

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DR. CLEVELAND WILLIAMS,)
)
 Petitioner,)
)
 vs.) Case No. 04-3494
)
 DEPARTMENT OF HEALTH, BOARD OF)
 MEDICINE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on December 20, 2004, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Dr. Cleveland Williams, pro se
6134 Edsall Road, No. 203
Alexandria, Virginia 22304

For Respondent: Ladasiah Jackson, Esquire
Assistant Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to licensure as a medical doctor.

PRELIMINARY STATEMENT

On July 2, 2004, Respondent Department of Health, Board of Medicine (Respondent) issued a Notice of Intent to Deny Petitioner Dr. Cleveland Williams (Petitioner) a license to practice medicine. Specifically, Respondent denied Petitioner a medical license based on alleged violations of Sections 458.331(1)(b) and 458.331(1)(gg), Florida Statutes (2004).

On July 19, 2004, Petitioner filed a request for an administrative hearing. Respondent referred the request to the Division of Administrative Hearings on September 28, 2004.

In a Notice of Hearing dated October 8, 2004, the undersigned scheduled the hearing for December 20, 2004.

On November 18, 2004, Respondent filed a Motion to Continue. The undersigned entered an Order Denying Continuance on November 23, 2004.

On December 2, 2004, Respondent filed a Motion to Deem Admissions Admitted. Petitioner did not file a response to the motion, which was granted in an Order dated December 13, 2004.

During the hearing, Petitioner testified in his own behalf. He did not present the testimony of any other witness. Petitioner's Exhibit Nos. P1-P13 were accepted into the record as evidence.

Respondent presented the testimony of one witness. Respondent's Exhibit Nos. R1-R2 and R4-R25 were accepted as

record evidence. The undersigned reserved ruling on the admissibility of Respondent's Exhibit No. R3, which is hereby accepted as evidence.

On January 12, 2005, the court reporter filed a copy of the hearing transcript.

On January 18, 2005, Petitioner filed a Proposed Recommended Order.

On January 27, 2005, Respondent filed a Proposed Recommended Order.

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

FINDINGS OF FACT

1. Petitioner graduated from the University of Florida's College of Medicine in 1977.

2. After medical school, Petitioner served as a physician in the United States Air Force. During his military service, a patient named Petitioner as a defendant in a medical malpractice suit. Petitioner was just one of many named defendants in the suit, which was subsequently dismissed.

3. Petitioner was released from active duty in the Air Force in April 1985. He received an honorable discharge on January 5, 1993.

4. From 1985 through 1992, Petitioner had attending staff privileges in the Department of Obstetrics and Gynecology at the

Washington Hospital Center, Washington, D.C. The Washington Hospital Center did not require Petitioner to be board-certified in obstetrics and gynecology in order to have staff privileges.

5. In January 1985, Petitioner applied for departmental membership and medical staff privileges with the Department of Obstetrics and Gynecology at Washington Adventist Hospital in Tacoma Park, Maryland. Washington Adventist Hospital did not grant staff privileges to doctors who were not board-certified.

6. Petitioner especially was interested in receiving staff privileges at Washington Adventist Hospital because it is owned and operated by his church. In the application for staff privileges, Petitioner misrepresented his professional credentials by stating that he had been certified as a Diplomat by the American Board of Obstetrics and Gynecology.

7. In February 1985, Petitioner made the same misrepresentation regarding his professional credentials on forms submitted to the Montgomery County Medical Society in Rockville, Maryland. Respondent has never been certified as a Diplomat by the American Board of Obstetrics and Gynecology.

8. At some point in time, Petitioner took the FLEX exam and passed only the first part of it. Subsequently, Petitioner took the second part of the FLEX exam again and failed it for the second time. Thereafter, Petitioner was required to retake both parts of the FLEX exam, which he passed in its entirety.

9. In August 1985, Petitioner applied for a medical license in Virginia. After an evidentiary hearing in July 1986, the Virginia Board of Medicine denied Petitioner a medical license because his application included false information regarding the number of times he had taken the FLEX exam. Petitioner's application incorrectly indicated that he had passed the FLEX exam on his second attempt instead of his third attempt.

10. When Petitioner filed an application to renew his medical license in the District of Columbia, he did not disclose that the Virginia Board of Medicine had denied him a license. Thereafter, the District of Columbia's Board of Medicine gave Petitioner notice that it intended to revoke his medical license.

11. During a hearing on February 10, 1988, Petitioner admitted that he had given false information to District of Columbia's Board of Medicine by not revealing the denial of licensure in Virginia. During the hearing, Petitioner argued that he had provided the false information due to a mental problem.

12. In March 1988, Maryland's Board of Physicians, Commission on Medical Discipline, charged Petitioner with violating the Medical Practice Act by misrepresenting his professional credentials in applications for hospital staff

privileges and membership in a medical society. Following an evidentiary hearing in May 1988, the Commission on Medical Discipline and Petitioner agreed to change the charge to reflect that Petitioner was professionally, physically, or mentally incompetent.

13. A Final Consent Order dated June 21, 1988, suspended Petitioner's medical license in Maryland for three years and 90 days, with a stay following the first 90 days of suspension, and probation for the remaining period of time. The Final Consent Order included the following terms and conditions:

(a) Petitioner had to continue psychiatric treatment in connection with a personality disorder; (b) Petitioner had to file reports regarding his psychiatric treatment; (c) Petitioner's medical practice was limited to ambulatory clinics and private practice; and (d) the Maryland Medical Board would perform peer reviews as deemed necessary.

14. At the time that Maryland entered the order suspending his medical license, Petitioner was employed full-time by the District of Columbia, Department of Human Services, in the capacity of a clinical obstetrician and gynecologist. He had a private practice in the evenings, mainly in the District of Columbia. He maintained an office in Maryland, seeing patients one evening a week.

15. On February 7, 1990, District of Columbia's Board of Medicine issued a Consent Order in regard to Petitioner's failure to disclose the denial of licensure in Virginia. The Consent Order placed Petitioner on probation for two years, required him to continue psychiatric treatment for a personality disorder, required the submission of all reports regarding his psychiatric treatment, and required the submission of all reports from all peer reviews.

16. In 1991, one of Petitioner's patients filed a pro se medical malpractice suit against him in the Superior Court of Washington, D.C. In 1994, the suit was dismissed for lack of prosecution. The claim was abolished in Petitioner's subsequent personal bankruptcy proceeding.

17. In 1988, 1989, and 1990, a member of Maryland's Medical and Chirurgical Faculty, Peer Review Management Committee, appeared unannounced at Petitioner's Maryland office. The peer reviewer requested Petitioner to select 25 files for review.

18. In July 1991, after the 1990 peer review of Petitioner's patient records, the Maryland Board of Physician Quality Assurance charged Petitioner with violating the Maryland Practice Act by inadequately documenting patients' charts in his office.

19. In a letter dated August 14, 1991, Petitioner voluntarily surrendered his Maryland medical license.

20. On March 27, 1992, District of Columbia's Department of Consumer and Regulatory Affairs, Occupation and Professional Licensing Administration, issued a Notice of Summary Action to Suspend License. The notice alleged that the medical charts of Petitioner's patients, as described in the Maryland peer-review report, showed a consistent pattern of inadequate documentation and indicated that his conduct presented an imminent danger to the health and safety of the residents of the District of Columbia. The notice also alleged that Petitioner had failed to submit a copy of the Maryland peer-review report to the District of Columbia Board of Medicine as required by the 1990 Consent Order.

21. The District of Columbia licensing agency conducted a hearing on April 10, 1992. During that hearing, Petitioner testified that the Maryland charts were incomplete because he usually saw the patients in the District of Columbia where he maintained a complete file for each patient.

22. On April 13, 1992, the District of Columbia Administrative Law Judge issued a Final Decision and Order on Summary Action to Suspend License. The Order states that the evidence supported a suspension of Petitioner's medical license, but based on the needs of Petitioner's patients in the clinics

where he worked, the suspension was stayed pending further review. Additionally, Petitioner was ordered to deliver the complete patient files for each patient included in the 1990 Maryland peer-review process.

23. In June 1992, Petitioner began attending law school at the University of Nebraska's College of Law.

24. On September 30, 1992, Petitioner received a Master of Public Health degree from George Washington University, in Washington, D.C. He had been enrolled in the graduate program since the Fall of 1989.

25. In October 1993, the District of Columbia Board of Medicine issued an Order lifting the summary suspension imposed in April 1992. The Order also terminated the probationary period imposed by the 1990 Consent Order.

26. On October 21, 1994, the Nebraska Department of Health denied Petitioner's application for licensure as a medical doctor. The denial was based on the disciplinary action taken against Petitioner's Maryland medical license.

27. Petitioner received his Juris Doctorate degree from the University of Nebraska's College of Law in December 1994. As of the date of the hearing in the instant case, Petitioner had not taken a bar exam in any state.

28. On November 22, 1994, a hearing officer for the Nebraska Department of Health conducted a hearing. On January 13, 1995, the Director of the Nebraska Department of Health issued an Order granting Petitioner a medical license.

29. On February 7, 1995, the North Carolina Board of Medical Examiners issued a Consent Order granting Petitioner a medical license. However, the license limited Petitioner's practice to the Cumberland County Health Department.

30. On August 28, 1995, the North Carolina Medical Board discontinued the February 1995 Consent Order.

31. On January 10, 1996, the North Carolina Medical Board issued a second Consent Order, which allowed Petitioner to practice without geographical limitations. It also required Petitioner to receive written approval before changing practice sites in North Carolina.

32. On January 16, 1997, the North Carolina Medical Board issued an Order. Said Order denied Petitioner's request to terminate the written approval provision of the January 10, 1996, Consent Order.

33. From October 20, 1997, to August 26, 2002, Petitioner worked for the State of Nebraska as a physician for the Nebraska Health and Human Services System at the Beatrice State Developmental Center in Beatrice, Nebraska.

34. Petitioner's performance evaluation from October 20, 1997, to January 20, 1998, indicates that his performance was more than satisfactory. From August 15, 2000, to December 15, 2000, and from December 15, 2000, to December 1, 2001, Petitioner's performance either met or exceeded expectations.

35. In 2002, Petitioner and his supervisor at the Beatrice State Developmental Center in Nebraska had a difference of opinion regarding Petitioner's job responsibilities. Petitioner's employment was suspended pending an investigation in July 2002. Petitioner resigned his position at the Beatrice State Developmental Center in August 2002.

36. On June 12, 2003, the Nebraska Board of Medicine and Surgery issued a Letter of Concern. The letter related to the following: (a) Petitioner's failure to disclose a prior medical malpractice suit when Petitioner applied for employment with the Beatrice State Developmental Center; and (b) Petitioner's failure to advise the licensing board that he had resigned his position at Beatrice State Developmental Center. The letter, which did not constitute a disciplinary action, stated as follows in relevant part:

In view of the history of discipline of your medical licenses in other states for misrepresentation of information on applications, you are strongly encouraged to carefully review the accuracy of the answers and information you provide on future applications.

37. On September 4, 2003, Petitioner filed his application for a medical license with Respondent.

38. On the application, Petitioner answered "no" to Question No. 36, which states as follows:

Have you ever been notified to appear before any licensing agency for a hearing on a complaint of any nature including, but not limited to, a charge or violation of the Medical practice act, unprofessional or unethical conduct?

39. At one point during Petitioner's testimony, Petitioner stated that, at the time he filed the application, he did not believe he had ever violated the Medical Practice Act or that he had ever engaged in any unethical or unprofessional conduct. He also stated that he believed he would appear personally before Respondent to explain his situation and therefore, did not contact Respondent's staff regarding Question No. 36. However, Petitioner admitted that he would have answered the question differently today or would ask for an explanation of the question.

40. At the time of the hearing in the instant case, Petitioner was working for the District of Columbia as a Medical Director for the Potomac Job Corps. He had been employed in that position for approximately five months.

41. Petitioner currently has an unrestricted license to practice medicine in the District of Columbia and Nebraska. His

license in North Carolina is subject to the January 1996 Consent Order. His medical license in Pennsylvania is in the second year of a two-year period of probation.

CONCLUSIONS OF LAW

42. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 456.073(5), Florida Statutes.

43. 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) quoting, Osborne Stern & Co. v. Dept. of Banking and Finance, 647 So. 2d 245, 250 (Fla. 1st DCA 1994)(Booth, J., concurring and dissenting) 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 [an applicant] violated certain statutes and [was] thus unfit for registration. "Osborne Stern Co., 670 So. 2d at 934. Regardless of which party bears the burden of presenting certain evidence, the applicant "bears the burden of ultimate persuasion at each and every step of the licensure proceedings." Id. at 934.

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

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(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. The licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

* * *

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

45. Section 458.331(2), Florida Statutes, states as follows in relevant part:

(2) The board may enter an order denying licensure . . . against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

46. In this case, Petitioner failed to disclose material facts when he answered Question No. 36 in the negative. For example, Petitioner's answer did not disclose his license suspension in 1988 in Maryland, where the licensing authority specifically found him guilty of violating Maryland's Medical

Practice Act. The disclosure of the Maryland disciplinary proceeding in response to other questions does not excuse Petitioner's failure to answer Question No. 36 correctly. The greater weight of the evidence indicates that Petitioner violated Section 458.331(1)(gg), Florida Statutes.

47. Additionally, Petitioner admits that his medical license has been the subject of disciplinary proceedings in several states, including Maryland, District of Columbia, North Carolina, and Pennsylvania. Petitioner also admits that Virginia denied his application for licensure. The multiple disciplinary proceedings constitute grounds to deny Petitioner's application for licensure pursuant to Section 458.331(1)(b), Florida Statutes.

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.

DONE AND ENTERED this 14th day of February, 2005, in
Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 14th day of February, 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.