

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAYESHKUMAR VALLABHBHAI PATEL, O.D., )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-5023  
 )  
 DEPARTMENT OF HEALTH, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Following notice to all parties, Don W. Davis,  
Administrative Law Judge for the Division of Administrative  
Hearings, held a final hearing in the above-styled case on  
January 30, 2001, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Jayeshkumar Vallabhbhai Patel, O.D.,  
pro se  
1601 Norman Drive, Apartment GG-1  
Valdosta, Georgia 31601

For Respondent: Cherry A. Shaw, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should  
receive a passing score on the clinical portion of the August  
2000 optometry licensure examination.

PRELIMINARY STATEMENT

In August 2000, Petitioner took the optometry licensure examination. By grade dated September 13, 2000, Petitioner was informed by Respondent's personnel that Petitioner had failed to achieve a passing score on the clinical portion of the licensure examination. Petitioner scored 74.20. A score of 75 is required to pass the clinical portion of the examination. Consequently, Petitioner failed the overall examination.

Petitioner contested the grade awarded by Respondent and the matter was transferred to the Division of Administrative Hearings on December 13, 2000.

At the final hearing, Petitioner presented 5 exhibits and testified in his own behalf. Respondent presented 12 exhibits and testimony of two witnesses.

The Transcript of the final hearing was filed on February 8, 2001. Proposed Findings of Fact submitted by the parties have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. In August 2000, Petitioner took the optometry licensure examination and failed to pass the clinical portion of the exam. The clinical portion is where the candidate is

required to perform certain patient procedures. The student, or candidate, is evaluated in the process of performing those procedures by two examiners. Each examiner grades the candidate independently of whatever score the other examiner may award on a particular procedure.

2. With regard to the contested questions in this matter, Petitioner objected to the awarding of credit by one examiner and failure of the other examiner to grant credit.

3. In the conduct of the clinical portion of the examination, each procedure is performed twice, once for each examiner. The examiners are not permitted to confer as they apply uniform grading standards to a candidate's performance in demonstrating a particular procedure. Additionally, the examiners have been previously subjected to standardization training where they are trained to apply grading standards in a consistent manner. Both examiners in Petitioner's examination were experienced examiners. Where one examiner gives a candidate one score and the other examiner gives a different score, the two scores are averaged to obtain the candidate's score on that question.

4. With regard to Question 1C on the examination, the candidate is required to tell the patient to look at his or her nose. At the same time, the candidate must hold up a

finger in a stationary, non-moving manner. By his own admission, Petitioner failed to comply with this requirement in that his hands were moving.

5. With regard to Question 7A, the candidate was required to tell the patient to look at a distant target. Petitioner told the patient to look straight ahead and argued at final hearing that his instruction was adequate for him to assume that the patient was looking at a distant target. Notably, this question on the examination seeks to elicit a candidate's skill at administering a neurological test of the patient's eye and brain coordination and requires that the candidate specifically tell the patient to look at a distant target.

6. With regard to Question 13C, the candidate must perform a procedure designed to detect retinal lesions. The candidate and the examiner simultaneously look through a teaching tube where the candidate is asked to examiner the patient's eye in a clockwise fashion. When told to look at the nine o'clock position of the retina, Petitioner failed to look at the correct position. By his own admission Petitioner stated that since he had to perform the procedure twice, it is possible that he did not perform the procedure correctly for one examiner.

7. Question 34A relates to Tonometry; the measure of intraocular pressure (IOP) in the eye. Petitioner was not given credit by one examiner because Petitioner rounded the pressure results he observed. He argued that his answer of 12 was acceptable since he had rounded to the result within 0.5mm of what the machine detected in regard to the patient's eye. One of the purposes of this procedure is to determine whether the candidate can accurately read the dial to the machine. Consequently, Petitioner's failure to perform properly with regard to this procedure was appropriately graded.

#### CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over this matter. Section 120.57(1), Florida Statutes.

9. Respondent's Rule 64B-1.006(2), Florida Administrative Code, allows for subjective evaluation and disagreement on a candidate's performance on the clinical portion of the licensure examination for optometrists by no less than two examiners. The rule also requires that the independent grades of examiners be averaged to produce a final score. No provision is made in the rule to discard the opinion or grade of one examiner in favor of the other.

10. Petitioner seeks licensure and thereby bears the burden of demonstrating entitlement to the license sought. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner has not met this burden. Petitioner has not shown by a preponderance of the evidence that Respondent's grading decision in regard to the challenged examination questions is arbitrary and capricious or an abuse of discretion.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that a Final Order be entered dismissing Petitioner's challenge to the grade assigned him for the August 2000 optometry licensure examination.

DONE AND ENTERED this 23rd day of February, 2001, in Tallahassee, Leon County, Florida.

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DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of February, 2001.

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.