

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARIO ALBERTO ALMEIDA SUAREZ, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 86-3996  
 )  
 DEPARTMENT OF PROFESSIONAL )  
 REGULATION, BOARD OF MEDICAL )  
 EXAMINERS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the, Division of Administrative Hearings through its duly designated Hearing Officer Sharyn L. Smith, held a formal hearing in this case on January 23, 1987, in Tallahassee, Florida. The parties were represented as follows:

APPEARANCES

For Petitioner: Stephen Marc Slepín, Esquire  
SLEPIN & SLEPIN  
1114 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: Allen Grossman, Esquire  
Assistant Attorney General  
Department of Legal Affairs  
1601 - The Capitol  
Tallahassee, Florida 32399-1050

The issue at the final hearing was whether the Petitioner Mario Almeida Suarez, should be permitted to sit for the Board of Medical Examiners licensing exam.

At the final hearing, Petitioner's Exhibits 1 and 4-7 were offered and admitted into evidence. Ruling was reserved on Petitioner's Exhibits 2 and 3 which are now admitted into evidence. Dr. Almeida Suarez and Mrs. Suarez, his wife, testified on behalf of the Petitioner. The Respondent offered no witnesses.

The parties requested and received an extension of time for filing proposed recommended orders. The parties' proposed recommended orders were filed on April 6, 1987. In the appendix attached to this Recommended Order, the parties' findings of fact are individually discussed.

## FINDINGS OF FACT

1. The Petitioner Mario Alberto Almeida applied to the Respondent Board of Medical Examiners to sit for the medical licensure examination and paid his application fee in September, 1985.

2. At that time, the Petitioner Almeida was interning in New York and his wife, concerned that a prior application had been untimely filed, assisted the Petitioner in filling out the subject application.

3. When filling out the application, Mrs. Almeida erroneously wrote on the application form that her husband had a "B.S. 1979, University of Miami," which error arose from the fact that she was unaware that the Petitioner had not completed his University of Miami undergraduate degree work despite completing 137 credit hours of courses and being eligible for graduation. Mrs. Almeida believed that her husband graduated from the University of Miami because he had not informed her that he had left prior to graduating and Mrs. Almeida had seen solicitations for funds addressed to her husband as a 1979 University of Miami graduate.

4. Also omitted by the Almeida's was the Petitioner's race (which is caucasian), that he had successfully attended a junior college and that he was a United States citizen who had legally changed his name to reflect his father's name, Alberto.

5. Other than these erroneous statements and omissions, the Petitioner Almeida supplied the Respondent with all information requested, including additional information requested by letter dated November 4, 1985.

6. Thereafter, the Respondent Board issued to the Petitioner Almeida an authorization to sit for the December, 1985, examination which card was inadvertently issued to and returned by the Respondent.

7. In support of his application, the Petitioner was issued a letter which requested that he personally appear in Tampa, Florida, at 4:15 p.m. on November 22, 1985, at a meeting before the Foreign Medical Graduate Committee of the Board of Medical Examiners. Although the Petitioner was put under oath and was questioned at that meeting, he was not represented by legal counsel.

8. The Committee referred his application to the full Board with no recommendation regarding approval.

9. On November 23, 1985, the Board voted to deny the Petitioner's application. The Petitioner did not receive notice of this second meeting and, therefore, did not attend.

10. By order dated September 9, 1986, the Petitioner was notified of the Respondent's denial of his application based upon "material discrepancies between the information stated on the application and the testimony given with regard to the applicant's education," citing Section 458.331(1)(a) and (2), Florida Statutes.

11. The Petitioner's application did misstate his undergraduate, pre-medical school data. He failed to disclose his successful completion of Miami-Dade Community College and his 137 credit hours when he left the University of Miami before attaining the "B.S. 1979, University of Miami." He did however, accurately testify concerning these discrepancies under oath at the November 22, 1985, committee meeting.

12. These discrepancies were unintentional and resulted from the Petitioner's preoccupation with his medical duties and his wife's concern that another application deadline not be missed. No evidence was submitted which would support a finding that fraud or deceit was intended by either of the Almeida's or that any advantage would be gained as a result of any errors or omissions in completing the form.

13. The Respondent's order of September 9, 1986, finds that the Petitioner either has been found guilty of attempting to obtain a license to practice medicine by fraudulent misrepresentation or adjudicates him guilty of attempting to obtain a license to practice medicine by fraudulent misrepresentation.

14. The Petitioner is presently a duly licensed physician in the State of New York.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

16. On September 9, 1986, the Respondent entered a written order denying the Petitioner's application to sit for the Medical Board exam. As grounds for the denial, the Respondent cited Sections 458.331(1)(a) and (2), Florida Statutes, and noted that "material discrepancies" existed between the information provided on the application and the testimony given with regard to the applicant's education.

17. Sections 458.331(1)(a) and (2), Florida Statutes, provide that the Board may refuse to certify an applicant for licensure who has attempted to obtain, obtained or received a license to practice medicine by bribery, fraudulent misrepresentations, or through an error of the department or board.

18. Since no allegations were made in either the order entered September 10, 1986, or at the final hearing that the Respondent attempted to secure licensure by bribery or through an error of the department or board, the only issue to be determined is whether the Petitioner fraudulently misrepresented his educational background on his application for licensure and at the board hearing on November 23, 1985.

19. It has been consistently held that "fraudulent misrepresentation" requires a showing of a willful or intentional effort to deceive or mislead. See, *Gentile v. DPR, Board of Medical Examiners*, 448 So.2d 1087 (Fla. 1st DCA 1984); *Gentry v. DPR, Board of Medical Examiners*, 293 So.2d 95 (Fla. 1st DCA 1974). An unintentional misstatement or omission is insufficient to support such a charge.

20. The testimony and evidence introduced at final hearing demonstrate at best an inadvertent error and at worst simple negligence by the Petitioner and his wife in completing the subject application. The Petitioner's testimony

before the Respondent was truthful and represented an honest attempt to explain his educational background. Significantly, no advantage would accrue to the Petitioner by the alleged misrepresentation since an undergraduate degree is not a prerequisite to qualify to sit for the Florida medical licensure exam. See, Section 458.311(1), Florida Statutes.

21. Similarly, the inadvertent omission from the application of Petitioner's attendance at Miami-Dade Junior College does not rise to the level of a "fraudulent misrepresentation." No advantage was gained from this omission, it was fully explained by the Petitioner at the November board meeting, and further, the Respondent's own application could be reasonably construed to require that only colleges rather than junior colleges be listed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

#### RECOMMENDED:

That a final order be entered by the Board of Medical Examiners approving the application of the Petitioner Mario Alberto Almeida Suarez, to sit for the next scheduled medical license examination.

DONE and ENTERED this 26th day of May, 1987 in Tallahassee, Florida.

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SHARYN L. SMITH  
Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of May, 1987.

#### APPENDIX TO RECOMMENDED ORDER, CASE NO. 86-3996

#### Petitioner's Proposed Findings of Fact

1. Accepted.
2. Accepted.
3. Accepted.
4. Accepted, but not in issue.
5. Accepted.
6. Accepted, but not in issue.
7. Accepted.
8. Rejected, not relevant to this proceeding.
9. Accepted in part, rejected in part.
10. Accepted.
11. Accepted.
12. Accepted.
13. Rejected, not relevant.

14. Accepted.
15. Accepted.
16. Accepted.
17. Accepted.
18. Accepted.
19. Rejected.

Respondent's Proposed Findings of Fact

1. Accepted.
2. Accepted.
3. Accepted, but relevant only insofar as educational background is concerned.
4. Accepted.
5. Accepted.
6. Accepted.
7. Accepted, but not relevant.
8. Accepted.
9. Accepted.
10. Accepted, but not relevant.
11. Accepted, but not relevant.
12. Accepted insofar as the information is characterized as incomplete.
13. Accepted.
14. Accepted.
15. Accepted.
16. Accepted insofar as this concerns Mrs. Alemeida's knowledge subsequent to completing the application.
17. Accepted insofar as this concerns Mrs. Alemeida's knowledge subsequent to completing the application.
18. Accepted.

COPIES FURNISHED:

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AGENCY FINAL ORDER

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DEPARTMENT OF PROFESSIONAL REGULATION  
BOARD OF MEDICAL EXAMINERS

MARIO ALBERTO ALMEIDA SUAREZ,

Petitioner,

vs.

CASE NO. 86-3996

DEPARTMENT OF PROFESSIONAL REGULATION,  
BOARD OF MEDICAL EXAMINERS,

Respondent.

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FINAL ORDER

The Board of Medicine of the Department of Professional Regulation, after having reviewed the Recommended Order entered in this case by Sharyn L. Smith, Hearing Officer of the Division of Administrative Hearings on May 26, 1987 (Exhibit A), the Exceptions to the Recommended Order filed by the Respondent (Exhibit B), and the complete record and after hearing oral argument of the parties and being otherwise fully advised in the premises enters the following Order:

I. This matter came before the Board of Medicine on July 31, 1987. The Petitioner was represented by Stephen H. Slepkin, Esquire, and Respondent was represented by Allen Grossman, Assistant Attorney General.

II. The Board has jurisdiction over this matter pursuant to Section 120.57(t), Florida Statutes and Chapter 458, Florida Statutes.

Rulings On Exceptions Filed by Respondent

1. Respondent took exception to paragraph 13 of the Findings of Fact of the Recommended Order asserting that the letter set forth in paragraph 13 is a legal conclusion rather than a finding of fact. The Board finds that this Exception is not well-founded and rejects the same.

2. Respondent took exception to paragraph 13 of the Findings of Fact of the Recommended Order as being contrary to the greater weight of the evidence.

The Board having rejected the first Exception filed by the Respondent, the Respondent was allowed to modify the second Exception and did so, arguing that this Finding of Fact was not based upon competent and substantial evidence. The Board adopted the second Exception as modified and finds that the Finding of Fact found in paragraph 13 of the Recommended Order is not based on competent substantial evidence in the record.

3. The remaining Findings of Fact of the Recommended Order are adopted by the Board of Medicine as being based on competent substantial evidence, and the Conclusions of Law of the Hearing Officer as set forth in the Recommended Order are adopted by the Board.

4. The Board adopts the Recommendation of the Hearing Officer that the Petitioner's application to sit for the license examination be approved.

Pursuant to Section 120.59, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the agency and by filing the filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty (30) days of the day this Order is filed, as provided in Chapter 120, Florida Statutes, and the Florida Rules of Appellate Procedure.

WHEREFORE, the Board hereby orders that the Petitioner's application for permission to sit for the medical license examination be approved.

DONE and ORDERED this 6th day of November 1987 by the Board of Medicine.

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Chairman, Board of Medicine