

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GREGORY K. BARFIELD,)
)
 Petitioner,)
)
 vs.) Case No. 99-4052
)
 DEPARTMENT OF HEALTH, BOARD OF)
 DENTISTRY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on November 16, 1999, in Miami, Florida.

APPEARANCES

For Petitioner: Gregory K. Barfield, pro se
2555 Collins Road, Penthouse 114
Miami Beach, Florida 33140

For Respondent: Adam Keith Ehrlich, Esquire
Department of Health
2020 Capital Circle, Southeast
Bin A02
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner achieved a passing score on the June 1999 Florida dental licensure examination.

PRELIMINARY STATEMENT

By examination grade report mailed July 20, 1999, the Department notified Petitioner that he had failed the clinical portion of the June 1999 Florida dental licensure examination, and Petitioner timely requested an evidentiary proceeding regarding that score. This cause was thereafter transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

The Petitioner testified on his own behalf. The Department presented the testimony of Thomas E. Shields, D.D.S., and, by way of late-filed deposition, Marsha Carnes. Additionally, Petitioner's Exhibits numbered 1-10 and the Department's Exhibits numbered 1-17 were admitted in evidence during the evidentiary proceeding. Leave was granted to the Department to file after the hearing the deposition of Marsha Carnes, and the Petitioner was granted leave to file copies of 13 pages from identified textbooks. Those documents were filed and have been considered as part of the evidence in this cause.

Both parties also filed after the hearing proposed recommended orders. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is licensed to practice dentistry in California and was also licensed in Georgia until he permitted

his Georgia license to become inactive. He has been engaged in the active practice of dentistry for thirteen years. He has never been sued.

2. Petitioner took the June 1999 clinical portion of the Florida dental licensure examination. He was subsequently advised that he had not achieved a passing score.

3. Petitioner challenges the score he received on two portions of the clinical examination: his amalgam cavity preparation on the patient and his endodontic procedure on an extracted tooth.

4. Petitioner's patient had a cavity between two teeth, although it was much lower than the contact point. The patient also had a large non-contiguous cavity in the front of the same tooth. Petitioner determined that he wished to save as much of the tooth as possible knowing that the large cavity in the front of the tooth would need to be filled.

5. Because of the manner in which it was necessary to prepare the tooth to preserve the maximum amount of structure, he generated a monitor note explaining his approach. When he located the monitor to whom he would turn in his note, that monitor was busy viewing another patient and motioned for Petitioner to place the note at the monitor's station. Petitioner placed the note in the monitor's chair and returned to his patient.

6. Petitioner completed the preparation procedure. While doing so, he noticed that his patient's tooth had a dead tract, a rare dental defect that would not interfere with the process. This was only the second time that Petitioner had seen a dead tract in a tooth despite his many years of practice. The first time had been while Petitioner was in dental school

7. When his patient was graded, two of the three graders gave Petitioner a score of "0," noting that caries remained. The third grader saw no caries but noted debris remained. What the two examiners mistook for further decay was the dead tract. No debris remained. The other comments of the graders suggested that they had not seen the monitor note generated by Petitioner explaining the manner in which he was preparing the tooth and why. Despite the alleged presence of decay, Petitioner was instructed to proceed to fill the cavity.

8. The extracted tooth on which Petitioner performed his endodontic procedure was an "easy" tooth with large canals. One grader gave Petitioner a "5," which is a perfect score. One grader gave him a "3," and the other gave him a "0."

9. Only the grader who gave Petitioner the "0" noted that the tooth was perforated. The tooth Petitioner worked on had no perforation on the inside, and the x-rays taken during the process revealed no file or gutta percha filling off to the side

of the canals. Petitioner did not perforate the tooth during his endodontic procedure.

10. Petitioner properly performed both the amalgam cavity preparation on his patient and the endodontic procedure on the extracted tooth. He should be awarded full points on both procedures. The additional points are sufficient to give Petitioner a passing score.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto. Sections 120.569 and 120.57(1), Florida Statutes.

12. Section 466.006, Florida Statutes, requires the passage of an examination to be licensed as a dentist in the State of Florida. Subsection 466.006(4)(d), Florida Statutes, authorizes the Board of Dentistry to enact rules determining the passing score on the examination.

13. Rule 64B5-2.013(4)(a), Florida Administrative Code, regulates grading the clinical portion of the dental examination and provides that a grade of "0" is mandatory if caries or decay remains. No caries remained in Petitioner's patient's tooth when Petitioner completed his preparation. The dead tract was misdiagnosed as caries by two out of three graders.

14. Rule 64B5-2.013(4)(c), Florida Administrative Code, provides that a grade of "0" is mandatory if a perforation

occurs. Petitioner did not perforate the tooth in performing his endodontic procedure.

15. Due to Petitioner's licensure as a dentist, he testified both as to facts and as to his opinions regarding his performance and the grades he should have received. On the other hand, the Department presented no competent evidence as to the work performed by Petitioner during the clinical portion of the examination.

16. Although the Department presented the testimony of two witnesses, neither of them was present when Petitioner took the examination and neither of them was, therefore, able to testify as to whether Petitioner properly performed the procedures. They simply testified as to how graders are selected and trained, how the examination is administered in general, and as to the contents of grade sheets and other grade documentation forms. Those documents, however, are hearsay and cannot form the basis for a finding of fact as to what happened during the examination. Section 120.57(1)(c), Florida Statutes. No grader who scored Petitioner's clinical examination testified as to what occurred or as to the accuracy of the scores assigned to Petitioner.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding that
Petitioner achieved a passing score on the June 1999 dental
licensure examination.

DONE AND ENTERED this 26th day of January, 2000, in
Tallahassee, Leon County, Florida.

LINDA M. RIGOT
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 26th day of January, 2000.

COPIES FURNISHED:

Bill Buckhalt, Executive Director
Department of Health
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0750

Angela T. Hall, Agency Clerk
Department of Health
2020 Capital Circle, Southeast
Bin A02
Tallahassee, Florida 32399-1703

Gregory K. Barfield
2555 Collins Road, Penthouse 114
Miami Beach, Florida 33140

Gregory K. Barfield
Post Office Box 102
Rancho Sante Fe, California 92067

Adam Keith Ehrlich, Esquire
Department of Health
2020 Capital Circle, Southeast
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.