Credential Society: An Historical Sociology of Education and Stratification* (New York: Academic Press, 1979), p. 198, in Stanley J. Gross, "Professional Licensure and Quality: The Evidence," *Cato Institute Policy Analysis No. 79*, December 9, 1986, p. 27.
16. Dorsey, Stuart, "The Occupational Licensing Queue," *Journal of Human Resources* 15, 1980, p. 432, in Stanley J. Gross, "Professional Licensure and Quality: The Evidence," *Cato Institute Policy Analysis No. 79*, December 9, 1986, p. 27.
17. As noted by Blevins, Sue A., "The Medial Monopoly: Protecting Consumers or Limiting Competition?" *Cato Institute Policy Analysis No. 246*, December 15, 1995, p. 6.

18. United States District Court, Southern District of California, Cornwell vs. Hamilton, Case No. 97 CV 138-B (POR). Ruling by United States Senior District Judge Rudi Brewster.
19. *Ibid.*
20. *The Governor's Fiscal Year 2000 Budget Report, volume 2*, p. 513.
21. Friedman, Milton and Rose, *Free to Choose* (New York: Harcourt, Brace, Jovanovitch, 1979), p. 240.
22. Peterson, John L., "Legal snag ensnares hairdressers: Without license, Braidin' Maidens close festival booth," *The Kansas City Star*, Metropolitan Edition, p. B1. Also confirmed by telephone interview with Mary Lou Davis, Executive Director of the Kansas Board of Cosmetology, October 11, 1999.
23. Young, S. David, *The Rule of Experts: Occupational Licensing in America* (Washington: Cato Institute, 1987), p. 53.
24. Franciosi, Robert and Nelson Llumiquinga, "Don't Raise the Bridge, Lower the Water: How Government Can Really Help Small Entrepreneurs," *Goldwater Institute Perspective*, February 21, 1997, p. 2.
25. The author would like to thank Bryan Riley and Dr. Myron Calhoun for their assistance with this study.