

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH M. PELLE,)
)
 Petitioner,)
)
 vs.) Case No. 03-3689
)
 BOARD OF DENTISTRY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for formal hearing, pursuant to appropriate notice, before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was conducted in Tallahassee, Florida, on December 15, 2003, and the appearances were as follows::

APPEARANCES

For Petitioner: Lawrence Curtin, Esquire
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For Respondent: Ann Cocheu, Esquire
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STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether Joseph M. Pelle, the Petitioner should be issued a

dental teaching permit in conjunction with his duties as Dean of the Jacksonville University Dental School of Orthodontists (dental school) in accordance with the authority cited and treated below.

PRELIMINARY STATEMENT

On May 16, 2003, the Board of Dentistry (Board) denied a teaching permit, applied for by the above-named Petitioner. On July 18, 2003, Mr. Pelle filed a Petition for Formal Administrative Hearing pursuant to Sections 120.569 and 120.57, Florida Statutes (2003). The issue was placed on the Board's agenda for reconsideration and, on September 26, 2003, the Board declined to reconsider its prior decision. The matter was therefore forwarded to the Division of Administrative Hearings and the undersigned Administrative Law Judge.

On November 18, 2003, the Florida Association of Orthodontists, Inc., filed a petition to intervene or in the alternative petition for leave to appear as amicus curie. On November 26, 2003, the Petitioner filed a written response to the motion. On December 10, 2003, an order was entered by the undersigned denying the petition. The cause proceeded to formal hearing on December 15, 2003, in Tallahassee, Florida.

Prior to taking testimony, the parties stipulated to seven exhibits as follows: Petitioner's Exhibit One, the teaching permit application of Joseph Pelle; Petitioner's Exhibit Two,

the accreditation standards for advanced specialty education programs in orthodontics from the Commission on Dental Accreditation; Petitioner's Exhibit Three, an internal listing from the American Dental Association Advance Education Accredited Dental Programs in Florida; Petitioner's Exhibit Four, an August 5, 2003, letter from Kathryn Horan of the American Dental Association; Petitioner's Exhibit Five, an October 23, 2003, letter from Ms. Horan; Respondent's Exhibit One, the agenda materials from the May 16, 2003, Board of Dentistry meeting concerning Joseph Pelle's application; and Respondent's Exhibit Two, the agenda materials from the September 26, 2003, meeting concerning Joseph Pelle's request for reconsideration. Additionally, the Respondent requested, and the undersigned took official recognition of the Board's booklet of its laws and rules.

The Petitioner testified on his own behalf. Irene Stavros, a member of the Board of Dentistry, testified on behalf of the Respondent.

Upon conclusion of the hearing a transcript thereof was ordered and the parties elected to submit Proposed Recommended Orders. The Proposed Recommended Orders were timely filed and have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is Dr. Joseph M. Pelle. His business address is 2800 University Boulevard North, Jacksonville University, Jacksonville, Florida. The Petitioner is not licensed to practice dentistry in Florida, but is licensed in three other states. His licensure is current and in good standing in those states.

2. The Respondent is the Florida Board of Dentistry (Board). It is an agency of the State of Florida charged with regulating the licensure standards and practice standards for those engaged in the practice of dentistry in all its facets in the State of Florida. Its authority includes the authority, under the law cited below, to issue teaching permits in limited circumstances for professionals engaged in the teaching of clinical aspects of dentistry, at accredited institutions, offering advanced education to post-graduate dentists in Florida.

3. The Petitioner filed an application for a teaching permit pursuant to Section 466.002, Florida Statutes, and Florida Administrative Code Rule 64B5-7.005, with the Respondent Board. The application is dated March 25, 2003. The teaching permit was proposed to be used at the Jacksonville University Dental School of Orthodontists in Jacksonville, Florida (Dental

School). On June 25, 2003, the Board entered an order denying the application for the teaching permit.

4. The Petitioner is the Dean of the Dental School of Orthodontics. The Petitioner is not currently licensed as a dentist in the State of Florida, but is licensed in Texas, Pennsylvania, and Ohio with all those licenses being in good standing. The Petitioner has practiced orthodontics since 1971, and has been the chairman of dental programs at the University of Pittsburgh and at West Virginia University. He has a board specialty from the American Board of Orthodontics.

5. Jacksonville University is a private, non-profit, accredited, liberal arts university in Jacksonville, Florida, that confers degrees at the undergraduate and graduate levels. It also offers advanced professional education programs.

6. The Dental School of Orthodontics offers advanced education in orthodontics to post-graduate dentists that have already completed their dental program to receive the DMD or DDS degree. The dental school currently has four full-time faculty, eleven part-time faculty, and adjuncts, both outside and inside the Jacksonville University. There are fourteen students currently enrolled in the program. The advanced program offered consists of approximately 3700 hours of formal intense instruction over a twenty-four month period. The program

results in conferring a certificate of advanced education in orthodontics on successful students.

7. The Petitioner's duties as Dean of the Dental School of Orthodontics, are divided between administrative and teaching duties. Approximately 75 percent of his duties are attributable to administrative matters and 25 percent to teaching. If the teaching permit is issued, the Petitioner will participate in clinical instruction at the Dental School of Orthodontics.

8. The accreditation body for dental programs in the United States is the Commission on Dental Accreditation of the American Dental Association (the Commission). The Commission is a specialized programmatic accrediting agency recognized by the United States Department of Education. It conducts all aspects of the accreditation process for the more than 1300 programs for dental, allied dental, and advanced dental education in the United States. The accreditation is for the program itself, and not for the sponsoring institution. The Petitioner, on behalf of the Dental School of Orthodontics, applied to the Commission for accreditation and personally participated in the accreditation review process.

9. The Commission's accreditation standards are set forth in a document entitled "Accreditation Standards for Advanced Specialty Education Programs in Orthodontics and Dentofacial Orthopedics" that was introduced in Petitioner's Exhibit Two in

evidence. The accreditation process requires compliance with six standards contained in that document. The standards address institutional commitment and program effectiveness, the program director and teaching staff, the facilities and resources, the curriculum and program duration, the advanced education student selection, and research. The Commission concluded that the Dental School of Orthodontics is in compliance with all accreditation standards. See Petitioner's Exhibit Four in evidence.

10. The curriculum for the Dental School was developed in accordance with the self-study guide of the Commission on Dental Accreditation of the American Dental Association.

11. As a result of the accreditation process and evaluation, the Commission sent a letter dated August 5, 2003, to David L. Harlow, President of Jacksonville University, containing the following passage:

The program in orthodontics and dentofacial orthopedics is accredited by the Commission on Dental Accreditation [and has been granted the accreditation status of 'initial accreditation.']. The Commission is a specialized accrediting body recognized by the United States Department of Education.

That letter from the Commission also contains the following passage:

Based upon all the information presented, the Commission concluded that the program is in compliance with the Accreditation

Standards, including Standard 1-1 regarding financial support from entities outside of the institution. Accordingly, the Commission adopted a resolution changing the accreditation classification of the educational program from 'preliminary provisional approval' to 'initial accreditation.' No additional information is requested at this time.

See Petitioner's Exhibit Four in evidence.

12. Petitioner's Exhibit Three consists of the listing of from the American Dental Association of all Florida programs currently accredited by the Commission. The School of Orthodontics is included on that list.

13. The Petitioner has never failed the Florida Dental Licensure Examination. The Petitioner is also a full-time faculty member at the Dental School of Orthodontics at Jacksonville University. The Petitioner has agreed not to engage in the practice of dentistry pursuant to the teaching permit if it is issued, except under the programs of the Dental School of Orthodontics.

14. The Petitioner has also agreed that if the teaching permit is issued, all records pertaining to the teaching practice shall be subject to review and available to the Board of Dentistry. The Petitioner has also agreed that if the teaching permit is issued, information requested by the Board of Dentistry will be submitted for the purpose of allowing the

Board to evaluate compliance with applicable laws regulating the practice of dentistry.

15. The Petitioner has provided proof of current CPR certification to the Board of Dentistry. The Board of Dentistry does not issue or grant accreditation to dental programs in the State of Florida. Rather, the Board defers to the Commission as to its accreditation decisions.

16. As shown by Respondent's Composite Exhibit One in evidence (letter of May 12, 2003, from attorney Bruce D. Lamb to the Executive Director of the Board of Dentistry) the Commission voted to discontinue awarding preliminary provisional approval status as to accreditation. According to that letter the United States Department of Education does not consider preliminary provisional approval to constitute accreditation. In fact, the Commission Communications Update of Fall 2002 indicates that the Commission has a firm policy that a program is strongly encouraged not to enroll students/residents until "initial accreditation" status has been obtained. If a program enrolled students or residents without first having been granted "initial accreditation" status, the Commission will notify all students or residents enrolled of the possible ramifications of enrollment in a program operating without accreditation. Thus, at least implicitly, the Commission and the U.S. Department of Education considers "initial accreditation" status, conversely,

to constitute accreditation, at least for purposes of admission of students and residents to such a program.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties hereto. §§ 120.569 and 120.57, Fla. Stat. (2003).

18. The statutory basis for the Respondent's authority to issue teaching permits is found in Section 466.002(6), Florida Statutes, which provides in pertinent part as follows:

A full-time dental instructor at a dental school approved by the board may be allowed to practice dentistry at the teaching facilities of such school, upon receiving a teaching permit issued by the board, in strict compliance with such rules as are adopted by the board pertaining to the teaching permit and with the established rules and procedures of the dental school.

19. The applicable rule for teaching permits is Florida Administrative Code Rule 64B5-7.005. That Rule provides as follows:

(1) A teaching permit may be issued by the Board of Dentistry to a faculty member of a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a medical school accredited by the American Medical Association's Liaison Committee for Medical Education upon the request of the dean of the school if the faculty member:

(a) Has not failed the Florida dental licensure examination; and

(b) Is a full-time faculty member; and

(c) Does not engage in the practice of dentistry except under the programs of the dental or medical school described in subsection 64B5-7.005(1), F.A.C.

The Rule proceeds on to set forth the conditions under which the permit authorizes the holder to practice dentistry. These conditions include the following:

(a) All records pertaining to the teaching practice shall be subject to review and available to the Board.

(b) Upon the Board's request, the permit holder shall submit any information the Board deems necessary to evaluate compliance with Chapters 456 and 466, Florida Statutes, and Chapter 64B5, F.A.C.

(c) Permits shall be in effect only as long as the holder is a full-time faculty member of the College of Dentistry or School of Medicine and shall be automatically cancelled and nullified by termination of the holder as a faculty member of the teaching facility or failure of the Florida dental licensure examination.

(d) Teaching permits are subject to cancellation or revocation by the Board for failure to comply with Chapters 456 and 466, F.S. and Chapter 64B5, F.A.C.

Fla. Admin. Code. R. 64B5-7.005(3). In addition to the foregoing conditions and requirements, proof of current CPR certification must be obtained and maintained while the teaching permit is in effect. Fla. Admin. Code. R. 64B5-7.005(4).

20. The disputed issue concerns whether the Dental School of Orthodontics is accredited by the Commission as required by the applicable rules quoted above. There is no dispute that the Petitioner has met all of the other requirements for issuance of the teaching permit. He has agreed to use the teaching permit in accordance with the terms and conditions of the Board's rules, and has further agreed to make available and provide the information required under those rules.

21. The rules do not define what is meant by the term "accredited." The Respondent did not present any testimony or evidence concerning this term or definition. Rather the testimony presented by the Respondent makes clear that the Board is not an accrediting body and that it accepts the determinations of the Commission. The evidence adduced by the Respondent in testimony, does not establish a policy basis by the Board for any definition of what is meant by the term "accredited."

22. Based upon the evidence submitted by the Petitioner, the Dental School of Orthodontics has met all of the requirements of the Commission for accreditation. It is listed on the master list of accredited programs in the State of Florida. The Commission has unequivocally stated that the Dental School of Orthodontics is in compliance with accreditation standards and is an accredited program. The

preponderant weight of the evidence, culminating in the above Findings of Fact demonstrates that indeed the status "initial accreditation" constitutes accreditation for purposes of the Commission's accreditation standards, and the acceptance of students and/or residents in such programs as being acceptance into an accredited program. The Dental School is thus established to be an accredited program for purposes of the application of Section 466.002(6), Florida Statutes, and Florida Administrative Code Rule 64B5-7.005. Inasmuch, as all requirements for issuance of a teaching permit by the Board have been met, the teaching permit should be granted to the Petitioner.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties it is, therefore,

RECOMMENDED that the Respondent enter a Final Order determining that the Petitioner is in compliance with the above-referenced statute and Rule, relating to the issuance of a teaching permit and that the application of the Petitioner for the teaching permit at issue be granted.

DONE AND ENTERED this 15th day of March, 2004, in
Tallahassee, Leon County, Florida.



P. MICHAEL RUFF
Administrative Law Judge
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Filed with Clerk of the
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this 15th day of March, 2004.

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.