

*** NOT FOR PUBLICATION ***

NO. 22560

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Application for a Dental License of
JOE YAMANE, D.D.S., Petitioner-Appellant

vs.

STATE OF HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS,
Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-4250)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Petitioner-appellant Joe Yamane, D.D.S. (Yamane) appeals from the May 3, 1999 judgment of the circuit court of the first circuit, the Honorable B. Eden Weil presiding, affirming the final order of the Board of Dental Examiners [hereinafter, "the Board"], dated August 25, 1998. In its final order, the Board concluded that Yamane failed to prove by a preponderance of the evidence that he suffered a substantial disadvantage when it denied his application for a dental license.

On appeal, Yamane argues that the circuit court erred when it: (1) held that the Board's hearings officer did not err in failing to admit into evidence each individual grader's handwritten notes; (2) concluded that the graders' use of the "secret blue cards" did not violate the grading criteria established by Hawai'i Administrative Rules ("HAR") §§ 16-79-103(c) and 16-79-105 (1990); and (3) concluded that no fatal error resulted to the grade forms and the informal review process.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and the arguments advanced, we hold that the circuit court did not err when it held that: (1) the hearings officer did not commit reversible error when he refused to admit into evidence

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the graders' handwritten notes, see Hawai'i Revised Statutes (HRS) § 91-10(1); 2 Am.Jur.2d Administrative Law § 345 (1994); (2) the use of the "secret blue cards" did not violate the grading criteria established by HAR §§ 16-79-103(c) and 16-79-105, see HAR §§ 16-79-103(c) and 16-79-105; and (3) the Board and exam graders properly followed the HAR grading process and procedures. Specifically, Yamane's exam is not entitled to be regraded, inasmuch as: (1) the graders properly graded the practical portion of Yamane's exam; see HAR §§ 16-79-103(c) and 16-79-105; (2) the graders properly documented Yamane's failures for the practical procedures of his exam, see HAR § 16-79-103(d); (3) the Board did not err in instructing the graders to draw a line and assign a letter grade for an area that is part of the grading criteria, see id.; (4) the hearings officer did not err in refusing to admit into evidence the Board's October 27, 1997 meeting minutes, see HRS § 91-10(1); 2 Am.Jur.2d Administrative Law § 345; (5) the graders graded each step of each exam procedure, see HAR § 16-79-103(c); and (6) the informal review process is not improper and meaningless, and, as such, does not violate the HAR, see HAR § 16-79-110. Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment affirming the Board's final order, from which this appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, November 25, 2003.

On the briefs:

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petitioner-appellant

Erica L. Piccolo,
Special Deputy Attorney
General, for respondent-
appellee