

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RAFAEL D. MOTA, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-4943  
 )  
 DEPARTMENT OF HEALTH, )  
 BOARD OF MEDICINE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on February 12, 1999, at sites located in Miami and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rafael D. Mota, pro se  
8320 Northwest 10th Street, No. 9  
Miami, Florida 33126

For Respondent: Anne Marie Frazee, Esquire  
Department of Health  
2020 Capital Circle, Southeast  
Bin A02  
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner is eligible for licensure as a physician assistant.

PRELIMINARY STATEMENT

In June 1998, Rafael D. Mota (Petitioner) took the General Written Exam part of the Physician Assistant Examination (Examination). The minimum score required to pass the Examination was 600. The Department of Business and Professional Regulation (DBPR) administered the Examination for the Department of Health (Respondent). DBPR notified Petitioner that he did not successfully complete the Examination, having received a score of 589.20. By letter dated October 21, 1998, Petitioner requested a hearing pursuant to Subsection 120.57(1), Florida Statutes. On November 4, 1998, this matter was referred to the Division of Administrative Hearings.

At hearing, Petitioner testified in his own behalf and entered five exhibits (Petitioner's Exhibits numbered 1-5) into evidence. Respondent presented the testimony of two witnesses (both experts)<sup>1</sup> and entered ten exhibits (Respondent's Exhibits numbered 1-7, 9, 16, and 17)<sup>2</sup> into evidence. Official recognition was taken of Sections 458.347, 455.647, and 455.574, Florida Statutes; and Chapter 64B-1 and Rule 64B8-30.003, Florida Administrative Code.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for ten days following the filing of the transcript. The transcript was filed on March 31, 1999. The parties timely filed post-hearing submissions (Petitioner on February 17, 1999, and

Respondent on April 5, 1999), which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. In June 1998, Rafael D. Mota (Petitioner) took the General Written Exam part of the Physician Assistant Examination (Examination).

2. The minimum score required to pass the Examination was 600. The Department of Business and Professional Regulation (DBPR) administered the Examination for the Department of Health (Respondent). DBPR notified Petitioner that he did not successfully complete the Examination, having received a score of 589.20.

3. Petitioner challenged five questions. They were questions numbered 108, 173, 179, 224, and 235. Petitioner needed to demonstrate that he correctly answered four of the five questions to successfully complete the Examination.

4. At hearing, Respondent conceded that Petitioner answered question numbered 179 correctly and should receive credit for that question. Consequently, Petitioner needs only to demonstrate that he correctly answered three of the remaining four questions being challenged.

5. At hearing, Petitioner agreed that the Examination was fair.

6. The instructions for the Examination directed the candidates for licensure taking the Examination, among other things, to "choose the best answer to each question."

7. As to question numbered 108, the best and correct response was "A." Petitioner chose "C" as the correct response. The response chosen by Petitioner is a symptom, not a complication. Generally, the symptom chosen by Petitioner does not require medical attention. Petitioner should not receive credit for question numbered 108.<sup>3</sup>

8. As to question numbered 173, the best and correct response was "A." Petitioner chose "B" as the correct response. The treatment for response "A" involves medication which is meant to stop a stroke; whereas the treatment for response "B" is not for the threat of a stroke. Even though response "B" is a risk factor for a stroke, response "A" is more of a risk factor than response "B". Petitioner should not receive credit for question numbered 173.<sup>4</sup>

9. As to question numbered 224, the best and correct response was "C." Petitioner chose "D" as the correct response. Question numbered 224, specifically addressed newborn babies. The condition identified for newborns is normally regarded as transient, so response "C" would be the best response. Petitioner's response "D" was more appropriate for non-infants. Petitioner should not receive credit for question numbered 224.<sup>5</sup>

10. As to question numbered 235, the best and correct response was "A." Petitioner chose "B" as the correct response. Response "A" is the first drug of choice for treatment; whereas, response "B" is one of the drugs used if response "A" is ineffective. Petitioner should not receive credit for question numbered 235.<sup>6</sup>

11. Petitioner's answers were not arbitrarily or capriciously graded.

12. The grading process was not devoid of logic and reason.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

14. Petitioner, as the applicant, has the ultimate burden of proof to establish that he is entitled to licensure as a physician assistant. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

15. The burden of proof is upon the Petitioner to show by a preponderance of evidence that the Examination was faulty, that the questions on the Examination were worded arbitrarily or capriciously, that his answers to the questions were arbitrarily or capriciously graded, or that the grading process was devoid of logic and reason. Harac v. Department of Professional Regulation, Board of Architecture, 484 So. 2d 1333, 1338 (Fla. 3d

DCA 1986); State ex rel. Glaser v. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1963); State ex rel. Topp v. Board of Electrical Examiners for Jacksonville Beach, 101 So. 2d 583 (Fla. 1st DCA 1958).

16. Petitioner challenged the grading of his answers to the questions numbered 108, 173, 179, 224, and 235. Respondent conceded at the outset that Petitioner correctly answered question numbered 179 and should receive credit for that question.

17. Petitioner agreed that the Examination was fair.

18. Petitioner failed to satisfy his burden of proof. He failed to demonstrate that his answers were arbitrarily or capriciously graded or that the grading process was devoid of logic and reason.

19. Petitioner is not entitled to additional credit for questions numbered 108, 173, 224, and 235.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Health enter a final order giving Rafael D. Mota credit for question numbered 179, dismissing his examination challenge, and denying him licensure as a physician assistant.

DONE AND ENTERED this 30th day of April, 1999, in  
Tallahassee, Leon County, Florida.

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ERROL H. POWELL  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of April, 1999.

ENDNOTES

<sup>1/</sup> One witness was an expert in psychometrics. The other witness was an expert in physician assistants.

<sup>2/</sup> Respondent's Exhibits numbered 8, 10-15, 18-20 were withdrawn by Respondent.

<sup>3/</sup> Considering the proof, the opinions of Respondent's experts were more persuasive.

<sup>4/</sup> Ibid.

<sup>5/</sup> Ibid.

<sup>6/</sup> Ibid.

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.