

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MAGALIS AGUILERA, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 99-4489  
 )  
 DEPARTMENT OF HEALTH, BOARD )  
 OF PSYCHOLOGY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to stipulation of the parties, this matter was submitted to Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings for preparation of a Recommended Order on the basis of a stipulated record, without an evidentiary hearing.

APPEARANCES

For Petitioner: Howard J. Hockman, Esquire  
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For Respondent: Donna Erlich, Esquire  
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STATEMENT OF THE ISSUES

The issues in this case are whether the Petitioner's application for a provisional license as a psychologist and/or

the Petitioner's application for licensure as a psychologist by examination should be granted or denied.

PRELIMINARY STATEMENT

The history of this case began when the Petitioner, Dr. Magalis Aguilera, filed applications for provisional licensure and for licensure by examination with the Board of Psychology on February 23, 1998, and March 19, 1998, respectively. On August 7, 1998, and August 12, 1998, respectively, the Board of Psychology issued and served notices of intention to deny the Petitioner's applications for provisional licensure and licensure by examination.

On December 4, 1998, pursuant to the Petitioner's request, a hearing not involving issues of disputed material fact was held before the Board of Psychology. At the conclusion of the December 4 hearing, the Board of Psychology entered a Final Order denying both of the Petitioner's applications for licensure. The Petitioner appealed the Final Order. Her arguments on appeal included the assertion that she had been improperly denied an evidentiary hearing before the Division of Administrative Hearings. In an opinion issued on October 13, 1999, 1/ the Third District Court of Appeal wrote:

Magalis Aguilera, a graduate of a psychology doctoral program at a non-accredited school, appeals a final order denying her application to the Department of Health, Board of Psychology ("the board")

for licensure by examination and provisional licensure pursuant to §§ 490.005, .0051, Florida Statutes (1997). At the outset of the non-evidentiary administrative hearing, the board specifically advised Aguilera, who appeared before the board pro se, that if any material issues of fact arose during the course of the proceedings, the hearing would have to be terminated and referred to a hearing officer at the Department [sic] of Administrative Hearings ("DOAH"). The issue at the hearing below was whether the doctoral degree received by Aguilera was comparable to a doctoral degree from an accredited school program. Because we conclude that this issue was a mixed question of fact and law, we hold that the board erred in not submitting this matter to a hearing officer at DOAH, as it had indicated that it would.

We, therefore, reverse the final order under review and remand with instructions that this matter be submitted to a hearing officer at DOAH.

Consistent with the foregoing opinion, on October 25, 1999, this matter was referred to the Division of Administrative Hearings. By means of a Notice of Hearing issued on November 9, 1999, the case was scheduled for final hearing on February 8, 2000.

Shortly before the scheduled hearing date, the parties both waived their right to an evidentiary hearing and agreed that this case would be submitted to the administrative law judge for preparation of a Recommended Order on the basis of a stipulated record. 2/ A deadline was established for the filing of proposed recommended orders, and on February 16, 2000, both

parties timely filed proposed recommended orders containing proposed findings of fact and conclusions of law. 3/ The parties' proposals have been carefully considered during the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. In 1987, the Petitioner earned a doctorate degree in Psychology, the Psy.D. degree, from the Caribbean Center for Advanced Studies in San Juan, Puerto Rico. The psychology program at the Caribbean Center for Advanced Studies was not accredited by the American Psychological Association (APA) during the time the Petitioner participated in that program. 4/

2. At all times material to this case, the APA has been the only credentialing agency for psychology programs recognized by the United States Department of Education.

3. The Petitioner filed applications for provisional licensure and for licensure by examination with the Board of Psychology on February 23, 1998, and on March 19, 1998, respectively. On August 7, 1998, and on August 12, 1998, respectively, the Board of Psychology issued and served notices of intention to deny the Petitioner's applications for provisional licensure and for licensure by examination.

4. The Board notice issued on August 7, 1998, read as follows, in pertinent part:

Notice is hereby provided that the Board of Psychology (Board) intends to DENY the application for provisional licensure.

The Board reviewed and considered the application for licensure at the regularly scheduled Board meeting held on June 28, 1998, in Key West, Florida, and has determined that it be DENIED. As grounds therefore, the Board states that the applicant failed to demonstrate that her degree was augmented in or obtained from a program comparable to a program accredited by the American Psychological Association (APA).

Rule 64B19-11.0035 of the Florida Administrative Code requires an original, signed letter, on official letterhead sent directly to the Board from the director of an APA accredited doctoral psychology program that confirms the comparability of the applicant's program to an APA accredited program. The letter must enumerate the exact documents that were reviewed in determining comparability. While the letter submitted on behalf of the applicant indicates that academic records were reviewed, the exact documents are not disclosed. Additionally, according to the application transcripts, the applicant had insufficient coursework in the field of Psychology to have earned a degree comparable to a degree from an APA accredited program. The institution she attended awarded the applicant a minimum of 18 transfer credits for courses taken in the field of Social Work.

WHEREFORE, the Board voted to deny the application.

5. The Board notice issued on August 12, 1998, advised the Petitioner of the Board's intention to deny her application for licensure by examination for reasons identical to those quoted above.

6. The Petitioner requested, and was granted, an informal hearing before the Board of Psychology on both of her applications. Following an informal hearing (which the Petitioner attended without benefit of legal counsel), the Board of Psychology issued a Final Order denying both of the Petitioner's applications. That Final Order (which has since been reversed) 5/ read as follows, in pertinent part:

THIS MATTER came before the Board of Psychology (Board) for final action pursuant to section 120.569, and subsection 120.57(2), Florida Statutes, at a duly-noticed public meeting of the Board on December 4, 1998, in Orlando, Florida, for the purpose of a hearing not involving disputed issues of material fact based on the Board's Notice of Intention to Deny Application for Licensure by Examination and Notice of Intention to Deny Application for Provisional Licensure, copies of which are attached to and made a part of this Final Order, as Exhibits A and B. Applicant Magalis Aguilera participated in the hearing before the Board.

After a complete review of this matter, including the evidence presented by Applicant, the Board made the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Applicant, Magalis Aguilera obtained an advanced degree in psychology in 1987 from the Caribbean Center for Advanced Studies. The program she attended was not accredited by the American Psychological Association (APA).

2. Pursuant to section 490.004, Florida Statutes, Dr. Aguilera applied for a provisional license and for licensure by examination by contending that the

educational program that she attended was comparable to an APA-approved program.

3. Applicant obtained a letter dated September 1, 1998, from the Director of the Psy.D Program at the Caribbean Center for Advanced Studies, which asserted that the Applicant's program was comparable to an APA accredited program. The letter indicated that certain documents were reviewed to determine comparability including the official transcript at the Registrar's office.

4. Applicant's transcript reveals that the program from which she graduated awarded Applicant a minimum of 18 transfer credits for courses taken in the field of Social Work.

5. The September 1, 1998, letter from the Director of an accredited APA program is inaccurate with regard to the Applicant because APA-approved programs do not award a significant amount of transfer credit for courses taken outside of the field of psychology.

#### CONCLUSIONS OF LAW

6. To be licensed as a psychologist by examination or to obtain a provisional license, an applicant must submit proof satisfactory to the Board that the applicant has graduated with a doctoral-level psychological education from an APA-accredited program or from a program comparable to such a program. §§490.003 and 490.005(1)(b), Fla. Stat.

7. The transcript establishes that the program Applicant attended was not comparable and, therefore, Applicant did not satisfy the criteria for licensure as a psychologist in Florida.

WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that, based on the foregoing, the applications of Magalis Aguilera for licensure by examination and for provisional licensure are DENIED.

7. As mentioned in the text of the Final Order quoted above, the Board of Psychology had before it, and considered, a letter dated September 1, 1998, from the Director of an APA-accredited program. That letter was not available to the Board at the time it issued its earlier notices of intent to deny the Petitioner's applications.

8. The psychology program from which the Petitioner received her doctoral degree allowed her to transfer at least 18 hours of credits she had earned in a master's program in Social Work at the University of Puerto Rico. This transfer of credits has no bearing on the comparability of the psychology program from which the Petitioner graduated to APA-accredited psychology programs in existence at that time. The extent to which a program does or does not accept transfer credits is not listed as an accreditation criterion in the APA's Criteria for Accreditation of Doctoral Training Programs and Internships in Professional Psychology, nor is such a criterion described in Rule 64B19-11.0035, Florida Administrative Code. The acceptance of transfer credits is generally a matter of program discretion, which can appropriately vary substantially between APA-accredited programs. Further, the courses for which transfer credits were granted to the Petitioner are all in a closely related field and are comparable to courses that could be, and



often are, taught in APA-accredited programs. For example, courses in alcoholism, dynamic social functioning, social work with individual families and small groups, are all likely to have comparable doctoral level psychology courses in many APA-accredited programs. In this regard it is noted that at subparagraph (f) on page 8 of the APA accreditation document there is a provision reading:

Students, based on their needs and individual interests, should have access to appropriate instruction in related fields such as anthropology, biology, genetics, neuroscience, sociology, and other behavioral and social sciences.

Such being the case, the acceptance of transfer credits from a master's program in Social Work would appear to be consistent with the APA's accreditation philosophy. 6/

9. Although the Psy.D. program at the Caribbean Center for Advanced Studies in San Juan, Puerto Rico, was not accredited by the APA at the time the Petitioner received her doctoral degree, it was comparable to APA-accredited programs in existence at that time. The educational and training philosophy of the program from which the Petitioner graduated accomplished the six professional core competencies established by the APA within the Practitioner Model. The academic program provided and implemented a coherent curriculum plan with a course content in the areas of curriculum specified by APA standards. Clinical

training at the program from which the Petitioner graduated enabled students to perform professional duties related to the core competencies consistent with the standards for professional psychology programs. 7/

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes; Aguilera v. Board of Psychology, 743 So. 2d 1153 (Fla. 3d DCA 1999).

11. Statutory provisions regulating the procedure to be followed in cases involving applications for licenses include Section 120.60(3), Florida Statutes, which reads as follows:

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has requested notice of agency action. Each notice shall inform the recipient of the basis for the agency decision, shall inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, shall indicate the procedure which must be followed, and shall state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the

notice and the certification shall be filed with the agency clerk.

12. With regard to provisional licensure to practice psychology, Section 490.0051, Florida Statutes, reads as follows:

490.0051 Provisional licensure; requirements.

(1) The department shall issue a provisional psychology license to each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$250, as set by board rule.

(b) Earned a doctoral degree in psychology as defined in s. 490.003(3).

(c) Met any additional requirements established by board rule.

(2) A provisional licensee must work under the supervision of a licensed psychologist until the provisional licensee is in receipt of a license or a letter from the department stating that he or she is licensed as a psychologist.

(3) A provisional license expires 24 months after the date it is issued and may not be renewed or reissued.

13. With regard to licensure by examination to practice psychology, Section 490.005, Florida Statutes, provides, in pertinent part:

490.005 Licensure by examination.

(1) Any person desiring to be licensed as a psychologist shall apply to the department to take the licensure examination. The department shall license each applicant who the board certifies has:

\* \* \*

(b) Submitted proof satisfactory to the board that the applicant has:

\* \* \*

4. Received and submitted to the board, prior to August 31, 2001, certification of a doctoral-level program that at the time the applicant was enrolled and graduated maintained a standard of education and training comparable to the standard of training of programs accredited by a programmatic agency recognized and approved by the United States Department of Education. Such certification of comparability shall be provided by the program director of a doctoral-level psychology program accredited by a programmatic agency recognized and approved by the United States Department of Education.

14. Statutory definitions which must be considered in order to understand and apply the statutory provisions quoted above are found at Section 490.003, Florida Statutes, which includes the following:

490.003 Definitions. As used in this chapter:

(1) "Board" means the Board of Psychology.

(2) "Department" means the Department of Health.

(3)(a) Prior to July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:

1. An educational institution which, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing

with the Association of Universities and Colleges of Canada; and

2. A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from an accrediting agency recognized and approved by the United States Department of Education or was comparable to such programs.

(b) Effective July 1, 1999, "doctoral-level psychological education" and "doctoral degree in psychology" mean a Psy.D., an Ed.D. in psychology, or a Ph.D. in psychology from:

1. An educational institution which, at the time the applicant was enrolled and graduated, had institutional accreditation from an agency recognized and approved by the United States Department of Education or was recognized as a member in good standing with the Association of Universities and Colleges of Canada; and

2. A psychology program within that educational institution which, at the time the applicant was enrolled and graduated, had programmatic accreditation from an agency recognized and approved by the United States Department of Education.

15. Rule provisions which bear on the issues in this case include Rule 64B19-11.003, Florida Administrative Code, which provides:

(1) To show eligibility for examination, an applicant must prove possession of either a Psy.D., a Ph.D. in psychology or an Ed.D. in psychology. No other academic degrees will be considered, and the applicant will be denied outright, regardless of the program from which the applicant graduated, if proof of such degree is lacking.

(2) An applicant who meets the requirements of (1) must also prove that the degree was obtained from a psychology program which, at the time when the

applicant was enrolled in it and at the time when the applicant graduated from it, was either:

(a) approved and accredited by the American Psychological Association; or

(b) comparable to a program approved and accredited by the American Psychological Association at the same time.

(3) Alternatively, an applicant who meets the requirements of (1) may augment his or her education by complying with Section 490.005(3), F.S., and, thereby, certify for examination by submitting proof of such augmentation.

(4) To prove comparability or augmentation, an applicant must cause a letter to be submitted directly to the Board office from the director of a doctoral program currently approved and accredited by the American Psychological Association. The letter must have the original signature of the director and it must be written on the letterhead of the doctoral program which is approved and accredited by the American Psychological Association. The letter must state unequivocally that the program from which the applicant received the Psy.D., the Ph.D. in psychology or the Ed.D. in psychology was comparable to a program accredited and approved by the American Psychological Association at the same time. The letter shall enumerate the exact documents that were reviewed in determining comparability or augmentation. Alternatively, the letter must state unequivocally that the applicant's education has been augmented to the standards of an education currently received at a program accredited and approved by the American Psychological Association.

(5) For the purpose of this rule, an applicant "was enrolled" if the applicant's entry into the program took place within seven (7) years prior to the applicant's date of graduation.

16. The following portions of Rule 64B19-11.0035, Florida Administrative Code, also bear on the issues in this case:

(4) The following proof is satisfactory to the Board for the purpose of showing that the applicant's degree obtained outside of the United States or Canada was equivalent to a Ph.D. in psychology, a Psy.D., or an Ed.D. in psychology and was obtained from a program equivalent to a program accredited by a programmatic accrediting agency recognized and approved by the U.S. Department of Education: an original, signed letter on official letterhead confirming same and sent directly to the Board from the director of a doctoral psychology program accredited by the accrediting agency recognized and approved by the United States Department of Education. The letter shall enumerate the exact documents that were reviewed in determining comparability or augmentation. The Board shall also require the validation of degree and internship equivalence performed by a credentials' evaluation service acceptable to the Board.

(5) For a section 490.005(1)(b)4. applicant only, the Board will apply the following criteria to determine whether an applicant's doctoral program was a program which maintained a standard of training comparable or substantially equivalent to the standard of training of programs accredited by the accrediting agency recognized and approved by the United States Department of Education:

\* \* \*

(g) The doctoral program must require a minimum of three academic years of full-time graduate study, defined as at least 18 credit hours per year, at least two academic years of which must be at a single institution, and one year of which must be in full-time residence at the institution

from which the doctoral degree is granted. .

. .

17. With regard to the Petitioner's application for a provisional license to practice psychology, it is first noted that there has been a change in the applicable statutes since the date of the Petitioner's application for a provisional license. Prior to July 1, 1999, a provisional license could be issued to a graduate with an appropriate degree from a psychology program that was "comparable to" a psychology program that had "programmatically accredited from an accrediting agency recognized and approved by the United States Department of Education." After July 1, 1999, the issuance of provisional licenses is authorized only to those who graduated from a psychological program that was accredited at the time the graduate participated in the program. Sections 490.0051(1)(b) and 490.003(3), Florida Statutes. The psychology program from which the Petitioner graduated was not accredited at the time the Petitioner participated in the program. Accordingly, the Petitioner is not eligible for a provisional license under the current statutory provisions. The Petitioner argues that her application for a provisional license should be decided on the basis of the law in effect at the time of her application, rather than on the basis of the current law. The argument fails because it appears to be well-settled that "Florida follows the



general rule that a change in a licensure statute that occurs during the pendency of an application for licensure is operative as to the application, so that the law as changed, rather than as it existed at the time the application was filed, determines whether the license should be granted." Lavernia v. Department of Professional Regulation, Board of Medicine, 616 So. 2d 53 (Fla. 1st DCA 1993); and Agency for Health Care Administration v. Mount Sinai Medical Center of Greater Miami, 690 So. 2d 689 (Fla. 1st DCA 1997). Accordingly, the Petitioner's application for a provisional license must be denied.

18. Turning now to the Petitioner's application for licensure by examination, it is first noted that Section 490.005(1)(b)4, Florida Statutes, allows for licensure by examination of, among others, those who graduated from an unaccredited psychology program that was "comparable to" accredited psychology programs at the time the applicant participated in the unaccredited program. The Respondent's arguments in this case seem to be predicated on an interpretation of Section 490.005(1)(b)4, Florida Statutes, that treats the word "comparable" as meaning "the same as." Such an interpretation is more narrow than the plain and ordinary meaning of the word "comparable." And it is well-settled in this state that, in the normal course of events, the words in a statute should be given their plain and ordinary meaning. Harper

v. State, 217 So. 2d 591 (Fla. 4th DCA 1969). As noted as long ago as Gaulden v. Kirk, 47 So. 2d 567 (Fla. 1950), at page 574:

Courts should always give words in the statutes and constitutional provisions the meaning accorded them in common usage unless a different connotation is expressed in or necessarily implied from the context of the statute or constitutional provision in which they appear.

19. Courts often turn to the dictionary to ascertain the meaning of words used in statutes. The American Heritage Dictionary of the English Language (1973), at page 270, defines the word "comparable" as: "1. Able to be compared; having traits or qualities in common; similar or equivalent. 2. Worthy of comparison." Further meaning is gleaned by consideration of the definition at page 271 of the word "compare," which includes the following: "To represent as similar, equal, or analogous." From the dictionary definitions it is clear that, while things that are "equal" are "comparable," things that fall short of being "equal," but that are shown to be "similar," or "equivalent," or "analogous," are also "comparable" to the thing with which they are "similar," or "equivalent," or "analogous."

8/ Thus, the inquiry in this case is not whether the psychology program from which the Petitioner graduated was the same as, equal to, or identical to, accredited psychology programs at that time. The appropriate inquiry here is whether the psychology program from which the Petitioner graduated was

similar to, equivalent to, or analogous to, accredited psychology programs at that time.

20. The greater weight of the evidence in this case is to the effect that the psychology program from which the Petitioner received her degree was at least similar to and equivalent to APA-accredited programs at that time. Accordingly, the Petitioner is eligible for licensure by examination and must be allowed to take the examination.

21. The Respondent argues that the Petitioner's application for licensure should be denied for several additional reasons. Those additional reasons do not warrant further discussion here, because denial of licensure on any of the additional reasons is barred by both Section 120.60(3), Florida Statutes, (quoted in paragraph 11, above) and by fundamental notions of due process and fair play. The statute requires notice to the applicant which "must state with particularity the grounds or basis for issuance or denial of the license." Fundamental notions of due process and fair play preclude an agency from requiring an applicant to litigate issues which have not previously been identified as a basis for the agency's denial.

#### RECOMMENDATION

Based on all of the foregoing, it is RECOMMENDED that the Board issue a final order in this case denying the Petitioner's

application for a provisional license, and granting the  
Petitioner's application to take the licensure examination.

DONE AND ENTERED this 16th day of June, 2000, in  
Tallahassee, Leon County, Florida.

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MICHAEL M. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of June, 2000.

ENDNOTES

- 1/ Aguilera v. Board of Psychology, 743 So. 2d 1153 (Fla. 3d DCA 1999).
- 2/ The contents of the stipulated record are itemized in the parties' Stipulated Record Document List filed on January 31, 2000.
- 3/ On February 16, 2000, the Petitioner also filed a separate document titled Petitioner's Argument. That document has been treated as part of the Petitioner's Proposed Recommended Order.
- 4/ The psychology program at the Caribbean Center for Advanced Studies is presently accredited by the American Psychological Association.
- 5/ The text of the appellate court opinion reversing the Board's Final Order is included in the Preliminary Statement in this Recommended Order.

6/ The findings of fact in this paragraph are derived in large part from the evidence presented by Dr. Altieri, an expert witness on behalf of the Petitioner. Dr. Bauer, an expert witness on behalf of the Board, agrees that there is nothing in the APA accreditation criteria that specifically addresses transfer of credits. (Pages 66-67 of Bauer deposition.)

7/ Again, the findings of fact in this paragraph are derived in large part from the evidence presented by Dr. Altieri, an expert witness on behalf of the Petitioner.

8/ The Board's expert witness agrees with this interpretation of the word "comparable." At page 21 of his testimony, he acknowledges his "understanding that a program does not have to be identical to an APA-accredited program, but that it must be similar or of similar quality."

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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.