

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUSAN J. SUMMERTON-MADISON,)
)
 Petitioner,)
)
 vs.) Case No. 97-5865
)
 DEPARTMENT OF HEALTH, BOARD OF)
 OPTOMETRY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On March 23, 1998, a formal administrative hearing was held in Tampa and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings. The hearing was conducted by videoconference from Tallahassee, Florida.

APPEARANCES

For Petitioner: Susan J. Summerton-Madison, pro se
559 99th Avenue North
Naples, Florida 34108

For Respondent: Anne Marie Williamson, Esquire
Department of Health
Building 6, Room 102
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

STATEMENT OF THE ISSUE

Whether the Petitioner is entitled to an award of additional points sufficient to achieve a passing score on the July 1997 optometry exam.

PRELIMINARY STATEMENT

The Petitioner took the July 1997 optometry licensure examination. By grade report dated August 27, 1997, the Petitioner was advised that she had not passed the clinical portion of the examination.

The Petitioner requested a formal administrative hearing. The request was forwarded to the Division of Administrative Hearings which scheduled and conducted the proceeding.

At the hearing, the Petitioner testified on her own behalf and had exhibits numbered 1-8 admitted into evidence. The Respondent presented the testimony of two witnesses and had exhibits numbered 1-6 admitted. A transcript of the hearing was filed. The Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. Susan J. Summerton-Madison (Petitioner) took the July 1997 examination for licensure as an optometrist in the State of Florida.

2. A portion of the examination tests the clinical skills of the applicant for licensure. Each applicant performs a number of tasks while two examiners observe.

3. Prior to administration of the test, all examiners receive standardization training providing a baseline for grading the individual performance of each applicant.

4. Examiners grade each applicant independently of each other.

5. During the clinical part of the test, a viewing system known as a "teaching tube" is attached to the optometrist's equipment used by the applicant. The applicant performs each task twice because only one examiner at a time can observe the performance through the tube.

6. Prior to beginning the clinical portion of the exam, the applicant and the examiners set the tube focusing mechanism so that both the applicant and the examiner have a clear view of the procedures being demonstrated.

7. By grade report dated August 27, 1997, the Petitioner was advised that she had scored 68.80 on the clinical portion of the examination.

8. A score of at least 75 points is required to pass the clinical portion of the examination for licensure as an optometrist.

9. The Petitioner challenges the grading of the following questions:

Section 1, questions 4a and 4b.

Section 2, questions 3a, 3b, 5c, 6a, 7b, 10a, 11a, 11b, 12a, 12b, 13a, 14a, 15a, 18a, 18b, 21a, 21b, 24a, 25a, and 26a.

10. The Petitioner asserts that her pregnancy during the examination resulted in ocular changes which caused focusing anomalies. The anomalies allegedly caused the viewing equipment through which the examiners observed her performance to be out of focus.

11. The Petitioner received score deductions related to lack of focus on numerous questions; specifically section 2, questions 3a, 3b, 5c, 6a, 7b, 10a, 13a, 14a, 15a, 18a, 21a, 24a, 25a, and 26a.

12. There are multiple causes of temporary ocular changes, including nervousness. Although there is evidence that pregnancy can result in ocular changes, the evidence fails to establish that any focusing problems which occurred during the Petitioner's performance on the July 1997 examination were related to pregnancy.

13. Refocusing the viewing mechanism takes approximately five seconds. There is no evidence that an applicant is prevented from refocusing the equipment during the clinical examination.

14. Although examiners are under no obligation to advise applicants during the test, one of the examiners observing the Petitioner suggested that she refocus the equipment. The Petitioner asserts that the request caused her to run out of time on section 2, questions 11a, 11b, 12a, and 12b. The evidence fails to establish that any problems related to insufficient time for the examination were related to the examiner's suggestion.

15. The Petitioner asserts that points were deducted for poor focus on tasks which did not include focus as grading criteria. The evidence establishes that because the clinical portion of the test involves examination of ocular systems in a patient, almost all procedures require correct focus.

16. The Petitioner asserts that on section 2, question 21b, ("foveal reflex") she received no points, but that another optometrist's examination of the test patient indicated that the foveal reflex was acceptable. Review of the examination indicates that the Petitioner's score was lowered because of focusing problems. The fact that a qualified optometrist determined the patient to be normal does not entitle the Petitioner to additional points or indicate that the scoring of her performance was unfair.

17. Because examiners view separate procedures, it is not unlikely that examiners may award different scores. It is

possible to evaluate the performance of examiners through use of "agreement ratings." Agreement ratings indicate the frequency of which each examiner agrees with the other examiner in testing the same applicant.

18. The Petitioner notes that the examiners grading her performance differed in grading section 1, questions 4a and section 2, questions 3a, 3b, 7b, 10a, 13a, 14a, 15a, 18b, 21a, 21b, and 25a, and asserts that such indicates she was graded unfairly.

19. Although the agreement ratings of the examiners who observed the Petitioner were slightly lower than average, the examiner agreement ratings fail to establish that she was graded arbitrarily or unfairly. The sample size is so small as to be subject to influence by borderline candidates, where one examiner believes an applicant's performance to be more acceptable than does the other examiner.

20. The Petitioner asserts that on section 2, question 18b, the lack of agreement between the examiners reflects arbitrary grading because both supposedly view the same procedure through the viewing tube. The evidence fails to establish that the Petitioner is entitled to additional points or that the scoring of her performance was unfair.

21. The Petitioner asserts that she informed the examiners that she was pregnant prior to administration of the clinical portion of the exam and that she should have received special accommodation of some type based on her condition.

22. Procedures set forth in Rule 61-11.008, Florida Administrative Code, address special assistance to certain persons submitting to examination by the Department of Business and Professional Regulation, Office of Examination Services, which administered the examination in the instant case. Such assistance is available to persons with learning disabilities or physical handicap as defined in the rule. There is no evidence that the Petitioner sought to utilize such procedures. There is no evidence that the Petitioner's condition would have been regarded as a learning disability or physical handicap by the agency.

23. The Petitioner asserts that an examiner exited the room while she was addressing section 1, questions 4a and 4b, and that the confusion of the departure caused the examiners to err. The evidence establishes that the scores reflect the inappropriate performance of the task involved, which involved measurement of the patient's pupil.

CONCLUSIONS OF LAW

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

25. Persons desiring to practice in the State of Florida as optometrists must pass an examination designed to measure competence. Section 463.006, Florida Statutes.

26. The Department of Health is responsible for administration of licensure examinations for optometrists. Section 455.574, Florida Statutes.

27. The Petitioner has the burden of establishing that she meets the qualifications for licensure. Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (1st DCA 1977). In this case, the burden has not been met.

28. The evidence fails to establish that the grading of the Petitioner's clinical performance was inappropriate. The Petitioner received numerous deductions in points because, at least to the eye of the observing examiner, the equipment was not properly focused on the patient's ocular system. The fact that points were deducted for focusing problems seems of utmost importance when the passage of the examination permits a person to enter a profession where focus is frequently of paramount concern.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the Department of Health enter a Final Order dismissing the Petitioner's challenge to the grading of the July 1997 examination for licensure as an optometrist.

DONE AND ENTERED this 22nd day of May, 1998, in Tallahassee,
Leon County, Florida.

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of May, 1998.

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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 must be filed with the agency that will issue the Final Order in this case.