

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TYLER WAYNE WELDON,)
)
 Petitioner,)
)
 vs.) Case No. 11-2025
)
 BOARD OF ORTHOTISTS)
 AND PROSTHETISTS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On June 17, 2011, a duly-noticed hearing was held in Tallahassee, Florida, before Lisa Shearer Nelson, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Frank Edward Maloney, Jr., Esquire
Macclenny City Attorney
445 East Macclenny Avenue, Suite 1
Macclenny, Florida 32063-2217

For Respondent: Lee Ann Gustafson, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-6536

STATEMENT OF THE ISSUES

The issues are whether Petitioner has sufficiently completed the requirements necessary to receive a license to practice orthotic fitting from the Board of Orthotists and

Prosthetists and whether the Petitioner has violated section 468.809, Florida Statutes, by practicing orthotics without a license or registration.

PRELIMINARY STATEMENT

This cause arose when the Petitioner submitted an application to the Board of Orthotists and Prosthetists (Board) for licensure as an Orthotic Fitter. On March 16, 2011 the Board notified Petitioner of its Intent to Deny Petitioner's application.

Petitioner filed a Petition for Review and Request for Administrative Hearing on April 6, 2011, regarding the Notice of Intent to Deny. Respondent referred the case to the Division of Administrative Hearings (DOAH) requesting DOAH to assign an administrative law judge to hear the disputed issues of fact arising from the Notice of Intent to Deny Petitioner's licensure application. The undersigned Administrative Law Judge was assigned to hear the matter.

The cause came on for hearing as noticed. The proceedings were recorded but no transcript was filed. At the hearing Petitioner presented his own testimony in addition to the testimony of Ray McKinney Patterson, an expert in physical therapy education, and Danny Wayne Weldon, Petitioner's father and licensed physical therapist. Petitioner also introduced three exhibits which were admitted into evidence. Respondent

presented the testimony of Sharon Lee Guilford, and one joint exhibit was also admitted into evidence. Upon conclusion of the hearing the parties were informed of their option to submit proposed recommended orders by July 11, 2011. Both parties timely filed Proposed Recommended Orders which have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. The two rules governing the requirements for licensure as an orthotic fitter in the state of Florida are found in section 469.803(5)(c), Florida Statutes (2010), and Florida Administrative Code Rule 64B14-4.110(1)(b). Section 468.803(5)(c) requires:

(c) to be licensed as an orthotic fitter the applicant must pay a license fee not to exceed \$500 and must have:

1. A high school diploma or its equivalent;
2. A minimum of 40 hours of training in orthotics education, as approved by the board;
3. Two years of supervised experience in orthotics acquired after completion of the required education, as approved by the board; and
4. Completed the mandatory courses.

2. Petitioner requested information from the Board regarding the requirements for licensure and received a publication containing both chapter 468, Florida Statutes, Part XIV, and rule 64B14. He completed the prerequisite education

required by section 468.803(5)(c), on June 22, 2009. However, Petitioner testified that he only reviewed the requirements identified in section 468.803(5)(c) and did not consider the definition of "experience" contained in rule 64B14-4.110(1), for applicants for licensure as an orthotic fitter.

3. Florida Administrative Code Rule 64B14-4.110(1)(b) construes supervised "experience" to require an applicant to complete two years of experience in orthotics under the supervision of a Florida licensed orthotist. The two years of experience may only begin accruing after the applicant has successfully completed the requisite education courses.

4. Petitioner applied for a license in orthotic fitting on November 22, 2010, only 17 months after the completion date of his educational courses. Assuming Petitioner started gaining experience immediately upon completion of his education courses, Petitioner was still seven months shy of the two years of experience required to obtain a license as an orthotic fitter.

5. Petitioner testified at hearing regarding the orthotic experience gained prior to applying for licensure. According to his testimony, his experience consisted of activity more accurately described as assistance than experience. The experience described was limited to helping patients stand up, holding a measuring stick, assisting with paperwork, and explaining paperwork to the patient. Petitioner's role involved

little more than observing and occasionally assisting a licensed physical therapist. This is surely not what is meant by "experience in orthotics under the direct supervision of a Florida licensed orthotist," as contemplated by rule 64B14-4.110(1)(b).

6. The assistance provided by Petitioner was performed under the supervision of a licensed physical therapist. While his actions, as described at hearing, did not meet the requirements for supervision specified by rule 64B14-9.110, they also did not rise to the level of unlicensed activity.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2010).

8. Petitioner has applied to the Board for licensure to practice orthotic fitting. As the applicant for a new license, Petitioner has the burden of presenting evidence of his fitness for licensure. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). If Petitioner presents evidence supporting his fitness for licensure, the burden of going forward with evidence shifts to Respondent to show any violation of statutes or rules supporting denial. However, the ultimate burden of persuasion remains with Petitioner. Id.

9. Respondent did not provide sufficient evidence to prove Petitioner was practicing orthotics without a license. Respondent and Petitioner both failed to provide any evidence that Petitioner was involved in anything more than providing aide to a licensed physical therapist. This behavior is not in violation of section 468.809.

10. Florida Administrative Code Rule 64B14-4.110(1)(b) requires an applicant for licensure as an orthotic fitter to demonstrate:

(a) Successful completion of the 32-hour Trulife Healthcare or the 32-hour Surgical Appliance Industries orthotics course and examination, and completion of an approved eight hour course in custom-molded shoes.

(b) Two years experience in orthotics under the direct supervision of a Florida licensed orthotist. Candidates licensed by the Board as an orthotic fitter assistant may earn the two years of experience under the direct supervision of a Florida licensed orthotic fitter. Experience in orthotics earned outside of Florida may also be earned under the direct supervision of an ABC certified orthotist. This paragraph shall not be construed to authorize any person to supervise, assist or engage in the unlicensed practice of orthotics, prosthetics or pedorthics. The education required by paragraph (1)(a) above shall be completed prior to earning the experience required by this paragraph, except that the required custom molded shoe course may be completed no less than one year prior to the end of the two year period of orthotics

experience the applicant relies on to qualify for licensure. This paragraph shall not be construed to authorize any person licensed by the Board to practice beyond the scope of their license, unless supervised pursuant to the requirements of Chapter 468 Part XIV, F.S., and rules of the Board.

11. The rule specifies that the education requirements listed in paragraph (a) must be completed prior to earning the two years of experience required by paragraph (b). Petitioner testified at hearing that his application for licensure was submitted only 17 months after completion of the requisite education courses, rendering it impossible for Petitioner to have complied with rule 64B14-4.110(1)(b).

12. Rule 64B14-1.110(1)(b) also requires that the two years of experience in orthotics must be completed under the supervision of a Florida licensed orthotist. While the duties and qualifications of a physical therapist and an orthotist undoubtedly overlap, rule 64B14-4.110(1)(b) does not allow for the required experience for licensure to be performed under the supervision of any licensed professional alternative to an orthotist. There is no provision for supervision by someone of comparable credentials: the rule only allows for experience to come at the direct supervision of a licensed orthotist.

13. Compliance with rule 64B14-4.110(1)(b) is a necessary licensure requirement that an applicant must complete prior to gaining a license in orthotic fitting. The rule clearly calls for two years of experience in orthotics under the supervision of a Florida licensed orthotist and Petitioner has not complied with this rule given that Petitioner has, at best, 17 months of experience under the supervision of a licensed physical therapist.

14. Petitioner did not meet his burden of demonstrating that he met the requirements for licensure. Petitioner's own admissions at hearing, showing that he had not complied with all of the prerequisites for a grant of his application for licensure, demonstrate that he is not entitled to licensure at this time.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered by the Board of Orthotists and Prosthetists denying Petitioner's application for licensure as an orthotic fitter.

DONE AND ENTERED this 2nd day of August, 2011, in
Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 2011.

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.