

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
CLINICAL LABORATORY PERSONNEL,)
)
Petitioner,)
)
vs.) Case No. 00-0202
)
STEVEN R. MOORE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A hearing was held in this case was held in St. Petersburg, Florida, on February 24, 2000, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lawrence F. Kranert, Jr. Esquire
Agency for Health Care Administration
Post Office Box 14229
Mail Station 3
Tallahassee, Florida 32317

For Respondent: Steven R. Moore, pro se
1735 Michigan Avenue, Northeast
St. Petersburg, Florida 33703

STATEMENT OF THE ISSUE

The issue for consideration in this matter is whether Respondent's license as a clinical laboratory supervisor should be disciplined because of the matters alleged in the Administrative Complaint filed herein.

PRELIMINARY MATTERS

By Administrative Complaint dated October 22, 1999, Nancy Snurkowski, Esquire, Chief Attorney in the Agency for Health Care Administration on behalf of the Department of Health's Board of Clinical Laboratory Personnel, charged Respondent with a violation of Section 483.825(7), Florida Statutes, and Rule 64B3-11.001(1), Florida Administrative Code, by failing to supply proof that he had complied with the continuing education requirements of the Board of Clinical Laboratory Personnel for the biennium of 1996-1998. Respondent requested formal hearing on the allegations and this hearing ensued.

At the hearing, Petitioner presented the testimony of Sharon Guilford, a program administrator for the Department of Health's continuing education and continuing education audit divisions; Harry F. Knight, an investigator with the Department; and Respondent, Steven R. Moore. Petitioner also introduced Petitioner's Composite Exhibit 1 and Exhibit 2. Respondent testified in his own behalf and introduced Respondent's Exhibit A.

A Transcript of the proceedings was filed March 3, 2000. Subsequent to the receipt thereof, only Respondent submitted matters in writing. This was carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to the issues herein the Petitioner, Board of Clinical Laboratory Personnel, was the state agency in Florida responsible for the licensing of clinical laboratory personnel and the regulation of the clinical laboratory profession in this state. Respondent was licensed by Petitioner as a clinical laboratory supervisor holding license number JC 10663.

2. Respondent came to Florida in 1973. He held a bachelor's degree at that time and immediately took the test for licensure as a laboratory technician, which he passed. A year later, he also took the test for licensure as a laboratory supervisor and passed that test as well. His licenses require that he take 24 continuing education course hours in his specialty every two years.

3. During the course of a routine departmental audit of the continuing education requirements for the biennium of July 1, 1996 to June 30, 1998, Respondent was asked for evidence of his completion of the required continuing education courses. He went through his personal continuing education file and extracted the records on file for the required period. In doing so, Respondent claims he found evidence of a course in chemistry he had completed and sent in to the provider, Anderson Continuing Education, for grading and completion certification, but he received no certificate of his completion of this course.

4. Respondent is adamant that he mailed the completed course materials to Anderson on June 14, 1998. He claims he also sent the Board copies of what he sent in, along with other information he had. Records at the Board reflect Respondent submitted certificates reflecting completion of 25 continuing education hours. However, 12 of those hours, those for chemistry, were not shown to have been completed during the biennium. Mr. Moore was advised of this by the Board.

5. The records available reflect that on July 30, 1996, Respondent was granted a completion certificate for three continuing education hours for advanced troubleshooting (Course CC-0019741); on May 14, 1998, a certificate for completing one hour for Course CC-0021660 and two hours in Advances on the AIDS Horizon: 1998; and on June 2, 1998, a certificate for seven hours in Clinical Application of Laboratory Data.

6. The certificate of completion for the 12-hour course in Clinical Chemistry; Theory, Analysis, Correlation, Section 1, reflected the completion date of January 13, 1999. Respondent contends he completed the course materials and sent them in to Anderson for grading within the required biennium, and the answer sheet submitted by Respondent at the hearing reflects on the top of the first page thereof Respondent's hand-written notation that it was sent to Anderson on June 12, 1998. This contradicts the notation by Anderson that the required material was not submitted

for certification until January 13, 1999, well after the completion of the pertinent biennium.

7. Respondent contends he is aware of what is required and when the deadlines are. He is also aware of how long it generally takes Anderson to grade the submitted materials. Though he contends he submitted the 12-hour chemistry course materials in June 1998, he claims he didn't realize Anderson had not received it or graded it. It was not until the audit, he contends, when he found he had not received a completion certificate, that he sent the answer sheet in again.

8. Respondent asked Anderson if the Board would backdate the certificate for the 12-hour chemistry course to reflect it was completed during the biennium. Respondent claims it was not his idea to do so, but he did it at the request of the Board auditors who asked him to get a statement from Anderson that they could not backdate certificates.

9. When Respondent was notified of the audit, he wrote to the Board and indicated the out-of-biennium date on the chemistry certificate was inaccurate. Based on that claim, a representative of the Board made a courtesy call to Anderson to advise the Board of the problem. Anderson did not admit that a mistake had been made. If Anderson had admitted a mistake, Respondent would have received credit for the course.

10. Respondent contends he was selected for this audit of his continuing education as retaliation because he requested to

take the test for licensure in microbiology. He indicates he requested the test on December 18, 1998, and called the Department frequently thereafter when he did not hear anything. It was shortly thereafter that he was notified that he was being audited.

11. According to Sharon L. Knight, a program administrator in continuing education and education audit for two of the Department's regulatory Boards, of which one is the Petitioner herein, usually 10 percent of the licensed practitioners in a profession are subjected to an audit of their continuing education each cycle. Audits are usually conducted within four to six months after the end of a biennium. The list of those selected is computer-generated. Respondent was identified by the computer for audit. Based on the evidence presented, it is found there is no evidence the audit of Respondent's continuing education record was in any way retaliation for his request to take the microbiology examination, or based on any other improper foundation.

12. Respondent is adamant that he completed the required chemistry course material and submitted it to Anderson for certification within the biennium. However, he admits he did not check with Anderson when he did not receive a timely certificate of completion, but he attributes this to the fact that at that time his mother moved in with him.

13. Absent any indication of irregularity in Anderson's grading process, it is found that the chemistry course, accounting for 12 hours of continuing education, was not completed by Respondent and submitted for grading within the biennium in issue. Any gratuitous comments which may have been made to Respondent by the Department's investigator regarding the seriousness of the allegations are irrelevant and not considered herein.

CONCLUSIONS OF LAW

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

15. The Board of Clinical Laboratory Personnel seeks to discipline the Respondent's license as a licensed laboratory supervisor because of his failure to supply to the Board proof that he had complied with the minimum continuing education requirements for continued licensure, in violation of Section 483.825(7), Florida Statutes. The burden rests with the Board to establish Respondent's misconduct by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

16. Rule 64B3-11.001(1), Florida Administrative Code, requires individuals licensed as Respondent is to complete a specified number of hours (24) of approved continuing education courses every two years, and to provide proof thereof to the

Board. In the instant case, Respondent was subjected to a random audit of his continuing education hours for the 1996-1998 biennium. His report to the Board reflected that he had completed a 12-hour chemistry course during the biennium but when the certificate of completion of that course was sent in, it reflected the course had not been taken by Respondent during the relevant biennium.

17. Respondent contends he took the required course and sent the completion sheet to the provider within the appropriate time period, but has no evidence in support of that contention. In fact, the only documentation relating to the chemistry course in issue reflects the completion sheet was not submitted to the provider until January 13, 1999, well after the end of the pertinent biennium. Respondent's assertion that the completion sheet was sent in on time is not supported by credible evidence of record and is not persuasive.

18. The thrust of the allegation of misconduct is two-fold. One allegation relates to the failure to complete the required education within the prescribed period, and the other relates to the failure of Respondent to send in the appropriate certificate of attendance in the proper form. Taken together, the evidence clearly establishes that Respondent failed to provide the necessary proof of completion of the required attendance. He, therefore, did not comply with the requirements for continuing education for the 1996-1998 biennium. His failure to do so

constitutes a violation of the agency's rules regarding continuing education which is a basis for disciplinary action as set out in the statute alleged.

19. Section 483.827, Florida Statutes, sets out the administrative penalties authorized for established violations of the agency's rules. Under the provisions of this section, the Board may suspend, revoke, annul, or limit renewal of a license; and impose an administrative fine of not in excess of \$500.00 for each violation established. The statute also sets out those factors that should be considered in assessing a penalty. These include the severity of the violation and the severity of the potential harm to the safety of any person that has or may result; actions taken by the licensee to correct the violation, previous violations by the licensee, and financial benefit to the licensee.

20. Counsel for the Board did not submit any information suggesting any specific penalty for Respondent's misconduct. While the failure to pay sufficient attention to ensure the Board's continuing education requirements are met in a timely fashion raises some question as to the seriousness with which the Respondent considers these requirements, there is no evidence that anyone was harmed by Respondent's misconduct or that he was financially benefited thereby. By the same token, no evidence was introduced regarding any prior misconduct by Respondent. Under the circumstances of this case, it appears that Respondent

has been made aware of the need to ensure his continuing education requirements are met, and a severe penalty to include revocation or suspension of his license would serve no legitimate purpose.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Respondent pay an administrative fine of \$250.00 and that he be reprimanded.

DONE AND ENTERED this 6th day of April, 2000, in Tallahassee, Leon County, Florida.

ARNOLD H. POLLOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of April, 2000.

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.