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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE

AFSHAN SULTAN
APPLICANT

:
:
:
: FINAL
: DECISION AND ORDER
: LS 0504151 DEN
:

PARTIES

The parties to this action for the purposes of Wis. Stat. 227.53, are:

Dr. Afshan Sultan
c/o Hal Harlowe, Esq.
Hal Harlowe & Associates
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Wisconsin Dentistry Examining Board
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PROCEDURAL HISTORY

On January 12, 2004, Afshan Sultan submitted an application to the Dentistry Examining Board, ("Board"), for a Dental License. (Ex. 11, p. 4025). Thereafter, by correspondence dated January 26, 2005, the Board issued to Dr. Sultan a notice of denial, (Ex. 11, pp. 4081-82). Dr. Sultan thereafter made a request for a hearing as provided in Wis. Admin. Code RL 1.07. On August 10, 2005, a Class One hearing was conducted before Administrative Law Judge William Black. Attorney Eric Callisto appeared on behalf of the Department of Regulation and Licensing. Dr. Sultan was represented by Mr. Hal Harlowe and appeared by telephone.

Based on the entire record in this case, the Dentistry Examining Board makes the following Findings of Fact, Conclusion of Law, Order and Explanation of Variance.

FINDINGS OF FACT

1. Afshan Sultan, (DOB 9-28-1972), graduated from The University of Mumbai/ Padmashree Dr. D.Y. Patil Dental College and Hospital in Mumbai, India on December 12, 1997. She received a Bachelor of Dental Surgery degree. (Ex. 11, p. 4064).
2. On or about March 2000, Dr. Sultan immigrated to the United States. (Ex. 1, p. 4027)
3. From 1984 to 2003 the Marquette University School of Dentistry conducted an evaluation program for the Board for graduates of a foreign dental school seeking licensure in Wisconsin. (Ex. 11, pp. 8231, 8243, 8262, 4)
4. During the period from 1984 to 2003 the Marquette University School of Dentistry was the only evaluation program accepted by the Board. (Ex. 11, p. 8040)
5. On June 16, 2003, the Board was informed by the Marquette University School of Dentistry that following the March 2003 meeting of the American Association of Dental Examiners (AADE), they no longer wished to conduct evaluations assessing equivalency of graduates of a foreign dental school. (Ex. 11, p. 4)
6. Following June 16, 2003 there no longer existed a Board approved evaluation program for a graduate of a foreign dental school.
7. In January 12, 2004, Dr. Sultan initially applied for licensure in Wisconsin. The completed application was received on July 15, 2004. (Ex. 11, pp. 4011, 4025)
8. In September 2004, the Board formed a subcommittee on foreign trained dentists in order to find a new evaluation program. (Ex. 11, pp. 61-62)
9. From September 2004 to January 2005 an assessment by the subcommittee on foreign trained dentists of existing evaluation programs was conducted. (Ex. 11, pp. 160, 226-227)
10. On January 26, 2005 a letter was sent to Dr. Sultan stating the following:
 1. The Board determined that there is presently no existing evaluation program for foreign trained dentists that adequately measures whether your training, specifically the clinical phase of your dental education, is equivalent to ADA approved programs.
 2. The Board is unable to act on your application at the present time due to the unavailability of a Board approved evaluation program.
 3. If a suitable evaluation program is approved by the Board you may reapply for consideration at that time. (Ex. 11, p. 4081)
11. Dr. Sultan has not completed a Board approved evaluation program.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to Wis. Stat. 227.01(3)(a), and Wis. Admin. Code Ch. RL 1.
2. Dr. Afshan Sultan has not met the requirement of Wis. Admin. Code DE 2.01 (1)(e), by successfully completing a Board-approved foreign graduate evaluation course.
3. Dr. Afshan Sultan has not met the burden of proof for the issuance of a license under Wis. Admin. Code RL 1.08(4)

ORDER

IT IS ORDERED that the application for a license to practice dentistry in the State of Wisconsin be issued to Dr. Afshan Sultan is DENIED.

APPLICABLE LAW

Statutes

Wis. Stat. 447.04 (1)

447.04 Licensure

(1) Dentists.

(a) The examining Board shall grant a license to practice dentistry to an individual who does all of the following:

....
....

6. completes any other requirements established by the examining Board by rule.

(b) Except as provided in par. (c), the examining Board may grant a license to practice dentistry to an individual who is licensed in good standing to practice dentistry in another state or territory of the United States or in another country if the applicant meets the requirements for licensure established by the examining Board by rule and upon presentation of the license and payment of the fee specified under s. 440.05 (2).

Administrative Rules

Wis. Admin. Code DE 2.01

DE 2.01 Application for license.

(1) An applicant for license as a dentist shall submit all of the following to the Board:

....

(e) Evidence satisfactory to the Board of having completed educational requirements in s. 447.04(1), Stats. In the case of a graduate of a foreign dental school, verification shall be provided from a Board-approved foreign graduate evaluation program of successful completion of the evaluation course.

Wis. Admin. Code 4.02

DE 4.02 Evaluation programs for foreign graduates. Evaluation programs for applicants who are graduates of dental education programs in other countries shall be approved by the Board.

OPINION AND EXPLANATION OF VARIANCE

1. Introduction

At the American Association of Dental Examiners (AADE) meeting in March 2003 the Wisconsin Dentistry Examining Board and Marquette University School of Dentistry were provided research data informing them that the existing processes of evaluating foreign trained dentists for equivalency was invalid and flawed. Based on this knowledge Marquette University School of Dentistry informed the Board that they would no longer provide an evaluation program for foreign trained dentists. The Board was then faced with the inability to provide appropriate evaluations of foreign trained dentists who applied for licensure within the state of Wisconsin.

2. History of the Evaluation Program at Marquette University School of Dentistry

In June of 1975 the Board adopted a written policy requiring any applicant for dental licensure in Wisconsin who had graduated from a foreign dental school and had been evaluated to be comparable with a graduate of a Board approved school by virtue of a foreign graduate evaluation program (such as that available in Minnesota, California or New York) the applicant would be permitted to take the examinations set forth in Ss. 447.04 leading to licensure This policy was promulgated as an administrative rule, effective March 1, 1982.

DE 2.01 (1)(e) Evidence satisfactory to the Board of having completed educational requirements in s. 447.03(2), Stats. In the case of a graduate of a foreign dental school, verification shall be provided from a foreign graduate evaluation program as conducted in California, Maryland, Minnesota, New York or other Board-approved evaluation programs of successful completion of the evaluation course. (Ex. 11, p. 8008)

In 1983, the Board determined that such evaluation programs were not sufficiently evaluating clinical skills, and thus the Board attempted to delete all rule language allowing applicants to go through an evaluation course (Ex. 11, p. 8196). Accordingly, the deletion of the evaluation program was included in a proposed rule change. (Ex. 11, p. 8010).

However, the Joint Committee for Review of Administrative Rules (JCRAR) asked the Board to delay deletion of the rule, and to "continue negotiations" with Marquette

University School of Dentistry to create an evaluation program. (Ex. 11, p. 8031). The Board agreed to the delay. However, in 1988 the Board amended Section DE 2.01 (1)(e), to remove references to specific programs conducted in other states and creates the rule in its present state.

By early 1984, Marquette University School of Dentistry created an evaluation program which was accepted by the Board. (Ex. 11, pp. 8231, 8243, 8262)

The Marquette University School of Dentistry evaluation program consisted of a three week screening evaluation and a semester clinical evaluation. The purpose of the evaluation was to judge whether the candidate was equivalent educationally to graduates of Marquette University School of Dentistry who obtained a DDS degree. (Ex. 11, p. 322)

The three week screening evaluation was conducted by Marquette University School of Dentistry faculty in the disciplines of Endodontics, Operative Dentistry, Fixed Prosthodontics, Removable Prosthodontics, Periodontics, Oral Pathology and Diagnosis, Oral and Maxillofacial Surgery, Pedodontics, and Orthodontics. It was composed of oral, written, and/or preclinical laboratory exercises. If the candidate was unsuccessful in passing the screening evaluation initially, a second opportunity could be available. The purpose of the screening evaluation was to determine the didactic and technical ability of the candidate in order to decide whether further evaluation on clinical patients was warranted. Provided the candidate successfully passed each individual screening examination for all disciplines, he/she would be then be individually evaluated clinically in each discipline. The candidate would be required to complete the clinical evaluations in one academic semester. **"If the candidate did not pass either aspect of the evaluation his/her only option was to attempt to gain admittance to an undergraduate program in dentistry leading to the DDS or DMD degree from an accredited school."** (Ex. 11, p. 322) [Emphasis Added]

This option for the foreign trained dentists regarding the necessity of a DDS or DMD degree in 1984 sets an important historical precedent. The precedent is either the candidate is deemed equivalent by successfully passing a valid evaluation program approved by the Board or obtain a DDS or DMD degree.

In the explanation from Marquette University School of Dentistry of its own evaluation program it is stated: **"The intent of the screening and clinical evaluations is for evaluation purposes only, and it is emphasized that the candidate is not enrolled for a learning experience."** (Ex. 11 p. 322) [Emphasis Added] There is a difference between an evaluation program and an educational program. The goal of an evaluation program is to assess a candidate's current skills. His/her work is performed without assistance and the results are a measure of his/her competency. The goal of an educational program is to teach a skill to the candidate. This work is frequently done with assistance.

This Marquette University School of Dentistry evaluation program was the only Board approved evaluation program for foreign trained dentists applying for dental licensure in the state of Wisconsin. (Ex. 11, p. 8040)

3. March 2003 meeting of American Association of Dental Examiners (AADE)

In March 2003, the Mid-Winter meeting of the American Association of Dental Examiners (AADE) was held in Chicago, Illinois. Meeting participants included several Board members and representatives from Marquette University School of Dentistry. Jack D. Gerrow, DDS, MS, MED, the Executive Director and Registrar of the National Dental Examining Board of Canada presented "Credential Assessment and Examination of International Dentists: Limitation and Problems." (Ex. 11, pp. 173-214) This report of 4 years duration, costing 4 million dollars attempted "to establish equivalency between their standards and foreign trained programs". (Ex. 11, p. 307) Dr. Gerrow outlined the legislation that provided the National Dental Examining Board of Canada legal authority to establish "qualifying conditions for a national standard of competence for general dental practitioners". (Ex. 11, p. 175) This authority necessitated a study on how to determine competencies for the Canadian Board based on a credential review.

This study of internal credential reviews included the following findings:

1. It is impossible to differentiate course equivalency based solely on the review of documentation. (Ex. 11, p. 177)
2. Most transcripts look okay but this is not an adequate measure of whether the applicant has met the proper educational requirements. Although the coursework titles on transcript documents may appear equivalent, the content and curriculums vary from school to school, state to state, and country to country and cannot be adequately evaluated on their face unless they are all meeting the same accreditation standards. (Ex. 11, p. 177)
3. There exists the possibility of fraudulent documents. (Ex. 11, p. 177) In fact, the Wisconsin Dentistry Examining Board is aware that fraudulent documentation has been received by the Minnesota Board of Dentistry from foreign trained applicants. (Ex. 11, p. 308)

Dr. Gerrow concluded that an internal credential document review provides no basis for a reliable, sound or equitable decision, therefore everyone gets accepted. (Ex. 11, p. 178)

He then presented his findings on an external review of credentials and the methodology used in these reports. A general background of the education system and a description of a dental curriculum was reviewed. (Ex. 11, p. 179-194) Then there was a course by course listing of credits and grades with the conclusion that an International DDS/DMD degree (graduate of a foreign trained program) is equivalent to 4 or 5 years of professional study. (Ex. 11, p. 182) In his sampling of dental schools he was unable to obtain specific information that provided a valid comparison between international courses and Canadian equivalency standards.

His conclusion on external review of credentials was that it had "no relationship to equivalency relative to standards but (was) simply based on a comparison of years of study." Furthermore, evaluating credentials is "very difficult and prone to error" and a "significant step backwards." (Ex. 11, p. 194) [Emphasis Added]

He then talked about the Canadian experience in evaluating or examining graduates of International Dental Programs. His conclusion was that examining graduates of International Dental Programs is “very difficult and prone to error.” (Ex. 11, p. 212)

The Wisconsin Dentistry Examining Board found Dr. Gerrow’s conclusions valid and persuasive in both the review of credentials and in examining foreign trained dentists. The Board now questioned the validity of any credential review and acknowledged the difficulties in examining foreign trained dentists thereby questioning the validity of the original Marquette University School of Dentistry evaluation program previously approved in 1984 by the Board.

During this AADE meeting, it was revealed to the Board by the Marquette University School of Dentistry that instead of conducting an evaluation program as previously outlined, they were conducting credential reviews due to budget, time and faculty restraints. Its evaluation no longer included any clinical, didactic or technical ability assessment. No patient, mannequin or hands-on skills were being appraised. The Board has no record of being notified of these substantial changes. To date, no documentation exists with either the Board or DRL regarding this.

4. July 2, 2003 Wisconsin Dentistry Examining Board (DEB) meeting

Prior to the July 2, 2003 DEB meeting, the Board received a letter dated June 16, 2003, from the Dean of the Marquette University School of Dentistry essentially ending Marquette University School of Dentistry’s involvement in evaluating graduates of foreign dental schools and suggesting an alternative pathway. (Ex. 11, p. 4) After discussion the following motion was adopted by the Board:

MOTION: Keith Clemence moved, seconded by Catherine Schleis, to require all foreign trained dentists, prior to applying for Wisconsin licensure, would need to: first successfully pass National Boards Part I and II, attend an ADA accredited dental school for a minimum of 2 years, which would result in the candidate receiving a DDS/DMD degree, successfully pass either CRDTS or WREB; and in addition, all foreign trained applicants are acted on by the credentialing committee. Motion carried unanimously.

Similar requirements (as stated in the motion above) are used in 21 states for licensure of graduates of foreign trained dental schools and in total, the majority of states require a DDS/DMD degree from an ADA accredited dental school. (Ex. 11, p. 54)

While other applicants received licenses with qualifications similar to Dr. Sultan’s, once the Board became aware of the errors and inconsistencies of the process as cited in the Canadian study, the Board, with advice from counsel, stopped issuing licenses. (Ex. 11, p. 51)

5. Conflict about the motion and formation of a subcommittee

Following the July 2, 2003 Board meeting, there was an opinion expressed that the motion to establish an alternative to the Marquette University School of Dentistry evaluation program should be done by the rule making process. (Ex. 11, p. 46) Thus began a series of exchanges between the Board's counsel who argued that the Board had the authority to make this change by motion and the Department of Regulation and Licensing's counsel who argued that the rule making process was required. (Ex. 11, p. 44-52) This dispute occurred from July 29, 2003 to the September 1, 2004 DEB meeting at which time, the July 2, 2003 motion establishing an alternative process for foreign trained dentists was rescinded by the Board. (Ex. 11, p. 61) The Board also appointed a subcommittee to study foreign graduate evaluation programs to determine their acceptability. (Ex. 11, pp. 61-62)

At the January 19, 2005 DEB meeting the subcommittee presented its initial findings and the Board adopted the following:

MOTION: Dr. Gill moved, seconded by Dr. Strand:

1. to adopt the findings of the committee in that there is presently no existing evaluation program for foreign trained dentists that adequately measures whether their training, specifically the clinical phase of their dental education is equivalent to an ADA approved program
2. to issue a letter to any person that applies for licensure under s. 447.04 (1)(b) and DE 4.02 indicating that the board is unable to act on his/her application due to the unavailability of a board approved evaluation program.
3.If a suitable evaluation program is approved by the board pursuant to s. 447.04 (1)(b) and DE 4.02, applicants may reapply for consideration at that time;

6. Recommendations of the foreign trained dentist subcommittee

The work of the subcommittee then continued in an attempt to discover an evaluation program that was suitable. Several credential review organizations were contacted and asked specific questions in an effort to ascertain whether equivalency could be established. (Ex. 11, pp 166-287) Follow up correspondence with these organizations was also sent out to clarify and reconfirm whether they were adequate evaluation services. There was an apparent acknowledgement by the evaluation companies that they were unable to provide the type of evaluation required by the Board. (Ex. 11, p. 235) These organizations were rejected by the subcommittee as not being able to assess clinical competency. (Ex. 11, pp. 166-287).

At the same time, the subcommittee did not pursue a similar evaluation program as Marquette University School of Dentistry had offered because the Canadian study discredited the validity of Marquette University School of Dentistry's original evaluation program approved in 1984.

The subcommittee did find a second pathway for licensure of a foreign trained dentist, besides the requirement of the obtainment of a DDS or DMD degree from an accredited U.S. or Canadian dental school. The second pathway is international accreditation of foreign dental schools would using the same accreditation standards as used for US and Canadian dental schools assuring the equivalency of the US and Canadian issued DDS or DMD degree to the degree issued by the international schools. (Hanan Youssef, Applicant, LS 0504083DEN, Ex. 5 pp. 46-47) 1.

7. Errors of the ALJ

A. The ALJ does not acknowledge the ending of the Marquette University School of Dentistry evaluation program, which left the Board without a Board approved evaluation program. The ALJ's opinion in granting Dr. Sultan's a license is reliant upon the historical precedent of previously granted licenses of foreign trained dentists who completed the Marquette University School of Dentistry evaluation program. The inaccuracy in his decision is evidenced by the fact that there is not an evaluation program at Marquette University School of Dentistry for foreign trained dentists. A Board approved evaluation program does not exist. Dr. Sultan has never completed a Board approved evaluation program. This is a **failure to satisfy the requirements of DE 2.01(1)(e) that (in the absence of meeting the educational requirements of Wis. Stat. 477.04(1), [Emphasis Added]** a foreign trained dentist must verify completion of a Board-approved evaluation program.

B. At the same time, the ALJ attempts to argue that the North Carolina educational program is an evaluation program similar in nature to the original Marquette University School of Dentistry evaluation program. The Board rejects that conclusion and believes that there are fundamental differences between educational programs such as the North Carolina program and the original Marquette University School of Dentistry evaluation program.

C. The ALJ states that the original Marquette University School of Dentistry evaluation program "itself was actually a clinical program that the Board approved as meeting the requirements of Section DE 4.02. Nothing prevents the Board from reviewing other clinical programs to see if they too now qualify for purposes of Section DE 4.02." The Board does not accept this conclusion and this opinion is directly contradicted by Marquette University School of Dentistry's own assertion that its evaluation program was not an educational program.

1. At the July 12, 2006 meeting of the Wisconsin Dentistry Examining Board, an Administrative Rule scope statement was approved by the Board for an evaluation program requiring that foreign trained dentists be required to obtain either a DDS or DMD degree from an accredited U.S. or Canadian dental school or a degree from an accredited international school.

D. The ALJ is remiss in not acknowledging or even considering the conclusions of the Canadian study. The Board studied the presentation and content of Dr. Gerrow's presentation of the Canadian study on the challenges and difficulties in reviewing credentials and evaluating foreign trained dentists. The Board believes that this evidence overwhelmingly supports accepting the conclusions of the Canadian study. The focal point of the study is that credential reviews and examinations of foreign trained dentists are difficult and prone to error.

E. While credential reviews for determining equivalency have been discredited by the Canadian study as being prone to error, the methodology that the ALJ used in attempting to compare the Marquette University School of Dentistry evaluation program and the one year North Carolina (UNC) educational Program was exactly that...prone to error. He used the very technique that both the Canadian study and the evaluation program companies contacted by the Board acknowledged are unable to provide the Board assurance of competency. The ALJ illustrated this final point, when in the similar matter of **Dr. Jan Bublik (LS 0503182 DEN)**, [Emphasis Added] throughout his opinion, he stated that the Eastman International Program, which Dr. Bublik completed, was accredited, when in fact, it was not. Eastman has three programs, two of which are a 12 and 24 month advanced education in general dentistry (AEGD) programs which are accredited by the Commission on Dental Accreditation (CODA). However, its third program, the Eastman International Program is NOT an accredited dental program. Dr. Bublik's certificate provided with his application for licensure is from the Eastman International Program. In the ALJ's opinion, he would have used this mistake as the main basis for issuing a license to Dr. Bublik.

In the interest of public safety, the prudent choice in the failure or absence of a valid evaluation program is the completion of an undergraduate program in dentistry leading to the DDS/DMD Degree from an accredited school as was the initial intent back in 1984.

The Administrative Law Judge recommended to the Board that the North Carolina Program be accepted for purposes of Wisconsin Administrative Code DE 4.02, and the Dr. Sultan be issued a license. Based upon the modified Findings of Fact and Conclusions of Law, and upon the reasons set forth in the explanation of variance, those recommendations are rejected.

The applicant has not demonstrated that she has complied with the requirements for licensure in Wisconsin as a foreign degreed applicant and therefore her petition is denied.

Dated this 1 day of November, 2006.

Wisconsin Dentistry Examining Board

Maureen J. O'Connor
Chairperson