Podiatry examination and minimum score

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Subject:
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REGULATION OF PROFESSIONS--MINIMUM PASSING GRADE ON PODIATRY EXAMINATION

To: Douglas Stowell, Secretary, Department of Professional and Occupational Regulation, Tallahassee

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QUESTION:

May an examinee gain licensure under the terms and requirements of s. 461.03, F. S., by achieving an overall average of 75 percent in all subjects in the examination even though that examinee may achieve less than 50 percent on one subject of the examination?

SUMMARY:

An examinee of the Board of Podiatry Examiners who achieves a score of less than 50 percent in any one subject of the board's licensing examination fails to meet the requirements of s. 461.03, F. S., even though a general average of 75 percent in all subjects in the examination is attained, and, by reason thereof, is not entitled to a license to practice the profession of podiatry.

The board's question is answered in the negative.

In pertinent part, s. 461.03, F. S., reads as follows:

". . . minimum requirements for licensure *shall* be a general average in said examination of seventy-five percent in all subjects, *and not less* than fifty percent in any one subject; . . . ." (Emphasis supplied.)

It is clear that the minimum cumulative or general average required by law in the board's licensing examination as a prerequisite for licensure to practice podiatry in this state is 75 percent. It is equally clear that the Legislature established as the threshold "passing" point, a score of 50 percent or more in any one subject of the examination, with a score falling below that point being deemed unsatisfactory. The percentage range lying between 50 and 75 percent in any one subject is satisfactory so long as the overall cumulative or general average is 75 percent. This would mean that an examinee might score within the 50 to 75 percent range on one, or possibly more, subjects of the examination and still attain an overall or general average of 75 percent.

The question here presented, however, is whether an examinee who scores less than 50 percent on any one subject in the examination but still achieves a cumulative or general average of 75 percent in all subjects in the examination will be deemed to have passed the examination and to have become qualified for and entitled to a license to practice the profession of podiatry. The requirement of the statute is twofold. First, it is required that an examinee achieve a "general average in said examination of seventy-five percent in all subjects." Second, it is required that an examinee achieve a score "not less than fifty percent in any one subject."

Reference to s. 461.03, F. S., reflects use of the word "shall" in prescribing the requirements for passage of the podiatry licensing examination, use of such term normally being mandatory. I am of the opinion that use of "shall" in the present case is mandatory, as there is nothing in the context of the statute which indicates any contrary legislative intent. As was pointed out in State *ex rel*. Greenberg v. Florida State Board of Dentistry, 297 So.2d 628, *cert. dismissed* 300 So.2d 900:

"Administrative bodies have no common law powers. They are creatures of the Legislature and what powers they have are limited to the statutes that create them."

In view of the above-quoted principle and upon review of the statutory language involved, I am of the opinion that the effect of the language employed in s. 461.03, F. S., is to require a score of at least 50 percent in each and every subject in the examination conducted by the board and administered to the examinee. Therefore, any examinee who scores less than 50 percent in any one subject on the examination, even though that individual might achieve an overall general average of 75 percent, is not entitled to a license to practice podiatry in the state, and no license shall be issued to such individual.