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R.Q. 0353-GA

June 20, 2005

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
P.O. Box 12458
Austin, TX 78711-2548

Re: Request for Opinion

Dear General Abbott:

This is to respectfully request your opinion pursuant to article IV, section 22, of the Texas Constitution and Chapter 402 of the Texas Government Code regarding the meaning of certain provisions of the Occupations Code that relate to examinations conducted by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

BACKGROUND

Chapter 402 of the Texas Occupations Code creates and governs the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (the Committee). The Committee is established under the auspices of the State Department of Health Services to regulate the fitting and dispensing of hearing instruments. The Committee's responsibilities include examining applicants for licensure.

Section 402.104 of the Occupations Code provides:

- Sec. 402.104. **POWERS AND DUTIES REGARDING EXAMINATION.** (a) The committee shall administer or arrange for the administration of a written examination.
- (b) The examination shall be administered at least twice each year.
- (c) The examination *must be validated by an independent testing professional.* (Emphasis added.)

Section 402.202 of the Occupations Code provides that applicants for licensure must pass the examination given by the Committee. Section 402.204 of the Occupations Code provides, in pertinent part:

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OPINION COMMITTEE

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Sec. 402.204. CONTENTS OF EXAMINATION. (a) The examination must consist of written, oral, or practical tests that are *objective in method and applied in a consistent manner*. (Emphasis added.)

TEX. OCCUPATIONS CODE ANN. §§402.205 (examination shall be in writing and by other means the committee determines adequate to ascertain the qualifications of applicants). Committee Rule 141.15 states that the examination shall consist of a written section and a practical section and that it shall cover the 14 specific subject matter areas listed in Section 402.204(b).

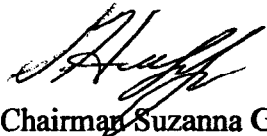
THE ISSUES

Because the practical examination is administered by Committee members, it may vary widely depending on the Committee member conducting the practical examination. This is to seek your opinions on whether the practical examination must be validated by an independent testing professional, and, if not, what standard applies?

The language of section 402.104 (c) appears to be limited to written examinations, since subsection 402.104(a) references only written examinations. In contrast, section 402.204(a) by its terms applies to written and practical examinations and requires that they both be "objective in method and applied in a consistent manner." If the language in subsection 402.104(a) does not apply to the practical examination and if subsection 402.204(a) does *not* require that the practical examinations be independently validated, what does section 402.204(a) require? Further, assuming that the two sections are different, would anything prevent the Committee from seeking independent validation of the practical examination and would that meet the requirement of subsection 402.204(a) of objectiveness and consistency?

Your opinion will help the Committee more efficiently administer the examinations in accordance with the Occupations Code. Thank you for your attention in this matter and please let me know if you need additional information.

Sincerely,



Chairman Suzanna Gratia Hupp

SGH/AL