

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



Before the
State of Wisconsin
Medical Examining Board

In the Matter of the Application for A Medicine
and Surgery License of Tatjana Stevanovic,
Applicant

FINAL DECISION AND ORDER
ORDER 0007473
Order No. _____

Division of Legal Services and Compliance Case No. 20 MED 043

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 21 day of July, 2021.

Member
Medical Examining Board



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application for Medicine and
Surgery License of Tatjana Stevanovic, Applicant

DHA Case No. SPS-20-0006
DLSC Case No. 20 MED 043

PROPOSED DECISION

The PARTIES to this proceeding are:

Tatjana Stevanovic
By Attorney Barbara Zabawa
Center for Health and Wellness Law, LLC
5104 Valley Dr.
McFarland, WI 53558

Department of Safety and Professional Services
By Attorney Jameson Whitney and
Attorney Yolanda McGowan
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On March 9, 2020, the Wisconsin Department of Safety and Professional Services, Division of Legal Services and Compliance (Department) issued a Notice of Hearing with regard to the denial of an application for a medical and surgical license of the Applicant, Tatjana Stevanovic. The matter was referred to the Division of Hearings and Appeals for the appointment of a hearing official to preside over the hearing. Administrative Law Judge Kristin P. Fredrick was assigned as the hearing official and prehearing conferences were held on April 7, 2020, July 8, 2020, and October 8, 2020. The Second Amended Prehearing Conference Report and Scheduling Order dated October 8, 2020 was stayed on October 26, 2020, at the parties' joint request. Another prehearing was held on December 21, 2020, at which time a Third Amended Prehearing Conference Report and Scheduling Order was issued with a briefing schedule to address the parties' respective motions, to set the deadline for exchange of witness lists and exhibits, and to set the matter for a contested hearing on April 15, 2021. Pursuant to the Third Amended Prehearing Conference Report and Scheduling Order, the Department filed an Amended Notice of Hearing on January 7, 2021, to correct typographical errors in the original March 2020 Notice of Hearing. The parties filed competing motions for summary judgment pursuant to the prehearing scheduling order, which were both denied. A hearing was held on April 15, 2021, by remote video conference due to the Covid-19 pandemic. The parties submitted post-hearing briefs on May 14, 2021. The record in this matter includes the pleadings, motions, a digital recording and transcript of the hearing testimony, the Department's Exhibits 1, 2, 5-8, and Applicant's Exhibits 112, 113, and 126-128.

PROPOSED FINDINGS OF FACT

1. The Applicant, Tatjana Stevanovic, is a resident of the State of Wisconsin. She is currently licensed in the State of Wisconsin as an advanced practice nurse prescriber (APNP) (license no. 2508-33) and has had her APNP license since 2004. The applicant has also been licensed in the State of Wisconsin as a registered nurse (RN) (license no. 1398241-30) since 2001. (Dept. Exs. 1 and 2)
2. The Applicant graduated with a medical degree from the Oceania University of Medicine located in Apia, Samoa in April 2012. The Applicant's medical school education was completed primarily online, but she obtained in-person clinical experience at St. Joseph Hospital and Roger's Memorial Hospital in the Milwaukee area, a three-month surgical assignment in Springfield, Illinois, and a six-week psychiatric "pre-residency" training at Larkin Community Hospital in Florida. (Testimony of Tatjana Stevanovic, Tr. 95-98; Dept. Exs. 1 and 2)
3. Following her graduation from medical school, the Applicant applied to approximately twenty residency programs between 2013 and 2015. She primarily focused her search and applications based upon the program's proximity to her residence in Wisconsin because she did not want to be too far from her family or work. The Applicant was not offered a spot in any residency program in the Milwaukee area. In addition, the Applicant did not request that any residency program grant her an accommodation(s) that would enable her to complete the residency program part-time. (T. Stevanovic, Tr. 99-103, 119-120, 133)
4. Since 2005 the Applicant has been employed as an APNP at the Stevanovic Family Clinic, 11111 West Oklahoma Avenue, West Allis, WI. The Applicant's husband, Dr. Nebojsa Stevanovic, has been the primary attending physician and the Applicant's supervising physician at the Stevanovic Family Clinic. (T. Stevanovic testimony, Tr. 109, 125, 134; hearing testimony of Dr. Nebojsa Stevanovic, Tr. 167-169; Applicant Ex. 128)
5. The Applicant's husband's health history includes a diagnosis of coronary heart disease, a heart attack in 2001, undergoing open heart surgery in 2009, placement of a stent in 2015/2016, and a heart valve replacement in 2020. As a result of his heart condition, the Applicant's husband reduced his work hours at the Stevanovic Family Clinic to 25-30 hours per week. (N. Stevanovic, Tr. 172-173)
6. To keep the Stevanovic Family Clinic operational, the Applicant increased her workload responsibilities and hours at the Clinic due to her husband's reduced work hours. It is the Applicant and her husband's belief that the Stevanovic Family Clinic would not survive if the Applicant completed a 24-month postgraduate residency program. (T. Stevanovic, Tr. 129; N. Stevanovic, Tr. 173-174; Dept. Ex. 2)
7. In October 2017, the Applicant filed an application (#631354) for a license to practice Medicine and Surgery in the State of Wisconsin. In support of the application, the

Applicant submitted a request on February 13, 2018, that the Medical Examining Board (hereinafter "Board") waive the 24-months of post-graduate training required for applicants who graduate from a foreign medical school based, in part, upon her postgraduate training and education. (Department Ex. 1)

8. The Board unanimously denied the Applicant's waiver request on March 21, 2018, finding that the Applicant had not demonstrated the requisite substantial equivalency or hardship, and on September 21, 2018, the Board issued a denial of the application based upon her failure to demonstrate the requirements for licensure, including the failure to complete the 24-month post-graduate training required under Wis. Stat. §448.05(2)(b)4 and Wis. Admin. Code § Med 1.02(3)(b). (Hearing testimony of Dr. Kenneth Simons, Tr. 36-40; Dept. Exs. 1 and 6)
9. On April 29, 2019, the Applicant filed a second application for licensure (#673925). As part of her second application, the Applicant requested a waiver of the 24-month postgraduate training requirement "on grounds of prolonged illness or disability or other similar hardship" under Wis. Admin. Code § Med 1.02(3)(cm) based upon the health condition of the Applicant's husband. (Dept. Ex. 2)
10. The Board met to review the Applicant's waiver request in October 2019. Based upon the Board's consensus that the hardship requirement under Wis. Admin. Code § Med 1.02(3)(cm) applies to an applicant, not an applicant's spouse, the Board unanimously denied the Applicant's waiver request. The Board issued a written Notice of Denial of Waiver on December 23, 2019. (Simons Tr. 41-43; Dept. Ex. 2)
11. The Applicant requested a hearing contesting the Board's denial of her second waiver request and the constructive denial of her application on January 10, 2020.
12. The Applicant has not completed a 24-month post-graduate training that is accredited by the Accreditation Council for Graduate Medical Education. (T. Stevanovic, Tr. 104)

APPLICABLE LAW

Pursuant to Wis. Stat. § 448.05(2), an applicant for licensure for medicine must demonstrate that they meet the following criteria:

...

(b) Except as provided in pars. (c) to (f), an applicant for a license to practice medicine and surgery who is a graduate of a foreign medical college must supply evidence satisfactory to the board of all of the following:

1. That the applicant is a graduate of and possesses a diploma from a foreign medical college credentialed by an agency approved by the board.
2. That the applicant has obtained certification by the Educational Council for Foreign Medical Graduates or a successor organization.
3. That the applicant has passed all steps of the United States Medical Licensing Examination administered by the National Board of Medical Examiners and the Federation of State Medical Boards, or their successor organizations.
4. That the applicant satisfies one of the following:
 - a. The applicant has successfully completed and received credit for 24 months of postgraduate training in one or more programs accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization.
 - b. The applicant is currently enrolled in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization; the applicant has successfully completed and received credit for 12 consecutive months of postgraduate training in that program; and the applicant has received an unrestricted endorsement from the postgraduate training program director that includes confirmation that the applicant is expected to continue in the program and complete at least 24 months of postgraduate training.
5. That the applicant satisfies any other requirement established by the board by rule for issuing the license.

(c) The board may promulgate rules specifying circumstances in which the board, in cases of hardship or in cases in which the applicant possesses a medical license issued by another jurisdiction, may grant a waiver from any requirement under par. (a) or (b). The board may grant such a waiver only in accordance with those rules.

Under Wis. Admin. Code § Med 1.02(3)(b), an applicant who graduates from a foreign medical school must provide evidence of completion of 24 months of postgraduate training or be currently enrolled in an accredited program and received credit for 12 consecutive months of training with expectation of completing at least 24 months unless the applicant requests a waiver as follows:

An applicant may apply to the board for waiver of the requirements of par. (a) or (b) on grounds of prolonged illness or disability or other similar hardship, and each case will be considered individually on its merits by the board.

Wis. Admin. Code § Med 1.02(3)(cm).

ISSUES

- (1) Whether the Department's denial of the applicant's application for medical license was based upon a mistake of fact or law, and/or arbitrary and capricious; and
- (2) Whether the Department's denial of a waiver was an erroneous interpretation of Wis. Admin. Code § Med 1.02(3)(cm).

DISCUSSION

The present matter involves the Medical Examining Board's ("Board") denial of the Applicant's request for a waiver of the 24-month postgraduate training requirement for a medical license required under Wis. Stat. § 448.05(b). Specifically, the Applicant requested a waiver based upon an "other similar hardship" pursuant to Wis. Admin. Code § Med 1.02(3)(cm) due to her husband's health condition that limited his ability to work full time.

The authority of the Board is codified in Wis. Stat. § 448.02 as delegated by the legislature to promulgate rules and regulations governing medical licenses. *Gilbert v. State, Med. Examining Bd.*, 119 Wis. 2d 168, 184-85, 349 N.W.2d 68, 75 (1984). The purpose behind Chapter 448 of the Wisconsin Statutes "is to protect the public by insuring that those licensed to practice medicine in the State of Wisconsin are competent to do so under standards which have become accepted in the profession." *Id.* at 189; *Strigenz v. Dep't of Regulation*, 103 Wis.2d 281, 286, 307 N.W.2d 664 (1981). However, a Board's discretionary authority is not completely unfettered. Importantly, a Board's decision cannot be arbitrary. *Reidinger v. Optometry Examining Bd.*, 81 Wis. 2d 292, 297, 206 N.W.2d 270 (1977) (finding that the Board failed to exercise discretion by not setting forth a rationale for its decision). As recognized in *Reidinger*, discretion requires more than a choice; it requires giving the rationale or reason behind the choice. *See id.* Exercising discretion is a process that depends on facts in the record "and a conclusion based on a logical rationale founded upon proper legal standards." *Id.*, citing *McCleary v. State*. 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971).

The underlying facts in this matter are largely undisputed. The Applicant graduated from medical school outside of the United States in 2012 and has not completed 24 months of postgraduate training through an accredited program as required under Wis. Stat. § 448.05 and Wis. Admin. Code § Med 1.02. In order for a graduate of a foreign medical school to become licensed to practice medicine in Wisconsin, they must successfully complete 24 months of postgraduate training in an approved program or be enrolled in an approved postgraduate training program or

be granted a waiver of those requirements by the Board. *See* Wis. Stat § 448.05(2)(b) and (c); Wis. Admin. Code § Med 1.02(3)(cm).

Under Wis. Stat. § 448.05(2)(c), the Board “may promulgate rules specifying circumstances in which the board, in cases of hardship or in cases in which the applicant possesses a medical license issued by another jurisdiction, may grant a waiver from any requirement.” The Board’s applicable promulgated rule provides that an applicant may apply for a waiver of the postgraduate training requirements “on grounds of prolonged illness or disability *or other similar hardship*, and each case will be considered individually on its merits by the board.” Wis. Admin. Code § Med 1.02(3)(cm) (emphasis added). It is undisputed that the Applicant sought waiver of the 24-month residency training requirement. The Applicant’s waiver request was not based upon her own prolonged illness or disability; rather, it was based upon her husband’s health condition and the Applicant’s decision to stay close to Milwaukee in order to help financially support her family and to keep the Stevanovic Family Clinic operational. (Dept. Ex. 2)

The Applicant argues that the Board’s interpretation of “other similar hardship” under Wis. Admin. Code § Med 1.02 is erroneous and that the underlying regulation is ambiguous given that it fails to specify the meaning of “other similar hardship.” Further, the Applicant argues that the Board’s decision was without adequate reasoning and thus, arbitrary and that the Applicant has produced evidence of an “other similar hardship” to justify approval of her waiver request.

It is undisputed that “other similar hardship” is not defined under Wisconsin Statute or the Wisconsin Administrative Code. Moreover, the word “hardship” appears countless times throughout the Wisconsin Statutes and the Wisconsin Administrative Code often without explicit definition. However, the absence of an explicit definition of either “hardship” or “other similar hardship” does not render § Med 1.02(3)(b) meaningless or ambiguous. Rather, as recognized by the Applicant, the text of an administrative rule is given its plain, common, and accepted meaning. *See, Bar-Av v. Psychology Examining Board*, 2007 WI App 21, ¶ 10, 299 Wis 2d 387, 398, 728 N.W. 2d 722. Additionally, based upon its specialized knowledge, experience and technical competence, the Board is given discretionary authority to render licensing decisions based upon the individual facts of each case when considering whether to grant an application seeking waiver of licensing requirements on grounds of hardship. Wis. Stat. § 448.02; *see also*, Wis. Stat. § 227.01(3)(a).

The discretionary allowance for hardship waivers of agency rules is found throughout the Administrative Code; however, there are very few sections of the Code that specifically define “hardship.” In one example, exclusive to extending the temporary licensure of perfusionists, the Medical Examining Board has stated that “hardship” may include “illness of the applicant, illness or death of a family member of the applicant, or an accident or natural disaster.” Wis. Admin. Code § Med 22.05(3)(a). The Radiology Examining Board has set forth what constitutes a “hardship” for purposes of waiving or postponing its continuing education requirements as “full-time military service during a substantial part of the 2-year period immediately preceding the renewal date or an incapacitating medical infirmity documented by a licensed health care provider.” Wis. Admin. Code § Rad 5.05(b). In another example, in deciding whether to waive

continuing education requirements, the Optometry Examining Board has defined “hardship” to mean “serious illness, as determined by a licensed health care provider, or some other personal adversity, as determined by the board.” Wis. Admin. Code § Opt 8.01(3).

Hardship waivers are referenced in the Code largely in the context of existing licensees seeking waiver of continuing education requirements for professional licensees. For example, an occupational therapist or podiatrist licensee can seek a waiver of continuing education requirements from their respective boards “on the grounds of prolonged illness, disability, or other grounds constituting hardship.” Wis. Admin. Code §§ OT 3.06(7) and Pod 3.01(2). Some licensing authorities go farther and require that the licensee demonstrate “prolonged illness, disability, or ... *extreme* hardship” (emphasis in italics added) in order to grant waiver of continuing education requirements.¹ Although the Medical Examining Board has also promulgated a rule allowing physicians to apply for waiver of continuing education requirements, the rule does not reference “hardship”; rather, the physician must demonstrate “grounds of prolonged illness or disability or other similar circumstances, and each case will be considered individually on its merits by the board.” Wis. Admin. Code § Med 13.02(2).²

The common denominator among all of the hardship waiver provisions cited above, however, is that they involve applications by individuals with existing licenses seeking to waive continuing licensing requirements, most notably continuing education. In other words, unlike the Applicant in the present matter, those licensed individuals had already completed all of their training requirements to be licensed in their profession. With this comparison and contextual background, it is reasonable to appreciate that the Board in the present matter would not want to extend the waiver to applicants who did not demonstrate the requisite competence and training. Moreover, had the Board intended for the “hardship” to apply to a family member rather than the Applicant, the rule could easily have incorporated that allowance as the Board did under a separate waiver rule reflected in Wis. Admin. Code § Med 22.05(3)(a).

The Applicant in the present matter applied for licensure on two separate occasions, once in 2018 and again in 2019. Dr. Kenneth Simons, who was a member of the Board at the time of both applications were reviewed, testified at the hearing. The Applicant first applied for licensure in 2018. (Dept. Ex. 1; Tr. 34-40) After initial review of the 2018 application, the Board provided the Applicant an opportunity to submit additional documentation. However, it was later determined that the documentation submitted misrepresented that the Applicant had completed training in a program that did not exist. (Tr. 39-40) The Board unanimously denied the application based upon the Applicant’s failure to submit evidence of completion of 24 months of training

¹ See eg. Wis. Admin. Code §§ SPS 168.03 (governing counselors), PSY 4.04(1) (governing psychologists), PT 9.03(8) (governing physical therapists), MPSW 1904(1) (governing social workers), SPS 131.45(1) (governing home inspectors), SPS 50.424(1) (governing barbers), A-E 11.07(1), A-E 12.08(4) and A-E 13.08(2) (governing architects).

² Likewise, both the Dentistry and Pharmacy Examining Boards allow potential waiver of continuing education requirements upon a demonstration of “exceptional circumstances such as prolonged illness, disability, or other similar circumstances” that prevent a licensee from meeting the requirements. Wis. Admin. Code §§ DE 13.03(11) and Phar 16.02(2).

approved by the Accreditation Council for Graduate Medical Education (ACGME). (Tr. 40-41) The Applicant appealed the 2018 denial to the Division of Hearings and Appeals but the appeal was later voluntarily withdrawn and dismissed. (Dept. Ex. 1)

In 2019 the Applicant submitted a new application to the Board but this time requested a hardship waiver of the 24-month postgraduate training requirement to obtain her medical license under Wis. Admin. Code § Med 1.02(3)(cm). (Dept. Ex. 2) Dr. Simons testified that the Board was familiar with the Applicant's file at the time of the second application having previously reviewed her file on two prior occasions during the first application review process. Dr. Simons also testified that the Board had ample time to review the Applicant's submissions in support of the most recent application prior to making its decision. (Tr. 41-42) According to Dr. Simons, who was on the Board at the time that the hardship waiver provision under Wis. Admin. Code § Med 1.02(3)(cm) was promulgated, it was the consensus of the Board that any hardship waiver should be based upon the illness or disability of the individual applicant, and not based upon the illness or disability of an applicant's family members. (Tr. 45, 51, 57-58) Further, according to Dr. Simons, the Board envisioned the "other similar" hardship waiver applying to extenuating situations when an applicant had already begun their postgraduate training and were close to finishing but unable to complete it due to an exceptional situation beyond their control, for example when a residency program closes prior to the completion of 24 months. (Tr. 32-34, 65-67) According to Dr. Simons, the role of the Medical Examining Board is to protect the public. (Tr. 23) And the goal of residency programs is for the benefit of public safety and to turn out well trained qualified physicians who can safely take care of patients. (Tr. 31, 60) Dr. Simons testified that completion of the arduous residency programs are a hardship in and of themselves and that the 24-months of postgraduate training "make or break a physician." (Tr. 42, 63) Finally, Dr. Simons testified that most medical residents incur some form of financial hardship as they complete their residency and thus, the Board would not consider that a hardship justifying waiver of the postgraduate training requirement. (Tr. 69-70) Based upon the facts presented to them the Board unanimously denied the Applicant's hardship waiver request. (Tr. 43)

In the present matter, the Applicant asserts that her husband's heart condition created an "other similar hardship" that prevented her from completing the necessary 24-month postgraduate training program required for licensure. She was aware when she started medical school that a postgraduate residency program was a necessary part of obtaining a medical license. (Tr. 132) The Applicant testified that she took a year off from medical school and ended a "pre-residency" program in Florida six weeks into the program at her husband's request due to his health condition, to help take care of her family and to work at the Stevanovic Family Clinic. (Tr. 98, 121, 175) After completing medical school in April 2012 the Applicant applied to approximately twenty residency programs between 2013 to 2015; but limited her search primarily to the Chicago and Milwaukee areas, as well as, in the State of Michigan. (Tr. 101-103) The Applicant was not accepted into any residency programs in the Milwaukee area. (Tr. 119) Although she was accepted into a program in Michigan, she determined that it was too far away from her family as she wanted to "be present in [her] children's life and husband's life due to his condition and to help with family responsibilities." (Tr. 120) The Applicant testified that she did not believe that she could attend a 24-month residency program outside of Milwaukee due to her husband's condition and did not

seek accommodations to work part-time through a residency. (Tr. 99-100) She last applied for a residency program in 2015 but did not participate in the interview process because she did not consider it a viable option. (Tr. 103)

The Applicant and her husband both testified that he reduced his work hours as the primary attending physician at the Stevanovic Family Clinic, which resulted in the Applicant taking on additional responsibilities and increasing the amount of hours she worked at the family clinic. (Tr. 129). The Applicant's husband also testified at the hearing that despite feeling better following a 2020 heart valve replacement procedure, he continues to work part time approximately 25 hours per week at the Stevanovic Family Clinic and wanted to retire, except then there would be no one to supervise the Applicant while she is an APNP. (Tr. 173) He testified that his wife works 60 hours per week handling patient care, supervising the clinic's bookkeeping, and performing administrative functions at the family clinic. (Id.) According to the Applicant's husband, the family clinic would not survive and would have to close if his wife was required to complete a 24-month residency. (Tr. 129, 173-174) In addition, the Applicant's husband states that trying to hire a replacement to cover her responsibilities at the clinic while she attempted to complete a residency would be too expensive. (Tr. 182) The Applicant's husband testified that their family's financial concerns, including the fact that they have three kids in college and the fact that he wants to retire, prevent the Applicant from leaving the family clinic to participate in a residency program. (Id.)

The Department asserts that the Board properly exercised its discretion in denying the Applicant's requested waiver. Further, the Department asserts that the Board's interpretation of whether the hardship should or should not apply in the present matter is reasonable. For example, as stated above, Dr. Simons testified that the goal of postgraduate training and licensure is to ensure public safety and thus, standards for licensure should not be relaxed primarily out of concern for that reason. Even doctors who testified in support of the Applicant recognized that the postgraduate training is an important component of becoming a competent doctor. (Tr. 151) Dr. Simons also testified that the general requirements for licensure under Administrative Code, Chapter Med 1 focus on the applicant themselves. Thus, it makes sense that any hardship waiver requested would apply to the applicant, not to a family member. Furthermore, according to Dr. Simons there should be some attempt to complete training or evidence of training in progress by an applicant to justify a hardship waiver of the residency postgraduate training requirement. The Applicant in the present matter never started a residency program.

The preponderance of evidence presented in this matter established that the Applicant and her husband's concern for the financial and operational viability of the Stevanovic Family Clinic was a driving motivation for the Applicant's decision not to participate in or complete a 24-month postgraduate residency. There was little testimony or evidence that the Applicant was required to forego a residency program in order to take care of her husband due to his heart condition. On the contrary, the Applicant's husband continued to work despite his health issues and even after his condition improved following a heart valve replacement procedure, he chose to maintain a reduced part time work schedule. In order to support the Stevanovic Family Clinic while her husband maintained a reduced workload, the Applicant chose to increase her responsibilities and work

hours at the clinic. Further, the Applicant and her husband chose not to hire someone to replace the Applicant similarly for financial reasons.

Unlike a prolonged illness or disability, which is completely outside the control or choice of an individual, the Applicant chose to forego a residency program that required her to be away from her family so that she could stay close to home to financially support her family and out of a desire to maintain the Stevanovic Family Clinic. It was a decision and choice the Applicant made that was within her control. In addition, the Applicant chose to apply to only a limited number of residency programs close to her home and even rejected an offer to participate in a program that required her to be eight hours away from home and the clinic. In effect, the Applicant decided to put her family, the family business, and the related financial stability of both above and before her desire to become a licensed physician. As hard as that decision may have been, it is not a "hardship" similar to a prolonged illness or disability to justify waiving the 24-month postgraduate residency training program required of all physicians before they can become licensed. As recognized by Dr. Simons, the majority of medical residents completing their 24-month postgraduate training incur financial hardships to support themselves and their families. If the Applicant's circumstances in the present matter were to qualify as a hardship under Med 1.02(3)(cm), then hundreds of residents in training who similarly struggle to financially support themselves and their families throughout a residency would likely seek hardship waivers.

The Department presented credible testimony from a member of the Board that set forth the Board's rationale for its decision to deny the Applicant's hardship waiver request. Although "other similar hardship" is not defined under the Board's promulgated rules, the Board's common sense interpretation limiting the hardship to only the individual applicant is supported by the fact that the Board could have added language to the rule allowing the hardship to include family members as the Board has done in another hardship waiver rule under Wis. Admin. Code § Med 22.05(3)(a), but obviously chose not to in Wis. Admin. Code § Med 1.02(3)(cm). Further, the testimony supported the Board's rationale that the waiver provision was envisioned to apply to situations where an applicant has already begun the postgraduate training. (Tr. 33-34) The Board's rationale is reasonable as most hardship waivers under the Code apply to individuals who are already licensed. Based upon the Board's ultimate goal of protecting the public by only licensing competent medical professionals who have demonstrated successful completion of a rigorous training, the Board's interpretation and refusal to apply the hardship waiver to the Applicant in this matter is supported by both the facts and the law. Further, the Applicant has failed to persuade me that the Board's decision was arbitrary or capricious, that any error of fact or law was made, or that the Board erroneously interpreted Wis. Admin. Code § Med 1.02(3)(cm). Based upon the preponderance of evidence presented, the Board's conclusion was founded upon its specialized knowledge and experience, supported by a logical rationale and based upon the proper legal standards, including the undisputed fact that the Applicant failed to demonstrate she met the requirements for licensure under Wis. Stat. § 448.05(2). Therefore, the Board's denial of the Applicant's request for waiver of the 24-month postgraduate training requirement was not an erroneous exercise of discretion.

PROPOSED CONCLUSIONS OF LAW

1. The Medical Examining Board has the authority to render a decision in this matter pursuant to Wis. Stat. §§ 448.02(1) and 448.06(2).
2. The Medical Examining Board correctly denied Tatjana Stevanovic's request for waiver of the required completion of 24-month postgraduate training in an accredited program under Wis. Admin. Code § Med 1.02(3)(b) and (cm).
3. Pursuant to Wis. Admin. Code § SPS 1.08(4), Tatjana Stevanovic failed to prove by satisfactory evidence that the Medical Examining Board made a mistake of law or fact, that the Board's decision was arbitrary and capricious or that she met the eligibility requirement to be credentialed under Wis. Stat. § 448.05(2).
4. The Medical Examining Board correctly found that the Tatjana Stevanovic does not meet the requirements for licensure under Wis. Stat. § 448.05(2)(b) in constructively denying her application for license to practice medicine and surgery.
5. The Division of Hearings and Appeals has the authority to issue this proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.10.

PROPOSED ORDER

THEREFORE, IT IS HEREBY ORDERED that the Medical Examining Board's denial of the Applicant's request for waiver and constructive denial of her April 29, 2019 application for licensure are affirmed.

Dated at Madison, Wisconsin on this 14th day of June, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
Madison, WI 53705
Telephone: (608) 266-2447
FAX: (608) 264-9885
Email: Kristin.Fredrick@wisconsin.gov

By: 

Kristin P. Fredrick
Administrative Law Judge