

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ARTHUR GAGE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 97-2518  
 )  
 DEPARTMENT OF HEALTH, )  
 BOARD OF DENTISTRY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on October 31, 1997, at West Palm Beach, Florida, before Susan B. Kirkland, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Arthur A. Gage, pro se  
12688 Tucano Circle  
Boca Raton, Florida 33428

For Respondent: Janine B. Myrick  
Senior Attorney  
Florida Department of Health  
1317 Winewood Boulevard  
Building 6, Room 102  
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STATEMENT OF THE ISSUE

Whether Petitioner should receive a passing grade on the clinical portion of the dentistry examination administered in December 1996.

PRELIMINARY STATEMENT

On March 19, 1997, Petitioner, Arthur A. Gage (Gage) filed a the Petition for Formal Hearing challenging the grading of his challenge to the dentistry examination administered in December 1996. On May 23, 1997, the Division of Administrative Hearings received the case for assignment to an administrative law judge. The final hearing was scheduled for September 11, 1997. The Board of Dentistry was transferred from the Agency for Health Care Administration to the Department of Health by Section 20.43, Florida Statutes. The caption in this case has been changed to reflect this transfer. On August 27, 1997, Respondent filed a Motion to Dismiss for Lack of Jurisdiction or, in the Alternative, to Relinquish Jurisdiction to the Board of Dentistry for Purposes of Conducting an Informal Hearing and Motion to Dismiss. The motions to dismiss and relinquish jurisdiction were denied. The motion for a continuance was granted, and the final hearing was rescheduled for October 31, 1997.

At the final hearing, Gage testified on his own behalf. Petitioner's Exhibit 1 was admitted in evidence at the final hearing. Gage was granted leave to file exhibits after the close of the hearing, and Respondent, Department of Health, Board of Dentistry, was afforded an opportunity to file objections to the exhibits. In its proposed recommended order, Respondent objected to the admission of the late-filed exhibits. Respondent's objections were overruled, and Petitioner's Exhibits 2-6 were

admitted in evidence. Respondent called Marsha Carnes and

Thomas E. Shields, III, DDS, as its witnesses. Respondent's Exhibit 1 was admitted in evidence.

The parties agreed to file their proposed recommended orders within ten days of the filing of the transcript. The transcript was filed on November 10, 1997. On November 19, 1997, Respondent filed a Motion for Extension of Time to File Proposed Recommended Order. The motion was granted, and the time for filing proposed recommended orders was extended to December 3, 1997. The parties timely filed their proposed recommended orders, which have been considered by the undersigned Administrative Law Judge in entering this Recommended Order.

#### FINDINGS OF FACT

1. In June 1996, Petitioner, Arthur A. Gage (Gage), took the dentistry examination for licensure as a dentist in Florida. He was unsuccessful on the clinical part.

2. In December 1996, Gage retook the clinical portion of the examination. He was notified by an examination grade report, mailed on January 13, 1997, that he had again failed the clinical portion of the examination. He achieved a general average score of 2.75. A final grade of 3 or better as a general average on the clinical portion is a passing score.

3. Gage complains that there was inconsistency among the examiners in grading the examination. In particular, he submits that if you average the grades by each examiner on the mannequin portion of the examination that the averages are 3.25, 3.08, and

1.08. Gage averaged all the grades for each examiner and did not

average by procedure. Consequently, Gage's approach did not produce a statistically meaningful result.

4. Marsha Carnes, a psychometrician with the Department of Business and Professional Regulation (DBPR), testified for the Respondent. A psychometrician is an expert in testing and measurement. Ms. Carnes' responsibility is to ensure the validity and reliability of the examinations, including the dentistry examination. Ms. Carnes outlined the procedure used for selecting the examiners and the grading of the dentistry examinations.

5. The examiners are selected by the Florida Board of Dentistry (Board) and must have five years of experience as a licensed, active dentist in Florida. The examiner must be recommended by a current examiner or member of the Board. Examiners must submit an application and have no complaints against their dentistry license.

6. After the examiners are selected, they are trained by DBPR. Approximately one month prior to the dentistry examination, the examiners are sent the details of the examination, the clinic monitor, and an examiner instruction package. The examiner package outlines the grading criteria, the procedures for the examination, and the necessary paper work.

7. The day before the examination, the examiners go through a standardization process conducted by the psychometrician and three assistant examiner supervisors from DBPR. The process

takes approximately eight hours.

8. There are nine clinical procedures in the dentistry examination. Three of the procedures are performed on a patient, five on a mannequin, and one is written. As part of the standardization process, the assistant examiner supervisors outline the criteria for each procedure that is on the examination and explain what is and is not minimally acceptable. The examiners are shown slides, and the supervisors explain what grade should be awarded for each procedure shown on the slides.

9. The examiners are given a post standardization examination to make sure that they have internalized the criteria explained during the standardization process. The examination consists of the examiners actually grading models created by applicants in past examinations. Twenty-five different procedures are graded, and DBPR staff evaluate the grading of the examiners to ensure that they are grading consistently.

10. Scores of zero through five are possible on each examination procedure. Five is considered to be an outstanding dental procedure. Four is better than minimally acceptable. Three is minimally acceptable. Two is below minimally acceptable. One is unacceptable, and zero is a complete failure. Rule 64B5-2.013, Florida Administrative Code.

11. Three examiners independently grade each procedure. The dentistry examination is double-blind graded. The applicant has no contact with the examiners, and the examiners do not consult one another. This procedure was followed for the



dentistry examination taken by Gage.

12. The overall percentage score is determined by averaging and weighting the grades of the three examiners for each procedure. Statistically, averaging three grades is more accurate than using one grade alone.

13. Gage complains about the inconsistency of the grading of the procedures on the mannequin. The examiners were identified by number as 080, 320, and 321. These examiners successfully completed the standardization process.

14. Gage complains that Examiner 321 gave disproportionately low grades for the procedures performed on the mannequin. It is, however, more common for an examiner to give an inappropriately high grade than an inappropriately low grade. The higher grade can be a result of an examiner missing something, but the low grade must be justified in documentation and then actually verified on the mannequin.

15. The three examiners for the mannequin procedures, when examined in the examiner's performance report, all had statistically acceptable measures of consistency and reliability.

16. Gage complained that the patient on whom he performed the patient procedures had to make several trips to the restroom during the examination and that he did not have time to properly perform all the procedures. During the examination, Gage did not submit monitor to examiner notes, indicating there were any problems encountered during the examination or anything that he wanted the examiners to take into consideration in the grading.

17. Prior to the perio and amalgam sections of the examination, the applicants are read a script that gives instructions as to what is to be done and how much time is allotted. The script provides that the applicants need to plan their usage of time in order to finish the procedures within the allotted four hours. Near the end of the examination, the applicants are advised of the time remaining until the end of the examination.

18. Time management is important in the practice of dentistry because patients do not like to be kept waiting and because certain dental procedures must be executed within certain time frames. Applicants are advised before the examination how much time is allotted. Applicants are responsible for obtaining a patient for the examination.

19. Gage received grades of four, four, and one on the class four composite filling portion of the examination. Examiner 321 gave the grade of one and documented that there was a margin open on the incisal. Dr. Thomas Shields III, who was qualified as an expert witness for the Respondent, reviewed the procedure and found that there was a definite click or catch on the incisal margin of the tooth, which was consistent with the grade of one.

20. On the endo portion of the examination, Gage received grades of two, three, and zero. Dr. Shields reviewed the X-rays of the procedure, which showed that the final fill on the root

canal had voids and was unacceptable and one of the tooth canals was not completely filled.

21. On the prosthetic written portion of the examination, Gage scored 70 percent. In order to pass that portion of the examination, the applicant must achieve at least 75 percent, which equates to a 3.75 on a scale of zero to five. Rule 64B5-2.013(2)(c), Florida Administrative Code. Gage complained that some of the pictures in the booklet were not very good and it was difficult to see which teeth were touching. He went to Tallahassee and reviewed the written portion of the test and made some comments concerning the test. Gage did not present his comments at the final hearing.

#### CONCLUSIONS OF LAW

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

23. Respondent is authorized to administer licensure examinations for dentists. Section 466.006, Florida Statutes. Further, the Board of Dentistry has promulgated Chapter 64B5-2, Florida Administrative Code, which outlines various aspects of the dentistry examination process.

24. Since Gage seeks licensure from Respondent and has alleged that the grading of his dentistry examination was flawed, Gage has the burden of establishing by a preponderance of the evidence that he should be given a passing grade. See generally

Balino v. Department of Health and Rehabilitative Services, 348

So. 2d 349 (Fla. 1st DCA 1977).

25. Gage did not establish by a preponderance of the evidence that the dentistry examination was not conducted in accordance with the applicable laws and regulations.

26. Gage alleged but did not show how the scores that he received were incorrect or what score he should have received by particular examiners. Gage's solution of throwing out the low scores is not in compliance with Rule 64B5-2.017, Florida Administrative Code, which requires that the three grades for each procedure shall be averaged to determine the applicant's final grade on each procedure.

27. The evidence did establish that Gage should not receive a passing score for the clinical portion of the dentistry examination which he took in December.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Arthur A. Gage failed to achieve a passing score for the clinical portion of the dentistry examination administered December 1996.

DONE AND ENTERED this 7th day of January, 1998, in Tallahassee, Leon County, Florida.

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SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of January, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.