

BEFORE THE BOARD OF PSYCHOLOGISTS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-11-0064-PSY REGARDING:

THE APPLICATION OF TAYLOR MAYER,     ) Case No. 874-2011  
Psychologist License by Examination Pending. )  
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**PROPOSED FINDINGS OF FACT;  
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

Taylor Mayer requested a hearing in response to the Montana Board of Psychologists' Notice of Proposed Action to deny his application to sit for the psychologist's licensing examination. Hearing Officer David A. Scrimm held a contested case hearing in this matter on March 29 and 30, 2011. Mayer was represented by Peter A. Stanley, attorney at law. Tyler Moss, agency legal counsel, represented the Board of Psychologists. Mayer and Dr. Christine Fiore testified under oath. The record was left open to accept additional testimony from Mayer's witness, Dr. House. Ultimately Dr. House did not testify and the record was closed on April 22, 2011. Board Exhibits 1 through 6 and Applicant's Exhibit A were admitted into the record.

The parties requested additional time to submit proposed findings of fact and conclusions of law together with briefs, the last of which was filed July 1, 2011. The record in this matter was deemed submitted for decision on that date. Based on the testimonial and documentary evidence adduced in this case, the hearing officer makes the following findings of fact, conclusions of law, and recommended decision.

**II. FINDINGS OF FACT**

1. Prior to June 25, 2010, Dr. Mayer submitted a signed and certified application for psychologist licensure by examination to the Montana Board of Psychologists (Board). Dr. Mayer submitted additional material at the request of the Board prior to June 25, 2010.

2. The Board denied Dr. Mayer's application on June 17, 2010 because it found that Walden's doctoral psychology program did not provide "a minimum of one year's residency at the educational institution granting the doctoral degree" and its core program did not "demonstrate competence in the four substantive content areas of: biological bases of behavior; cognitive-affective bases of behavior; social bases of behavior; and individual differences." See Admin. R. Mont. 24.189.604.

3. Mayer's application met all other criteria for licensure except those identified in Finding of Fact Number 2.

4. Mayer is an adult and of good moral character.

5. On or about May 25, 2005, Dr. Mayer obtained a doctor of philosophy in clinical psychology from Walden University. Walden University is accredited by the accrediting commission for senior colleges and universities of the Higher Learning Commission which accredits degree-granting post-secondary educational institutions in the North Central region.

6. Mayer applied for licensure pursuant to the provisions of Mont. Code Ann. § 37-17-302(3)(c).

7. Mayer's psychology graduate program included a minimum of three academic years of full-time graduate study.

8. Mayer's psychology graduate program included a minimum of one-year's residency at the educational institution. Mayer attended classes in-person on campus and earned more than 27 quarter hours on a full-time basis. His classes included student-to-faculty and student-to-student contact and involved personal group courses. His classes were taught 100% of the time by full-time or adjunct Walden faculty. His educational meetings were documented by the institution. Mayer had considerable meetings with faculty that related substantially to the psychology program and course content. Mayer's doctoral degree program included instruction in scientific and professional ethics, research design and methodology, statistics and psychometrics, and a core program through which students demonstrate competence in the four substantive content areas of biological bases of behavior, cognitive-affective bases of behavior, social bases of behavior, and individual differences.

9. Mayer's transcript clearly documents Walden University's assessment that he successfully completed the following courses:

Ethical Standards of Professional Practice, Course Number 8260, scientific and professional ethics requirement;

Psychological Research Designs, Course Number 8140, which fulfilled the research design and methodology requirement;

Qualitative and Quantitative Analysis, Course Number 8120, and Qualitative Analysis, Course Number 8130, which fulfilled the statistics and psychometrics requirement;

Biological Psychology, Course Number 8050, at Walden University which fulfilled the biological bases requirement;

Psychology of Learning, Course Number 8070, which fulfilled the cognitive-affective bases of behavior requirement;

Social Psychology, Course Number 8090, which fulfilled the social bases of behavior requirement;

Theories of Personality, Course Number 8200, Developmental Psychology, Course Number 8030, and Advanced Psychopathology, Course Number 8230, all of which fulfilled the individual differences requirement.

10. Mayer completed at least three years (12 quarters) of full-time graduate study. Mayer received either an A, B, or P grade with an overall grade point average of an A-.

11. On June 25, 2010, the Board's amendments to its rule defining "one-year's academic residency" became effective.

### III. DISCUSSION

#### A. The One-Year Residency Requirement.

The Board found Mayer's residency program at Walden insufficient. The applicable rule governing the residency requirements reads as follows:

One year's academic residency means 18 semester hours or 27 quarter hours earned on a full-time or part-time basis at the educational institution granting the doctoral degree. (a) The residency must be accumulated in not less than nine months and no more than 18 months and must include student-to-faculty contact involving face-to-face (personal) group courses. Such educational meetings must: (i) include both faculty-to-student and student-to-student interaction; (ii) be conducted by the psychology faculty of the institution at least 90 percent of the time; (iii) be fully documented by the institution; and (iv) relate substantially to the program and course content. (b) An internship requirement cannot be used to fulfill the academic year requirement of the residency. (c) The institution must clearly document its assessment and evaluation of the applicant's performance. Admin. R. Mont. 24.189.301(2).

The Board significantly amended this rule subsequent to Mayer's application. Board counsel did not argue that Mayer failed to take a sufficient number of hours of residency as evidenced by his transcripts and testimony, but instead argued that the rule cited above included other requirements more similar to what the rule now states and that Dr. Fiore's offered expert opinion on what a residency means should guide the hearing officer's determination of whether Mayer met the residency requirements.

The hearing officer cannot accept Board counsel's argument. Mayer is subject only to the rule in effect at the time the Board acted on his application. *Wallace v. Montana Dep't of Fish, Wildlife & Parks*, 269 Mont. 364, 368 (Mont. 1995); *Hotch v. United States*, 212 F.2d 280 (9th Cir. Alaska 1954); *Hulmes v. Div. of Retirement, Dept. of Admin.*, 418 So.2d 269 (Fla. 1st DCA 1982); *Canal Ins. Co. v. Continental Cas. Co.*, 489 So.2d 136 (Fla. 2d DCA 1986); *Dolese Bros. Co. v. State ex rel. Okla. Tax Comm'n*, 2003 OK 4, 9 (Okla. 2003). See Mont. Code. Ann. § 2-4-306. Furthermore, Dr. Fiore's testimony regarding the Board's residency requirements is rejected due to the considerable inconsistencies in her testimony about what standard she was testifying about. Her testimony all too frequently referred to the APA requirements for residency and the University of Montana's program's residency program. Even when asked directly about the Board's standards her responses were tainted by her prior testimony. Fiore's testimony also displayed considerable lack of familiarity with the Board's rules and standards. Under the rules in effect at the time Mayer applied for licensure, he met the residency requirement.

Mayer was on notice of no other requirements. While the Board has adopted new requirements, which Mayer might not now meet, he has met the standards under the rules in effect when he made his application and cannot be held to meet the new standards. While the Board may not be comfortable granting licensure to Mayer in light of its new rules on residency, there will always be instances where applicants submit an application during a time when a board is contemplating new rules and has them in the forefront of their mind, but can only apply the rules then in effect. Applying not yet adopted rules in such a situation is not compatible with the notions of due process. *Wallace, supra*. See also Mont. Code. Ann. § 2-4-306(5). In *Wallace* the court held that a statute that took effect during the department's review of a license application could be applied even though the new statute was not in effect when the Wallaces filed their application. The court reasoned that the Montana Department of Fish, Wildlife and Parks could review the application under the new statute because the license was a privilege and the statute did not "create a new obligation, impose a new duty or attach a new disability with respect to past transactions between the department and the Wallaces." *Id.* at 370. In this case, the Board denied Mayer's application 8 days before the new residency rules took effect. Accordingly, even if the Board could apply the new rules because doing so would not create a new obligation, impose a new duty or attach a new disability with respect to

past transactions between the Board and Mayer, they were not yet in effect when they denied his application.

BSD's counsel also argued that because the APA standards are similar to the ASPPB standards, which are, in turn, similar to the Board's standards, ASPPB's questions about the University's residency requirements could demonstrate that Mayer had not met the Board standards. However the testimony offered to prove these logical connections was often confused and therefore not reliable. Fiore's testimony was again filled with references to the APA standards and the practices of the University of Montana. Her testimony was insufficient to show that Mayer did not meet the residency requirements described in Admin. R. Mont. 24.189.301 and Admin. R. Mont. 24.189.604. Mayer met the residency requirements under Montana law.

B. Mayer's Course Work.

Mayer's testimony is sufficient to show that he completed the required course work that is identified in Admin. R. Mont. 24.189.604. The department's expert testimony was again inconsistent about the standards for the course work. She frequently referred to course work at the University of Montana and the APA requirements. However, the standards that Mayer must meet are only those described by the rules in place when Mayer's application was under consideration. If the Board had a different standard it wished to apply to course work, it needed to adopt further rules interpreting or explaining in more depth what they expected from an applicant for a license in psychology in Montana.

Mayer took and passed the necessary course work as required by Admin. R. Mont. 24.189.604. While BSD's expert witness testified that some of the courses did not meet the standards of the University of Montana and the APA and that she had some concerns about the breadth and depth of some of those courses, it is clear based on Mayer's testimony and the effect of the rules that he met those requirements. In looking at Mayer's whole application, there are a number of references provided by him that indicate that in the years he's been employed working in various areas of psychology, including the time since he earned his PhD, that Mayer meets the expectations of his peers, and uses and understands the work of a licensed psychologist. The hearing officer finds that given the number of outstanding recommendations, Dr. Mayer has shown that any doubts about the sufficiency of his course work should be resolved in his favor because his work experience and the knowledge of those most familiar with it indicate that the knowledge he gained at Walden University was sufficient. While Mayer may not be the strongest candidate for licensure that the Board may ever see, it is clear that his peers consider him ably

qualified and that the rules as they existed at the time of his licensure allow him to sit for the examination.

#### IV. CONCLUSIONS OF LAW<sup>1</sup>

1. Mayer seeks licensure as a psychologist in Montana. As such, he bears the burden of proof to demonstrate that he is qualified for the license. *See generally*, 2 Am. Jur. 2d Administrative Law §251.

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 37-1-307(1)(e). The Board may license as a psychologist a person who “has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the Board.” Mont. Code Ann. § 37-17-302(3)(c).

3. Mayer’s psychology program meets the minimum standards for licensure established by the Board. Mont. Code Ann. § 37-17-302(3)(c). Admin. R. Mont. 24.189.604.

#### V. RECOMMENDED ORDER

Based upon the foregoing, the hearing officer recommends that, pending the outcome of his examination, the Board grant Dr. Taylor Mayer’s application for licensure as a psychologist.

DATED this 14th day of November, 2011.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

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

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<sup>1</sup> Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.