

10-26-98

STATE OF FL
BOARD OF CHIRC

Final Order No. DOH-99-00041 Date 1-19-99

FILED
Department of Health
Angela Hall, AGENCY CLERK

PHILLIP ANDREW COBB, D.C.,

Petitioner,
vs.

AT

DOAH CASE NO.: 98-2

Division of Administrative Hearings
 Deputy Agency Clerk
FILED
 Date 7/6/04

DEPARTMENT OF HEALTH,

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Chiropractic (hereinafter referred to as the "Board") pursuant to Section 120.57(1)(I) and (j), Florida Statutes, on November 30, 1998 at a duly noticed conference call meeting, for consideration of the Recommended Order entered by Robert E. Meale, Administrative Law Judge (a copy of which is attached hereto and incorporated herein by reference). The Petitioner participated in the conference call. The Respondent was represented by Anne Marie Frazee, Esquire. RE 11-0105

Upon consideration of the Administrative Law Judge's Recommended Order, the exceptions filed by both parties, the arguments of the parties and after a review of the complete record in this matter, the Board makes the following:

RULINGS ON EXCEPTIONS

1. The Board grants Respondent's exceptions to Findings of Fact numbers 14 and 15. There is no competent and substantial evidence in the record to support the findings that "it is possible to imply a correct score for the x-ray portion of the November examination," and "Petitioner would have passed the x-ray interpretation part of the November examination if Respondent had made reasonable accommodation for his disability. Although Petitioner successfully passed the x-ray portion of the May examination, there is no evidence in the record to demonstrate that the two exams were composed of identical material.

2. The Board grants Respondent's exceptions to Conclusions of Law numbers 24, 25,

26, 27, and 28. Although the de novo nature of the Formal Hearing may permit a wider range of remedies than the remedy provided by rule 61-11.013(3), F.A.C., any such remedies must be based upon competent substantial evidence, not conjecture. Furthermore, the concept of an "implied score" on a licensure examination has no legal basis.

3. The Board rejects all of Petitioner's exceptions. There was competent substantial evidence to support the challenged findings. Furthermore, even if Petitioner's specific exception had merit, there is no evidence to support a finding that Petitioner would receive a passing score on the technique part of the November 1997 exam.

FINDINGS OF FACT

1. The Administrative Law Judge's Findings of Fact, as modified by the exceptions granted herein, are hereby approved and adopted.

2. There is competent, substantial evidence to support the Findings of Fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to the provisions of Section 120.57(1), and Chapter 460, Florida Statutes.

2. The Administrative Law Judge's Conclusions of Law, as modified by the exceptions granted herein, are hereby approved and adopted.

5. There is competent, substantial evidence to support the Board's findings and conclusions.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

Petitioner's challenge to the grades he received on the x-ray portion of the November 1997 examination is hereby DISMISSED. However, based upon the facts of this case, the Board *sua sponte* grants a limited waiver of that part of rule 64B2-11.003(2), F.A.C, which requires an applicant to pass at least two of the three subject areas of the practical examination in order to retake any failed subject area. Petitioner has passed the x-ray portion and the physical diagnosis portion in separate exam administrations. Petitioner will be provided one

opportunity to pass the technique portion by itself. If unsuccessful, Petitioner shall retake the entire practical examination.

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 Department of Health, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, and by filing the filing fee and one copy of the Notice of Appeal with the District Court of Appeal within thirty (30) days of the effective date of this Order.

This Order shall become effective upon filing with the clerk of the Department of Health.

DONE AND ORDERED this 15 day of January, 1998⁹


DR. RICHARD SHELDON,
CHAIRMAN
Board of Chiropractic

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Phillip Andrew Cobb, D.C., 18508 Orlando Road, Fort Myers, Florida 33912 and by hand delivery/United States Mail to the Clerk, Department of Health and its Counsel, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-0792, on or before 5:00 p.m., this _____ day of _____, 1998.
