STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GARY RANDALL OSTOSKI,

Petitioner,

vs. CASE NO. 99-5247

BOARD OF PHYSICAL THERAPY

Respondent.
_____/

FINAL ORDER

This cause came before the Board of Physical Therapy Practice pursuant to Section 120.569 and l20.57(1), Florida Statutes, on May 25, 2000 by telephone conference can, for the purpose of considering the Recommended Order and Respondent's Exceptions To The Recommended Order (copies of which are attached here to as Exhibits A and B, respectively) in the above-styled cause. Respondent was represented by Ann Cocheu, Assistant Attorney General. Petitioner did not participate in the conference call. Legal advisor to the Board was M. Catherine Lannon.

Upon review of the Recommended Order, the Exceptions, the argument of the Respondent, and after review of the complete record in this case the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

The Board reviewed the exceptions filed by the Respondent and makes the following rulings:

1. The Board grants exceptions 1 and 2 to the Findings of Fact on the basis that there is no competent substantial evidence to support the Findings of Fact by the Administrative Law Judge. There is no competent evidence that the state of Colorado did any other than allow Petitioner to take the examination. Therefore paragraph 5 of the Recommended Order should so amended. In addition, the assertion in the Recommended Order that "Pensioner passed the Colorado PES examination" must be amended to delete the word Colorado. The

PES examination is a national, not a state examination. Accordingly, the first sentence of paragraph 12 of the Recommended Order is amended to state, Petitioner passed the PES examination."

2. The Board grants Respondent's exception number 3 which takes exception to the last sentence in paragraph 14 of the Findings of Fact in the Recommended Order. Regardless of whether the assertion, "Respondent's legal interpretation of applicable statutes and rules is a legal interpretation rather than a matter within the ambit of agency expertise," is a Finding of Fact or a Conclusion of Law, the Board rejects that assertion on the basis that agencies are the appropriate parties to interpret their statutes. The Board expressly adopts and incorporates into this Order the reasoning set forth in Respondent's exceptions on this point.

3. The Board grants all of Respondent's exceptions to the Conclusions of Law, numbered 4 through 9, and expressly adopts and incorporates the assertions therein as the correct Conclusions of Law.

FINDINGS OF FACT

1. The Findings of Fact set forth in the Recommended Order are approved and adopted and incorporated by reference with the amendments reflected in the rulings on Respondent's exceptions above.

2. There is competent substantial evidence to support the Findings of Fact of the Board.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes. The Conclusions of Law in paragraph 15, 16, and 18 of the Recommended Order are approved and adopted and incorporated herein by reference.

2. The Board rejects the Conclusion of Law set forth in paragraph 17 and in lieu thereof makes the following finding: "Petitioner failed to satisfy his burden of proof."

3. The Board rejects the Conclusion of Law set forth in paragraph 19 on the basis that the Administrative Law Judge construed Section 486.031(3), Florida Statutes, in isolation. In lieu of the conclusions set forth by the Administrative Law Judge, the Board finds as follows:

a. Mere passage of the national examination for endorsement applicants is not the sole criterion for licensure. All candidates, whether foreign or U.S. trained and whether candidates for examination or endorsement, must establish equivalency of education. The rationale adopted by the Administrative Law Judge through his conclusions of law create an illogical loophole that discriminates against individuals who attend four-year and five-year accredited programs in favor of anyone who, regardless of the length or quality of education, can find a jurisdiction which will permit him or her to take the national examination. (Contrary to the implication of the Administrative Law Judge in paragraphs 12, 13, and 30 there are no individual state PES exams. The PES exam is a national exam).

b. Section 486.015, F.S., clearly states the legislative intent of the Physical Therapy Practice Act "is to ensure that every physical therapy practitioner practicing in this state meets minimum requirements for safe practice." The position expressed by the Administrative Law Judge would permit a grossly unequal educational standard.

c. In order to determine equivalence, logically, one must have a standard against which other things are compared. Foreign education is compared to accredited U.S. programs. Statutes in this instance cannot be read in isolation but in pari materi to construe Sections 486.031(3)(a), (3)b, and (3)(c) and Section 486.081 in light of the intent expressed in Section 486.015, F.S. The rules of statutory construction require a statute be read so as to give meaning to every part. Beach v. Great Western Bank, 692 So.2d 146 (Fla. 1997); Unruh v. State, 669 So.2d 242 (Fla 1996). Section 486.081, F.S. as referenced in Section 486.031(3)(c) requires standards "as high those of this state" to be the criteria for licensure by endorsement. No evidence was adduced, nor is it logical to say that the standard for licensure in this state is mere passage of the examination. Successful completion of an accredited physical therapy program or its equivalent is also necessary.

d. The Administrative Law Judge violated one of the fundamental rules of statutory construction: that statutes are to be read to avoid making any part meaningless. Unruh, supra; Forsythe v. Long Boat Key Erosion District, 604 So.2d 452 (Fla. 1992). Not only is one to read statutes in such a way as to avoid rendering any part meaningless, but also one has an affirmative responsibility to "give full effect to all

statutory provisions and construe related statutory provisions in harmony with one another." Forsythe v. Longboat Key Beach Erosion District, supra, at 455; see also Sharer v. Hotel Corporation of America, 144 So.2d 813, 817 (Fla. 1962). The legislature is presumed not to enact purposeless or useless laws.

4. The Board rejects the Conclusions of Law set forth in paragraph 20. While labeled as a Conclusion of Law, it is a factual finding that does not have competent substantial evidence to support it. The credential's evaluator did not find equivalence to educational preparation in this county. The finding as stated in paragraph 7 of the Findings of Fact was that the education was equivalent to "a Bachelor of Science in Physical Therapy (non-traditional program) awarded by nonaccredited colleges and universities." Section 486.031 (3)(a), F.S., clearly states that approved programs must be so deemed by appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education. Section 486.031 (3)(b), F.S. requires equivalence to that U.S. standard for foreign graduates.

5. The Board rejects paragraph 21 of the Recommended Order on the basis that the Board does believe it has the authority to establish the baseline standard for education by evaluating equivalency. The uncontroverted testimony showed that the school Petitioner attended itself asked for Board approval and took no action when the Board did not approve it. Section 486.025, F.S., gives the Board authority to "review the standing and reputability of any school or college offering courses in physical therapy and whether the courses of such school or college in physical therapy meet the standards established by the appropriate accrediting agency referred in section 486.031(3)(a)." As the uncontroverted evidence showed this accrediting agency was CAPTE. Petitioner never challenged the Board's authority to look at schools. He merely argued that it was unfair for the Board to have not told him his school was unapproved prior to his applying for licensure.

6. The Board rejects the Conclusions of Law set forth in paragraphs 22 through 24 of the Recommended Order. This was not a rule challenge proceeding, nor were the issues addressed in these paragraphs raised by Petitioner. At best, the issues at hearing testified to by Petitioner were simply how he thought the statute and rule should be interpreted. He disagreed with the Board's interpretation. For the

Administrative Law Judge to make legal conclusions that de facto invalidate a rule or policy in the complete absence of such issues having been raised in the pleadings or having been the material facts in dispute is fundamentally unfair and devoid of due process. Further, while the Board recognizes that it cannot enlarge, modify or contravene the statutory requirements, it believes that its interpretation implements the statute in a reasonable and coherent manner, as explained in this Order.

7. The Board rejects the Conclusions of Law in paragraphs 25 through 29 for the reason set forth above. As stated earlier, the Administrative Law Judge looked at the Section 486.081, F.S., provision in isolation. Mere passage of an examination is not the legislative intent, educational equivalency is necessary to assure all candidates demonstrate minimum equivalency. In interpreting Section 486.081, Florida Statutes, the Administrative Law Judge overlooks the requirement in (1) that the standards for licensure and physical therapy in the other state must be determined by the Board to be "as high as those of this state. . ."

8. The Board rejects the Conclusions of Law set forth in paragraphs 30 Trough 33. The Board is the agency that administers physical therapy licensure decisions and has the specific authority to evaluate physical therapy education. The Administrative Law Judge's legal conclusions completely undermine the Board's duties and responsibilities granted to it by the legislature. The Board believes the law cited above articulates the proper standard. Otherwise, licensure is merely a ministerial act, and there is no purpose for any decision making to certify candidates by endorsement. The legislature did not establish licensure by reciprocity in which full faith and credit were to be given those licensed in other states. The standards for licensure in the other jurisdiction must be as high as those of this state. Section 486.081, F.S. Education equivalent to a CAPTE accredited physical therapy program and passage of the national exam are those standards.

DISPOSITION

Based on the findings and conclusions set forth above, the Board concludes that Petitioner Gary Randall Ostoski has failed to demonstrate that he satisfies the requirements of Sections 486.031(3)(b) or (c) or 486.081, F.S.

WHEREFORE, IT IS HEREBY ORDERED that the application for licensure by endorsement as a physical therapist is DENIED.

This Order takes effect upon filing with the Clerk of the Department of Health.

DONE and ORDERED this 19th day of July, 2000.

BOARD OF PHYSICAL THERAPY PRACTICE

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ANNIE CANDELA, VICE CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served by Certified Mail to Wilson Jerry Foster, Suite 101-A, 1342 Timberlane Road, Tallahassee, Florida 32312 and Gary Ostoski, 3865 Hidden Hills, Titusville, Florida 32780, and by Interoffice Mail to Daniel Manry, Administrative Law Judge, Division of Administrative Hearings, Desoto Bailding, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550 and Ann Cocheu, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 20th day of July, 2000.

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Connie Singletary