

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OLUFEMI OKUNOREN, M.D.,)
)
 Petitioner,)
)
vs.) Case No. 04-2271
)
DEPARTMENT OF HEALTH,)
BOARD OF MEDICINE,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal hearing was conducted in this case on November 29, 2004, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Olufemi Okunoren, M.D., pro se
Post Office Box 1992
Madison, Mississippi 39130

For Respondent: Rosanna M. Catalano, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issues are as follows: (a) whether Petitioner attempted to obtain a license by misrepresenting or concealing material facts at any time during any phase of the licensing process in violation of Section 458.331(1)(gg), Florida

Statutes; (b) whether Petitioner meets the training requirements pursuant to Section 458.331(1)(f), Florida Statutes; (c) whether Petitioner has had a license to practice medicine acted against by the licensing authority of another jurisdiction in violation of Section 458.331(1)(b), Florida Statutes; and (d) whether Petitioner was convicted or found guilty or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that directly relates to the practice of medicine in violation of Section 458.331(1)(c), Florida Statutes.

PRELIMINARY STATEMENT

On or about April 30, 2004, Respondent Department of Health, Board of Medicine (Respondent) issued an Amended Notice of Intent to Deny Licensure to Petitioner Olufemi Okunoren, M.D. (Petitioner). On May 24, 2004, Petitioner requested an administrative hearing to challenge Respondent's decision.

On June 29, 2004, Respondent referred this matter to the Division of Administrative Hearings. Subsequently, a Notice of Hearing scheduled the case for hearing on September 8, 2004.

On August 19, 2004, Respondent filed a Motion to Relinquish Jurisdiction. The undersigned denied the motion in an Order dated August 31, 2004.

On August 31, 2004, Respondent filed a Motion to Compel Production. On September 1, 2004, Petitioner filed an untimely Response to Motion to Relinquish By Respondent. Petitioner's

response alleged that Respondent had also failed to comply with Petitioner's discovery requests and requested a continuance. On September 1, 2004, Respondent filed a Response to Petitioner's Motion for Continuance and an Amended Response to Petitioner's Motion for Continuance. In an Order dated September 2, 2004, the undersigned denied Respondent's Motion to Compel Production, Petitioner's request for an order compelling discovery, and Petitioner's request for a continuance.

On September 3, 2004, Respondent filed a Motion to Quash or in the Alternative Motion for Protective Order. In an Order dated September 24, 2004, the undersigned considered the motion, granting it in part and denying it in part.

When the hearing commenced on September 8, 2004, Petitioner contacted the undersigned's office by telephone to make an ore tenus motion for continuance due to a hurricane. That same day, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing for September 27, 2004.

On September 27, 2004, Petition contacted the undersigned's office to make an ore tenus motion for continuance due to a hurricane. That same day, the undersigned issued an Order Granting Continuance and Re-scheduling Hearing on November 29, 2004.

During the hearing, Petitioner testified on his own behalf. Petitioner offered Exhibit Nos. P1 and P3, which were accepted

into the record as evidence. The undersigned reserved ruling on the admissibility of Exhibit No. P2, which is hereby accepted as record evidence.

Respondent presented the testimony of one witness. Respondent offered Exhibits Nos. R1 through R5, which were accepted into the record as evidence.

A transcript of the hearing was filed on December 20, 2004. Petitioner filed a Proposed Recommended Order on December 15, 2004. Respondent filed a Proposed Recommended Order on December 22, 2004.

All references hereinafter shall be to Florida Statutes (2004) except as otherwise specified.

FINDINGS OF FACT

1. Petitioner is a medical doctor. He is currently licensed to practice medicine in Mississippi.
2. Petitioner attended the University of Lagos, College of Medicine, in Lagos, Nigeria. While he was in medical school, Petitioner failed a pathology class. He did not have to repeat the entire class, but he was required to retake the examination in order to get credit for the course.
3. In 1972, Petitioner graduated from the University of Lagos, College of Medicine, which is an allopathic foreign medical school. However, the medical school has not been recognized and approved by an accrediting agency recognized by

the United States Office of Education (U.S.O.E.). Additionally, Petitioner's medical school is not located within a territorial jurisdiction of the United States.

4. The U.S.O.E. has designated the Liaison Committee on Medical Education (LCME) as the approved accrediting organization. Pursuant to this designation, LCME only has authority to accredit medical schools in the United States and Canada.

5. Foreign medical schools are not accredited by anyone in the United States. The U.S.O.E. has not designated an accrediting organization for foreign medical schools other than those located in Canada. Each foreign medical school (excluding Canada) is accredited by its own country. Therefore, Petitioner is not eligible for licensure pursuant to Section 458.311(f)1., Florida Statutes.

6. The World Health Organization does not approve/accredit medical schools. Additionally, Respondent has never certified a foreign medical school pursuant to Section 458.314, Florida Statutes. Therefore, Petitioner is not eligible for licensure pursuant to Section 458.311(f)2., Florida Statutes.

7. Graduates of foreign medical schools, which have not been certified pursuant to Section 458.314, Florida Statutes, must meet the requirements of Section 458.311(f)3., Florida Statutes. Petitioner meets these requirements in part because

his medical credentials have been evaluated by the Educational Commission for Foreign Medical Graduates (ECFMG). He holds an active, valid certificate issued by ECFMG and has passed the examination utilized by that commission.

8. Since October 1, 1992, graduates of foreign medical schools like Petitioner must complete an approved residency or fellowship of at least two years in one specialty area. The training must count toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

9. The Accreditation Council for Graduate Member Education (ACGME) is the body that certifies training programs in the United States. Petitioner has not completed an ACGME-approved residency or fellowship of at least two years in one specialty area.

10. From October 1975 to September 1976, Petitioner completed one year of residency training in the Meharry Medical College Family Practice program at George W. Hubbard Hospital, in Nashville, Tennessee. He has not completed any other residency or fellowship training. Therefore, Petitioner is not eligible for licensure pursuant to Section 458.311(f)3., Florida Statutes.

11. In late 1984 or early 1985, Petitioner had a private medical practice in Holly Springs, Mississippi. He lived across

the state border in Tennessee where he maintained a business office. Petitioner also advertised his medical practice in a Tennessee newspaper.

12. On or about September 3, 1985, Petitioner pled no contest to a criminal charge that he had met with and talked to four separate ladies about family planning in his Memphis, Tennessee, office. The Criminal Court of Shelby County, Tennessee, found Petitioner guilty of operating an ambulatory surgery treatment center without a license. Petitioner was required to pay a fine in the amount of \$2,000.00.

13. In August of 1989, the Mississippi Division of Medicaid initiated sanction proceedings against Petitioner for performing excessive routine laboratory tests in his private practice. In November 1990, the Medicaid and Medicare programs in Mississippi suspended Petitioner as a provider for three years.

14. On or about July 26, 1991, the Mississippi State Board of Medical Licensure issued an order revoking Petitioner's Mississippi medical license. The order was affirmed on appeal. The Mississippi Board of Medical Licensure reinstated Petitioner's Mississippi medical license with conditions in August 1997. In September 1999, the Mississippi Board of Medical Licensure removed the restrictions/limitations from Petitioner's medical license.

15. In February 2001, Petitioner had privileges at Hardy Wilson Memorial Hospital in Hazlehurst, Mississippi. Petitioner made the decision that he could no longer afford medical malpractice insurance. Because the hospital required physicians to have malpractice insurance, the hospital reduced Petitioner's clinical privileges. Although the timing of these events is not clear, Petitioner voluntarily resigned his privileges at the hospital.

16. In April 2003, Petitioner signed an application form for medical licensure by endorsement in Florida. Petitioner filed the application with Respondent in June 2003.

17. The April 2003 application contained the following affidavit, signed by Petitioner on April 6, 2003:

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for denial, suspension or revocation of my license to practice Medicine in the State of Florida.

18. Question 12b on the April 2003 application inquired whether Petitioner had been required to repeat any of his medical education. The question states that if the answer is "yes," the applicant should explain on a separate sheet providing accurate details.

19. Petitioner answered Question 12b on the April 2003 application in the negative. His answer was misleading and inaccurate because it did not disclose that he had to retake an examination in order to pass a pathology course.

20. Question 18 on the April 2003 application asked several questions, three of which are relevant here. First, the application inquired whether Petitioner currently held staff privileges in any hospital, health institution, clinic or medical facility. Petitioner answered "yes" to this question.

21. Second, Question 18 instructed Petitioner to list any hospital/health institution/clinic or medical facility where he held staff privileges. Petitioner listed Jefferson County Hospital, Emergency Room Privileges.

22. Third, Question 18 inquired whether Petitioner had ever had any staff privileges denied, suspended, revoked, modified, restricted, placed on probation, asked to resign or asked to take a temporary leave of absence or otherwise acted against by any facility. Petitioner answered this question negatively.

23. Question 23 on the April 2003 application inquired whether Petitioner had ever been convicted or found guilty, regardless of adjudication, resolution, or expungement, or pled guilty or nolo contendere to a criminal misdemeanor or felony in

any jurisdiction. Petitioner answered this question in the negative.

24. Question 24 on the April 2003 application inquired whether, regardless of adjudication, Petitioner had ever been convicted of a violation of, or pled nolo contendere to, any federal, state, or local statute, regulation, or ordinance, or entered into any plea, negotiated plea, bargain, or settlement relating to a misdemeanor or felony, or ever had an adjudication, resolution or expungement. Petitioner answered this question in the negative.

25. In a letter dated July 31, 2004, Respondent advised Petitioner that his application was incomplete. Among other things, Respondent stated that it was waiting for a response to an inquiry directed to Jefferson County Hospital, verifying Petitioner's staff privileges and good standing. Respondent also requested Petitioner to complete and file an current/updated application form.

26. In August 2003, Petitioner filed the updated application with Respondent. In response to Question 16 on the updated application, Petitioner once again denied that he was required to repeat any of his medical education?

27. In response to Questions 27 and 28 on the updated application, Petitioner continued to maintain that he currently

held privileges at Jefferson County Hospital in Fayette, Mississippi.

28. In response to Question 29 on the updated application, Petitioner, continued to assert that he had never had any facility staff privileges denied, suspended, revoked, modified, restricted, placed on probation, or asked to resign.

29. Petitioner appeared before Respondent's Credentialing Committee in November 2003. The committee was obligated to review Petitioner's entire application file, including the April 2003 application and the August 2003 application.

30. Petitioner failed to disclose his Tennessee criminal conviction on the April 2003 application. The conviction is related to practice of medicine because it involved Petitioner talking to patients from a Tennessee office.

31. During the hearing, Petitioner identified the following two letters of recommendation: (a) Willie L. McArthur, M.D., on Jefferson County Family Medicine Center letterhead; and (b) Bernadette E. Sherman, M.D. on Jefferson Comprehensive Health Center, Inc. letterhead. Neither of the letters refers to Petitioner's privileges at Jefferson County Hospital.

32. Petitioner testified that he answered Question 18 on the April 2003 application and Questions 27 and 28 on the updated application correctly, affirming that he held privileges

at Jefferson County Hospital. There is no evidence to the contrary.

33. The greater weight of the evidence indicates that Petitioner's reduction of clinical privileges at Hardy Wilson Memorial Hospital was due to his decisions not to secure malpractice insurance and to voluntarily resign his privileges. Therefore, he did not answer Question 18 on the April 2003 application and/or Question 29 on the updated application incorrectly.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

35. It is the general rule in administrative proceedings that applicants have the burden of presenting evidence of their fitness for licensure. See Dept. of Banking and Finance v. Osborne Stern Co., 670 So. 2d 932, 934 (Fla. 1996) and Florida Dept. of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). An agency has the burden of presenting evidence that applicants are unfit for licensure because they have violated certain statutes. See Osborne Stern Co., 670 So. 2d at 934.

36. Section 458.313, Florida Statutes, lists the requirements for a physician to become licensed by endorsement.

One of these requirements is that the physician has met the qualifications for licensure in Section 458.311(1)(b)-(g) or Section 458.311(1)(b)-(e) and (g) and (3), Florida Statutes.

37. Section 458.311(1)(f), Florida Statutes, states as follows in pertinent part:

(1) . . . The department shall license each applicant who the board certifies:

* * *

(f) Meets one of the following medical education and post graduate training requirements:

1.a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction;

* * *

2.a. Is a graduate of an allopathic foreign medical school registered with the World Health Organization and certified pursuant to s. 458.314 as having met the standards required to accredit medical schools in the United State or reasonably comparable standards;

* * *

c. Has completed an approved residency of at least 1 year.

3.a. Is a graduate of an allopathic foreign medical school which has not been certified pursuant to 458.314;

b. Has had his or her medical credentials evaluated by the Educational Commission for Foreign Medical Graduates, holds an active, valid certificate issued by that commission, and has passed the examination utilized by that commission; and

(c) Has completed an approved residency of at least 1 year; however, after October 1, 1992, the applicant shall have completed an approved residency or fellowship of at least 2 years in one specialty area. However, to be acceptable, the fellowship experience and training must be counted toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

* * *

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if the graduate:

(a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements and has passed part I of the National Board of Medical Examiners examination of the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the

National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

38. Section 458.314, Florida Statutes, states as follows in relevant part:

(2) The department shall be responsible for the certification of foreign medical schools based on the standards established pursuant to subsection (4). The department may contract with outside consultants or a national professional organization to survey and evaluate foreign medical schools. Such consultant or organization shall report to the department regarding its findings in the survey and evaluation.

* * *

(4) Any foreign medical school which wishes to be certified pursuant to this section shall make application to the department for such certification, which shall be based upon a finding that the educational program of the foreign medical school is reasonably comparable to that of similar accredited institutions in the United States and adequately prepares its students for the practice of medicine.

* * *

(8) Each institution which has been surveyed before October 1, 1986, by the Commission to Evaluate Foreign Medical Schools or the Commission on Foreign Medical Education of the Federation of State Medical Boards, Inc., and whose survey and supporting documentation demonstrates that it provides an educational program, including curriculum, reasonably comparable to that of similar accredited institutions in the United States shall be considered

fully certified, for purposes of chapter 86-245, Laws of Florida.

39. Petitioner has not met his burden of proving that he meets the requirements for licensure set forth in Section 458.311(1)(f), Florida Statutes, for several reasons. First, his medical school has not been approved by an accrediting agency recognized by the United States Office of Education and/or his medical school is not located within a territorial jurisdiction of the United States. See § 458.311(1)(f)1.a., Fla. Stat.

40. Second, there is no persuasive evidence that Petitioner's medical school is registered with or recognized by the World Health Organization. Even if it were, Petitioner's medical school has not been certified pursuant to Section 458.314, Florida Statutes. See § 458.311(1)(f)2.a., Fla. Stat.

41. Respondent has never certified a foreign school pursuant to Sections 458.314(2) and 458.314(4), Florida Statutes. Moreover, there is no competent evidence that Petitioner's medical school meets the requirements for certification set in Section 458.413(8), Florida Statutes.

42. Third, Petitioner has not completed an approved residency or fellowship of at least 2 years in one specialty area. See § 458.311(1)(f)3.a., Fla. Stat.

43. Section 458.313, Florida Statutes, provides as follows in pertinent part:

(6) The department shall not issue a license by endorsement to any applicant who is under investigation in any jurisdiction for an act or offense which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 459.331 shall apply. Furthermore, the department any not issue an unrestricted license to any individual who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331. When the board finds that an individual has committed an act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331, the board may enter an order imposing one or more of the terms set forth in subsection (7).

(7) When the board determines that any applicant for licensure by endorsement has failed to meet, to the board's satisfaction, each of the appropriate requirement set forth in this section, it may enter an order requiring one or more of the following terms:

(a) Refusal to certify to the department an application for licensure, certification, or registration with restriction on the scope of practice of the licensee; or

(b) Certification to the department of an application for licensure, certification, or registration;

(c) Certification to the department of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

44. Section 458.331(1), Florida Statutes, states as follows in relevant part:

(1) The following acts shall constitute grounds for which the disciplinary action specified in subsection 2 may be taken:

* * *

(b) Having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

* * *

(gg) Misrepresenting or concealing a material fact at any time during any phase of a licensing or disciplinary process or procedure.

45. Respondent has met its burden of proving that Petitioner has violated Section 458.331(1), Florida Statutes, in the following ways: (a) Mississippi revoked Petitioner's medical license; (b) Petitioner was convicted of operating an unlicensed clinic in Tennessee; (c) Petitioner failed to disclose his criminal conviction on the April 2003 application; and (d) Petitioner failed to disclose (on both applications) the

fact that he had to repeat an examination after failing a course in medical school.

46. Respondent did not meet its burden of proving the following allegations: (a) that Petitioner misrepresented his staff privileges at Jefferson County Hospital in Fayette, Mississippi; or (b) that Petitioner misrepresented facts regarding his resignation of staff privileges and/or reduction in clinical privileges at Hardy Wilson Memorial Hospital.

RECOMMENDATION

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

RECOMMENDED:

That Respondent enter a final order denying Petitioner's application for a medical license by endorsement.

DONE AND ENTERED this 5th day of January, 2005, in Tallahassee, Leon County, Florida.



SUZANNE F. HOOD
Administrative Law Judge
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Filed with the Clerk of the
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this 5th day of January, 2005.

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.