

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES H. HALL, JR., )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 06-0393  
 )  
 DEPARTMENT OF LAW ENFORCEMENT, )  
 CRIMINAL JUSTICE STANDARDS AND )  
 TRAINING COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this case on April 7, 2006, by video teleconference before Carolyn S. Holifield, a designated Administrative Law Judge of the Division of Administrative Hearings, who presided from Tallahassee, Florida. Petitioner and the court reporter were in Tampa, Florida, and Respondent's counsel and witnesses were in Tallahassee, Florida.

APPEARANCES

For Petitioner: James H. Hall, Jr., pro se  
729 Wood Drive  
Brooksville, Florida 34601

For Respondent: Grace A. Jaye, Esquire  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

STATEMENT OF THE ISSUE

Whether Petitioner should be given credit for certain answers provided on the State Officers Certification Examination (officers certification examination).

PRELIMINARY STATEMENT

By letter dated December 21, 2005, Respondent, Department of Law Enforcement, Criminal Justice Standards and Training Commission (Respondent or Commission), notified Petitioner that it had reviewed his challenges to certain answers on the officers certification examination. According to the letter, based on that review, it was determined that Petitioner would not receive additional credit for any of his challenges. Petitioner challenged the decision and requested a hearing. On or about January 31, 2005, the matter was forwarded to the Division of Administrative of Hearings for assignment of an Administrative Law Judge to conduct a hearing.

Prior to hearing, Respondent filed a Motion for Protective Order (Motion). At the commencement of the hearing, argument was heard on the Motion. Upon consideration thereof, at the hearing, the undersigned granted Respondent's Motion to prevent the actual test questions and responses from being publicly divulged in any manner by the persons having access to the test questions and responses. Pursuant to the Protective Order, questions and answers from the examination have been sealed in

the record and, in accordance with law, shall not be available for public inspection.

At hearing, Petitioner testified on his own behalf. Respondent presented the testimony of Wendy Bailey and Roy G. Gunnarsson. Respondent's Composite Exhibit 1 was received into evidence.

At the conclusion of the hearing, the parties were advised to file proposed recommended orders within ten days of the filing of the transcript. The Transcript of these proceedings was filed on April 14, 2006. Respondent requested an extension of time for the parties to file proposed recommended orders because of a delay in the Transcript being sent to Petitioner. The extension was granted, and the time for filing proposed recommended orders was extended to April 28, 2006. Petitioner did not file a proposed recommended order. Respondent filed a Proposed Recommended Order on April 20, 2006, which has been considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, James H. Hall, Jr., took the officers certification examination and, thereafter, challenged certain answers to questions on the examination. Specifically, challenged questions were numbered 40, 49, 63, 89, 112, 115, 156, 143, 203, and 211. At hearing, Petitioner withdrew his

challenges to questions 143 and 211, leaving eight questions to be challenged.

2. The Commission is the state agency charged with the responsibility of administering officers certification examinations and establishing "standards for acceptable performance on each officer certification examination."

§ 943.1397(1), Fla. Stat. (2005).<sup>1</sup>

3. The officers certification examination is a multiple-choice examination with four answer choices for each question. Only one of the proposed answers is deemed correct. The answer deemed to be correct is the best of the four answer choices.

4. The content of all the questions on the officers certification examination are derived from the basic recruit curriculum and from objectives that come from a job task analysis. The objectives appear in the beginning of every lesson of the curriculum. The curriculum materials are available to all applicants who take the officers certification examination.

5. All the questions on the officers certification examination have been validated and field tested.

6. Question 40 was clear and unambiguous and asked applicants to identify immunizations required for law enforcement officers. The correct answer to the Question 40

is (a). Petitioner selected answer choice (c), based on his belief as to what communicable disease officers should and could be vaccinated against. The correct answer to Question 40 is included in the curriculum materials and is not the answer selected by Petitioner. The question is statistically valid, and 69 percent of all test takers who have answered this question have answered it correctly. Petitioner's reason for choosing (c) as the answer to Question 40 does not constitute persuasive evidence establishing that the answer he chose is correct.

7. Question 49 was clear and unambiguous and required the applicants to demonstrate knowledge and application of the phonetic alphabet used by the Federal Communications Commission and the United States military. The correct answer to Question 49 is (a). Petitioner selected answer (c), based on his belief that the response next to that choice "flowed, that it didn't have too many syllables in it." The correct answer to Question 49 is included in the curriculum materials and is not the answer selected by Petitioner. The question is statistically valid, and 89 percent of all test takers who have answered this question have answered the question correctly. Petitioner's rationale for selecting answer (c) does not constitute persuasive evidence establishing that the answer he chose is correct.

8. Question 63 was clear and unambiguous and required the applicants to demonstrate their understanding of various mental disorders. The correct answer to the question is (d). Petitioner selected answer (a). The correct answer is included in the curriculum material and is not the answer chosen by Petitioner. The question is statistically valid, and 91 percent of all test takers who have answered this question have answered it correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

9. Question 89 is clear and unambiguous and required applicants to know what an officer should do when a suspect is shot. The correct answer is (b). Petitioner selected answer choice (c). The correct answer is included in the curriculum material and is not the same answer selected by Petitioner. Question 89 is statistically valid, and 90 percent of all test takers who have answered this question have answered it correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

10. Question 112 is clear and unambiguous and required applicants to demonstrate knowledge relative to parties at a traffic crash scene. The correct answer to the question is (d). Petitioner selected answer choice (b). The correct answer is included in the curriculum material and is not the answer selected by Petitioner. The question is statistically valid,

and 68 percent of all test takers who answered this question answered it correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

11. Question 115 is clear and unambiguous and required the applicant to demonstrate knowledge of the officers' duty regarding the Miranda warning. The correct answer choice is (a). Petitioner selected answer choice (b). The correct answer is included in the curriculum material and is not the answer selected by Petitioner. The question is statistically valid, and 85 percent of all test takers who answered this question answered it correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

12. Question 156 is clear and unambiguous and required the applicant to demonstrate knowledge regarding the consent given by an adult needing assistance. The correct answer for Question 156 is (a). Petitioner selected answer choice (b). The correct answer is included in the curriculum material and is not the answer selected by Petitioner. The question is statistically valid, and 73 percent of all persons who have answered this question have answered it correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

13. Question 203 is clear and unambiguous and required the applicant to demonstrate knowledge regarding the officers' responsibility in domestic violence incidents. The correct answer for Question 203 is (c). Petitioner selected the answer choice (d). The correct answer is included in the curriculum material and is not the answer selected by Petitioner. The question is statistically valid, and 68 percent of all test takers who have answered this question have answered the question correctly. Petitioner failed to introduce persuasive evidence establishing that the answer he chose is correct.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter of and parties to this proceeding pursuant to Chapter 120, Florida Statutes, and Florida Administrative Code Chapter 28.

15. Subsection 943.17(e), Florida Statutes, requires the Commission to "implement, administer, maintain, and revise a job-related officer certification examination for each discipline."

16. Subsection 943.1397, Florida Statutes, provides, in pertinent part:

(1) Except as provided in subsection (4), on or after July 1, 1993, the commission shall not certify any person as an officer until the person has achieved an acceptable score on the officer certification



examination for the applicable criminal justice discipline. The commission shall establish procedures by rule for the administration of the officer certification examinations and student examination reviews. Further, the commission shall establish standards for acceptable performance on each officer certification examination.

(2) For any applicant who fails to achieve an acceptable score on an officer certification examination, the commission shall, by rule, establish a procedure for retaking the examination, and the rule may include a remedial training program requirement. An applicant shall not take an officer certification examination more than three times, unless the applicant has reenrolled in, and successfully completed, the basic recruit training program.

17. Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that the challenged questions on the Commission's officers certification examination were faulty, arbitrarily or capriciously worded or graded, or that the Commission's decision to give him no credit for his answers to the challenged questions is arbitrary and capricious or constitutes an abuse of discretion. See Harac v. Department of Professional Regulation, 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986); State ex. rel. Glaser v. J.M. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1963); State ex Rel. I.H. Topp v. Board of Electrical Examiners for Jacksonville Beach, Florida, 101 So. 2d 583 (Fla. 1st DCA 1958).

18. In this case, Petitioner has failed to present any evidence that supports his contention that he was erroneously or improperly denied credit for his responses to Questions 40, 49, 63, 89, 112, 115, 156, and 203. Petitioner has failed to show that any of the questions in dispute were unclear, ambiguous, misleading, or in any other respect unfair or unreasonable. Also, Petitioner has not established that he correctly answered any of the disputed questions. Therefore, Petitioner has failed to meet his burden of proof.

19. Having failed to meet his burden of proof, Petitioner's challenge to the scoring he received on the officers certification examination should be dismissed.

#### RECOMMENDATION

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

RECOMMENDED that the Florida Department of Law Enforcement enter a final order rejecting Petitioner's challenge to the scoring on Questions 40, 49, 63, 89, 112, 115, 156, and 203 and dismissing the Petition.

DONE AND ENTERED this 31st day of May, 2006, in  
Tallahassee, Leon County, Florida.

*Carolyn S. Holifield*

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CAROLYN S. HOLIFIELD  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of May, 2006.

ENDNOTE

1/ All references to Florida Statutes are to Florida  
Statutes (2005), unless otherwise indicated.

COPIES FURNISHED:

Grace A. Jaye, Esquire  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302-1489

James H. Hall, Jr.  
729 Wood Drive  
Brooksville, Florida 34601

Michael Crews, Program Director  
Division of Criminal Justice  
Professionalism Services  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

Michael Ramage, General Counsel  
Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

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.