

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COMMODORE BRADFORD,)
)
 Petitioner,)
)
vs.) Case No. 06-0833
)
CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on June 13, 2006. Petitioner and an employee of Respondent participated by videoconference in West Palm Beach, Florida. Respondent's attorney and witnesses attended the hearing in Tallahassee.

APPEARANCES

For Petitioner: Commodore Bradford, pro se
13628 Folkstone Court
Wellington, Florida 33414

For Respondent: Grace A. Jaye
Assistant General Counsel
Florida Department of Law Enforcement
Criminal Justice Standards and
Training Commission
Post Office Box 1489
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STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to a passing score on the law enforcement officer certification examination.

PRELIMINARY STATEMENT

By letter dated February 7, 2006, Respondent informed Petitioner that it had completed its review of the questions and answers that Petitioner had challenged and had determined that the questions were clearly worded, the questions presented enough information to allow the examinee to select the correct answer, the relevant curriculum supported the correct answer, and the information used to determine the correct answer was current. The letter states that Respondent had determined that Petitioner was not due additional credit for his answers.

Petitioner requested a formal hearing.

At the hearing, Petitioner called one witness and offered into evidence one exhibit: Petitioner Exhibit 1. Respondent called three witnesses and offered into evidence eight exhibits: Respondent Exhibits 1-8. All exhibits were admitted.

The court reporter did not file a transcript. On June 19, 2006, Petitioner filed a letter, and Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. Petitioner took the law enforcement officer certification examination on October 20, 2005. He needs to obtain credit for two more correct answers in order to pass the test. Respondent has challenged the scoring of five questions.

2. The first challenged question asked what an examinee should do when he or she, as a law enforcement officer, is the first person on the scene of an accident with an eviscerated victim. The correct answer called for conservative treatment, consistent with the level of medical training of the typical law enforcement officer and the preeminent objective doing no harm to the victim. Respondent's more aggressive response is unsupported by the relevant curriculum and clearly would have further endangered the accident victim.

3. The second challenged question asked the examinee how he or she, as a law enforcement officer, should approach a dangerous situation. The question specifically warned against so-called "tombstone courage" that can cost an officer his or her life. Consistent with his take-charge attitude, as exemplified by his first response, Respondent selected an answer that constituted his taking action, based on the fact that he is supplied with a sidearm. The correct answer discouraged the officer from risking his life to be a hero.

4. At the hearing, Petitioner did not contest that his answer was incorrect to the second challenged question. He testified that he actually provided the correct answer to the question. However, examination of the answer sheet proved otherwise.

5. The third challenged question asked the examinee to identify the penalty for an officer tampering with the evidence at a crime scene. As noted in the Conclusions of Law, the correct answer is revocation, not the lesser penalty that Petitioner selected.

6. The fourth challenged question asked the examinee to identify the "first" thing he or she would have to have done to ensure that a weapon found in the prisoner section of a police car, immediately after the prisoner had been transported, would be admissible into evidence. Petitioner insisted that the first thing would be to search the compartment immediately after the prisoner was removed from the car, but the correct answer focused on what had to take place earlier--a search of the compartment prior to the prisoner's occupying the compartment.

7. The fifth challenged question asked the examinee to identify a statement in the active voice. All but one of the choices were in the passive voice, and Respondent selected one of these statements.

8. Respondent correctly graded each of the challenged questions, and Petitioner failed to pass the law enforcement officer certification examination.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2005).

10. When challenging an examination, Petitioner has the burden of proving that the scoring of his test was arbitrary or capricious. Espinoza v. Department of Business and Professional Regulation, 759 So. 2d 1250 (Fla. 3d DCA 1999).

11. Section 943.1397(1), Florida Statutes (2005), authorizes Respondent to administer an officer certification examination as a prerequisite for certification of a law enforcement officer.

12. Florida Administrative Code Rule 11B-27.005(5)(a)5 provides that the penalty for an officer tampering with the evidence is revocation.

13. In no respect was the scoring of Petitioner's five challenged questions arbitrary or capricious.

RECOMMENDATION

It is

RECOMMENDED that the Criminal Justice Standards and Training Commission enter a final order dismissing Petitioner's challenge to the law enforcement officer certification examination.

DONE AND ENTERED this 20th day of June, 2006, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of June, 2006.

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 must be filed with the agency that will issue the final order in this case.