

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FAWZI M. AWAD, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-5094  
 )  
 AGENCY FOR HEALTH )  
 CARE ADMINISTRATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On December 8 and 20, 2011, a duly-noticed hearing was held in Tallahassee, Florida, with Petitioner appearing by telephone from Minnesota, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Fawzi M. Awad, pro se  
on December 8, 2011  
1717 Fair Oaks Drive  
White Bear, Minnesota 55110

Thomas K. Cambre, Qualified Representative  
on December 20, 2011  
Merrigan, Brandt, Ostenso & Cambre, P.A.  
25 Ninth Avenue North  
Hopkins, Minnesota 55343-0458

For Respondent: D. Carlton Enfinger II, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue is whether Petitioner's application for licensure as a health care risk manager is complete, pursuant to sections 408.806 and 395.10974, Florida Statutes (2011)<sup>1/</sup> and implementing regulations.

PRELIMINARY STATEMENT

In a notice dated September 15, 2011, Respondent advised Petitioner that his application for licensure as a health care risk manager was deemed incomplete and was being withdrawn from further consideration pursuant to section 408.806(3)(b). On September 26, 2011, Petitioner requested an administrative hearing. On October 3, 2011, Respondent referred the matter to the Division of Administrative Hearings for assignment of an administrative law judge to conduct the final hearing.

In a Joint Response to Initial Order, the parties requested that Petitioner be permitted to appear by telephone from Minnesota. The Notice of Hearing granted this request, provided that the Petitioner arrange for the services of a Notary Public to swear in Petitioner and other witnesses at the Minnesota location. At the December 8, 2011, hearing, Respondent presented the testimony of two witnesses, and offered five exhibits, which were received into evidence. Petitioner cross-examined Respondent's witnesses, but did not have a notary public present and was not permitted to testify. The hearing

was continued until December 20, 2011. Petitioner requested representation by a Qualified Representative, which was approved. Petitioner testified and offered three exhibits, which were received into evidence.

Neither party requested a copy of the transcript. Both parties submitted Proposed Recommended Orders on December 30, 2011, which were considered.

#### FINDINGS OF FACT

Based on the evidence presented at hearing, the following Findings of Fact are made:

1. Petitioner filed an application with Respondent for licensure as a health care risk manager on August 15, 2011. He sought licensure based upon his attainment of credentials as a Health Care Administrator.

2. On August 20, 2011, Petitioner received by certified mail a notice from Respondent acknowledging receipt of his application and advising that the application was incomplete. The letter listed three omissions: an application addendum; documentation of background screening requirements; and evidence of credentials as a Health Care Administrator. The third omission, the one relevant here, was described as follows:

Evidence of credentials as a Health Care Administrator as defined in Rule 59A-10.032(14), F.A.C. An official transcript submitted from the college that satisfies the above rule.

The letter explained that the missing information had to be submitted within 21 days from the receipt of the letter or the application would be denied.

3. On the day Petitioner received the deficiency letter, he telephoned Respondent to get clarification about the omissions. He also contacted the University of Wisconsin - Eau Claire and arranged for them to send Respondent his college transcripts.

4. Respondent received Petitioner's transcripts on September 9, 2011, when they were date-stamped as received by Central Systems Management Unit, before the deadline of September 12. The transcripts were date-stamped within Health Facility Regulation, Hospital and Outpatient Services almost a week later on September 15, 2011.

5. Petitioner's degrees, as reflected in his transcripts, were a Bachelor of Science in Environmental and Public Health and a Master of Science in Environmental and Public Health. Petitioner does not have a degree in hospital administration, hospital finance, hospital management, or public health administration.

6. Petitioner's transcripts demonstrate successful completion of the following college level courses: ALLH 215, Public Health Programs; ALLH 470, Public Health Administration; BEAM 517, Administrative Management; ENPH 730, Environmental

Health Administration; BEAM 627, Seminar in Administrative Management, ENPH 780, Practicum in Environmental Health, and ENPH 797, Independent Study.

7. After reviewing Petitioner's filings in response to the Agency's omissions letter, Respondent made a preliminary determination that the educational transcripts submitted by Petitioner in support of his application were insufficient, as his degrees did not appear to meet the criteria set forth in Florida Administrative Code Rule 59A-10.032(14), defining "Health Care Administrator."

8. Respondent sent a letter to Petitioner dated September 15, 2011, informing him of the Agency's intent to deem his application incomplete and withdraw it from further review, stating that the outstanding issue was the failure to timely submit evidence of credentials as a Health Care Administrator. As stipulated at hearing, other omissions or deficiencies in Petitioner's application were corrected and are not in issue in this proceeding.

9. In a letter dated September 20, 2011, Petitioner requested reconsideration of Respondent's decision and inquired about the possibility of variance or waiver of rule 59A-10.032(14), although he did not file a petition meeting the requirements of section 120.542, Florida Statutes, or applicable rules.

10. On September 26, 2011, Petitioner requested a formal hearing on Respondent's intent to deem his application incomplete and withdraw it from further review.

11. Petitioner is substantially affected by the intended action of Respondent.

12. Testimony at hearing demonstrated that the courses enumerated above, including the practicum at Sacred Heart Hospital, taught management and administration of health care facilities, though not management or administration of Florida-licensed health care facilities.

13. Petitioner is currently enrolled in Walden University and expects to receive a Doctorate in Healthcare Administration by the end of 2012.

14. Testimony at hearing demonstrated that Petitioner has extensive practical experience in management of health care facilities. He had experience in Jeddah, Saudi Arabia as the Public Health and Preventative Medicine Section Manager with National Guard Medical Services, overseeing 10 or 11 primary care health clinics; experience as the Quality Assurance Manager at the 500-bed National Guard Hospital in Jeddah; experience as the Senior Environmental Health Specialist with the Ramsey County (Minnesota) Department of Public Health; experience as the Director of Total Quality Management Department at the International Medical Center, a Joint Commission Accredited 300-

bed hospital and Cleveland Clinic Partner in Saudi Arabia, all in a career spanning over 24 years.

15. Petitioner's application for licensure as a health care risk manager was complete on September 9, 2011.

16. Petitioner's transcripts demonstrate successful completion of two degrees with college level courses in the management and administration of health care facilities, but not college level courses in the management or administration of a Florida hospital licensed under chapter 395 or a Florida ambulatory surgical center licensed under chapter 395.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes.

18. Respondent is the state agency responsible for the licensing and regulation of health care risk managers pursuant to sections 395.10971-10975.

19. Petitioner has demonstrated standing to maintain this proceeding.

20. Under section 395.10973(1), Respondent has been given authority to adopt rules to implement its licensing responsibilities.

21. Respondent has adopted Florida Administrative Code Rule 59A-10.033, containing the general qualifications for licensure as a health care risk manager. It has adopted rule section 59A-10.032, containing definitions relating to licensure of health care risk managers. It has also adopted rule section 59A-10.002 containing definitions with application to licensure "under Parts I and II" of chapter 59A-10.

22. Rule section 59A-10.033(1) provides:

- (1) Any person desiring to be certified as a health care risk manager shall submit an application on Form AHCA/RM-001, entitled "Application for Health Care Risk Manager Licensure." Form AHCA/RM-001 is hereby incorporated by reference and shall become effective on July 9, 1986. This form may be obtained from the Agency for Health Care Administration, Risk Management Office, 2727 Mahan Drive, Tallahassee, Florida 32308. In order to qualify, the applicant shall submit evidence satisfactory to the department which demonstrates the applicant's competence, by education, training, or experience, in the following areas:
  - (a) Applicable standards of health care risk management.
  - (b) Applicable federal, state, and local health and safety laws and rules.
  - (c) General risk management administration.
  - (d) Patient care.
  - (e) Medical care.
  - (f) Personal and social care.
  - (g) Accident prevention.
  - (h) Departmental organization and management.
  - (i) Community interrelationships.
  - (j) Medical terminology.



- (2) An applicant shall be considered qualified as competent in the areas required by subsection (1) if he or she submits evidence of one of the following:
- (a) Attainment of Nominee Level or advanced credential status from the International Healthcare Security and Safety Foundation.
  - (b) Attainment of credentials as a Fellow or Diplomate of the American Society for Hospital Risk Management.
  - (c) Attainment of credentials as a Health Care Professional as defined above and:
    - 1. Satisfactory completion of a risk management educational program approved pursuant to Rule 59A-10.037, F.A.C.; or
    - 2. Experience which qualifies under paragraphs (a), (b), (c), (g), and (h) of subsection 59A-10.036(2), F.A.C.
  - (d) Attainment of credentials as a Health Care Administrator as defined above and:
    - 1. Satisfactory completion of a risk management educational program approved pursuant to Rule 59A-10.037, F.A.C.; or
    - 2. Experience which qualifies under paragraphs (a) and (g) of subsection 59A-10.036(2), F.A.C.
  - (e) Satisfactory completion of an educational program accredited by the Committee on Allied Health Education Accreditation for Medical Record Administrators or Medical Record Technicians and satisfactory completion of a risk management educational program approved pursuant to Rule 59A-10.037, F.A.C.
  - (f) Attainment of credentials as a Basic Risk Manager as defined above and:
    - 1. Satisfactory completion of a health care educational program approved pursuant to Rule 59A-10.037, F.A.C.; or
    - 2. Experience which qualifies under paragraphs (c), (d), (e), (f), and (g) of subsection 59A-10.036(2), F.A.C.
  - (g) Attainment of a degree from an accredited law school and attainment or completion of one of the following:

1. An advanced degree in health law from an accredited law school or a degree in a health related field from an accredited institution of higher learning; or
2. Satisfactory completion of a health care educational program approved pursuant to Rule 59A-10.037, F.A.C.; or
3. Experience with health care risk management or medical malpractice claims administration as a result of being employed or retained for a period of one year by a health care facility to advise, direct, or coordinate a risk management program.
  - (h) Satisfactory completion of a one year Health Care Risk Manager Training Program approved pursuant to Rule 59A-10.034, F.A.C.
  - (i) Satisfactory completion of two years of college level studies approved pursuant to Rule 59A-10.035, F.A.C.
  - (j) Satisfactory completion of one year of practical experience in health care risk management which meets the requirements of Rule 59A-10.036, F.A.C.

23. Rule subsection 59A-10.033(1) therefore establishes qualifications for licensure as a health care risk manager, requiring demonstration of competency in ten competency areas, while subsection (2) then creates several distinct pathways through which an applicant "shall be considered" as competent in the areas set forth in subsection (1). Paragraph (2)(d) establishes one such pathway as attainment of credentials as a Health Care Administrator.

24. It is not entirely clear from the structure of rule section 59A-10.033 whether the pathways of (2) are to be construed as "safe harbors" or if the rule is instead intended to limit applicants to one of the pathways. If the latter, the

rule purports to deny licensure to an applicant otherwise demonstrating qualification under all criteria of the statute, but simply failing to fit into any of the particular pathways established by Agency rule. Section 395.10974(3) provides that the Agency shall issue a license to practice health care risk management to any applicant who qualifies under the statute.

25. Rule 59A-10.032(14) provides that:

"[T]he term 'Health Care Administrator' means a person who has a degree, awarded by an accredited institution of higher learning, in hospital administration, hospital finance, hospital management, public health administration, or other such education which included successful completion of college level courses in the management and administration of a health care facility."

26. Rule section 59A-10.002(15) provides that, "'health care facility' or 'facility' means a facility described in subsections (2) and (3) above."

27. Rule 59A-10.002(2) and (3) in turn provide that, "'Hospital' means a hospital licensed under Chapter 395, Florida Statutes and Chapter 59A-3, F.A.C." and "'Ambulatory surgical center' means an ambulatory surgical center licensed under Chapter 59A-3, F.A.C."

28. The definitions contained in rule 59A-10.002 seem outdated. Several terms that are defined, such as "Personnel directly involved", "Risk Manager designee" and "Disciplinary

action" in fact are apparently no longer even in the chapter. The definitions of "hospital" and "ambulatory surgical center" seem to have been originally intended to be applicable to provisions governing the administration of Florida licensed facilities.

29. Respondent suggests that acceptable college level coursework must teach the management and administration of Florida-licensed health care facilities. Since the specific requirement that an applicant may demonstrate successful completion of coursework in management and administration of a health care facility does not appear in section 395.10974, it is not clear whether or not imposing a "Florida-licensed" requirement would result in a conflict with the implemented statute. Section 395.10974(1) permits an applicant to demonstrate competence in each area by education or experience. Section 395.10974(2)(c)2. refers only to "college-level studies." Cf. Dep't of HRS v. McTigue, 387 So. 2d 454 (Fla. 1st DCA, 1980)(addition by rule of the adjective "Florida" before the word "physician" was invalid contravention of statutory language).

30. The issue here is whether or not the omission of "evidence of credentials as a Health Care Administrator as defined in Rule 59A-10.032(14), F.A.C." was corrected by Petitioner's submission of his transcripts.

31. Respondent contends that the coursework reflected on the transcripts is not sufficient to demonstrate that the awarded degrees qualify Petitioner as a Health Care Administrator. Even if true, this is not determinative. The question for this hearing is not whether the application is sufficient, but only whether it is complete. As noted above, the identified omission was:

Evidence of credentials as a Health Care Administrator as defined in Rule 59A-10.032(14), F.A.C. An official transcript submitted from the college that satisfies the above rule.

Taken in a pedantic sense, it is true that no transcript submitted by any applicant could ever result in a "complete" application unless and until it was determined that the transcript was in fact sufficient to meet requirements for licensure. But this interpretation merges the concepts of completeness and sufficiency in a manner inconsistent with the license application process set forth in sections 408.806 and 120.60.

32. Section 408.806(3) provides:

- (3)(a) Upon receipt of an application for a license, the agency shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.
- (b) Requested information omitted from an application for licensure, license renewal, or change of ownership, other than an

inspection, must be filed with the agency within 21 days after the agency's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.

(c) Within 60 days after the receipt of a complete application, the agency shall approve or deny the application.

33. Under the statute, a complete application does not conclude the review process. Rather, the "60-day clock" within which Respondent must evaluate and grant or deny the application begins to run only when the application is complete.

34. Section 120.60(1) provides:

An application is complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

35. Petitioner's original application did not include college transcripts or other evidence of Petitioner's academic degrees and coursework. Respondent notified Petitioner of this omission within 30 days, consistent with statutory provisions. Petitioner then supplied transcripts showing his degrees and coursework. This corrected the omission from his application. While Respondent may ultimately conclude that Petitioner's degrees and coursework are not sufficient to demonstrate that Petitioner possesses an appropriate degree, this does not mean the application is therefore "incomplete." Petitioner's

application for licensure as a health care risk manager was complete on September 9, 2011.

36. Should Respondent desire additional information not requested within 30 days of the application's submittal, it may request it, but it may not subsequently deny the application on the procedural ground of failure to supply this information, but only on substantive grounds after evaluating the application. § 120.60(1), Fla. Stat. Respondent may give an applicant an opportunity to waive "default" licensure provisions to allow processing to continue.

37. During a section 120.57 hearing process to consider whether or not an application is complete, the approval process timelines are tolled. Silver Show v. Dep't of Bus. & Prof'l Reg., 706 So. 2d 386, 389 (Fla. 4th DCA 1998).

38. Petitioner has the burden of proving his application is complete and will have the burden to show he is qualified to obtain licensure as a health care risk manager. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

39. Under section 120.542, an agency may grant a variance or waiver to requirements of their rules if the person subject to the rule demonstrates that the purpose of the statute has been achieved and application of the rule would create a substantial hardship or would violate principles of fairness.

40. Section 120.542(4) provides that agencies shall provide certain information on waivers and variances to persons who inquire about the possibility of relief from rule requirements.

41. Pursuant to section 120.57(4), informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

RECOMMENDATION

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

RECOMMENDED that the Agency for Health Care Administration enter a final order finding that Petitioner's application for licensure as a health care risk manager was complete on September 9, 2011, and proceed to process his application.

DONE AND ENTERED this 12th day of January, 2012, in Tallahassee, Leon County, Florida.

*F. Scott Boyd*

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F. SCOTT BOYD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of January, 2012.

ENDNOTE

<sup>1/</sup> All statutory references are to the 2011 Florida Statutes, except as otherwise indicated. Since a final order has not yet been issued in this case, Petitioner's application for licensure is governed by current law. See Agency for Health Care Admin. v. Mount Sinai Med. Ctr., 690 So. 2d 689, 691 (Fla. 1st DCA 1997)(agency must apply law in effect at the time it makes its final decision).

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.