

PRELIMINARY STATEMENT

In December 2001, Petitioner took the dental licensure examination. By grade report dated January 22, 2002, the Department of Health ("the Department") notified Petitioner that he had failed the licensure examination. The minimum passing score for the examination is 3.00, and Petitioner scored 2.87.

Petitioner timely submitted a request for hearing to contest the grading process applied to certain procedures upon which he was examined. Additionally, at Petitioner's request, a re-grade was conducted for the challenged procedures, but Petitioner still failed the examination.

At the final hearing, Petitioner testified on his own behalf but offered no additional witnesses. The Department offered six exhibits. Also, the Department presented the testimony of Marsha Carnes, accepted as an expert in the field of psychometrics; Dr. William F. Robinson, D.D.S., accepted as an expert in the field of dentistry; and by deposition, Dr. Howell A. Goldberg, D.D.S, an examiner for the December 2001 examination.

No transcript of the final hearing has been supplied, but proposed Findings of Fact submitted by the parties have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. In December 2001, Petitioner took the dental licensure examination and failed to pass the clinical portion of the exam. The examination is a three-day process involving two days of clinical examination. Those two days of clinical examination consist of nine procedures. Four of the nine procedures were challenged by Petitioner.

2. The clinical portion is where the candidate is required to perform certain patient procedures. The work product of the student, or candidate, is evaluated following the performance of those procedures by three examiners. Each examiner grades the candidate independently of whatever score the other examiners may award on a particular procedure. Then the average grade for each procedure is weighted in accordance with requirements of Rule 64B5-2.013, Florida Administrative Code. This produces the overall score for the entire clinical exam.

3. The Department uses three examiners' scores because this provides a more reliable indication of the candidate's competency and true score. Further, each examiner must be a licensed dentist for a minimum of five years and have no complaints or disciplinary actions against their license. Examiners have no contact with the candidate taking the examination and, accordingly, have no idea of who they are grading.

4. To further ensure fairness, each examiner must attend and successfully complete a standardization session. The purpose of these sessions is to ensure that each examiner is trained to use the same internal grading criteria. In standardization, each examiner is thoroughly taught specific grading criteria with the result that examiners are instructed on how to evaluate the work of the candidates.

5. The examiners who graded Petitioner's examination had successfully completed the foregoing standardization session. Also, the Department's post-exam check found these examiners' grading to be reliable.

6. Petitioner contested the score he received on Procedure 4, the Endodontic procedure, a root canal. The Endodontic procedure required removal of infected nerve tissue and blood vessels pulp from the tooth. Petitioner was required to access the canal and pulp tissue from the outside. Then, Petitioner was required to remove the bad nerve and cleanse the canal. Finally, Petitioner was required to seal the canal to prevent recurring bacteria. Petitioner failed to observe a fracture in the tooth. He claimed that a fracture to the root of the tooth was caused by the Department after he reviewed his examination and that no one advised him the root was fractured. Petitioner requested a score of 3.00 for this procedure.

7. However, the Department's witness, Dr. William F. Robinson, a licensed dentist for 32 years who examined the tooth and X-ray prepared by Petitioner, testified that the fracture to the root was noticed in both the X-ray and on the tooth when he examined the same. Additionally, two of the three re-graders also noted the fracture of the root. With regard to Petitioner's preparation of the X-ray at the conclusion of the examination, Dr. Robinson opined that Petitioner caused the fracture to the root during the examination and not the Department, as alleged by Petitioner.

8. Dr. Robinson further opined that even without a fracture to the root of the tooth, Petitioner failed the procedure and the failing grade he received was fair. Dr. Robinson would not recommend that Petitioner receive a passing score of 3.00 on the procedure.

9. The examiners' comments and grades and the testimony of Dr. William F. Robinson establish that Petitioner failed to properly perform this procedure. The grade Petitioner received was fair.

10. Petitioner challenged the grade he received on Procedure 5, the Class IV Composite Restoration of the front tooth, but did not offer any testimony at the hearing as to why the score was not correct for the procedure. Petitioner requested that the score of 1.00 given by one of the examiners

be thrown out, thus giving him a passing grade on this procedure.

11. Procedure 5 of the dental licensure examination is a procedure that involves the candidate's ability to replace the edge of the front tooth with a composite resin material, which is a tooth-colored filling. As established by the examiners' comments and grades and the testimony of Dr. William F. Robinson, Petitioner failed to properly perform this procedure and the grade Petitioner received was fair. Specifically, the examiners found that the tooth was abraded and the re-grader noted, as did the examiners, the excessive "flash" on the tooth. Dr. Robinson also noted both deficiencies in the procedure.

12. Petitioner contested the score he received on Procedure 6, the Class II Composite Restoration procedure in his original petition, but offered no testimony at the hearing concerning this procedure.

13. Dr. Robinson reviewed the examiners' grades and the tooth prepared by Petitioner and opined that Petitioner's grade of 2.66 for this procedure is fair.

14. Based on the examiners' comments and grades and the testimony of Dr. Robinson, Petitioner failed to properly perform this procedure and the grade Petitioner received was fair.

15. Petitioner contested the score he received on Procedure 7, the preparation for a 3-unit Fixed Partial Denture,

claiming that on the re-grade one of the examiners reviewed the wrong procedure.

16. The Preparation for a 3-unit Fixed Partial Denture procedure of the dental licensure examination is a procedure that involves the candidate's ability to provide preparations of two (2) teeth in order to replace a missing tooth with a fixed bridge.

17. Dr. Robinson established that Petitioner's work on this procedure resulted in one tooth, No. 29, being grossly over reduced and tooth No. 31 was insufficiently reduced. The result of such work is that it is impossible to place a bridge on such an improper preparation. As established by testimony of Dr. Robinson, Petitioner's problem with this procedure resulted from Petitioner's undercut. This undercut indicated that Petitioner's preparations were not properly aligned to accept a bridge.

18. Based on the examiners' comments and grades, and the testimony of Dr. Robinson, Petitioner failed to properly perform this procedure and the grade Petitioner received was fair.

19. The Department's "re-grade" process was utilized in this case. Used to give all candidates who timely request a hearing another chance at passing, the re-grade process allows the Department to go back and determine whether any grades rendered were inconsistent. The Department selects the top

three examiners who had the highest reliability from that examination to participate in the re-grade process.

20. The Department maintains post-standardization statistics of the examiners' performance. In this case, those statistics indicated that Petitioner's examiners graded reliably.

21. In addition, the Department calculates post-examination statistics for the examiners, which are as follows for the examiners who graded Petitioner's challenged procedures:

<u>Examiner</u>	<u>Accuracy Index & Rating</u>
#206	95.8-Excellent
#375	98.8-Excellent
#380	92.1-Good
#334	97.8-Excellent
#298	95.9-Excellent
#375	98.8-Excellent-was an original and a re-grader.

All of Petitioner's examiners exhibited a reliability significantly above the minimum acceptable accuracy index of 85.0.

CONCLUSIONS OF LAW

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

23. Respondent's Rule 64B5-2.017(1), Florida Administrative Code, provides:

Each clinical procedure shall be graded by three (3) examiners, . . . and the 3 independent grades shall be averaged to determine an applicant's final grade on each procedure of the clinical examination.

24. 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 the Department's grading decision in regard to the challenged examination questions is arbitrary and capricious or an abuse of discretion. See State ex rel. Glasser v. J.M. Pepper, 155 So. 2d 383 (Fla. Stat. 1st DCA 1963); State ex rel. Topp v. Board of Electrical Examiners, 101 So. 2d. 583 (Fla. 1st DCA 1958).

25. Examining boards such as the Department's dental board are generally constituted and established for the purpose of protecting the health and safety of the public against incompetents who seek to enter the various vocations and professions. See Topp v. Board of Electrical Examiners at 586. Such boards are not vested with "arbitrary hegemony" over the rights of the individual but are charged with the duty to administer their rules and regulations equally and justly as between all persons and groups who come within the bounds of their jurisdiction. Id.

26. So long as these boards conduct their examinations fairly and uniformly in accordance with lawful authority and their own rules and regulations, their judgment as to the proper grading of such examinations will not be disturbed by the courts. See Id.

27. In the instant case, it is clear that the Department, in the exercise of its lawful authority, determined that Petitioner failed to earn a passing grade on the December 2001 dental licensure examination.

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 December 2001 dental licensure examination.

DONE AND ENTERED this 9th day of October, 2002, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Division of Administrative Hearings
this 9th day of October, 2002.

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.