

1990

In the matter of the application of Juanita Fussell for  
licensure as a Psychologist in the State of Utah:  
Juanita J. Fussell v. Department of Commerce,  
Division of Occupational and Professional  
Licensing : Brief of Respondent

Utah Court of Appeals

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DOCKET NO.

900291-CA

IN THE MATTER OF THE  
APPLICATION OF JUANITA FUSSELL  
FOR LICENSURE AS A PSYCHOLOGIST  
IN THE STATE OF UTAH

Petitioner

VS.

DEPARTMENT OF COMMERCE  
DIVISION OF OCCUPATIONAL  
AND PROFESSIONAL LICENSING

Respondent.

[illegible]

Case No. 900291-CA

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IN THE MATTER OF THE  
APPLICATION OF JUANITA FUSSELL  
FOR LICENSURE AS A PSYCHOLOGIST  
IN THE STATE OF UTAH

VS.

Respondent.

• • • • •

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## TABLE OF CONTENTS

TABLE OF CONTENTS . . . . .	i
TABLE OF AUTHORITIES. . . . .	ii
Cases . . . . .	ii
Statutes . . . . .	iii
Other Authorities (Regulations) . . . . .	iii
PARTIES . . . . .	1
STATEMENT OF THE CASE . . . . .	1
STATEMENT OF MATERIAL FACTS . . . . .	2
SUMMARY OF ARGUMENT . . . . .	14
ARGUMENT . . . . .	17
POINT I.	
FUSSELL PROPOUNDED AN INCOMPLETE STANDARD OF REVIEW	17
POINT II.	
FUSSELL IS NOT QUALIFIED TO PRACTICE AS AN INDEPENDENT, PROFESSIONAL, LICENSED PSYCHOLOGIST IN THE STATE OF UTAH . . . . .	22
POINT III.	
PRIOR TO RECEIVING HER DEGREE PETITIONER HAD REASON TO KNOW SHE DID NOT QUALIFY FOR LICENSURE IN UTAH. . . .	24
POINT IV.	
THE AGENCY'S ACTIONS ARE NEITHER ARBITRARY NOR CAPRICIOUS . . . . .	28
CONCLUSION . . . . .	32
APPENDEX . . . . .	35

## TABLE OF AUTHORITIES

<u>CASES:</u>	<u>PAGE</u>
<u>Athay v. State Dept. of Business Reg.,</u> 626 P.2d 695 (Ut. 1981) . . . . .	4, 5, 18, 19, 22
<u>Brown v. Bd. of Exam. of Psychologist,</u> 378 S.E. 2nd 718 (GA. App 1989) . . . . .	26, 27, 28
<u>Grace Drilling v. Board of Review,</u> 776 P.2d 63 (Utah App. 1989) . . . . .	14, 17
<u>Hughes v. State Bd. of Med. Examiners,</u> 134 S.E. 42 (GA. 1926) . . . . .	28
<u>Pro-Benefit Staffing v. Board of Review,</u> 775 P.2d 439 (Utah App. 1989) . . . . .	14, 17, 20, 28, 29

STATUTES:

58-1-1, <u>et seq.</u> UCA, 1953. . . . .	2, 5
58-1-6(1)(7). . . . .	2
58-1-8 UCA, 1953. . . . .	2
58-1-9 UCA, 1953. . . . .	2
58-25-2, UCA, 1953 . . . . .	1, 3, 19
58-25a-6, UCA, 1953. . . . .	24
63-11-208, Tennessee Code . . . . .	26
63-46b-16(4), UAPA . . . . .	17, 20
5-116(c)(4), MSAPA . . . . .	20
43-39-5(b), OCGA . . . . .	27
43-39-8(b)2 . . . . .	27

OTHER AUTHORITIES:

REGULATIONS:

R153-25-8(4)(b). . . . .	5, 9, 25
R153-25-8(4)(i). . . . .	31
R153-25-8(4)(c) through (i). . . . .	31
R153-25-8(4)(e). . . . .	31
R153-25-8(4)(9). . . . .	32

### PARTIES

Juanita J. Fussell, Petitioner

Department of Commerce Division of Occupational and  
Professional Licensing, Respondent.

### STATEMENT OF THE CASE

This is a response to Petitioners appeal from the Order of David E. Robinson, Director of the Division of Occupational and Professional Licensing, Department of Commerce, State of Utah, dated May 3, 1990. The Petitioner seeks a reversal of the Order and a remand with directions to the Division that it proceed with her licensure as a doctoral level psychologist.

The Petitioner in this matter, Juanita J. Fussell (Fussell), initially applied for licensure at the doctoral level as a psychologist on August 5, 1987. Petitioner's application was denied by the Psychologist Licensing Board on the basis that she did not meet the requirements of Utah Code Annotated § 58-25-2(1)(b), which requires that:

1. Each applicant for a license to practice as a psychologist shall:

- (b) produce transcripts of credit which are acceptable to the representative committee which demonstrate that the candidate for licensing has received a doctoral degree based on a program of studies whose content was primarily psychological from an accredited educational institution, recognized by the Division.

The Board's conclusion that Fussell did not qualify for licensure in the State of Utah was upheld by the Special Appeals Board.

#### **STATEMENT OF MATERIAL FACTS**

The duties and functions of the Division of Occupational and Professional Licensing are outlined in Utah Code Annotated § 58-1-1 et seq. Section 58-1-6(1)(7) states that it is the function and responsibility of the Division to prescribe, adopt and enforce rules to administer Title 58 and also makes it the responsibility of the Division to issue, refuse to issue, revoke, suspend, renew, refuse to renew or otherwise act upon a license or licensee. Section 58-1-8 makes it the duty, function and responsibility of the Board to recommend to the Director appropriate rules and to screen applicants and recommend licensing renewal, reinstatement and re-licensure actions. Finally, § 58-1-9 states that a duty, function and responsibility of the Division, in collaboration with the Board, is to prescribe license qualifications and to prescribe rules governing applications for licenses. These three statutes, therefore, allow the Division, in collaboration with the Board, to set a standard for licensing qualification for all applicants applying for professional licensure. They also designate the Division, in



collaboration with the Board, to prescribe any rules governing applications for licenses.

In unrefuted testimony, Dr. Thomas Schenkenberg described the complicated process for the promulgation of Rules. According to Dr. Schenkenberg the process includes drafts by the Utah Psychological Association and reviews by the Psychology Board. Reviews are made available to every psychologist in the State. The Board reviews national trends in licensing laws and reviews are conducted of the Psychological Association Model Licensing Act for compatibility and consistency with other states.

(Transcript p. 147-148). Dr. Schenkenberg further testified that the Utah statute does not provide discretionary language allowing the Board to make a decision that is not based on the statute.

(Transcript 163-168). It is an unrefuted that the regulatory language in the Utah Statute was drawn form a national source and that thirty three (33) jurisdictions use the same or more restrictive language. (Transcript p. 173.)

Candidates for licensure as psychologists in the State of Utah are called upon to meet the requirements of Utah Code Ann. § 58-25-2 Section (1)(b) of this statute requires that candidates;

produce transcripts of credit which are acceptable to the representative committee which demonstrate that the candidate for licensing has received a doctoral degree based on a program of studies whose content was

primarily psychological, from an accredited educational institution recognized by the Division.

(Emphasis added.)

The above stated section was analyzed by the Supreme Court of Utah in 1981, in the case of Athay v. State Dep't of Business Regulation, 626 P.2d 965, (Utah 1981). In Athay, the trial court looked at the statute and rules and found that:

No rules, regulations, guidelines, or description of any kind relating to the type of courses which would be considered by the Committee to be "primarily psychological" within the meaning of the statute had, at that time, ever been adopted, published or communicated by the Committee. . . .

Id. at 966 (Emphasis provided by the Court).

Because of this the Court felt that there were no objective, identifiable standards against which the applicant's qualifications could be judged. The trial court felt that the statute was vague and ambiguous in nature. This deprived the plaintiff of an opportunity to qualify and offended basic notions of due process. Id.

The Supreme Court in Athay affirmed the trial court's finding and held that:

The legislative grant of authority to the administrative agency is necessarily in general language. It is the responsibility of the administrative body to formulate, publish and make available to concerned persons rules which are sufficiently definite and clear that persons of ordinary intelligence will be understand and abide by them.

Id. at 968 (Emphasis added.)

The Court further stated that the failure to establish guidelines for a curriculum or a criteria for course content, which is "primarily psychological" constituted arbitrary action.

Partially in response to the filing of the Athay case and in holding with § 58-1-1 et seq., the Division, in collaboration with the Psychology Board promulgated rules defining the requirements for applicants. One of these rules is the rule at issue in this case, R153-25-8(4)(b). The Rules are outlined in R153-25-1 et seq. Section 8(4)(b) which defines "a program of studies whose content is primarily psychological" as follows:

(b) The program wherever it may be administratively housed, must be clearly identified and labelled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

The Petitioner in this matter, has not met the requirements described in R153-25-8(4)b. (See Order, Appendix A.) Fussell, received a Doctor of Education (Ed.D) degree through the Human Development Counseling program of the George Peabody College for teachers at Vanderbilt University (Peabody). The 1976-77 course catalog for this college reflects that Doctorate Degrees of Education were available in three programs within the college: Human Development Counseling, Psychology and Special Education. Fussell chose Human Development Counseling, a program which,

according to the Licensing Board and the Special Appeals Board, does not qualify her for licensure in the State of Utah. One of the reasons for this decision is that the Human Development Counseling Program is described in the Peabody College catalog as follows:

The primary goal of the Human Development Counseling Program is to train individuals at the M.S., Ed.S, and Ed.D levels to intervene via the helping relationship as a means of enabling persons to become more fully functioning... The Peabody program recognizes the professionally trained counselor as a human development teacher whose primary function is to help individuals enhance life adjustment and facilitate behavioral development, such that they can cope more effectively with their environment. . . .

Settings in which graduates apply their counseling skills will vary. They will include school counseling and guidance, classroom teaching, correctional institutions, vocational rehabilitation centers, mental health centers, drug treatment centers, marriage and family counseling clinics and community action agencies.

(Emphasis added.)

The course catalog further provides as follows:

The curriculum of the program in human development counseling conforms to the Standards for the Preparation of Counselors and Other Personal Service Specialists developed by the Association of Counselor Educators and Supervisors (ACES), and is intended to reflect the trend in professional training programs for its competency/performance-based instruction.

The Psychology Program offered in the 1976-77 course catalog for the George Peabody College for Teachers at Vanderbilt University describes its course offerings as follows:

Programs in psychology reflect concern about the development of human resources and the discovery of new ways to bring psychological knowledge and research skills to bear upon societal problems, especially those which are amenable to intervention during the early years of life. A heavy emphasis is placed on doctoral level training in various specialty areas including developmental psychology, educational psychology, experimental psychology, mental retardation research, social and personality psychology, and transactional-ecological psychology (which includes sub specialties of clinical, community, counseling and social psychology), which are accredited by the American Psychological Association. . . .

General requirements of all psychology students are kept to a minimal level to encourage and their advisors to develop carefully thought-out programs designed to meet the specific needs of the individual students. A training committee faculty and student exist for each area of specialization which sets specific guidelines and requirements for the specialization.

The above stated description of the Psychology Program clearly fits within the requirements set out by R153-25-8 (4)(b).

Fussell, however, took course in Human Development rather than the Psychology Program. Fussell received her degree in 1985. The program catalog of the Peabody in 1985 makes it even clearer that the Human Development Program is not a Psychology Program. According to the catalog:

Credentialing as a nationally certified counselor is possible through the department. In addition,

certification as a school counselor may be obtained through appropriate course work. Students wishing to be licensed in marriage and family counseling or other related areas, may arrange through additional course work and supervision to apply for licensure, depending on state regulations. Individuals interested in clinical psychology training or licensure as a psychologist, however, should apply to programs approved by the American Psychological Association.

(Emphasis added.)

The 1985 catalog in describing the Human Development Program provides:

At the post-baccalaureate level the Department of Human Development Counseling (HDC) has as its primary goal the education of mental health generalists who will function in a host of mental settings as counselors. The program maintains a balance between didactic and experiential learning. The HDC program is interdisciplinary in nature with faculty and resources from such areas as psychology, sociology, management, education, human development and community organization.

Although Fussell has testified that it was always her intent to become a licensed psychologist, she did not enroll in a program that was intended to train psychologists. (Transcript p. 16, 19, 85.)

In applying for a license to practice as a psychologist in the state of Utah, the applicant submits an application packet which the Board reviews at their monthly meeting. Two Board members look at every file and if a question arises the whole group discusses it. In the instance of Fussell, her initial materials were reviewed and several matters were clarified with

her by mail. After these matters were cleared up, Fussell's materials were reviewed and it was found that her program did not meet the requirements of the Utah statute. (Transcript p. 165-167).

The Board, when considering applications for licensure relies heavily on the statute and the rules and regulations as guidelines by which to make their decisions. According to Dr. Schenkenberg, the Board's duty to the State and to the Governor who appoints the Board is to apply the statutes, rules and regulations as they're written and not to go beyond the authority that's established within those guidelines. (Transcript p. 149.) The Board may spend two or three hours reviewing an individual applicant's file and discussing whether it meets the criteria established by the rules and regulations. Dr. Schenkenberg testified that he was involved with the decision making process on the application of Dr. Fussell. He stated that there was a series of votes and that the final conclusion of the Board was that Fussell's program of study simply did not meet the statute nor the rules and regulations. According to Dr. Schenkenberg, the Board felt that Fussell's program clearly did not meet the requirements of § 4(b) of Rule 153-25-8. (Transcript p. 152.) Dr. Schenkenberg further testified that "Human Development Counseling is clearly not labelled as a psychology program."

There were six, and perhaps seven programs at Vanderbilt, at George Peabody, at the time when all this educational experience took place, which would have qualified.<sup>1</sup>

There is further unrefuted testimony that the movement of the Board is toward raising the criteria set out in the rules. (Transcript p. 160.) Also, according to the testimonies of Dr. Furhman and Dr. Schenkenberg, an exception has never been carved out for any individual since the rules were established. According to the doctors, there have been other incidents in which an individual received his or her degree in a different department, while a lot of their course work was psychological in nature. As in the case at hand, these application have been refused licensure. (Transcript pp. 120-121, 159.)

The psychologists testifying on behalf of the State also stated in unrefuted testimony that the program of studies taken by Ms. Fussell was not in a department whose intent was to

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<sup>1</sup> "It is not simply a matter of laying off the Clinical Psychology program against Human Development Counseling; there were five or six other programs that would clearly qualify. [The rule] states that 'A program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologist.' This clearly is not present in any of the [Human Development counseling] catalogs or brochures . . . . The materials that Dr. Fussell presented to us indicate that the intent of the program was to develop teachers. The program description for 1985 states that; if the goal is to become a licensed psychologist, go to one of the programs here at Vanderbilt that have and APA accreditation." (Transcript p. 152-153.)



prepare professional psychologists. This was a matter of concern to the Board because its members felt that it would affect her ability to practice psychology as an independent, licensed professional. According to Dr. Fuhman it is important that a student take an integrated program of studies that allows the person to have both the experience and theory that are necessary in order to practice psychology. (Transcript p. 82, 85.) Dr. Fuhman testified that although Fussell has had many courses and perhaps even many required courses, she has not matriculated and has not been accepted into a program that was intended to train professional psychologists. This means that Fussell did not have a directed and articulated integrated program of studies leading to preparation as a professional psychologist.<sup>2</sup> (Transcript p. 85.)

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<sup>2</sup> Although, the Petitioner claimed at the hearing her courses were APA approved, it is undisputed that the APA does not accredit courses. Rather, according to Dr. Fuhman's testimony, the APA accredits programs. Dr. Fuhman is a site visitor for the APA. This position allows her to visit pre-doctoral training programs and internship programs and either approve them for accreditation or for establish accreditation. She assists in the review process and submits recommendations to the national committee. Dr. Fuhman testified that the purpose of APA accreditation programs is to try and insure continuing competency and a quality of educational course work. Additionally, it assures that the program includes both theory and provides a person with the kind of experiences that allow them to practice independently as a psychologist as well as insuring a high quality of training, both as a teacher and as a researcher in psychological matters.

Dr. Malouf testified that Fussell's program was not administratively housed in a psychology program, that the brochures did not state the intent of training psychologists, and that her program did not appear to be a psychology program. Dr. Malouf had a concern that the program outlined by Fussell seemed extremely limited and was not intended to train a psychologist. (Transcript p. 127-129). Dr. Malouf further expressed concern that since research is a major component what a psychologist's work, a program that de-emphasizes research to that extent does not qualify to train psychologists. (See testimony of Fussell, Transcript p. 180, where Fussell testifies that she did not wish to do research.) Dr. Malouf testified that Fussell's Human Development program did not have the necessary focus or emphasis on psychology. Finally, he voiced a concern that there was no process by which someone could be disqualified or taken out of the program if they did not have a the proper skills or personal traits to become a psychologist.<sup>3</sup>

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<sup>3</sup> In a normal psychology program, the student must meet certain qualifications and criteria to remain in the program. If that student is failing or lacking in qualifications he would be instructed to make up for it. If he could or did not, it would be recommended that he leave the program. The above stated criteria and disciplinary approach did not appear in Fussell's program, since she was training to be a Human Development Counselor rather than a Psychologist. (Transcript p. 130-132.)

The Petitioner's program description was not "primarily psychological" during the time of her studies or at the time of her graduation. Fussell attended a university that offered accredited programs in courses of study that are clearly described as primarily psychological in nature. Despite this, she chose to take a course of studies that was designed to train human development counselors rather than psychologists. Fussell could have enrolled in the psychology program and also have taken courses with the practical approach she desired. Instead she chose to develop her own program. (Transcript p. 180-181). Finally, it must be noted that currently, Fussell is working on the doctoral level as a psychologist at Weber State College. Her current employment is precisely what her program description and her course of studies and training qualify Fussell to do. It should also be taken into consideration that Fussell has worked in Utah since 1983. The Rule at dispute in this case was promulgated prior to 1983. Therefore Fussell should have been aware that her course work was not acceptable several years before her graduation.

## SUMMARY OF ARGUMENT

### POINT I

#### FUSSELL PROPOUNDED AN INCOMPLETE STANDARD OF REVIEW

Two Utah cases, Grace Drilling v. Board of Review, 776 P. 2d 63 (Utah App. 1989) and Pro-Benefit Staffing v. Board of Review, 775 P. 2d 439 (Utah App. 1989) set out the proper standard of review in court of appeals review of agency decisions. The substantial evidence test propounded by the Grace Drilling court requires that the court review both sides of the record to determine if the Board's findings are supported by the substantial evidence. This requires that the party opposing the Board's decision has the burden of showing that the Board's decision is not supported by relevant evidence that a reasonable mind would find adequate to support a conclusion. The Pro-Benefit court stated that it would not disturb the Boards application of factual findings to the law unless its determination exceeds the bounds of reasonableness and rationality. The Court further states that the conclusions must be reasonable and rational as measured against the language and purpose of the governing legislation. Despite Petitioner's claims, the Board's decision is clearly based on Utah statute and is neither unreasonable or irrational. It was the Legislatures intent that the Board interpret the relevant statutes. The rule

in question interprets the relevant statute in a clear, reasonable and rational manner.

POINT II

FUSSELL IS NOT QUALIFIED TO PRACTICE AS AN  
INDEPENDENT PROFESSIONALLY LICENSED PSYCHOLOGIST  
IN THE STATE OF UTAH.

There is a difference between being qualified to practice psychology on the doctoral level and being qualified to practice independently as a licensed psychologist. Fussell is currently practicing psychology on the doctoral level at Weber State College Student Counseling Center. This is precisely what her course in Human Development Counseling trained her to do. This course of studies, however, did not train Fussell to work as an independent licensed psychologist. Fussell's program and course of studies do not give her the expertise to become licensed in Utah.

POINT III

PRIOR TO RECEIVING HER DEGREE PETITIONER HAD REASON TO  
KNOW SHE DID NOT QUALIFY FOR LICENSURE IN UTAH

Prior to receiving her degree, Petitioner had reason to know that she did not qualify for licensure in Utah. The rule at issue in this case was promulgated prior to 1983. Fussell came to Utah in 1983, two years before her graduation. Despite the fact that she has stated that her intention from the beginning was to be licensed as a psychologist and the fact that it is

clear from the relevant rule that her program did not qualify her to be a psychologist, she did not change her course of studies. Fussell's course of study does not qualify her for licensure in Utah. Any right Fussell may have to licensure is subordinate to Utah's right to regulate the licensure of psychologists. The fact that Fussell did not choose to take a program of studies that would be approved in the State of Utah, but instead chose to take her own independent course, does not create a special dispensation allowing her to ignore the statutorily created rules and regulations.

#### POINT IV

##### THE AGENCY'S ACTIONS ARE NEITHER ARBITRARY NOR CAPRICIOUS

Fussell provides no basis upon which to rest her claim that the agency's action is arbitrary and capricious. The Board and the Division have promulgated rules which provide a clear and acceptable standard by which students or applicants may judge their qualifications for licensure. Fussell claims that because her course of studies does not meet these rules, the rules must be arbitrary and capricious. Fussell did not take a course of study designed to train her to become a psychologist. Fussell designed her own course of study, taking courses in which she was interested and apparently dismissing those in which she was not. However, according to Ms. Fussell's logic, any student who took

numerous psychology courses could claim that he was therefore qualified to become a licensed psychologist. Such a standard would be arbitrary and capricious, were it to replace the clear and acceptable standards which currently exist in the rules.

#### ARGUMENT

#### POINT I

#### FUSSELL PROPOUNDED AN INCOMPLETE STANDARD OF REVIEW

Fussell relies heavily on Grace Drilling in expounding the proper standard of review in this case. Pro-Benefit Staffing decided the same day, gives additional insight into the Court of Appeals posture toward review of agency decisions. Both cases state that the standard of review for mixed questions of law and fact is governed by the Utah Administrative Procedures Act (UAPA) Utah Code Ann. § 63-46b-16(4). Grace Drilling primarily explains what the "substantial evidence test" for UAPA is, while Pro-Benefit focuses on the standard of review in a state boards application of law.

The substantial evidence test, as propounded by the Grace Drilling court, requires that the court "review both sides of the record to determine whether the boards findings are supported by substantial evidence." Grace Drilling, 776 P.2d at 68, n.7. This means that the court must "consider not only the evidence supporting the Board's factual findings, but also the evidence

that 'fairly detracts from the weight of the [Board's] evidence'" Id. at 68.

However, the

party challenging the board's findings of fact must marshal all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence . . . . Substantial evidence is "more than a mere 'scintilla' of evidence . . . though 'something less than the weight of the evidence.'" Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Id. (Citations omitted.)

Thus, the party opposing the Board's decision has the burden of showing that the Board's decision is not supported by "relevant evidence [that] a reasonable mind [would find] adequate to support a conclusion." Id. Fussell must show that a reasonable thinking person would not agree with the board's decision. Fussell has not met this burden in her petition to the Court of Appeals or her hearing before the Special Appeals Board.

In attempting to prove her claim that the Board's decision is not supported by substantial evidence, Fussell points to the decision in Athay (Br. Petitioner p.24.) Fussell also claims that the State makes an arbitrary and undisclosed requirement, in asking that a program be listed in the "Designated Doctoral Programs in Psychology (DDPP)." There is no such requirement in Utah law. Rather the DDPP is just one indication of the intent



and viability of a program of studies. Fussell makes the claim that this is a requirement in order to distract the court from the more relevant issues. One of these issues is that the Rule in question was promulgated in accordance with the Courts holding in Athay.

At the time Athay applied for licensure as a psychologist in Utah, the only existing standard was set under Utah Code Ann. § 58-25-2. The Division had not promulgated any rules or standards explaining what was meant by a program "primarily psychological in nature." The lack of anything further in the statute, rules or regulations explaining that phrase was the basis for the courts decision. The Athay court stated that "no objective, identifiable standard existed against which the Plaintiff's qualifications could be judged." Athay 626 P.2d at 966. After Athay filed suit, but before her case was decided, the Division promulgated the "objective identifiable" standards which Fussell is now claiming are invalid or arbitrary and capricious when applied to her.

In its explanation in Athay, the Utah Court of Appeals recognized that a State agency necessarily has the authority to promulgate rules and regulations explaining the agency's authorizing statutes. This authority was further recognized by the court in Pro-Benefit. The Pro-Benefit court stated that

relief would be granted if an "agency has erroneously interpreted or applied the law." Pro-Benefit 775 P.2d at 442. The Court in Pro-Benefit recognized that the current Utah Code Ann. § 63-46b-16(4)b is identical to its Model State Administrative Procedures Act (MSAPA) counterpart, §5-116(c)(4) and then quoted from the comment section of the MSAPA:

Paragraph (c)(4) includes two distinct matters - interpretation and application of the law . . . [W]ith regard to the agency's application of the law to specific situations, the enabling statute normally confers some discretion upon the agency. Accordingly, a court should find reversible error in the agency's application of the law only if the agency has improperly exercised it's discretion.

Id. at 442.

In the case at hand there has been no showing by the Petitioner that the Division or the Board improperly exercised its discretion.

The Pro-Benefit court goes on to say that it will

continue to embrace the analysis described in Administrative Services for reviewing mixed questions of law and fact periodically . . . accordingly, under Utah Code Ann. § 63-46b-16(4)(b) we will not disturb the boards application of its factual findings to the law unless its determination exceeds the bounds of reasonableness and rationality.

The Court in Pro-Benefit outlines the standard that must be applied in an administrative hearing. This standard requires that the party opposing the Board's decision must prove that the decision was unreasonable and irrational in order for the court

to disturb an agency's application of law. There has been no such showing in the case at hand. The Psychology Board's and the Special Appeal Board's decisions are firmly based upon the relevant statutes, rules and regulations.

The Pro-Benefit court additionally decided that the standard of view is to be "a intermediate standard" covering "the Board's conclusions, [which] must be reasonable and rational as measured against the language and purpose of the governing legislation.'" Pro-Benefit at 442. The Pro-Benefit court explained that "[t]his intermediate standard of review also governs our review of 'the [Board's] interpretation of the operative provisions of the statutory law it is empowered to administer, especially those generalized terms that bespeak a legislative intent to delegate their interpretation to the responsible agency.'" Id. at 442, n.2

(Emphasis added.)

In the case at hand, the applicable statutes clearly demonstrate that it is the Legislature's intent that the Division, in conjunction with the Licensing Board, interpret the applicable statutes. Thus the Psychology Board, in promulgating interpretive rules, has acted in accordance with the applicable statutes. Russell however, would have the court believe that it is beyond the Division and the Board's jurisdiction to make these

interpretive rules. Clearly this is contrary to the court's finding in the Pro-Benefit case.

In the Athay case the court felt that the statute was overly ambiguous. The rules promulgated were intended to, and have clarified that ambiguity. Rule 4(b) is one subsection of a section which sets forth an "identifiable standard. . .against which. . . qualifications could be judged." Athay at 966. The Division and the Board have acted within the legislative intent in interpreting the statute through the rules. The Psychology Board and the Special Appeals Board have acted correctly in their application of the rules and in finding that Fussell is not qualified to become a psychologist in the State of Utah.

## POINT II

### FUSSELL IS NOT QUALIFIED TO PRACTICE AS AN INDEPENDENT, PROFESSIONAL, LICENSED PSYCHOLOGIST IN THE STATE OF UTAH

Fussell points out, in her brief, that she is qualified to practice psychology on the doctoral level in the State of Utah. However, Fussell does not distinguish between practicing psychology on the doctoral level and being qualified to practice independently as a licensed psychologist. Currently, Fussell is practicing psychology on the doctoral level in the State. She is a staff psychologist, with the title of "Dr.," at the Weber State

College Student Counseling Center. In point of fact, Fussell is doing exactly what the program she graduated from qualifies her to do. The Peabody college catalog description of Fussell's program states as follows:

The Peabody program recognizes the professionally trained counselor as a human development teacher whose primary function is to help individuals enhance life adjustment and facilitate behavioral development, such that they can cope more effectively with their environment.... Settings in which graduates apply their counseling skills will vary. They will include school counseling and guidance, classroom teaching, correctional institutions, vocational and rehabilitation centers, mental health centers, drug treatment centers, marriage and family counseling clinics, and community action agencies. (emphasis added).

The catalog goes on to state that this program "stands in contrast to the traditional approach to training." Fussell's program qualifies her to practice psychology at the doctorate level, however, the program does not meet the Utah statutory requirement for a license to practice psychology. Nor does this program demonstrate an intent to educate and train professional psychologists as required. Fussell's program was directed to teaching situations rather than those of a professional psychologist.

The above description clearly intimates that Fussell's program stands in contrast to traditional psychological training.<sup>4</sup> The Peabody course catalog also describes the Human Development Program as meeting "the Standards for the Preparation of Counselors and Other Personal Service Specialist developed by the Association of Counselor Educators and Supervisors (ACES)." Although, Fussell has worked as a psychologist at a doctoral level, pursuant to U.C.A. § 58-25a-6, this does not qualify her for licensure as a psychologist although in the State of Utah. It simply qualifies her to continue in her current employment. If Fussell wished to practice as a psychologist she should have taken one of the numerous courses that train psychologists.

### POINT III

#### PRIOR TO RECEIVING HER DEGREE PETITIONER HAD REASON TO KNOW SHE DID NOT QUALIFY FOR LICENSURE IN UTAH.

In 1983, Fussell was a psychology intern at the University of Utah and has continued to work in Utah since that time. Rule 153-25-8 which outlines and defines the statutory requirements,

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<sup>4</sup> The catalog description goes on to say that the traditional approach "generally focusses on maladjustment and abnormal behavior, an approach which is increasingly regarded as outmoded." Nowhere does this description state that this "new approach" has received recognition as being better than, or even the equivalent of, a traditional psychology program for the purposes of licensure as a psychologist

was promulgated prior to 1983. Because of this, Fussell had reason to know that her program did not qualify her for a psychologist license in the State of Utah. Despite this, Fussell continued in her chosen program of Human Development Counseling. She continued with this program until she received her Doctor of Education, in 1985.

The Petitioner has stated that her intention from the beginning was to be licensed as a psychologist. (Transcript p. 16, 19, 41). Because she was living and training in Utah, after Rule 153-25-8 was promulgated, she had reason to know, and should have known that she did not meet the standards set by the rule. Despite this, she continued in a program of studies and received a degree that was not intended to train students to become psychologists. In the Peabody catalog the description of the Psychology Program states that the Psychology Program places a heavy emphasis on " doctoral level training in various specialty areas...which are accredited by the American Psychological Association." From the descriptions of both the Human Development and the Psychology Programs in the course catalog, it is clear that Fussell had the opportunity to assess which professional associations recognize and accredited the training received from the programs.

Although Dr. Fussell claims to be and is licensed in the state of Tennessee, it is undisputed that the requirements for licensing in Tennessee are lower than the requirements in Utah. Tennessee accepts graduates from programs which are not termed psychology programs, as long as the degree is from a "closely allied field if it is the opinion of the board that the training required therefore is substantially similar." (Tennessee Code §63-11-208). The language in the Tennessee Statute allows the Tennessee Licensing Board discretion in deciding which doctoral degrees are acceptable for licensure in psychology. Fussell relied on the discretion of the Tennessee Board rather than her program, in applying as an independent practicing psychologist in that state. In Utah, however, the Board does not have discretionary judgement in accepting applications. Utah statutes do not allow the Board to go beyond the rules and regulations. (Transcript p. 163).

"It is a commonly accepted fact that a state has the authority to promulgate its own licensing requirements." Brown v. Bd. of Exam. of Psychologists, 378 S E. 2nd 718, 720 (Ga. App. 1989). In the Brown case the appellant claimed that he had called the Psychology Board secretary and received incorrect information as to the rules concerning licensure in that state. A year and a half later, upon completion of his degree, his



application was denied because he did not meet the criteria set out in the Rules. Brown sued the Board for negligence in not providing him with timely and accurate responses to his questions concerning licensure. The Brown case is relevant to this case in several ways. First, the statutes in Brown closely resemble the statutes in the State of Utah.<sup>5</sup> Second, the facts of the case address the issue of an applicants "right" to practice as a psychologist. The Brown case states as follows:

The [State], in the exercise of its police power to protect public health and welfare, may regulate health and related trades and professions...an individual does not have a constitutional right to practice a health care profession since such a right is subordinate to the states right to regulate such a profession.

Id. at 720 (Citations omitted.)

Neither Brown nor Fussell have the basic "right" to a license if they do not meet statutory requirements. The States right to regulate the profession in order to protect the public and to set a predictable standard for all applicants supersedes other matters.

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<sup>5</sup> "Under OCGA section 43-39-5(b) the Board is expressly authorized to "adopt such rules and regulations as it may deem necessary for the performance of it's duties and [to] provide for examinations and pass upon the qualifications of the applicants for the practice of psychology. Under OCGA section 43-39-8(b)2, one of the requirements of a candidate for a license is that he or she "[h]as received a doctoral degree from a program in psychology... from an accredited educational institution recognized by the Board as maintaining satisfactory standards." Id.

The Brown case further states that

"[T]he fact that Dr. Brown has worked as a psychologist for the state does not give him a vested right to sit for the licensing examination. Indeed, the state may require additional requirements which would prohibit those already licensed from continuing to practice in the regulated field."

Id. at 720.

Brown cites Hughes v. State Bd. of Med. Examiners 134 S.E. 42 (Ga. 1926) in stating that "an individual takes his license subject to the states right . . . to make further restrictions and requirements, which will be upheld if reasonable, even though they prohibit some people from further engaging in a profession under a previously granted license." Id. at 721.

#### POINT IV

#### THE AGENCY'S ACTIONS ARE NEITHER ARBITRARY NOR CAPRICIOUS

Fussell relies on Pro-Benefit Staffing in claiming that the agency has misapplied the law and that their actions are not supported by the intermediate standard of reasonableness and rationality. In doing so, Fussell ignores certain portions of Pro-Benefit. As stated above, the intermediate standard of review also governs the courts review of the Board's interpretation of the statutory law, particularly those that bespeak a legislative intent to delegate their interpretation to

the responsible agency. In the case at hand, it is clear that it was the legislature's intent that the Division and the Board interpret the statutes and promulgate the rules. These rules were written with the express intent of clarifying the requirements for licensure as a psychologist in the state of Utah. These rules were promulgated for the purpose of providing defined, clear, requirements for an applicant. Dr. Fussell's program of studies has not met those requirements.

Fussell goes on to say that it is arbitrary and capricious to judge a doctoral candidates degree by three or four general paragraphs in the introduction of a course catalog. (Br. at 26). It is clear, however, from the testimony of the State's witnesses that their decision was not merely based on three or four general paragraphs. Rather, the Boards decision was based on a time consuming and complex process that involved review and input by all members of the Board. More than not meeting with one section of a Utah rule, Fussell's program does not meet with the standards set in Utah and 33 other states. Fussell has not trained to be a Psychologist. Instead she set out on her own course of studies that has trained her to be Human Development Counselor. Despite the claim that her course work was supervised, her program was not directed toward psychology. Any input by supervisors would be directed toward Human Development

Counseling. Fussell has testified that she didn't bother to research or take classes in which she had no interest.

(Transcript p. 180) "Within the confines of the [Human Development Counseling] program, and in conjunction with my interests. I designed the program with the assistance of my advisors. . ." Id.

Fussell further claims that she has produced acceptable transcripts in this matter. In doing so, Fussell ignores the fact that the transcripts were never reviewed in depth by the Board and that it is Fussell who claims the transcripts are acceptable. Drs. Malouf and Schenkenberg both testified that they had not considered or reviewed Fussell's record in order to make a judgement. (Transcript p. 164). All three agency witnesses expressed concerns about the fact that Ms. Fussell's program did not focus on psychology. As stated by Dr. Malouf, "in order to be considered a psychologist, you have to graduate from a program that is designed to train psychologist." (Transcript p. 140).<sup>6</sup>

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<sup>6</sup> According to Dr. Malouf, "my concern is that Dr. Fussell's program does not account for the fact that this is a core body of knowledge with set areas that are commonly accepted, and instead chose a specific area or specific problem area to focus on, which is much the same way as a marriage and family counselor or drug and alcohol counselor. (Transcript p. 143)"

In backing her claim that the Board's ruling was arbitrary and capricious, Fussell cites Rule 153-25-8(4)(i) of the Rules. According to Fussell, her qualifications meet with this section of the Rule and should, thus, reach the other qualifications. However, it must be noted, that in unrefuted testimony, the point was made that the Board did not yet review this section of the Rule. The Board's denial of licensure was based on section (b) of the rule. Sections (c) through (i) were not closely reviewed. (Transcript p. 165). Therefore, there is no basis other than Fussell's opinion, upon which to claim she meets with the requirements of section (i). Additionally, the rule is to be reviewed as a whole and the applicant must meet all sections of the rule, not simply one or two of them.

Finally, there is unrefuted testimony to the effect that Fussell, does not meet other unreviewed sections of the rule. According to Dr. Schenkenberg, Fussell does not qualify under section 4 (e) which states, that "the program must be an organized sequence of study planned by those responsible for the training program, to provide an integrated, educational experience appropriate to the professional practice of psychology. Nor does she qualify under section (g) which requires that the program "must have an identifiable body of

students who are matriculated in the program for a degree.  
(Transcript p. 150-151).<sup>7</sup>

Fussell has not demonstrated that the Agency's actions were unreasonable, arbitrary or capricious. Instead she appears to be claiming that because she might qualify for one unreviewed section all other qualifications should be ignored. The Rules provide clear and acceptable standard by which students or applicants may judge their needs and qualifications. Simply because Fussell chosen to ignore that standard does not make the rules arbitrary and capricious.

#### CONCLUSION

In accordance with the Utah statutes, the Psychologist Licensing Board and the Division have promulgated rules which set a standard which places applicants on clear notice of the requirements for a psychologists license in the State of Utah. Despite the fact that Fussell had notice and the ability to select a program of studies that would qualify her to become a

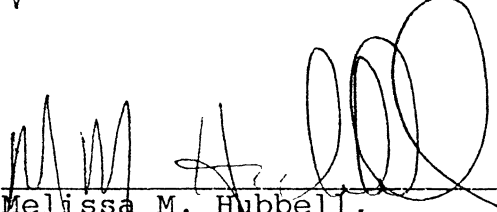
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<sup>7</sup> Dr. Schenkenberg goes on to say that "there's no doubt that the Human Development Counseling program had a matriculated, identifiable body of students, but there was no body of students revolving around the "program" of study that Dr. Fussell developed for her self.

Looking at this section rigorously and thoroughly and received a tremendous amount of input from all those individuals who had something to say on this matter. We concluded that the program of studies simply did not match the rules and regulations." (Transcript p. 154).

psychologist, she chose a course of studies which did not. The rules meet the statutory requirements and reflect a studied and careful basis for licensure. These rules can not be ignored or set aside simply because one applicant has decided to take a program of studies and a series of courses that fit her interests. Rather than being arbitrary and capricious in denying Fussell's license, the Division would be arbitrary and capricious in granting her one. The agencies decision to reject Fussell's application should be upheld.

RESPECTFULLY SUBMITTED this 31 day of December, 1990.



Melissa M. Hubbell,  
Assistant Attorney General  
Counsel for the Division  
of Occupational and  
Professional Licensing

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of December 1990, I mailed via first class, postage pre-paid a true and accurate copy of the foregoing to:

Jeffrey L. Silvestrini  
COHNE, RAPPAPORT & SEGAL  
Attorney for Petitioner  
Juanita J. Fussell  
525 East First South, 5th Floor  
P. O. Box 11008  
Salt Lake City, Utah 84147-0008

James J. Hill



BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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IN THE MATTER OF THE APPLICATION	:	
OF JUANITA FUSSELL	:	
FOR LICENSURE AS A PSYCHOLOGIST	:	ORDER
IN THE STATE OF UTAH	:	


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BY THE DIVISION:

Pursuant to Section 58-1-17(4)(b), Utah Code Ann. (1953), as amended, the attached Findings of Fact, Conclusions of Law and Recommendation are hereby adopted by the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 3rd day of May, 1990



  
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David E. Robinson, Director

Judicial review of this Order may be obtained by filing a petition for review within thirty (30) days after the issuance of this Order. Any petition for judicial review shall comply with the requirements set forth in Section 63-46b-16.

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE APPLICATION	:	
OF JUANITA FUSSELL	:	FINDINGS OF FACT,
FOR LICENSURE AS A PSYCHOLOGIST	:	CONCLUSIONS OF LAW
IN THE STATE OF UTAH	:	AND RECOMMENDATION
	:	

Appearances:

Jeffrey L. Silvestrini for the Applicant

Melissa M. Hubbell for the Division of Occupational & Professional  
Licensing

BY THE BOARD:

Pursuant to Section 58-1-17, Utah Code Ann. (1953), as amended, a hearing was conducted on April 10, 1990 in the above-entitled matter before J. Steven Eklund, Administrative Law Judge for the Department of Commerce and a Special Appeals Board consisting of Steven M. Ross, Maureen L. Cleary and Bonnie Posselli. Thereafter, evidence was offered and received.

The Board, being fully advised in the premises, now enters the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT

1. On August 5, 1987, the applicant filed an application with the Division of Occupational and Professional Licensing for licensure as a psychologist in the State of Utah. By letter, dated August 19, 1987, the Psychology Examining Committee requested the applicant to provide further information with regard to her doctoral program. The applicant submitted a response to that request on August 26, 1987.

2. By letter, dated September 22, 1987, the Division notified the applicant that her application was denied because her degree-granting program did not qualify under Section 58-25-2 and Rule 4(b) of the rules pertaining to the Psychologists Licensing Act. By letter, dated November 16, 1987, the Division notified the applicant that counsel had been sought from the Attorney General's Office regarding the applicant's degree-granting program and that the Board would reconsider the application after receiving such counsel. By letter, dated January 26, 1988, the Division notified the applicant that the application was denied on the basis of the above-referenced statute and rule.

3. By letter, dated January 6, 1989, the applicant informed the Division that she had completed the examination process to be licensed as a psychologist in Tennessee and became so licensed on December 13, 1988. Based on that licensure, the applicant requested that the Psychology Examining Committee reassess her application for licensure in this state.

4. By letter, dated January 31, 1989, the Division again denied the application, stating as follows:

Utah's law was written to more clearly specify those programs that are and are not considered psychology programs. Although you have taken courses in the psychology department, your degree is not in psychology.

The only reasonable course of facts that we can recommend is that you earn a doctorate in a psychology program. Since this is what Utah (and most other states) require, there is no alternative that will suffice. The Utah law on this is quite clear. We are sorry for any problems that this may have caused you.

5. By letter, dated April 25, 1989, the applicant documented her April 21, 1989 appeal from the denial of her application and requested that David L. Buhler, Executive Director, Department of Commerce, convene a Special Appeals Board. By letter, dated May 2, 1989, Mr. Buhler advised the

applicant that such a board would be called to consider the denial of the application for licensure.

6. On September 27, 1989, an initial hearing was conducted before a Special Appeals Board consisting of Elizabeth B. Stewart, David B. Erickson and Becky Rock. Certain evidence was offered and received by that Board. Sparing detail, the Division moved to recuse one of those Board members, that motion was granted and the remaining Board members were also recused from any further participation. As set forth above, the April 10, 1990 hearing was conducted before Dr. Ross, Ms. Cleary and Ms. Posselli.

7. On May 10, 1985, the applicant received a Doctor of Education (Ed.D) degree through the Human Development Counseling program of the George Peabody College for Teachers at Vanderbilt University. The 1976-77 course catalog for the just-stated College reflects that doctorate degrees of education were available in three programs within the College: Human Development Counseling, Psychology and Special Education. The catalog describes the Human Development Counseling program as follows:

The primary goal of the human development counseling program is to train individuals at the M.S., Ed.S and Ed.D levels to intervene via the helping relationship as a means of enabling persons to become more fully functioning. . . . The Peabody program recognizes the professionally trained counselor as a human development teacher whose primary function is to help individuals enhance life adjustment and facilitate behavioral development such that they can cope more effectively with their environment . . . .

Settings in which graduates apply their counseling skills will vary. They will include school counseling and guidance, classroom teaching, correctional institutions, vocational rehabilitation centers, mental health centers, drug treatment centers, marriage and family counseling clinics, and community action agencies.

The course catalog further provides as follows:

The curriculum of the program in human development counseling conforms to the Standards for the Preparation of Counselors and Other Personnel Service Specialists developed by the Association of Counselor Educators and Supervisors (ACES), and is intended to reflect the trend in professional training programs toward competency/performance-based instruction.

The central program units are six curriculum areas. Each area has a prescribed list of courses which are representative of the area. Students elect courses based on individual needs and area rather than course requirements.

8. The 1976-77 course catalog describes the Psychology program as follows:

Programs in psychology reflect concern about the development of human resources and the discovery of new ways to bring psychological knowledge and research skills to bear upon societal problems, especially those which are amenable to intervention during the early years of life. A heavy emphasis is placed on doctoral level training in various specialty areas including developmental psychology, educational psychology, experimental psychology, mental retardation research, social and personality psychology, and transactional-ecological psychology (which includes subspecialties of clinical, community, counseling, and social psychology), which are accredited by the American Psychological Association . . . .

General requirements of all psychology students are kept to a minimal level to encourage students and their advisors to develop carefully thought-out programs designed to meet the specific needs of the individual students. A training committee of faculty and students exists for each area of specialization which sets specific guidelines and requirements for the specialization.

9. The 1985 course catalog describes the Human Development Program in the following terms:

At the post-baccalaureate level the Department of Human Development Counseling (HDC) has as its primary goal the education of mental health generalists who will function in a host of mental health settings as

counselors. The program maintains a balance between didactic and experiential learning. The HDC program is interdisciplinary in nature with faculty and resources from such areas as psychology, sociology, management, education, human development, and community organization.

The catalog further provides as follows:

The department has recently been singled out as one of 30 programs in the United States - out of nearly 500 - to receive program and accreditation through the Counsel for Accreditation of Counseling And Related Educational Programs (CACREP), established by the American Association for Counseling And Development (formerly American Personnel and Guidance Association).

The catalog also provides:

Credentialing as a nationally certified counselor is possible through the department. In addition, certification as a school counselor may be obtained through appropriate course work. Students wishing to be licensed in marriage and family counseling or other related areas may arrange through additional course work and supervision to apply for licensure, depending on state regulations. Individuals interested in clinical psychology training or licensure as a psychologist, however, should apply to programs approved by the American Psychological Association.

10. The 1985 catalog describes the Psychology program as follows:

The Department of Psychology and Human Development offers programs of study leading to the professional degrees of M.Ed. and Ed.S in human development and the M.Ed. and Ed.S. in psychology. The department also offers course work toward the M.S. and Ph.D. degrees administered by the Graduate School . . . .

Degree programs in the department emphasize basic research as well as empirical, data-oriented approaches to practical problems in education and human development. The department is particularly concerned about the development of human resources and the discovery of new ways to bring psychological knowledge and research skills to bear upon societal problems, especially those amenable to intervention during the early years of life. Areas of specialization include the child development specialist program,

developmental psychology, educational psychology, general psychology, mental retardation research, social/personality and social development, and a combined scientific/professional program in clinical, counseling, and school psychology with a community psychology component option.

Specific guidelines and requirements beyond general departmental regulations are set by training committees of faculty and students in each area of specialization.

11. A majority (58%) of the courses which the applicant completed to attain her doctorate degree were taught by faculty in the Psychology Department at Vanderbilt University and would have been generally available to students working toward a psychology degree. Approximately 80-90% of courses taken by the applicant toward completion of her doctorate degree were cross-listed to courses in the Psychology Department, although some of the just-referenced courses would not have been taught by faculty in the Psychology Department and would not have been generally available to students seeking a psychology degree. Three psychologists supervised the preparation of the applicant's doctoral dissertation.

12. Subsequent to obtaining her doctoral degree, the applicant completed a psychology internship at the University of Utah and is presently employed as a counseling psychologist at the Weber State College counselling center. The applicant is supervised by a licensed psychologist and the nature of her existing employment is allowed, notwithstanding the fact that she is not licensed in this state.

#### CONCLUSIONS OF LAW

The applicant asserts that she has received a degree based on a program of studies whose content was primarily psychological and contends that she has thus satisfied the requirements which were previously set forth

in Section 58-24-2(1)(b), quoted below. The applicant contends that the just-referenced statute, which was subsequently amended in 1989, did not require a doctoral degree in psychology when the application now under review was filed in 1987. The applicant asserts that R153-25-8(4)(b), also quoted below, is invalid if applied to mandate any such requirement. Thus, the applicant urges that her specific program of studies, while not culminating in a doctoral degree in psychology, was such that the consideration of her application for licensure should proceed in all remaining respects.

Section 58-25-2(1) previously provided as follows:

Each applicant for a license to practice as a psychologist shall:

. . . .

(b) produce transcripts of credit which are acceptable to the representative committee which demonstrate that the candidate for licensing has received a doctoral degree based on a program of studies whose content was primarily psychological from an accredited educational institution recognized by the division . . . .

With respect to the just-quoted statute, R153-25-8 provides:

4. " . . . a program of studies whose content is primarily psychological . . ." means:

. . . .

(b) the program wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

In Athay v. Dept. of Business Regulation, Utah, 626 P.2d 965 (1981), an applicant for licensure as a psychologist, whose application had been denied on the basis that her curriculum had not been "primarily psychological"



in content, challenged the predecessor statute to Section 58-25-2(1)(b) as being unconstitutionally vague and ambiguous in the absence of any rules relating to the type of courses which would satisfy the statutory requirement. The Utah Supreme Court affirmed the trial court's finding that "the failure to establish guidelines for a curriculum or a criteria for course content . . . constituted arbitrary action and deprived plaintiff of her rights of due process of law". Id. at 968. Specifically, the Court quoted the following language from the trial court's decision:

No rules, regulations, guidelines, or description of any kind relating to the type of courses which would be considered by the Committee to be "primarily psychological" within the meaning of the statute had, at that time, ever been adopted, published or communicated by the Committee or any of the defendants to the plaintiff, applicants in general, the public, or the University of Utah, although it appears that such definitions have been recently promulgated. Thus, no objective, identifiable standard existed against which the plaintiffs qualifications could be judged by her or anyone else, including the defendants." Id. at 966. (Emphasis in original.)

The Court further quoted from the trial court's decision, as follows:

The very circumstance that this Court is now being asked by defendants to determine as a matter of fact that plaintiff's curriculum was not primarily psychological in content illustrates the vague and ambiguous nature of the statute when applied in the absence of uniform, published, identifiable and objective standards. Plaintiff is here being deprived of an opportunity to qualify for examination as a licensed practitioner in her chosen occupation, and thus to earn her living, on the basis of standards which were not known and could not have been known by her or by the University and the Department which awarded her a Ph.D. in a field of specialization designated as "Educational Psychology". This result offends basic notions of due process. Id.

R153-25-8(4)(a) through (i) reflects the various factors to be considered as to whether an applicant for licensure as a psychologist has

completed "a program of studies whose content is primarily psychological". Subsections (a) through (h) reference the nature of the program through which the applicant has obtained their degree, whereas subsection (i) sets forth the curriculum to be completed. For purposes of this proceeding, the only issue is whether the applicant has satisfied the provisions of Section 58-25-2(1)(b), with specific reference to R153-25-4(b).

The just-stated statute does not require that an applicant for licensure as a psychologist have a psychology degree. The rule in question also mandates no such requirement. However, the statutory language "based on a program of studies whose content was primarily psychological" evidences a legislative intent that both the nature of the degree-granting program and the content of courses taken by an applicant be considered as to whether the applicant has satisfied the provisions of Section 58-25-2(1)(b). Further, the criteria set-forth in R153-25-4 provides the appropriate guidelines by which to assess the necessary compliance with the statute.

Concededly, the applicant has completed a significant number of courses whose content was psychological. Nevertheless, a considered review of the 1976-77 and 1985 Peabody College course catalogs which were referenced during the hearing clearly reflects that the Human Development Counseling program was not primarily psychological in nature. Notwithstanding the affidavit of Dr. Julius Seeman to the effect that the Human Development Counseling program emphasized the role of service providers and that a number of students took their degree through that program to qualify for licensure as psychologists, no reference is made to the study of psychology - whether based on either a clinical or research emphasis - in the 1976-77 course catalog which sets forth the description of the Human Development Counseling

program. Furthermore, the 1985 catalog reflects that the study of psychology is only one of six areas combined to offer what is referred to as an "interdisciplinary program". Significantly, neither of those catalogs reflect that the Human Development Counseling program was intended to train and educate professional psychologists. Thus, the applicant has not completed a "program" of studies "whose content was primarily psychological", as was required by Section 58-25-(1)(b) and as further defined in R153-25-4(b).

#### RECOMMENDATION

WHEREFORE, IT IS RECOMMENDED that the application of Juanita Fussell for licensure as a psychologist in the State of Utah be denied.