STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERTA FELICI-COOK, O.D., FAAO,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-0009PL
	)	
DEPARTMENT OF HEALTH, BOARD OF OPTOMETRY,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 16, 2005, in Tallahassee, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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For Respondent: Allen R. Roman, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner should receive a passing grade for the Florida Optometry Licensure Examination taken on July 23 through 25, 2004.

PRELIMINARY STATEMENT

Petitioner, Roberta Felici-Cook, O.D. (Dr. Cook), received from Respondent, Department of Health, Board of Optometry (Department), a Florida Department of Health Testing Services Examination Grade Report, mail-dated August 20, 2004, advising her that she received a score of 75.75 on the Optometry Licensure Exam 2 given on July 23 through 25, 2004. The minimum passing score was an 80. Dr. Cook requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on January 4, 2005.

The final hearing was originally scheduled for March 15, 2005. On February 2, 2005, the Department filed a motion for continuance, which was granted. The final hearing was rescheduled for March 16, 2005.

The parties filed a Joint Pre-Hearing Statement and agreed to certain facts contained in section (e) of the stipulation. Those facts have been incorporated into this Recommended Order.

At the final hearing, Dr. Cook testified on her own behalf. Petitioner's Exhibits 1 through 7 were admitted in evidence. The Department called Priscilla Martin and Dr. Gary McDonald as

its witnesses. Respondent's Exhibits 1 through 11 were admitted in evidence, and Respondent's Exhibits 1 through 6 were sealed.

The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript, which was filed on June 6, 2005. Dr. Cook filed Petitioner's Proposed Recommended Order on June 14, 2005. The Department filed Respondent's Proposed Recommended Order on June 15, 2005. Both proposed recommended orders have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Dr. Cook is a licensed optometrist in the State of Michigan. She received her Doctor of Optometry degree in 1985, and became licensed in the same year. Dr. Cook has taken the Michigan, Illinois, and Wisconsin state licensure examinations and passed all three examinations on her first try.

2. For 17 years, Dr. Cook practiced optometry at the University of Michigan Health Services. This was a comprehensive practice, including eye examinations with dilation, treatment of eye diseases, emergency care, and the monitoring and follow-up care of patients with glaucoma, cataracts, and other diseases. Except for providing care to family members, Dr. Cook has not practiced professionally, on a regular basis, since August 2001, when she moved to Florida.

3. Dr. Cook is a Fellow of the American Academy of Optometry. She was accepted at the final hearing as an expert in optometry.

4. Dr. Cook desires to become licensed in Florida to practice optometry. As part of the process to apply for licensure in Florida, Dr. Cook is required to retake parts one and two of the national board examinations and to pass the Florida examination for licensure. She retook the national board examinations and passed on the first try. In August 2003, she took the clinical portion of the Florida examination and failed.

5. In July 2004, Dr. Cook retook the clinical portion of the Florida examination. A passing score on the clinical portion is 80. She scored 75.75 on the July 2004 examination, and, thus, failed the clinical portion.

6. For the clinical examination, Dr. Cook was required to bring her own "patient" upon whom some of the examination's required procedures were required to be performed. Some of the procedures are performed on "patients" brought by other candidates taking the examination.

7. The grading on each procedure in the clinical examination is done by two examiners who are licensed, practicing optometrists. A candidate will be graded by a different set of examiners for the morning and afternoon

sessions. The examiners are chosen by the Board of Optometry and trained by the Department's Testing Services Unit and outside practitioner consultants prior to the administration of each examination. The examiners are provided with a set of Grading Standards for their use during the grading of the examination. The purpose of the training and standards is to make the grading process objective and to provide grading uniformity and consistency.

8. The examiners are required to grade and mark their scores independently. They are not to compare or discuss their scoring with other examiners at any time. If both examiners' grades agree, the candidate is given either no credit or full credit, depending on whether the examiners considered the procedures were properly performed. If the examiners disagree on the grading, the candidate is given the average of the two grades actually awarded, which is the sum of the two grades divided by two.

9. If an examiner considers that a procedure is properly performed, the examiner marks the grade sheet with a "Y," indicating a yes. Examiners are taught to give the candidates the benefit of the doubt in borderline cases. If an examiner feels that the performance was borderline, the examiner must indicate "borderline" in the comment section on the grade sheet and specify the reason. If an examiner determines that the

candidate did not properly perform the procedure, the examiner marks the grade sheet with an "N," indicating a no. An examiner is required to specify the reason for a no grade in the comment section on the grading sheet.

10. Some of the procedures are performed once for both examiners. Other procedures are performed in groups, meaning that the procedures are performed twice, once before each of the examiners. In grouped procedures, the first examiner will read the directions for a procedure, and the candidate will perform the procedure after the directions are given. The first examiner will read the directions for the next procedure, and the candidate will perform the procedure after the directions are read. This format continues until the grouped segment is completed. The same procedures will then be performed for the second examiner, following the same format used by the first examiner. No records are kept to indicate which examiner graded first or second during any part of the examination. The examination candidate has control over when each examiner grades the candidate. When the candidate is ready to be graded, the candidate is required to say, "Grade me now."

11. Dr. Cook has challenged the grades that she received for the following procedures: confrontational field test; measurement of pupil size; rating patient's response to light; demonstrating the equator and posterior pole during the

binocular indirect ophthalmoscopy examination; the anterior vitreous portion of the biomicroscopy examination of the anterior segment; the choroidal crescent, posterior vitreous detachment, A-V three crossings out find and reflex, and hypertensive changes portion of the biomicroscopy examination of the fundus; and measuring eye pressure using a Goldmann Tonometer.

12. A confrontational field test is a gross neurological field test in which the candidate compares her visual field to the patient's to pick up gross neurological defects. The Candidate Information Booklet (CIB) states that the confrontational field test is to be performed as described in Clinical Opthalmology by J.D. Duane. In order to perform this test, the candidate sits in front of the patient about a meter away. The patient covers one eye and looks at the candidate's eye, nose, or other structure so that the patient's gaze is not moving around. The candidate puts her non-moving fingers in different quadrants to test the patient's ability to see the fingers. It is important to keep the fingers stationary while performing the test because moving fingers could be detected by the patient even in a blind field. In other words, a patient who is not able to see a stationary finger may be able to detect a finger that is moving because the motion contributes to the detection.

13. Dr. Cook performed the confrontational field test for both examiners simultaneously. She received .75 points out of a possible 1.5 points for the confrontation field test. Examiner 202 gave Dr. Cook full credit for the examination. Examiner 239 gave Dr. Cook no credit and noted the following in the comment section: "Moving fingers--Init performed 'wiggling fingers' while moving target fingers." Examiner 239 also noted "Did very brief static CF test but fingers moving not stationary." Dr. Cook admitted that she did wiggle her fingers during part of the performance of the examination, claiming that she was testing the patient's peripheral vision, which was not part of the examination. The examination was to be performed within the central 30 degrees. The preponderance of the evidence does not establish that Dr. Cook tested the four quadrants with non-moving fingers. Dr. Cook's score of .75 points is correct.

14. As part of the clinical examination, the candidates are required to measure the size of the patient's pupil. In order to measure the pupil, the candidate must not sit in front of the patient. Sitting in front of the patient creates a stimulus for accommodation, which is a phenomenon where the pupil size changes unless the patient can look and focus on a target at a distance.

15. Dr. Cook measured the pupil size of her patient simultaneously for both examiners. Examiner 202 gave Dr. Cook full credit for her performance in measuring the pupil size, and Examiner 239 did not give Dr. Cook credit for her performance. Examiner 239 noted in the comment section, "candidate sat in front of pt." Dr. Cook received .5 points out of a possible one point for measuring the pupil size during the pupillary examination.

16. Dr. Cook claims that she sat off to the side of the patient, lined up her right eye with the patient's right eye, and asked the patient to sight at a target at a distance. The examiners were off to the side when Dr. Cook performed the procedure. The preponderance of the evidence does not establish that Dr. Cook was in the correct position when she measured the patient's pupil size. Dr. Cook's score of .5 is correct.

17. As part of the examination, candidates are required to rate the patient's pupillary response to light on a pupillary scale. The CIB states, "Pupillary examinations, muscle balance, and motility, should be done on both eyes (including dilated eye)." Examiner 202 gave Dr. Cook full credit for rating the pupil, but indicated that her performance was borderline. Examiner 202 stated in the comment section: "borderline - she was confused about 0 to 4+, but eventually got it." Examiner 239 gave Dr. Cook no credit for her performance, and stated in

the comment section: "4+ but did not indicate eye, not used to using 0 to 4 scale." Dr. Cook received .5 points out of a possible one point for rating the pupil on a pupillary scale. She gave the same answer simultaneously to both examiners.

18. When Dr. Cook was asked to rate the pupils of her patient, Dr. Cook was uncertain which scale to use, the Marcus Gunn scale or a true light reflex scale. She indicated that she gave a response for both scales and that one of the responses was 4+. Dr. Cook stated at the final hearing that the left pupil was fixed and dilated, but she did not indicate that she rated the left eye as "0." The preponderance of the evidence does not establish that Dr. Cook advised the examiners of her rating of the left pupil. The score of .5 was correct.

19. The binocular indirect ophthalmoscope (BIO) is an instrument used to examine the fundus, which is the inside back part of the eye. The BIO sits on the candidate's head. There is a small mirror attached, through which another viewer may see the view being seen by the candidate. The candidate holds a condensing lens, which is like a magnifying glass, to evaluate structures in the eye. Examining the fundus with the BIO is a simple procedure, which Dr. Cook performed 14 to 16 times every clinical day for over 17 years.

20. Dr. Cook wore contact lenses during the examination. With the use of contact lenses, Dr. Cook has perfect vision.

Dr. Cook adjusted the instrument before the testing procedure started, including adjusting the angle of light and setting the illumination.

21. As part of the examination on the use of the BIO, a candidate is to demonstrate the equator and the posterior pole. In these procedures, the candidate finds the view of the applicable area, one examiner looks through the mirror after the candidate says "Grade me now," and then steps back. The second examiner then looks at the mirror after the candidate again says "Grade me now."

22. Examiner 239 did not give full credit to Dr. Cook in demonstrating the equator. For the portion of the performance which requires the candidate to demonstrate an equator landmark, Examiner 239 gave Dr. Cook a "no" and stated in the comment section: "No clear view through the mirror @ 'Grade me now.'" Examiner 239 also gave Dr. Cook a "no" for an acceptable view of an equator landmark and stated in the comment section: "Dim illumination." Examiner 202 gave Dr. Cook credit for these two performance areas.

23. In the portion of the examination in which the candidate is to demonstrate the posterior pole, the candidate is told that the disc and macula should be seen simultaneously. Examiner 239 did not give Dr. Cook credit for the portion of the examination where the disc and macula are to be viewed

simultaneously. Examiner 239 stated in the comment section: "very dim view vis'd ONH not macula." Examiner 202 gave Dr. Cook credit for this portion of the examination.

24. Between the first and second examiners' viewings for the equator and the posterior pole, the patient did not move, Dr. Cook held the focused view still, there was no change in illumination or intensity, and Dr. Cook did not change her position. Thus, it is more likely than not that Examiner 239 was mistaken. Dr. Cook received 3.5 points out of a possible seven points for examining the views of the equator and posterior pole during the binocular indirect ophthalmoscopy examination. She should be credited with an additional 3.5 points.

25. As part of the examination, the candidates were asked to perform an examination using a biomicroscope, which is a microscope combined with a light source that is used to view different structures on the outside and inside of the eye. It is also called a slit lamp. For purposes of the licensure examination, the biomicroscope has a teaching tube attached through the left ocular, and when the examiner looks through the tube she sees the same view the candidate sees through the left ocular.

26. A portion of the examination using the biomicroscope includes grouped procedures. The last procedure on one of the

grouped procedures was focusing on the anterior vitreous of the patient's eye.

27. The vitreous is made up of hyaluronic acid and contains vitreal strands made of collagen. As a person ages, the vitreal strands will increase and become more visible. A young patient may have vitreal strands that would be so difficult to see that on viewing the strands the view would appear to be "optically empty." In other words, the vitreous would appear clear on examination. Dr. Cook's patient was a healthy premed student in his early twenties. The patient did not have visible vitreal strands.

28. Before performing the group of procedures, which included the focus of the anterior vitreous, Dr. Cook adjusted the height and width of the light. She set for a direct focal illumination, meaning the light was focused where she was looking. The patient remained still between the procedures, and Dr. Cook did not change the illumination between each grading.

29. Examiner 216 gave Dr. Cook no credit for her focus of the anterior vitreous, stating the illumination was "too dim" and the "vit not seen." Examiner 268 gave Dr. Cook full credit for that part of the examination. Dr. Cook received 1.25 points out of a possible 2.5 points for her performance related to the anterior vitreous portion of the biomicroscopy exam of the anterior segment.

30. Based on the patient's having no visible vitreal strands; the patient not moving between the grading procedures, and Dr. Cook not changing the illumination between grading procedures, it is more likely than not that Examiner 216 was mistaken. Dr. Cook should be awarded 1.25 points for performance of the focus on anterior vitreous.

31. Dr. Cook received 3.5 points out of a possible seven points for her performance related to the choroidal crescent, posterior vitreous detachment, A-V three crossing outs, find and reflex, and hypertensive changes portion of the biomicroscopy exam of the fundus.

32. One of the grouped portions of the examination using the biomicroscope included demonstrating whether a choroidal crescent was present. Determining the presence of a choroidal crescent was the fourth procedure in this grouped segment. A choroidal crescent can be seen when the candidate is looking at the optic nerve and the retina does not come all the way up to the nerve. The choroidal crescent will appear at the edge of the optic nerve.

33. Examiner 268 did not give Dr. Cook any credit for determining whether the choroidal crescent was present, and stated in the comment section, "Did not focus on the edges of the ONH [optic nerve head]." Examiner 216 gave Dr. Cook full credit for the procedure. Dr. Cook did not demonstrate by the

greater weight of the evidence that she should be given additional credit for this procedure. Unlike the evidence presented concerning the anterior vitreous, she did not establish that there was no change in illumination, her position, or the patient's position between the grading of the grouped segments. In order to perform the grouped procedures in which she was tested on the presence of the choroidal crescent, Dr. Cook had to move the focus and illumination to different locations related to the optic nerve.

34. The last procedure in the same grouped segment involving the choroidal crescent was demonstrating posterior vitreous separation. Vitreous gel is attached to the back of the eye in several places. When the attachment points for the vitreous are pulled away or become loose, a ring-like structure can be seen where the vitreous pulled loose. Dr. Cook was asked to demonstrate and indicate whether a vitreous separation was present after she performed the procedure involving the choroidal crescent. The proper procedure for checking for posterior vitreous attachment would be to set the proper illumination, focus on the optic nerve, and pull back slightly on the "joy stick."

35. Examiner 268 did not give Dr. Cook any credit for the procedure involving a demonstration of a posterior vitreous separation, stating in the comment section, "Did not pull back."

Examiner 216 gave Dr. Cook full credit for the procedure. Again, Dr. Cook failed to establish by a preponderance of the evidence that she should be given additional credit for this portion of the examination. There was no showing that all conditions remained the same when each examiner graded this grouped segment of procedures.

36. Another grouped segment of the examination called for Dr. Cook to start at the optic disc and follow a temporal arcade for a distance of approximately three disc diameters and demonstrate an AV crossing. Dr. Cook was to then indicate whether there were any characteristic hypertensive changes at the crossing. A vascular arcade is a curved shape with blood vessels coming out and arcing toward one another. Most of the blood vessels in the eye are located in this area. Some diseases such as diabetes and hypertension cause changes where the blood vessels in the arcade cross.

37. In order to perform the AV crossing procedure, a candidate has to coordinate the microscope, going up and down and side by side. Lining up is critical on this procedure. Adjustments have to occur separately, once for each examiner. Examiner 268 did not give credit to Dr. Cook for this portion of the examination, stating in the comment section, "No view in the tube." Examiner 216 gave Dr. Cook full credit for the procedure. Dr. Cook has failed to establish that she is

entitled to additional points for this portion of the examination. The AV crossing procedure involves making adjustments for each of the examiners as part of the examination, Dr. Cook has not demonstrated by a preponderance of the evidence that all conditions remained the same for each examiner.

38. As part of the examination, candidates are tested on the use of the Goldmann Tonometer, which is a device used to measure eye pressure. The grading on this portion is divided into four categories: illumination at the proper angle, mires alignment, thickness of alignment, and the pressure measurement. Examiner 268 gave Dr. Cook full credit for all categories. Examiner 216 did not give credit to Dr. Cook for having the correct mires alignment, and gave full credit for the remaining categories, indicating that the mires width and the reading of the pressure were borderline. In the comment section, Examiner 216 drew the alignment which he viewed. The mires were not aligned correctly. Dr. Cook received 1.24-1.50 points out of a possible 2.5-3.0 points for the use of the Goldmann Tonometer.

39. Dr. Cook argues that because she was given credit for the pressure reading that it would be impossible for the mires alignment to be incorrect. The reading of the pressure is to test the candidate's ability to read the dial on the tonometer;

it is not to determine whether the reading that is on the dial is the actual pressure of the patient. The grading standards require that the examiner put down the reading that he saw during the viewing if it is different from the reading that the candidate gives as a response. Thus, it is possible to be given credit for the pressure reading without having the mires aligned correctly. Dr. Cook has not demonstrated by a preponderance of the evidence that she should be given additional credit for this portion of the examination.

40. None of the examiners testified at the final hearing. The Department did call Dr. Gary McDonald, who was accepted as an expert in optometry.

CONCLUSIONS OF LAW

41. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2004).

42. Florida Administrative Code Rule 64B13-4.001 provides that a candidate "must attain a score of 80 percent or better in order to secure a passing grade on the clinical portion of the practical examination."

43. As the applicant for a license, Dr. Cook has the burden to establish by a preponderance of the evidence that she has passed the examination. See Pershing Industries, Inc. v. Department of Banking and Finance, 591 So. 2d 991 (Fla. 1st DCA

1991); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

44. Dr. Cook did establish by a preponderance of the evidence that she should be given an additional 3.5 points for demonstrating the equator and posterior pole during the BIO portion of the examination and an additional 1.25 points for the focus of the anterior vitreous. The testimony was unrebutted that Dr. Cook had perfect vision with her contact lenses, which she wore during the examination; she did not make adjustments for these procedures between the grading by the examiners; and the patient did not move between the gradings. Additionally, the patient did not have visible vitreal strands.

45. The testing of the equator, posterior pole, and anterior vitreous was similar to those in Martuccio v. Department of Professional Regulation, Board of Optometry, 622 So. 2d 607 (Fla. 1st DCA 1993). In Martuccio, the candidate was qualified to practice optometry in another state, had successfully passed the written examination, had failed the clinical portion of the examination, had retaken the clinical portion of the examination, and was qualified as an expert in optometry at the final hearing. The appellate court upheld the hearing officer's recommendation that Dr. Martuccio should be given additional credit based on the following findings:

> As to the binocular indirect opthalmoscopy [sic], the hearing officer accepted Dr. Martuccio's testimony that the subject patient remained still during the examination process and thus concluded that one of the graders made a mistake in his evaluation that this demonstration was "out of focus." On the anterior biomicroscopy 4 examination, the applicant is required to use a slit lamp to project a beam of light into the patient's eye. One grader concluded that Dr. Martuccio erroneously projected an optic section rather than a parallelpiped [sic] from the slit lamp. Dr. Martuccio testified, however, that he did not change the adjustment on the lamp which controls the width of the beam of light. Accepting this testimony, the hearing officer decided that one of the examiners rather than Dr. Martuccio, was mistaken. For anterior biomicroscopy 9, the applicant is required to focus on vitreous strands on the anterior vitreous of the eye. In healthy patients, such vitreous strands are not present, and the anterior vitreous will appear clear when illuminated by a beam of light from the slit lamp. The examiner who failed Dr. Martuccio on this procedure observed that vitreous stands were not visible. Dr. Martuccio explained, however, that the subject patient had a healthy eye which did not have vitreous strands. The hearing officer accepted this testimony and concluded that the examiner's comment concerning vitreous strands was inappropriate, indicating he used an erroneous criterion. On the gonioscopy examination, one of the examiners commented that the structures of the eye which are examined in this procedure were out of focus. The hearing officer accepted Dr. Martuccio's testimony that the subject patient did not move, and accordingly that the structures remained in focus during the examination.

Id. at 608-609.

46. Dr. Cook has failed to establish by a preponderance of the evidence that she should be given additional points for the remaining portions of the examination which she challenged and did not receive full credit for the reasons set forth in the findings of fact.

RECOMMENDATION

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

RECOMMENDED that a final order be entered awarding Dr. Cook an additional 4.75 points for the clinical portion of the optometry licensure examination given on July 23 through 25, 2004, resulting in a passing grade of 80.25.

DONE AND ENTERED this 30th day of June, 2005, in Tallahassee, Leon County, Florida.

S

SUSAN B. HARRELL
Administrative Law Judge
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Filed with the Clerk of the
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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.