

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GARY ROSEN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-2321  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A final hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes, before Administrative Law Judge Cathy M. Sellers of the Division of Administrative Hearings on August 19, 2011. The hearing was held by video teleconference at sites in West Palm Beach and Tallahassee.

APPEARANCES

For Petitioner: Jack Bariton, Esquire  
Law Offices of Jack Bariton  
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For Respondent: Amy McKeever Toman, Esquire  
Reginald Dixon, Esquire  
Department of Business  
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1940 North Monroe Street  
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STATEMENT OF THE ISSUE

The issue is whether the National Association of Environmentally Responsible Mold Contractors' Initial Mold Assessor and Initial Mold Remediator licensing examinations meet requirements of section 455.217, Florida Statutes, and Florida Administrative Code Rule 61-11.015, such that they should be certified by the State of Florida for use in licensing mold assessors and mold remediators in Florida.

PRELIMINARY STATEMENT

On March 8, 2011, the Department of Business and Professional Regulation ("Respondent") issued a Notice of Intent to Deny the application filed by Dr. Gary Rosen ("Petitioner"), seeking certification of the National Association of Environmentally Responsible Mold Contractors' Initial Mold Assessor Exam and Initial Mold Remediator Exam as national examinations that meet the requirements of section 468.8413, Florida Statutes,<sup>1</sup> for use in licensing mold assessors and mold remediators in Florida. On March 12, 2011, Petitioner timely filed an Election of Rights form and addendum, disputing the material facts alleged in the Notice of Intent to Deny. The matter was referred to the Division of Administrative Hearings for the conduct of an administrative hearing pursuant to section 120.57(1), Florida Statutes.

The final hearing initially was scheduled for June 28, 2011. Petitioner retained counsel on June 22, 2011, and filed a Motion for Continuance on June 23, 2011; the Motion was granted and the final hearing was continued until August 19, 2011.

Respondent filed a Motion in Limine on June 21, 2011, seeking to exclude evidence challenging Respondent's certification of the American Council for Accredited Certification ("ACAC") as meeting the requirements of national examinations, and evidence challenging the legality of Respondent's contract with ACAC to provide examination services for licensing mold assessors and mold remediators in Florida. On July 7, 2011, the Motion was granted with respect to evidence relevant solely to those issues.

A telephonic prehearing conference between the parties and the undersigned was held on August 11, 2011, to determine the status of any prehearing statements to be submitted by the parties.

On August 12, 2011, Respondent filed a Motion to Continue or Dismiss, seeking to continue the final hearing for the purpose of addressing discovery-related issues, or, in the alternative, seeking to dismiss the proceeding. The Motion was denied on the same date.

On August 16, 2011, Petitioner filed a Unilateral Prehearing Statement and a document entitled "Supplement to Petitioner's List of Exhibits - Summary of Exhibits." On August 17, 2011, Respondent filed a unilateral Amended Prehearing Statement.

Also on August 17, 2011, Respondent filed a Motion to Strike Petitioner's Supplement to Petitioner's List of Exhibits - Summary of Exhibits. The undersigned reserved ruling on the Respondent's Motion to Strike, advising the parties that the Motion would be addressed, to the extent necessary, in the Recommended Order. Upon consideration, the undersigned determines that the Supplement to Petitioner's List of Exhibits - Summary of Exhibits contains numerous factual statements not substantiated by evidence in the record. Moreover, to the extent the document contains legal argument, that argument is or should have been addressed in Petitioner's Proposed Recommended Order. Accordingly, the undersigned determines that Petitioner's List of Exhibits - Summary of Exhibits is redundant, immaterial, and impertinent.<sup>2</sup> Respondent's Motion to Strike is granted.

A telephonic prehearing conference was held on August 17, 2011, to address factual and legal issues, including evidentiary issues, to be addressed at the final hearing.

The final hearing was held on August 19, 2011. Petitioner testified on his own behalf and offered Petitioner's Exhibits 100, 103, 109, 110, 122, 123, 125, 128, and 129 and Respondent's Exhibits E and F into evidence. Respondent objected to the admission of all but Petitioner's Exhibit 100 and Respondent's Exhibits E and F. All exhibits offered by Petitioner, except Petitioner's Exhibit 122, were admitted into evidence.

Respondent presented the testimony of Steven Allen and offered Respondent's Exhibits A, B, C, D, K, L, M, N, O, and P into evidence. Petitioner objected to the admission of Respondent's Exhibit B. All exhibits offered by Respondent were admitted into evidence. At the close of the hearing, the undersigned advised the parties that they would have ten days from the date of filing of the hearing transcript in which to file proposed recommended orders.

The two-volume transcript with filed with the Division of Administrative Hearings on September 16, 2011. On September 19, 2011, a Notice of Filing Transcript was issued, stating that proposed recommended orders were due ten days after filing of the transcript, on September 26, 2011. Pursuant to Plaintiff's [sic] Motion for Extension of Time, the undersigned issued an Order Granting Extension of Time, extending the time for the parties to file proposed recommended orders until October 4, 2011.

The parties timely filed their Proposed Recommended Orders on October 4, 2011. Both parties' Proposed Recommended Orders were considered in preparing this Recommended Order.

#### FINDINGS OF FACT

##### I. The Parties

1. Petitioner is the applicant for certification of the National Association of Environmentally Responsible Mold Contractors' ("NAERMC") Initial Mold Assessor Exam and Initial Mold Remediator Exam ("NAERMC Exams") as national exams for use in licensing mold assessors and mold remediators in Florida.

2. Petitioner has extensive academic training and professional experience in mold assessment and mold remediation. He is a Florida-licensed mold assessor and mold remediator, and is certified or accredited by numerous professional mold-related services organizations.<sup>3</sup> He has been a full-time professional mold assessor and mold remediator since 2004-2005, having performed over 1,000 mold and construction defect investigations and over 500 mold remediation projects. He has authored numerous texts on mold-related subjects and mold remediation.

3. Petitioner has no formal training or experience in the development of professional licensing examinations. Petitioner's only training in exam development consisted of one ten-hour course offered as part of a U.S. Green Building Council certification program. He also informally reviewed exam

development materials provided by Respondent's Examination Development Specialist.

4. Respondent is the state agency statutorily charged with regulating mold-related services and administering the mold-related services licensing program in Florida under chapter 468, part XVI, Florida Statutes.

## II. Florida's Mold-Related Services Regulatory Program

5. Mold-related services consist of mold assessment<sup>4</sup> and mold remediation,<sup>5</sup> which are performed by state-licensed mold assessors and mold remediators.

6. There are two means by which persons may become licensed to provide mold-related services in Florida: initial licensure by examination, and licensure by endorsement.

7. A person desiring to be initially licensed by examination to provide mold-related services in Florida must, among other things, pass a professional licensing examination.

8. By statute, Respondent is required to provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of professional licensing examinations, including mold-related services licensing examinations. Respondent may approve, for use in professional licensing, any national examination that it has certified as meeting the requirements of national

examinations and generally accepted testing standards.

§ 455.217(1), Fla. Stat.

III. Respondent's Evaluation of the NAERMC Exams

9. The NAERMC Exams are examinations that Petitioner offers in connection with courses approved by the State of Texas for training mold assessors and mold remediators, modified to address Florida-specific issues.

10. Petitioner applied to Respondent for certification of the NAERMC Exams for use in licensing mold assessors and mold remediators in Florida. He did this by submitting two completed Exam Evaluation Questionnaires ("EEQ") to Respondent.

11. The EEQ is an instrument Respondent has developed to determine whether an examination proposed for use in professional licensing meets the requirements of section 455.217(1)(d), Florida Statutes—that is, whether it is a "national examination" as defined in rule 61-11.015, and whether it has been developed using generally accepted testing standards.

12. Petitioner submitted the first version of his EEQ on or about November 8, 2010. Respondent determined, from a review of the EEQ, that the NAERMC Exams did not meet the statutory standards for examinations that may be approved for use in professional licensing in Florida. Respondent sent Petitioner a



written analysis and comments regarding the NAERMC Exams' deficiencies.

13. After receiving Respondent's analysis and comments, Petitioner requested and obtained a copy of the completed EEQ that ACAC submitted for its examinations. The ACAC examinations have been approved for use in mold-related services licensing in Florida.<sup>6</sup>

14. Petitioner revised his EEQ responses and submitted an amended EEQ for the NAERMC Exams on or about December 8, 2010. Several, although not all, of the revised responses are substantially similar or identical to ACAC's responses.

15. Respondent's analysis of Petitioner's amended EEQ noted the similarity between many of Petitioner's and ACAC's responses. Respondent asserts that Petitioner copied ACAC's responses rather than providing truthful responses that accurately describe the NAERMC Exams. Petitioner denies he copied the ACAC responses and claims that his revised responses reflect updates to the NAERMC Exams he made after having studied the ACAC EEQ responses in order to determine Respondent's exam certification requirements.

16. Respondent determined that the NAERMC Exams do not meet the statutory requirements in section 455.217, and on

March 8, 2011, issued a Notice of Intent to Deny, proposing to deny certification of the NAERMC Exams for use in professional licensure of mold assessors and mold remediators in Florida.

IV. Statutory Standard for Certification of Professional Licensing Examinations

17. Pursuant to section 455.217(1)(d), Respondent may only approve, for use in professional licensing, national examinations it has certified meet the requirements of generally accepted testing standards and national examinations.

18. Steven Allen, an Examination Development Specialist with Respondent's Bureau of Education and Testing, testified on behalf of Respondent regarding generally accepted testing standards and national examinations.

19. Mr. Allen has a Master's Degree in evaluation and measurement. His employment duties include evaluating exams submitted to Respondent by independent examination providers for certification for use in professional licensing, to determine whether they are national examinations and have been developed using generally accepted testing standards. These duties require Mr. Allen to be fully versed in generally accepted testing standards and the national examination rule, and the application of these standards in certifying professional licensing exams.

20. Mr. Allen was involved in reviewing the EEQs submitted for the NAERMC Exams.

A. Generally Accepted Testing Standards

21. Professional licensing examinations, including examinations for mold-related services licensure, must meet generally accepted testing standards. These standards are well-known, published standards for educational testing and evaluation in the United States that are set by three national organizations.<sup>7</sup> All testing organizations engaged in developing high-stakes licensing exams must follow these standards.

22. Exams must be prepared according to these standards to ensure that they are valid and reliable. Exam validity involves determining whether the exam covers a representative sample of the content and skills intended to be measured. Exam reliability means that the exam provides consistent results when measuring a test taker's knowledge, skills, and abilities.

23. The starting point in developing an exam pursuant to generally accepted testing standards is the performance of a job/task analysis. A job/task analysis entails an analysis and compilation of the knowledge, skills, and abilities to be tested on a particular exam. If a job/task analysis is not accurately performed, the validity of the exam—that is, whether the exam actually measures what it purports to measure—cannot be

verified. Therefore, performing a job/task analysis is essential to preparing a valid examination.

24. The first step in a job task analysis consists of the assembly, by the testing organization, of a panel of experts in the particular subject matter that the exam is being developed to test. These subject matter experts must constitute a representative sample of practitioners for the particular profession for which the exam is being developed.

25. Once the subject matter expert panel is assembled, panel members complete an occupational survey instrument to identify the knowledge, skills, and abilities for the particular competency level for which the exam is being developed. For example, for an entry level skills licensing exam, the subject matter expert panelists would complete an occupational survey to identify the knowledge, skills, and abilities that an applicant of minimum competency for licensure must demonstrate in order to be licensed.

26. The end product of the job/task analysis is a collaboratively developed content outline identifying the areas to be tested on the examination, with respective weight assigned to each.

27. Subject matter experts often have differing opinions regarding content that should be tested on an exam. Therefore, obtaining a consensus among subject matter expert panelists

regarding the content to be tested is essential to developing a valid exam that tests the content intended to be tested. An individual subject matter expert, working on his or her own, is unable to engage in the collaborative process integral to developing a valid exam.

28. After the job/task analysis is complete, the exam items (questions) are prepared by subject matter experts according to the content outline. Before preparing the items, the subject matter experts are trained to draft items that accurately, reliably, and fairly test the content. After the items have been prepared, they are reviewed by an item review committee.

29. These iterative review processes, conducted by subject matter and psychometrics expert panelists, are essential to developing exams that are valid and reliable.

30. Petitioner did not present evidence showing that he developed the NAERMC Exams using a job/task analysis, as that term is understood in the field of psychometric measurement. Petitioner did not demonstrate that he conducted an occupational survey of subject matter experts. Instead, he compiled content lists that he used in developing mold-related services courses<sup>8</sup> and writing books on mold-related topics. These compilations were not developed for licensing examinations,<sup>9</sup> and the evidence does not establish that they were developed using the

collaborative processes entailed in a psychometrically sound job/task analysis.

31. Petitioner's EEQ response also appears to misrepresent key information regarding the NAERMC Exams. Specifically, Petitioner's response to Item No. 24 of the December 8, 2010, EEQ, addressing job/task analysis performance, states: ". . . a review committee is formed from among industry experts and stakeholders across the United States." However, at hearing, Petitioner conceded that he is the only expert involved in developing the NAERMC Exams and is the sole member of the "review committee." Petitioner's EEQ responses regarding job/task analysis performance conflict with his testimony and, thus, are not credible.

32. For these reasons, it is determined that Petitioner did not present credible, persuasive evidence demonstrating that he performed a job/task analysis in developing the NAERMC Exams. Accordingly, he did not show that the NAERMC Exams are valid.

33. Petitioner also failed to demonstrate that the NAERMC Exams are reliable, as that term is used in psychometric measurement. Exam reliability is demonstrated by providing statistical analyses addressing the long-term performance of individual exam items and of the exam as a whole.

34. In his November 8, 2010, EEQ response, Petitioner stated that he performed an item analysis to identify poorly

performing items, but did not keep copies of the analysis. However, in his December 8, 2010, EEQ response, Petitioner provided a statistical analysis for an item and an explanation that substantially mimicked ACAC's response for that item.

35. As a matter of practice in the professional examination industry, exam developers keep and readily provide item reliability analysis information upon request from exam certification entities. The fact that Petitioner initially represented that he did not keep such information, but then soon after provided a response that mimicked ACAC's, undermines the EEQ's credibility and calls into question its accuracy with respect to the NAERMC Exams' reliability.

36. Petitioner's testimony and other evidence in the record also call into question the credibility and accuracy of other responses in the December 8, 2011, EEQ. Specifically, the EEQ asked how many subject matter experts review each exam item for accuracy and relevancy to the practice. Petitioner responded that five experts would review each item; however, at hearing, he was unable to identify any of those experts. Moreover, his EEQ responses directly conflict with a discovery response<sup>10</sup> in which he stated that he was the sole subject matter expert for development of the NAERMC Exams.

37. Based on inconsistencies in Petitioner's testimony, EEQ responses, and discovery responses; his failure to perform a

psychometrically sound job/task analysis; his lack of significant training in exam development; and his lack of understanding of generally accepted testing standards and their role in preparing valid, reliable exams, it is determined that Petitioner did not provide credible, persuasive evidence showing that the NAERMC Exams meet generally accepted testing standards, as required by section 455.217(1)(d).

B. National Examination

38. To implement the "national examination" requirement in section 455.217, Respondent has adopted rule 61-11.015, Florida Administrative Code, entitled "Definition of a National Examination." This rule establishes the criteria an exam must meet to be a "national examination" that Respondent may use to test professional licensure applicants. All rule criteria must be met for an exam to be a "national examination."

National or Multi-state Professional Organization

39. To be a "national examination," the examination must be developed by or for a national or multi-state professional organization. Fla. Admin. Code R. 61-11.015(2) (emphasis added). To be a national or multi-state organization, the organization must be generally recognized by practitioners across the nation in the form of representatives from state licensing boards, or must have membership representing a substantial number of the



nation's or states' practitioners who have been licensed through the national examination. Fla. Admin. Code R. 61-11.015(3).

40. Petitioner created Certified Mold & Allergen Free, Corp. ("CMAFC") to, among other things, provide online training courses in mold-related services. The courses are offered through Petitioner's CMAFC, NAERMC, and Green Buildings.org websites, and the U.S. Green Building Council ("USGBC") website. The State of Texas approved two CMAFC courses for training persons seeking licensure as mold assessors and mold remediators in Texas. CMAFC training courses have been taken by persons located in states other than Florida.

41. Petitioner also created NAERMC, an "association" that provides free internet-based mold-related services training courses<sup>11</sup> and "certification examinations" that test the topics covered in the online courses. Successful completion of the "certification exams" allows one to become certified by NAERMC. "Certification" by NAERMC entitles one to a certificate of accomplishment and a logo symbol that can be placed on business cards.

42. Petitioner is NAERMC's only officer. NAERMC does not have bylaws and does not prepare an annual report. Petitioner testified that anyone who passes the certification exams becomes a NAERMC member, but he did not provide any specific information

regarding NAERMC's membership. NAERMC does not conduct membership meetings or provide mailings to its membership.

43. There is no evidence establishing that the NAERMC Exams were developed by a national or multi-state professional organization, as that term is defined in rule 61-11.015(3). Petitioner did not present any evidence showing that NAERMC's membership includes or consists of practitioners across the nation in the form of representatives from state mold-related services licensing boards. Nor did Petitioner present any evidence that NAERMC's membership includes or consists of a substantial number of the nation's or state's mold-related practitioners who have been licensed through the NAERMC Exams.

44. Petitioner also did not present evidence establishing that the NAERMC Exams were developed for a national or multi-state professional organization, as provided in rule 61-11.015(3). The evidence shows only that Petitioner, through his websites, offers mold-related services training courses to persons in multiple states, and that successful completion of the courses and exams offered at the end of the courses entitles one to NAERMC certification and membership. Petitioner testified that the USGBC is a nationwide organization having 40,000 members, and presented evidence showing that some of his CMAFC-copyrighted courses are offered through the USGBC website. However, he did not present any evidence showing that USGBC is

generally recognized by practitioners across the nation in the form of representatives from state mold-related services licensing boards, or that USGBC's membership represents a substantial number of the nation's or state's mold-related practitioners who have been licensed through NAERMC's Exams.

45. Moreover, NAERMC's certification examinations are not licensing examinations. Petitioner conceded this point at hearing.

46. For these reasons, Petitioner failed to establish that the NAERMC Exams were developed by or for a national or multi-state organization, as required by rules 61-11.015(2) and 61-11.015(3).

#### Establishment of Entry Level Standards of Practice

47. To be approved by Respondent as a "national examination," the exam's purpose must be to establish entry level standards of practice that are common to all practitioners in the licensing area. Fla. Admin. Code R. 61-11.015(2)(a). Petitioner did not show that the NAERMC Exams meet this criterion.

48. As previously discussed, performing a psychometrically sound job/task analysis is essential to developing an exam that tests for the content intended to be tested—here, the knowledge, skills, and abilities that an entry level professional mold assessor or mold remediator should possess.

49. Petitioner, acting as a "committee of one," compiled content lists based on his knowledge of mold-related topics that he used to develop training courses and write books. At hearing, Petitioner referred to these content compilations as a "job/task analysis," but they are not. A "job/task analysis" is a term of art used in psychometric measure to describe a specific, collaborative process for developing exam content. The evidence does not establish that Petitioner performed a job/task analysis.

50. Petitioner asserts that the NAERMC Exams test entry level skills because he is a mold-related services subject matter expert, so knows what content entry level mold-related services professionals should know. Petitioner misapprehends the importance of generally accepted testing standards in developing exams that accurately test the knowledge, skills, and abilities intended to be tested. Petitioner has no training or experience in licensure examination development, and his testimony that the NAERMC Exams test entry level skills was not persuasive.

51. For these reasons, Petitioner did not demonstrate that the NAERMC Exams' purpose is to establish entry levels of practice common to all mold-related services practitioners, as required by rule 61-11.015(2) (a).

## Definition of Practice by a National Occupational Survey

52. Rule 61-11.015(2)(b) requires that the practice of the profession at the national level be established through an occupational survey with a representative sample of all practitioners and professional practices.

53. Petitioner did not meet this requirement. Petitioner did not provide evidence establishing that he utilized a survey instrument.<sup>12</sup> As previously discussed, Petitioner compiled mold-related content lists that he used to develop training courses and write books. However, these lists do not constitute an occupational survey.

54. Petitioner testified that he was involved with an international organization in preparing standards for mold assessment and in an online community of mold experts. However, he did not present any evidence to show that these entities comprise a representative sample of all mold-related services practitioners, as required by the rule.

55. In sum, Petitioner did not provide credible, persuasive evidence demonstrating that he developed the NAERMC Exams using an occupational survey to define the mold-related services practice at the national level, as required by rule 61-11.015(2)(b).

### Assessment of Scope or Practice and Entry Skills

56. Rule 61-11.015(2)(c) provides that the licensure examination must assess the scope of practice and the entry skills defined by the national occupational survey.

57. As previously discussed, Petitioner did not perform an occupational survey in developing the NAERMC Exams—a necessary endeavor to ensure that an exam accurately assesses the content it is intended to assess. Because no occupational survey was performed for the NAERMC Exams, it is not possible to verify that they assess scope of practice and entry level skills, as required by the rule. Accordingly, the NAERMC Exams do not meet this criterion.

### Oversight and Scoring of the National Examination

58. Rule 61-11.015(4) requires the organization to be the responsible body for overseeing the development and scoring of the national examination.

59. Petitioner is the sole officer of NAERMC. He testified and provided information in the EEQs stating that he alone develops the NAERMC Exams, and that he and his wife hand-score the exams. Respondent did not present evidence showing that these oversight measures are deficient under the rule. Accordingly, Petitioner showed that NAERMC is responsible for overseeing development and scoring of the NAERMC Exams.

However, because Petitioner has not established that the NAERMC Exams are "national examinations," this criterion is not met.

Examination Development and Scoring Security

60. Rule 61-11.015(5) requires the organization to provide security guidelines for the development and grading of the national examination and to oversee the enforcement of these guidelines.

61. Petitioner testified that the NAERMC Exams are encrypted and electronically stored on Petitioner's computer and a computer located in Nevada. Petitioner is the only person who develops the NAERMC Exams and has access to them.

62. These measures do not conform to standard security measures employed by exam developers in the professional examination industry. Typically, examination papers are inventoried when they are removed from the vault for administration, re-inventoried at the exam site before they are administered, closely monitored during the examination process, then re-inventoried by tracking forms once the exam is completed. Measured against the industry standard, the NAERMC Exams' security measures are deficient.

63. For these reasons, Petitioner did not present credible, persuasive evidence demonstrating that rule 61-11.015(5) is met.

64. Having considered the competent evidence in the record, the undersigned determines, as a matter of ultimate fact, that Petitioner failed to establish, by a preponderance of the evidence, that the NAERMC Exams meet the requirements of section 455.217 and rule 61-11.015.

CONCLUSIONS OF LAW

65. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.57(1), Fla. Stat.

66. This is a de novo proceeding. § 120.57(1)(k), Fla. Stat. Accordingly, its purpose is to formulate final agency action, not review agency action taken earlier and preliminarily. McDonald v. Dep't of Banking and Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977).

67. As the applicant for exam certification,<sup>13</sup> Petitioner has the burden of proof, by a preponderance of the evidence, to demonstrate entitlement to the certification of the NERRMC Exams by meeting all applicable statutory and rule requirements. § 120.57(1)(j), Fla. Stat.; see Florida Dep't of Transp. v. J. W. C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). The requirements applicable to this proceeding are set forth in section 455.217 and rule 61-11.015.

68. Section 455.217(1)(a) requires Respondent to ensure that professional licensure examinations adequately and reliably



measure an applicant's ability to practice the profession regulated by Respondent. To that end, Respondent may only approve national examinations that it has certified as meeting the requirements of national examinations, and generally accepted testing standards. § 455.217(1)(d).

69. Respondent has adopted rule 61-11.015, Florida Administrative Code, entitled "Definition of a National Examination," which establishes the criteria an examination must meet to be considered a "national examination." The rule provides in pertinent part:

(2) A national examination is an examination developed by or for a national or multi-state professional association, board, council, or society (hereinafter referred to as organization) and administered for the purpose of assessing entry level skills necessary to protect the health, safety, and welfare of the public from incompetent practice and meets the following standards:

(a) The purpose of the examination shall be to establish entry level standards of practice that shall be common to all practitioners;

(b) The practice of the profession at the national level must be defined through an occupational survey with a representative sample of all practitioners and professional practices; and

(c) The examination for licensure must assess the scope of practice and the entry skills defined by the national occupational survey.

(3) The organization must be generally recognized by practitioners across the nation in the form of representatives from the State Boards or shall have membership representing a substantial number of the nation's or states' practitioners who have been licensed through the national examination.

(4) The organization shall be the responsible body for overseeing the development and scoring of the national examination.

(5) The organization shall provide security guidelines for the development and grading of the national examination and shall oversee the enforcement of these guidelines.

An applicant for certification of a professional licensing exam must demonstrate that all of these criteria are met.

70. For the reasons set forth herein, Petitioner has not met its burden to establish, by a preponderance of the evidence in the record, that the NAERMC Exams meet the requirements of national examinations and generally accepted testing standards, as required by section 455.217 and rule 61-11.015.

71. Accordingly, Petitioner is not entitled to certification of the NAERMC Exams for use in licensing mold assessors and mold remediators in Florida.

#### 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 certification of the

National Association of Environmentally Responsible Mold Contractors' Initial Mold Assessor Exam and Initial Mold Remediator Exam for use in the professional licensing of mold assessors and mold remediators in Florida.

DONE AND ENTERED this 24th day of October, 2011, in Tallahassee, Leon County, Florida.



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CATHY M. SELLERS

Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of October, 2011.

ENDNOTES

<sup>1</sup> Unless otherwise stated, all references are to 2011 Florida Statutes. See Lavernia v. Dep't of Prof. Reg., 616 So. 2d 53 (Fla. 1st DCA 1993) (law in effect at time of final agency decision governs application).

<sup>2</sup> See Fla. R. Civ. P. 1.140(f).

<sup>3</sup> Petitioner holds a bachelor's degree in chemistry and a doctorate in biochemistry. He is a Florida-licensed mold assessor, mold remediator, and building contractor. He holds

professional accreditation by the U.S. Green Building Council and holds various certifications from ACAC, the Indoor Air Quality Association, and the Institute of Inspection, Cleaning and Restoration Certification.

<sup>4</sup> "Mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet. § 468.8411(3), Fla. Stat.

<sup>5</sup> "Mold remediation" is defined in pertinent part as the removal, cleaning, sanitizing, demolition, or other treatment, including preventative activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location. § 468.8411(5), Fla. Stat.

<sup>6</sup> Respondent certified, and entered into a contract with, ACAC to serve as the mold-related services licensure exam provider for the State of Florida. Pursuant to section 455.217(1)(d), Florida Statutes, Respondent's certification of, and contracting with, ACAC does not preclude other providers' exams from being certified.

<sup>7</sup> These organizations are the American Psychological Association, the American Educational Research Association, and the National Council of Measurement of Education.

<sup>8</sup> Two of these courses were approved by the State of Texas for training applicants for licensure as mold assessors and mold remediators.

<sup>9</sup> Petitioner testified that he later used the compilations as the content basis for the NAERMC Exams.

<sup>10</sup> Response No. 2 of Petitioner, Gary Rosen's Response to Respondent's Request for Production of Documents, dated August 3, 2011.

<sup>11</sup> The training courses offered through NAERMC's website consist of materials copyrighted by CMAFC.

<sup>12</sup> Mr. Allen testified that an occupational survey entails a survey instrument that is provided to, and completed by, the panel of subject matter experts, to develop a consensus

regarding the topics to be covered on the examination. Mr. Allen is an exam development specialist having extensive knowledge of, and experience in, licensing exam development. His testimony on this point was credible and persuasive.

<sup>13</sup> The certification Petitioner seeks in this proceeding is a "license" under section 120.52(10), Florida Statutes.

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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.