

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IMMACULA IRMA SAINT-FLEUR, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 99-3597  
 )  
 DEPARTMENT OF HEALTH, BOARD )  
 OF NURSING, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 31, 2000, in Tallahassee, Florida, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Michael C. Gold, Esquire  
Post Office Box 372  
Tallahassee, Florida 32302

For Respondent: Edward A. Tellechea, Esquire  
Office of the General Counsel  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether the Petitioner's application for licensure by endorsement should be approved or denied.

PRELIMINARY STATEMENT

Following notification that the Board of Nursing ("Board") intended to deny her application for licensure by endorsement, the Petitioner requested an evidentiary hearing. In due course the matter was referred to the Division of Administrative Hearings, where it was assigned to an administrative law judge and was scheduled for hearing. Following two continuances (both requested by the Petitioner), a final hearing was conducted on May 31, 2000. At the final hearing the Petitioner, through counsel,<sup>1</sup> offered two exhibits.<sup>2</sup> The Petitioner did not call any witnesses. The Respondent presented the testimony of one witness (Ms. Mark K. Jacobsen, Director of Nursing Education for the Board of Nursing), and offered one exhibit, which was received in evidence.<sup>3</sup> At the conclusion of the hearing counsel for both parties requested that they be allowed until June 30, 2000, within which to file their respective proposed recommended orders. The request was granted.

On June 13, 2000, a one-volume Transcript of the final hearing was filed with the Division of Administrative Hearings. On June 29, 2000, the Respondent filed a Proposed Recommended Order containing proposed findings of fact and conclusions of law.<sup>4</sup> As of the date of this Recommended Order, the Petitioner has not filed a proposed recommended order, or any other post-hearing document.

## FINDINGS OF FACT

1. In June of 1997, the Petitioner filed an application for nursing licensure, by means of which she seeks to be licensed as a registered nurse by endorsement. In support of her application, the Petitioner submitted, or caused to be submitted, evidence showing that she was licensed as a registered nurse in Quebec, Canada, and that she had such licensure status by passing an examination in 1976. The examination she passed in 1976 was the examination administered in French by the Ordre des Infirmieres et Infirmiers du Quebec ("OIIQ").

2. In 1976, the registered nurse licensure examination given by, or required by, the Florida Board of Nursing was the State Board Test Pool Examination, which was administered by the National Council of State Boards of Nursing.

3. In addition to the licensure examination administered by OIIQ, the Canadian Nurses Association Testing Service ("CNATS") has also offered a registered nurse licensure examination in Canada for many years, including 1976. The Florida Board of Nursing has determined that the CNATS registered nurse licensure examinations administered from 1980 through 1995 are equivalent to the State Board Test Pool Examinations administered by the National Council of State

Boards of Nursing. There has been no such determination for CNATS examinations administered before 1980 or after 1995.

4. The evidence in this case is insufficient to determine whether the registered nursing licensure examinations administered in 1976 by either CNATS or OIIQ were substantially equivalent to, or more stringent than, the State Board Test Pool Examinations administered in 1976 by the National Council of State Boards of Nursing.<sup>5</sup>

#### CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this case. Sections 120.69, 120.57(1), and 120.60, Florida Statutes.

6. The Respondent is the state agency charged with regulating the practice of nursing pursuant to Chapters 455 and 464, Florida Statutes.

7. In pertinent part, Section 464.009(1), Florida Statutes, requires an applicant for licensure by endorsement to demonstrate to the Board that he or she:

(b) Meets the qualifications for licensure in s. 464.008 and has successfully completed a state, regional, or national examination which is substantially equivalent to or more stringent than the examination given by the department.

8. The minimum requirements necessary to show the examination equivalence required by Section 464.009(1)(b),

Florida Statutes, are addressed in Rule 64B9-3.008(3), Florida Administrative Code, which provides that to be equivalent to the exam required by the Board, an examination must meet all five of the following criteria:

(a) The examination is developed using accepted psychometric procedures.

(b) The content and passing score of the examination are substantially equivalent to that of the National Council Licensure Examination.

(c) The security of the examination is maintained.

(d) At least one of the reliability estimations for the examination is 0.7 or higher.

(e) The examination is revised after each administration to insure currency of content.

9. The evidence in this case is insufficient to establish that the OIIQ examination administered in 1976 met any of the five criteria required by Rule 64B9-3.008(3)(a) through (e), Florida Administrative Code.<sup>6</sup>

10. In a case of this nature, the Petitioner bears the burden of establishing her entitlement to the license she seeks. Where, as here, the Petitioner fails to present sufficient evidence to demonstrate such entitlement, the license must be denied.

#### RECOMMENDATION

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing

enter a final order denying the Petitioner's application for licensure by endorsement.

DONE AND ENTERED this 27th day of July, 2000, in Tallahassee, Leon County, Florida.

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MICHAEL M. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of July, 2000.

ENDNOTES

- 1/ At the final hearing, the Petitioner was represented by legal counsel, but the Petitioner did not appear at the hearing.
- 2/ Petitioner's Exhibit 1 was a composite exhibit comprised of all documents contained in the Board's file regarding the Petitioner's application for licensure by endorsement. By agreement of the parties, that exhibit was filed after the final hearing, and was received by the Division of Administrative Hearings on June 6, 2000. Petitioner's Exhibit 2 was a letter dated November 14, 1994, from a Supervisor of the OIIQ.
- 3/ Respondent's Exhibit 1 was a letter dated November 12, 1998, from Yves Lafortune, a consultant with Assessment Strategies.
- 4/ The Proposed Recommended Order submitted by the Respondent has been carefully considered during the preparation of this Recommended Order.
- 5/ There is hearsay evidence (Petitioner's Exhibit 2 and Respondent's Exhibit 1) in the record of this case from which one might infer that the 1976 OIIQ examination was similar to the

1976 CNATS examination, but even that evidence is an insufficient basis for an inference that the 1976 OIIQ examination was "substantially equivalent to or more stringent than" the 1976 CNATS examination. There is no evidence that either the 1976 OIIQ examination or the 1976 CNATS examination was "substantially equivalent to or more stringent than" the 1976 State Board Test Pool Examination administered by the National Council of State Boards of Nursing.

6/ The only documentary evidence that specifically addresses the criteria in Rule 64B9-3.008(3)(a) through (e), Florida Administrative Code, is Respondent's Exhibit 1. The information in that document fails to establish that the 1976 OIIQ examination met any of the criteria in the subject rule. The testimony of Ms. Jacobsen emphasizes the deficiencies in the documentary evidence.

COPIES FURNISHED:

Michael C. Gold, Esquire  
Post Office Box 372  
Tallahassee, Florida 32302

Edward A. Tellechea, Esquire  
Office of the General Counsel  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

Ruth R. Stiehl, Ph.D., R.N.  
Executive Director  
Board of Nursing  
Department of Health  
4080 Woodcock Drive, Suite 202  
Jacksonville, Florida 32207-2714

Angela T. Hall, Agency Clerk  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

William W. Large, General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

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.