

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RAMI GHURANI,)
)
 Petitioner,)
)
 vs.) Case No. 00-2330
)
 DEPARTMENT OF HEALTH,)
 BOARD OF DENTISTRY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 3, 2000, by video teleconference with connecting sites at Miami and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Rami Ghurani, pro se
2400 Southwest Third Avenue, No. 702
Miami, Florida 33129

For Respondent: Cherry A. Shaw, 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 successfully completed the December 1999 dental licensure examination.

PRELIMINARY STATEMENT

In December 1999, Rami Ghurani (Petitioner) took the dental licensure examination (Examination). Petitioner was notified by the Department of Health, Board of Dentistry (Respondent) that he had failed the Examination. Successful completion of the Examination required a minimum score of 3.00 on the Clinical part and a minimum score of 75.00 on the Laws and Rules part. Petitioner obtained a score of 2.72 on the Clinical and a score of 78.00 on the Laws and Rules, thereby failing the Examination.

Petitioner requested a hearing through an Amended Petition for Formal Administrative Hearing (Amended Petition). In his Amended Petition, Petitioner listed six areas of dispute as follows:

- (a) Whether the score of 1.66 in the Periodontal Section of the Examination is accurate;
- (b) Whether the Petitioner sutured the patient during the Periodontal Section of the Examination;
- (c) Whether the score of 3.00 in the Endodontic Section of the Examination is accurate;

(f) [sic] Whether the score of 1.66 in the Preparation for a 3-unit Fixed Partial Denture Section of the Examination is accurate;

(g) [sic] Whether an undercut existed on the prepped teeth in the 3-unit Fixed Partial Denture Section of the Examination; and

(h) [sic] Whether the Petitioner was required to cut a full coverage porcelain crown instead of porcelain fused to metal crown in the 3-unit Fixed Dental Section of the Examination.

On June 1, 2000, this matter was referred to the Division of Administrative Hearings.

At hearing, the parties informed the undersigned that only issues (a) and (b) remained; all other issues had been resolved. Moreover, the parties informed the undersigned that, as a result of re-scoring, Petitioner's score on the Clinical part had been increased from 2.72 to 2.89.

Petitioner testified on his own behalf and entered one exhibit (Petitioner's Exhibit numbered 1) into evidence. Respondent presented the testimony of four witnesses and entered 13 exhibits (Respondent's Exhibits numbered 1-8 and 10-13) into evidence. The undersigned took official recognition of Respondent's Exhibit numbered 9, which is comprised of a copy of Chapters 466 and 455, Florida Statutes (1999), Section 90.616, Florida Statutes (1999), and Chapters 64B1 and 64B5, Florida Administrative Code.

Furthermore, at hearing, Petitioner was afforded an opportunity to take the deposition of a witness subsequent to the hearing and late-file the deposition as an exhibit. However, the record is devoid of a late-filed deposition by Petitioner.

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, consisting of one volume, was filed on November 15, 2000. The parties timely filed their post-hearing submissions, which were considered in the preparation of this Recommended Order.¹

FINDINGS OF FACT

1. Petitioner has been given a temporary permit to practice dentistry due to his being a resident in training.

2. In December 1999, Petitioner took the dental licensure Examination. He successfully completed the Laws and Rules part of the Examination having received a score of 78.00, where a minimum score of 75.00 was required to pass that part. Petitioner failed to successfully complete the Clinical part of the Examination having received a score of 2.89, where a minimum score of 3.00 was required to pass the Clinical part. As a result, Petitioner failed to successfully complete the overall Examination.

3. On the Periodontal section of the Clinical part, Petitioner received a score of 1.66. He challenges this score.

4. Each candidate is graded by three examiners. Each examiner is a dentist who is licensed in the State of Florida, with a minimum of five active years' experience, and who, among other things, has no complaints or negative actions against his/her license.

5. Before every examination, each examiner is trained in evaluating a procedure to make sure that the procedure is properly performed. The Department of Health (Department) conducts training in which each examiner is trained to grade using the same internal criteria. Such training results in a standardization of grading criteria. In this training process, the examiners are trained by assistant examiner supervisors on the different criteria that are used during the examination. The assistant examiner supervisors are dentists licensed in the State of Florida.

6. To further their training, the examiners after receiving verbal training are shown slides of teeth which do not meet the clinical criteria of the examination.

7. Following the standardization, to make sure that the examiners have been able to internalize the criteria, the examiners, themselves, are given an examination. Included in the examination is a hands-on clinical, where models are used and the

examiners check for errors on the models. The examiners are evaluated on how they perform when they grade the models, to make sure that the examiners are grading the candidates the same, using the same criteria, and with reliability.

8. Each examiner grades the examination independently. The examiners do not confer with each other while scoring the examination. The examiners do not have contact with the candidates.

9. As to grading, the average of the three grades from the examiners produces the overall grade for the exercise performed by the candidate. Having three examiners grading provides a more reliable indication of the candidate's competency and true grade.

10. Furthermore, the examination is double-blind graded, which is a grading process in which the candidates have no contact with the examiners. The candidates are located in one clinic and perform the dental procedures on their human patient. The clinic is monitored. When the candidate completes the procedures, a proctor accompanies the human patient to another clinic where the examiners are located, and the examiners grade the procedures performed by the candidates.

11. Monitors are used by the Department at the examination. The role of a monitor is to preserve and secure the integrity of the examination. The monitor, among other things, gives instructions to the candidates, answers questions of the

candidates, and acts as a messenger between the candidate and the examiner. Monitors also ensure that candidates do not have contact with the examiners.

12. For the Periodontal section, a candidate, as Petitioner, performs a periodontal exercise on a human patient who is chosen by the candidate. The human patient must also be approved by the Department in accordance with criteria specified by rule.² The criteria includes a requirement that the human patient must have a minimum of five teeth, each of which must have pockets of a minimum of four mm in depth with sub-gingival calculus.

13. Petitioner chose his human patient. The Department approved Petitioner's human patient. Petitioner's human patient was a periodontally involved patient.

14. Petitioner performed the periodontal exercise on his human patient. Petitioner's exercise was graded by three examiners, i.e., Examiners 131, 346, and 264. All three examiners participated in and successfully completed the standardization training, and it is inferred that they were considered qualified to act as examiners for the Examination.

15. Petitioner's examination was double-blind graded. Each examiner independently graded Petitioner's examination.

16. Examiner 131 found no errors and awarded Petitioner a grade of five (5). Examiner 346 found gross mutilation of the

human patient's soft tissue of areas 26, 27, and 28, and awarded Petitioner a grade of zero (0). Examiner 264 also found gross mutilation of the human patient's soft tissue of areas 26, 27, and 28, and awarded Petitioner a grade of zero (0).

17. The criteria for the Periodontal exercise mandates a grade of zero (0) where there is gross mutilation of gingival tissue.³ Consequently, Examiners 346 and 264 had no choice but to award Petitioner a grade of zero (0).

18. After the grading, both graders who found gross mutilation of gingival tissue made written comments, regarding the tissue mutilation, on the Examiner-To-Monitor Instructions form. Examiner 264's comment was "Please have candidate place perio pak, area 26, 27, 28" and was not intended to be instructions to Petitioner but was directed to follow-up work or to attention that the human patient may need afterwards. The Examiner-To-Monitor Instructions form, with the written comments, was provided to the monitor who related the comments to Petitioner. The monitor did not allow Petitioner to view the written comments.

19. The monitor informed Petitioner that further work needed to be done as to the human patient. The monitor indicated on the Examiner-To-Monitor Instructions form that Examiner 264's comment was related to Petitioner by the monitor writing "Candidate complied with" and writing and circling his assigned

monitor number. The monitor writing "Candidate complied with" meant only that the monitor informed Petitioner that further work needed to be done, not that the Petitioner correctly performed the procedure.

20. No evidence was presented that Petitioner sutured the human patient or that he placed a perio pak on the affected tissue of areas 26, 27, and 28. The evidence shows that the monitor only related to Petitioner that further work needed to be done without the monitor specifying what needed to be done. Moreover, the evidence shows that the monitor did not indicate that Petitioner had done what was requested of him.

21. A candidate is not informed of his/her performance by the examiner because there is no contact between the examiner and the candidate. Additionally, such notification at the Examination site is not done because it is believed to have the effect of alarming the candidate and raising the candidate's anxiety level.

22. The human patient was not informed that there was mutilation of soft tissue as a result of the periodontal exercise. Before an individual is accepted by the Department as a patient, the individual must complete and sign a "Patient Disclosure Statement and Express Assumption of Risk" form. This form, among other things, relieves the Department of any responsibility for poor work done by a candidate or for notifying

the human patient of any poor work done by the candidate and places the responsibility on the human patient to have a licensed dentist check the work done by the candidate.

23. The grading of Petitioner's Periodontal exercise is not arbitrary or capricious or an abuse of discretion. The grading process is not devoid of logic and reason.

CONCLUSIONS OF LAW

24. 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.

25. Pursuant to Section 455.574, Florida Statutes (1999), the Department is authorized to administer licensure examinations for dentists.

26. Section 466.006, Florida Statutes (1999), provides in pertinent part:

(4) To be licensed as a dentist in this state, an applicant must successfully complete the following:

(a) A written examination on the laws and rules of the state regulating the practice of dentistry;

(b)1. A practical or clinical examination, which shall be administered and graded by dentists licensed in this state and employed by the department for just such purpose. The practical examination shall include:

a. Two restorations, and the board by rule shall determine the class of such

- restorations and whether they shall be performed on mannequins, live patients, or both. At least one restoration shall be on a live patient;
- b. A demonstration of periodontal skills on a live patient;
 - c. A demonstration of prosthetics and restorative skills in complete and partial dentures and crowns and bridges and the utilization of practical methods of evaluation, specifically including the evaluation by the candidate of completed laboratory products such as, but not limited to, crowns and inlays filled to prepared model teeth;
 - d. A demonstration of restorative skills on a mannequin which requires the candidate to complete procedures performed in preparation for a cast restoration; and
 - e. A demonstration of endodontic skills.

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

28. The burden of proof is on Petitioner to show by a preponderance of evidence that the grading of the Periodontal section, Clinical part of the Examination was arbitrary or capricious or constituted an abuse of discretion, or that the grading process was devoid of logic and reason. Harac v. Department of Professional Regulation, Board of Architecture, 484 So. 2d 1333 (Fla. 3d DCA 1986); State ex rel. Glasser 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).

29. Petitioner has failed to meet his burden.

30. Petitioner is not entitled to additional points on the
Periodontal section, Clinical part of the Examination.

RECOMMENDATION

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

RECOMMENDED that the Department of Health, Board of
Dentistry, enter a final order dismissing Rami Ghurani's
examination challenge to the periodontal section of the clinical
part of the dental licensure examination administered in December
1999.

DONE AND ENTERED this 15th day of December, 2000, in
Tallahassee, Leon County, Florida.

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 15th day of December, 2000.

ENDNOTES

^{1/} Petitioner attached to his post-hearing submission excerpts from a published textbook on periodontics. Petitioner did not request leave to use and attach the excerpts or to late-file the excerpts. As a result, neither the excerpts nor any argument relying upon the excerpts were considered in the preparation of this Recommended Order.

^{2/} Rule 64B5-2.013(4)(b), Florida Administrative Code, provides:

(4) The grading of the clinical portion of the dental examination shall be based on the following criteria:

* * *

(b) Periodontal exercise on a patient with a minimum of 5 teeth, none of which shall have a full crown restoration, all of which shall have pockets at least 4 mm. in depth with obvious sub-gingival calculus detectable by visual or tactile means and radiographic evidence of osseous destruction; at least one tooth shall be a multi-rooted molar which shall be in proximal contact with at least one other tooth; none of the 5 teeth shall be primary teeth. All calculus appearing on radiographs must be detectable by visual or tactile means.

1. Definitive debridement (root planing, deep scale, stain removal):

a. diagnosis -- clinical and radiographic
b. presence of stain on assigned teeth
c. presence of supra-gingival calculus on assigned teeth

d. presence of sub-gingival calculus on assigned teeth

e. root roughness on assigned teeth

f. management of soft tissue is considered adequate in the absence of trauma or mutilation.

It is the intent of the Board that each of the criteria are to be accorded equal importance in grading. Equal importance does not mean that each criteria has a numerical or point value but means that any one of the

criteria, if missed to a severe enough degree so as to render the completed procedure potentially useless or harmful to the patient in the judgment of the examiner, could result in a failing grade on the procedure. The criteria do not have any assigned numerical or point value but are to be utilized in making a holistic evaluation of the procedure. However, a grade of zero (0) is mandatory if there is gross mutilation of gingival tissue or if the candidate fails to attempt or complete the procedure.

^{3/} 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.