

FILED DATE MAY 22 2014
Department of Health

By: *Angela Sanders*
Deputy Agency Clerk

STATE OF FLORIDA
THE FLORIDA BOARD OF PSYCHOLOGY

RUTH C. PREVOR, PH.D.
PETITIONER,

DEPARTMENT OF HEALTH,
BOARD OF PSYCHOLOGY,
RESPONDENT.

DOAH CASE NO.: 13-3520

FINAL ORDER

This cause came before the Board of Psychology (Board), pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on April 25, 2014, in Orlando, Florida. The purpose of the cause was for consideration of the Honorable Darren A. Schwartz's Recommended Order issued on January 28, 2014 (attached hereto as Exhibit "A"); Petitioner's Exceptions that were timely filed (attached hereto as Exhibit "B"); and Respondent's Response to Exceptions (attached hereto as Exhibit "C" and cited as Pet. Resp. Pg XX.). Petitioner was not present or represented at the meeting. Petitioner was properly noticed of the meeting. Respondent was present at the meeting and was represented by Lealand Lane McCharen, Assistant General Counsel, Department of Health.

APPEARANCES

For Petitioner: Not Present

For Respondent: Lealand Lane McCharen, Esquire
Assistant General Counsel
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

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DIVISION OF
ADMINISTRATIVE
HEARINGS

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

RULINGS ON EXCEPTIONS

1. Petitioner's Exception Number 1: DENIED. Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph four (4) of the Recommended Order that Petitioner moved from Puerto Rico to the United States arguing that Puerto Rico is a commonwealth of the United States. However, Puerto Rico is not a state; it is an unincorporated territory. The Board hereby adopts and incorporates the Respondent's response to exception number 1. Resp. Resp. Pg. 1.
2. Petitioner's Exception Number 2: DENIED. Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph seven (7) that Petitioner had not applied to be licensed by examination or Diplomate status arguing that licensure by examination is only available to applicants who obtained their doctorate degrees outside the United States and Canada. Petitioner, however, fails to reference that licensure by examination is available to applicants who have received doctoral-level psychological training as defined in Sections 490.003(3) and 490.005(b)(1), Florida Statutes. The Board hereby adopts and incorporates the Respondent's response to exception number 2. Resp. Resp. Pgs. 1-2.
3. Petitioner's Exception Number 3: DENIED. Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph eighteen (18) of the Recommended Order that Petitioner did not meet the possess the minimum statutory qualifications to be licensed in Florida by endorsement pursuant to Section 490.006, Florida Statutes, because at the time she was enrolled and graduated with her Ph.D. in 1988, the program was not accredited by the APA. Petitioner argues that these minimum statutory qualifications have been met by the submission of a comparability study on her behalf. The statutory definitions of a doctoral-level psychological education and a doctoral degree in psychology do not allow for such comparability studies to show equivalence. The Board hereby adopts and incorporates the Respondent's response to exception number 3. Resp. Resp. Pg.2.
4. Petitioner's Exception Number 4: DENIED. Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph nineteen (19) of the Recommended Order that Petitioner failed to prove that she is entitled to a waiver of Fla. Admin. Code Rule 64B19-11.0035 because she failed to prove that the underlying purpose of the statute would be met and that she failed to prove hardship or unfairness in denial of the waiver. Petitioner argues that she did provide competent, substantial evidence of same. However, the underlying purpose of the statute is to demonstrate that

an applicant holds a doctoral-level degree as defined in Section 490.003, Florida Statutes and Petitioner cannot demonstrate this. The Board hereby adopts and incorporates the Respondent's response to exception number 4. Resp. Resp. Pgs. 2-3.

5. Petitioner's Exception Number 5: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty (20) of the Recommended Order that the purpose of the underlying statute for licensure by endorsement would not be met by a variance or waiver from the rule because Petitioner does not meet the minimum educational requirements of the statute to be licensed by endorsement. Petitioner again argues that the submission of the comparability study demonstrates that Petitioner does meet these minimum requirements. However, the statutory definitions of doctoral-level psychological education and doctoral degree in psychology do not allow for the submission of a study to prove equivalency to an APA approved program of education. The Board hereby adopts and incorporates the Respondent's response to exception number 5. Resp. Resp. Pg. 3.
6. Petitioner's Exception Number 6: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-two (22) of the Recommended Order that allowing the Board to accept the comparability study submitted by Petitioner would violate the applicable statutes. Petitioner argues that the statutes are merely silent on this issue. However, prior to July 1, 1999, the statute allowed for the submission of such a comparability study. After this date, the ability to show comparability was removed from the definition of doctoral-level psychological education and doctoral degree in psychology. The Board hereby adopts and incorporates the Respondent's response to exception number 6. Resp. Resp. Pgs. 3-4.
7. Petitioner's Exception Number 7: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-three (23) of the Recommended Order that the Board's acceptance of the comparability study would violate the statutory requirement that the applicant must have been enrolled in and graduated from a doctoral program that, at the time, was accredited by the APA. Petitioner again argues that the statute is merely silent on this issue. However, prior to July 1, 1999, the statute allowed for the submission of such a comparability study. After this date, the ability to show comparability was removed from the definition of doctoral-level psychological education and doctoral degree in psychology. The Board hereby adopts and incorporates the Respondent's response to exception number 7. Resp. Resp. Pgs. 4-5.
8. Petitioner's Exception Number 8: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-four (24) of the Recommended Order that Petitioner could not overcome her failure to satisfy the minimum statutory educational requirements by seeking a variance or waiver from a rule. Petitioner argues that Fla. Admin. Code Rule 64B19-11.0035 expressly authorized comparability studies for licensure by endorsement. However, the rule never applied to licensure by endorsement, and the Board may not waive a requirement of its practice act.

The Board hereby adopts and incorporates the Respondent's response to exception number 8. Resp. Resp. Pg. 5.

9. Petitioner's Exception Number 9: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-five (25) of the Recommended Order that Fla. Admin. Code Rule 64B19-11.0035 is only applicable to licensure by examination. Petitioner argues that Board staff routinely cited to this rule in correspondence related to licensure by endorsement. However, Board staff is not the party that determines whether an applicant is qualified for licensure. That duty rests solely with the Board. The Board hereby adopts and incorporates the Respondent's response to exception number 9. Resp. Resp. Pg. 6.
10. Petitioner's Exception Number 10: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-seven (27) of the Recommended Order that the rule, in prior and current versions, does not create an exception to the statutory requirement that the doctoral program must have been APA accredited at the time of enrollment and graduation, and that if the Board had previously accepted comparability studies under the older version of the rule, it did so in violation of the statute. Petitioner again makes the merely silent argument and states that the Board was previously lenient in accepting comparability studies. The Board's current practice is in accordance with and does not violate the provisions of statute. The Board hereby adopts and incorporates the Respondent's response to exception number 10. Resp. Resp. Pg. 6.
11. Petitioner's Exception Number 11: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-eight (28) of the Recommended Order that Petitioner did not provide persuasive evidence that the other persons are similarly situated to her. Petitioner argues that the only substantive difference was that the others filed applications prior to the rule amendment in 2011. However, the amendment changed the manner in which applications were evaluated by the Board. Thus, Petitioner's argument is based on an old rule no longer in effect. The law in effect at the time of application is the governing law. The Board hereby adopts and incorporates the Respondent's response to exception number 11. Resp. Resp. Pgs. 6-7.
12. Petitioner's Exception Number 12: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-nine (29) of the Recommended Order that Petitioner failed to prove that that application of the current rule to her circumstances would violate principles of fairness or impose a substantial hardship because she has the option of pursuing other pathways to licensure. Petitioner argues that she did present competent and substantial evidence for both criteria. However, the Administrative Law Judge is the trier of fact and the Board may not reweigh the evidence. The Board hereby adopts and incorporates the Respondent's response to exception number 12. Resp. Resp. Pg.7.

13. Petitioner's Exception Number 13: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-nine (29) that there is not unfairness or substantial hardship because Petitioner has alternative pathways to licensure. Petitioner argues that this does not equate to a failure to demonstrate unfairness of hardship. However, the fact that Petitioner has not exhausted other pathways to licensure does show that she has not demonstrated unfairness or hardship. The Board hereby adopts and incorporates the Respondent's response to exception number 13. Resp. Resp. Pgs.7-8.
14. Petitioner's Exception Number 14: **DENIED.** Petitioner takes exception to the Administrative Law Judge's finding of fact in paragraph twenty-nine (29) of the Recommended Order that Petitioner did not demonstrate hardship because she could pursue licensure through Diplomate status with the ABPP because this is in excess of the qualifications for licensure in Florida. Simply because something is difficult does not automatically relieve an applicant of showing unfairness or hardship. The Board hereby adopts and incorporates the Respondent's response to exception number 14. Resp. Resp. Pg.8.
15. Petitioner's Exception Number 15: **DENIED.** Petitioner takes exception to the Administrative Law Judge's conclusion of law in paragraph thirty-five (35) that the purpose of the underlying statute would not be met if Petitioner were granted a waiver of variance from the rule because Petitioner does not meet the minimum educational standards of the statute to be licensed by endorsement. Petitioner argues that the minimum statutory qualifications have been met through the submission of the comparability study. The statute, Section 490.003(3), Florida Statutes, does not allow for comparability studies to prove equivalency to an APA approved program of education. The Board hereby adopts and incorporates the Respondent's response to exception number 15. Resp. Resp. Pg.8.
16. Petitioner's Exception Number 16: **DENIED.** Petitioner takes exception to the Administrative Law Judge's conclusion of law in paragraph thirty-six (36) of the Recommended Order that the rule, in its current and prior versions, applies to licensure by examination and not to licensure by endorsement. Petitioner argues that Board staff routinely cited the rule in correspondence related to licensure by endorsement. However, Board staff is not the party to determine qualification for licensure. That is solely the duty of the Board. The Board hereby adopts and incorporates the Respondent's response to exception number 16. Resp. Resp. Pg.9.
17. Petitioner's Exception Number 17: **DENIED.** Petitioner takes exception to the Administrative Law Judge's conclusion of law in paragraph thirty-six (36) that Petitioner may have the option of pursuing alternate pathways to licensure as a psychologist. Petitioner argues that just because Petitioner has alternate pathways does not equate to a failure to demonstrate unfairness or hardship. However, because Petitioner has not exhausted all pathways to licensure shows that she has not demonstrated unfairness or

hardship. The Board hereby adopts and incorporates the Respondent's response to exception number 17. Resp. Resp. Pg.9.

18. Petitioner's Exception Number 18: **DENIED.** Petitioner takes exception to the Administrative Law Judge's conclusion of law in paragraph thirty-seven (37) of the Recommended Order that because the Board cannot waive statutory requirements and Petitioner failed to establish that the underlying purpose of the statute would be met if she were granted a variance or waiver from the rule and that she has failed to demonstrate that the application of the current rule to her circumstances would violate the principles of fairness or impose a substantial hardship, she is not entitled to a variance or waiver from Fla. Admin. Code Rule 64B19-11.0035. Petitioner argues that she has presented competent substantial evidence for such a variance or waiver. The Administrative Law Judge's conclusion is a reasonable interpretation of the facts supported by the notion that the Board may not waive statutory requirements. The Board hereby adopts and incorporates the Respondent's response to exception number 18. Resp. Resp. Pgs.9-10.
19. Petitioner's Exceptions 19, 20, and 21: **DENIED.** Petitioner takes exception to the Administrative Law Judge's role and position to Abramson v. The Florida Psychological Association, et. al., 634 So. 2d 610 (Fla. 1994). Petitioner's objections are irrelevant to this proceeding. If petitioner believed that the Administrative Law Judge would be prejudiced in any way, she could have raised a motion for recusal, which she did not. To raise this issue as exceptions to the Recommended Order is improper. The Board hereby adopts and incorporates the Respondent's response to exception number 18. Resp. Resp. Pg.10.

FINDINGS OF FACT

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
2. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated by reference as the Findings of Fact of the Board.

CONCLUSIONS OF LAWS

1. The Board has personal and subject matter jurisdiction of this cause pursuant to sections 120.569; 120.57(1); and Chapter 466, Florida Statutes.

2. The Board does not find a more reasonable interpretation of the law than that which was found by the Administrative Law Judge;
3. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

VIOLATION, PENALTY, AND COSTS

VIOLATION

Upon a complete review of the record in this case, the Findings of Facts and Conclusions of Law, the Administrative Law Judge's Recommendation is **ACCEPTED**.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that the Petitioner's petition for a variance or waiver from Fla. Admin. Code Rule 64B19-11.0035 is denied.

DONE AND ORDERED this 21 day of May, 2014.

THIS FINAL ORDER shall become effective upon being filed with the Clerk for the Florida Department of Health.

FLORIDA BOARD OF PSYCHOLOGY



Allen Hall
Executive Director *on behalf of*
Dr. Luis Orta, Ph.D., 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 THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Ruth C. Prevor, Ph.D., 6000 Island Boulevard, Suite 2904, Aventura, Florida 33160; Mark S. Thomas, Esquire, Thomas Health Law Group, P.A., 5200 SW 91st Terrace, Suite 101-B, Gainesville, Florida 32608; Honorable Darren A. Schwartz, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to Lealand Lane McCharen, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265; and by electronic mail to Rachel A. Clark, Assistant Attorney General, rachel.clark@myfloridalegal.com this 22nd day of May, 2014.

Angel Saunders

Deputy Agency Clerk

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