

BEFORE THE BOARD OF PSYCHOLOGISTS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-06-0125-PSY REGARDING:

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| THE LICENSE APPLICATION OF LAURA WENDLANDT, Ph.D, Applicant. |) Case No. 1257-2006)) PROPOSED FINDINGS OF FACT) CONCLUSIONS OF LAW) AND RECOMMENDED ORDER |
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I. INTRODUCTION

Laura Wendlandt appeals from the Montana Board of Psychologists' denial of her request to be licensed as a psychologist. On December 28, 2005, the parties agreed to a schedule for the hearing in this matter. On March 20, 2006, Hearing Examiner David Scrimm convened a telephone conference to consider the Department's motion to extend the deadlines established in the December 28, 2005 Scheduling Order. Jack Atkins, agency legal counsel, represented the Department of Labor and Industry (Department). Patrick Sweeney, attorney at law, represented Wendlandt. During the conference, the parties agreed to a revised schedule for the proceedings.

At the May 8, 2006 pre-hearing conference, the parties agreed that an evidentiary hearing was unnecessary and to submit the matter to the hearing examiner on briefs. On July 27, 2006, the hearing examiner requested the parties submit additional briefing on the application of Admin. R. Mont. 24.189.620. Those briefs were submitted on September 8, 2006 and the matter was deemed submitted. Based on the stipulated facts and arguments raised in the parties' submissions, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

II. STIPULATED FACTS

1. Laura Wendlandt applied to be licensed as a psychologist with the Montana Board of Psychologists in June, 2005.
2. Wendlandt sought a license without examination based on her licensure as a psychologist in the State of Nevada.
3. Wendlandt was licensed as a psychologist by the State of Nevada in 2000 and was in good standing at the time of her application in Montana.

4. Wendlandt earned a Doctor of Philosophy degree from the University of Wyoming's Education department in 1993.

5. Wendlandt does not hold a doctoral degree in psychology or clinical psychology.

III. FINDINGS OF FACT

1. On July 15, 2005, Admin R. Mont. 24.189.620, the rule establishing the criteria for licensure of psychologists licensed by other jurisdictions, was amended.

2. On October 4, 2005, the Board of Psychologists met to consider Wendlandt's application.

3. At the October 4, 2005 meeting, the Board analyzed Wendlandt's application under the version of Admin R. Mont. 24.189.620 in effect prior to July 15, 2005.

IV. DISCUSSION

The issue in this case is whether the applicant is entitled to be licensed as a psychologist in the State of Montana. The Department argues that Wendlandt is not entitled to be licensed without examination because she lacks a doctorate degree in either psychology or clinical psychology. Wendlandt argues that her qualifications are substantially equivalent to those required in Montana, so she should be licensed. Wendlandt also argues that because the Board of Psychologists conducted its review of her application under a version of Admin. R. Mont. 24.189.620 that had been amended prior to the Board's October 4, 2005 meeting, that this matter should be returned to the Board for further proceedings.

The applicant's argument regarding the proper review of her application is well taken. As a general rule, an agency's decision on a license application must be based on the law in effect at the time of that decision despite the fact that the law may have changed. *Wallace v. Montana Dep't of Fish, Wildlife & Parks*, (1995) 269 Mont. 364, 368, 889 P.2d 817,820 (citing *Ziffrin, Inc. v. United States* (1943), 318 U.S. 73; *Wilson v. State Highway Comm'n* (1962), 140 Mont. 253, 370 P.2d 486).

Similarly, in making a decision on a license application, the Department is required to act in accordance with the statutes circumscribing its powers. See *Peterson v. Livestock Comm'n* (1947), 120 Mont. 140, 147, 181 P.2d 152, 156.

The version of Admin R. Mont. 24.189.620 in effect on October 4, 2005 reads as follows:

LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS

(1) Except as provided in (2), applicants licensed in another state or Canadian jurisdiction and seeking licensure under this rule shall provide information for the board to consider in determining whether the qualifications of the applicant are substantially equivalent to or greater than the current requirements of the state of Montana and whether to waive the written examination requirement. Applicants shall provide information regarding:

(a) the licensure requirements of such state or jurisdiction in place at the time the applicant obtained the license or certificate;

(b) a copy of a self-query of the national practitioner data bank;

(c) the composition and requirements of the applicant's prior licensing examination(s); and

(d) any additional information the board may require.

(2) An applicant will be deemed to have met the substantial equivalency requirements of (1) if the applicant:

(a) provides the board with a copy of the response to the applicant's self-query of the national practitioner data bank;

(b) has obtained a minimum required national examination score of either:

(i) a scaled score of 500 on the national computerized examination; or

(ii) a 70% on the national written examination previously administered by the board; and

c) either:

(i) is currently credentialed as a health service provider in psychology by the national register of health service providers in psychology; or

(ii) holds a current certificate of professional qualification (CPQ) in psychology issued by the association of state and provincial psychology boards (ASPPB).

. . .

Prior to July 15, 2005, Admin. R. Mont. 24.189.620 read as follows:

LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS

(1) When a person applies for licensure under this provision, the board shall obtain information from the other state(s) or Canadian jurisdiction(s), and determine whether the requirements in place at the time of obtaining such other license(s) or certificate(s) were substantially equivalent to the current requirements of Montana law.

(2) Persons seeking a license on the basis of having been examined and then issued a license by another state or Canadian jurisdiction shall submit to the board information concerning the nature of the prior examination with their completed application forms. The information shall be evaluated by the board, which may request additional information before making a decision to waive the written examination. The qualifications of the candidate must be verified by the board as at least substantially equivalent to the current requirements of the state of Montana.

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The amended rule is a substantial change from its predecessor. The amended rule now requires an analysis of the applicant's qualifications as opposed to a comparison of the different licensing requirements. It also provides an alternative method for determining whether an applicant's qualifications are substantially equivalent to the requirements of Montana law.

In this case, the Board reviewed Wendlandt's application to see if the State of Nevada's *licensing requirements* were substantially equivalent to those in the State of Montana. See Notice of Proposed Board Action and Opportunity for Hearing, p. 2; Board's Motion for Summary Judgement; Board's Contentions, List of Exhibits, Lists of Witnesses, and Proposed Stipulated Facts, ¶ 9. At the time of the Board's review, the proper analysis was to determine whether the *applicant's qualifications* were substantially equivalent to the requirements of Montana law. The Board did not conduct such an analysis of Wendlandt's application.

While the Board did determine that Wendlandt did not possess a doctorate in psychology required by those who must sit for the written examination, it did not determine whether she met the criteria for licensure of those already licensed by another state as provided in the revised language of Admin R. Mont. 24.189.620.

V. CONCLUSIONS OF LAW

The Board of Psychologists did not apply the law in effect at the time it considered Wendlandt's application.

VI. RECOMMENDED ORDER

The hearing examiner recommends that the Board of Psychologists stay any decision regarding Wendlandt's license until after it reconsiders her application under the current version of Admin R. Mont. 24.189.620.

DATED this 1st day of December 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.