

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 Petitioner

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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UTAH COURT OF APPEALS

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

JUANITA J. FUSSELL, :

Petitioner, :

vs :

DEPARTMENT OF COMMERCE, :
DIVISION OF OCCUPATIONAL :
AND PROFESSIONAL LICENSING, :

Respondent. :

Case No. 900291-CA

Priority # 15

BRIEF OF PETITIONER JUANITA J. FUSSELL

* * * * *

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FILED

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UTAH COURT OF APPEALS

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FOR LICENSURE AS A PSYCHOLOGIST	:	
IN THE STATE OF UTAH:	:	
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DIVISION OF OCCUPATIONAL	:	
AND PROFESSIONAL LICENSING,	:	
	:	
Respondent.	:	
	:	

BRIEF OF PETITIONER JUANITA J. FUSSELL

* * * * *

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PARTIES

Juanita J. Fussell, Petitioner

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

STATEMENT OF JURISDICTION

This is a petition for review of the Order of David E. Robinson, Director of the Division of Occupational and Professional Licensing, Department of Commerce of the State of Utah dated May 3, 1990. The Order was entered following and as the result of a formal adjudicative hearing before a Special Appeals Board constituted pursuant to Section 57-1-17 U.C.A., 1953 as amended. This court has jurisdiction to decide this appeal pursuant to the provisions of §§63-46b-16 and 78-2a-3(2)(a) U.C.A., 1953 as amended, as well as Rule 14 of the Utah Rules of Appellate Procedure for the reason that this is an appeal of formal adjudicative proceedings before the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah in respect of a question of licensure of the Petitioner as a psychologist.

ISSUES ON APPEAL

The following issues are presented by this appeal:

(a) Whether Petitioner is qualified to practice psychology on a doctoral level or whether her licensure would

expose the public to the practice of psychology by an unqualified person. The applicable standard of review is this court's determination that Petitioner has been substantially prejudiced by agency action based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court. (63-46b-16(4)(g) U.C.A., 1953.)

(b) Whether Petitioner has completed a doctoral degree based upon a program of studies whose content was primarily psychological, as required by former 58-25-2(1)(b) U.C.A., 1953. The standard of review involves a determination of whether the agency action was based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court; and whether the agency action is: (a) an abuse of discretion delegated to the agency by statute; or (b) otherwise arbitrary or capricious.) (63-46b-16(4)(g) and (h), U.C.A., 1953.)

(c) Whether Administrative Regulation R153-25-4(b) interpreting former §58-25-2(1)(b) U.C.A., 1953, as applied to the circumstances of this case, is out of harmony with and/or imposes requirements beyond or contrary to express provisions of the enabling statute. The standard of review involves this court's consideration of: (i) whether the agency has acted

beyond the jurisdiction conferred by any statute, specifically §58-25-2 U.C.A., 1953; (ii) whether the agency has erroneously interpreted or applied the law; (iii) whether the agency action is either an abuse of discretion delegated to the agency by statute or otherwise arbitrary or capricious. (63-46b-16(b)(d) and (h) U.C.A., 1953.)

(d) Whether the agency has correctly interpreted Administrative Regulation R153-25-4(b) under the facts of this case to require consideration of an institutional program of study as opposed to an individual doctoral degree and the courses and other work completed by the Petitioner to obtain such degree. The standard of review requires consideration of whether the agency has erroneously interpreted or applied the law (regulation) and whether the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court and whether the agency action is either an abuse of discretion delegated to the agency by statute or contrary to a rule of the agency or otherwise arbitrary or capricious. (63-46b-16(4)(d)(g) and (h) U.C.A., 1953.)

DETERMINATIVE STATUTES, RULES AND REGULATIONS

Psychology Licensing Act (former 58-25-1). Appendix "A".

State of Utah Rules and Regulations pertaining to the

Psychologists Licensing Act. R153-25-8(4) or Regulation 4, Appendix "B".

STATEMENT OF THE CASE

This is an 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. (R. 474) (Appendix C.) The Order was accompanied by undated Findings of Fact, Conclusions of Law and Recommendation. (R. 475-484) (Appendix D.) This Petition is to review the Order of the Division of Professional and Occupational Licensing referenced above. 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. Petitioner requests this relief for the reason that her doctoral degree qualifies her for licensure because it is a degree from an accredited institution based upon a program of studies whose content is primarily psychological. (58-25-2(1)(b) U.C.A., 1953.)

Petitioner initially applied for licensure at the doctoral level as a psychologist on August 5, 1987. She pursued all administrative remedies, to and including formal adjudicative proceedings before a Special Appeals Board constituted pursuant to the provisions of 58-1-17 U.C.A., 1953, and 63-46b-1, et seq. U.C.A., 1953. The final disposition at the agency was an Order adopting the Recommendation of the Special Appeals Board denying

licensure to Dr. Fussell, whereupon this appeal was taken.

STATEMENT OF MATERIAL FACTS

Petitioner Juanita J. Fussell applied for and was denied licensure as a psychologist. Dr. Fussell filed her application for licensure with the agency on August 5, 1987. (Application, R. 202-249; Findings of Fact para. 1, R. 475.) At the time her application was filed, former §58-25-1 et seq. U.C.A., 1953 governed. (cf. §§58-25a-1 U.C.A., 1953 effective July 1, 1989.) After a series of agency reviews, all resulting in the denial of licensure, Dr. Fussell requested and obtained a formal administrative hearing before a Special Appeals Board constituted pursuant to §58-1-17 U.C.A., 1953.

On April 10, 1990, a hearing was held before the Special Appeals Board and J. Steven Eklund, Administrative Law Judge for the Department of Commerce. Evidence was offered and received. (Findings of Fact, Conclusions and Recommendation, R. 475.) The Recommendation of the Special Appeals Board was for the denial of licensure, which recommendation was followed by the Division by its Order dated May 3, 1990. (Findings of Fact, Conclusions of Law and Recommendation, R. 475-484 and Order, R. 474.)

On May 10, 1985, Dr. Fussell received a Doctor of Education (Ed.D) degree through the Human Development Counseling Department (HDC) of the George Peabody College at Vanderbilt University. (Findings of Fact, Conclusions of Law and Recommendation, para.

7, R. 477.) The George Peabody College for Teachers was originally an independent teacher's school until it merged with Vanderbilt University. The George Peabody College now houses the school of education at Vanderbilt University. (R. 18.)

Dr. Fussell enrolled in the Human Development Counseling Department as opposed to either the psychology department at Vanderbilt University or the one at Peabody College because she was advised that the psychology departments emphasized research and that the Human Development Counseling Department would better train and prepare her as a practicing counseling psychologist. (R. 18-19.) As indicated in the affidavit and letter of Dr. Julius Seeman Professor Emeritus, Psychology, and Professor, Human Development Counseling Department, the major distinction between the psychology department and the HDC program at Peabody/Vanderbilt has been that the HDC program emphasized the role of service providers whereas the psychology department emphasized the research role. (R. 302-306 and R. 297-301) (Appendix "E"). Dr. Seeman stated that a number of doctoral students who took their degree in HDC from George Peabody/Vanderbilt also took appropriate courses in the Department of Psychology in order to qualify for licensure as psychologists, and that Dr. Fussell was one such student. (R. 303.) (Appendix "E").

Indeed, 58% of the courses which Dr. Fussell completed to attain her doctoral degree were offered in the psychology

department and were taught by the faculty in the psychology department at Vanderbilt University. (Findings of Fact, Conclusions of Law and Recommendation para. 11, R. 480.) Approximately 80-90% of the courses taken by the applicant toward completion of her doctoral degree were crosslisted and available for credit to students in the psychology department proper. (R. 25-28); (Findings of Fact, Conclusions of Law and Recommendation, para. 11, 480.) Dr. Fussell completed a course in ethics and a psychology internship at the University of Utah. (R. 240 and 218.)

Dr. Fussell's dissertation was psychological in nature and prepared in the style of the American Psychological Association. Its content is primarily psychological. (R. 24; 51-52.) Three licensed psychologists served on Dr. Fussell's dissertation committee and oversaw and supervised the preparation of her doctoral dissertation. (R. 24).

According to Dr. Weston H. Morrill, Director of the Counseling Center and Professor of Educational Psychology at the University of Utah, if Dr. Fussell had completed the same coursework and submitted the same dissertation at the University of Utah as she did at Peabody/Vanderbilt, she would have qualified for a doctoral degree in counseling psychology. (R. 52.) Dr. Fussell is licensed as a doctoral level psychologist in the State of Tennessee. (R. 23; R. 445).

At Peabody/Vanderbilt, Dr. Fussell was taught by nationally recognized faculty in various fields of psychology. Her professors included Dr. Julius Seeman, Dr. Barbara Walston, Dr. Al Baumeister, Dr. Harold Wilcoxon, and Dr. Bennett Tittler (R. 33-35; R. 442-444.) The course descriptions for each of the courses taken by Dr. Fussell were presented as part of her application and the record in this case before the Special Appeals Board and are present at R. 357-360.¹ Further, the Board was presented with selected syllabi (governed solely by Dr. Fussell's retention policy as opposed to any other factor). R. 361-441. These syllabi generally identify the reading materials utilized in the courses and in some cases provide brief

¹ Dr. Fussell's coursework included: Course 341: Workshop in Counseling; Course 347: Psychology of Careers; Course 379: Advanced Seminar in Personality and Social Psychology; Course 395P: Pre-Practicum in Human Development Counseling; Course 395R: Practicum in Human Development Counseling; Course 241: Fundamentals of Counseling; Course 376: Group Dynamics; Course 387: Research & Evaluation Methods in Human Service Settings; Course 220: Introduction to Psychological Testing; Course 349: Advanced Seminar in Counseling; Course 300P: History and Systems of Psychology; Course 346: Advanced Seminar in Clinical Psychology; Course 3660: Developmental Counseling Psychology; Course 3950: Practicum in Human Development Counseling; Course 3950: Practicum in Psychology; Course 3330: Seminar in Human Development Counseling; Course 3560: Seminar in Human Development Counseling Supervision; Course 340P: Psychopathology; Course 3680: Counseling Diverse Populations; Course 3812: Contemporary Issues in Human Service Settings; Course 301P: Methods of Psychological Research; Course 370P: Theories of Personalities; Course P381: Psychological Appraisal I; Course 354P: Psychobiology; Course 350P: Human Learning; Course 386P: Intervention - Individual Focus; Course 382P: Psychological Appraisal II; Course 3990: Doctoral Project in Human Development Counseling. (R. 357-360. (See also R. 29-30).

descriptions of the subject matter treated and the goals of the courses. The purpose of the courses to educate and train psychologists is obvious from the course descriptions and syllabi in the record.

Dr. Fussell's transcript from Vanderbilt University showing the courses taken, the credit for each and her grades in each class was a part of the record at R. 229-240. Dr. Fussell has completed a 2000 hour post-doctoral training program in psychology at the University of Utah (R. 35; R. 218). She has functioned as a doctoral level psychologist for more than four years under the supervision of a licensed psychologist at Weber State College in Ogden, Utah, all pursuant to a statutory exception from the licensing requirements pursuant to U.C.A. 58-25a-6(2), (4) and (5). (Findings of Fact, Conclusions of Law and Recommendation, para. 12, R. 480; R. 342.)

Dr. Fussell has completed all course requirements required of candidates for licensure at the doctoral level as established by administrative rules promulgated by the agency. (See regulations pursuant to former 58-25-2, Regulation R153-25-8(4)(i) (Appendix B) R. 26-27; R. 451). See also testimony of Dr. Wes Morrill, R. 51-53; testimony of Dr. Addie Fuhrman, R. 84-85, 100-103.) In addition, Dr. Fussell has engaged in extensive post-doctorate training by participating in various seminars and other continuing education. (See Dr. Fussell's vitae, R. 344-

345.)

Dr. Fussell obtained admission to the very competitive psychology internship program at the University of Utah. (R. 49-51; 58-60; 63-65 and 68-70). The program to which Dr. Fussell was admitted is available only to psychologists. Their degrees and their programs are screened by the internship selection committee of the program. Applicants are admitted primarily with degrees in counseling psychology or clinical psychology. (R. 57-60.) The number of applicants usually ranges from 30 to 50 and from that number, only 2 to 3 full-time interns are selected. Dr. Fussell became one such intern upon her selection. Dr. Morrill recalled that Dr. Fussell's program of study at Peabody/Vanderbilt indicated that her degree was primarily psychological in nature. The internship selection committee was convinced that she was, in fact, a psychologist. (R. 58-60.) (See also testimony of Dr. Ron Spinelli, R. 63-65 and testimony of Dr. Stephen C. Paul, R. 68-71.)

The testimony of these witnesses who have had professional experience with Dr. Fussell, together with that of Dr. Richard H. Southwick, her supervisor at the Weber State College Counseling and Psychological Services Center, is unanimous that Dr. Fussell is a capable, qualified and skilled psychologist. (R. 58-60, 63-65, and 68-71.) (See also testimony of Dr. Southwick, R. 73-77.) Even Dr. Fuhrman, who testified for the agency against Dr.

Fussell's application, acknowledged that her own experience with Dr. Fussell in the internship program at the University of Utah "was a good experience." (R. 107-108.) Dr. Fuhrman acknowledged personal familiarity with the qualifications of Drs. Wes Morrill, Steven Paul and Ron Spinelli. She respects their abilities and judgment. She has no reason to question their unanimous and unqualified testimony, based on their experience with Dr. Fussell, that she would be a credit to the profession. (R. 106-107.)

In rendering its decision on Dr. Fussell's application, the agency did not consider Dr. Fussell's coursework, the descriptions of those courses, or the fact that Dr. Fussell met the core educational requirements for licensure as a doctoral level psychologist established at Regulation 4(i). (R153-25-8(4)(i), Appendix B). See testimony of Dr. John Malouf, R. 130 ("I didn't review the transcripts, because from where I sat, the thing I was looking at, it wasn't really relevant what classes she had taken. I just didn't think, as I looked at it, that that was really an important factor. The important factor was: Is that a program designed to train psychologists?"). Dr. Malouf testified that Dr. Fussell's course requirements satisfied the licensing requirements as far as he knew, but reiterated that he didn't review her transcript with care. (R. 138)

Similarly, Dr. Thomas Schenkenberg, the Chairman of the

Psychology Licensing Board, was asked what classes Dr. Fussell lacked or should have taken to qualify her for the practice of psychology at the doctorate level. Dr. Schenkenberg stated that the course work Dr. Fussell had taken was not the issue. (R. 173-74). He admitted that the Board had not gone through the process of checking out her coursework, course by course to see if it qualified or not according to the statutory requirements. (R. 174.) He was unable to state what courses she may or may not need. (R. 173-176.)

The agency denied Dr. Fussell licensure because, in its judgement, her "degree granting program" at Vanderbilt University was 1) not "labeled a psychology program" and 2) not "designed to educate and train professional psychologists." (R. 310; 483-484.) These conclusions are based solely upon a few introductory paragraphs in the Peabody/Vanderbilt Course Catalog, which do not describe the program of studies Dr. Fussell actually completed, but rather the institutional program that granted Dr. Fussell's degree. (Findings of Fact, Conclusions of Law and Recommendation, para. 7, 8, 9, 10 and Conclusions of Law, R. 477-484.) There are no findings and no indication that the agency considered the coursework completed by Dr. Fussell toward completion of her doctoral degree or her dissertation. The findings and conclusions of the Special Appeals Board appear to be premised entirely upon the brief course catalog description of the Human

Development Counseling Department at Peabody/Vanderbilt.
(Findings of Fact, Conclusions of Law and Recommendations R.
475-484.)

SUMMARY OF ARGUMENT

POINT I.

JUANITA J. FUSSELL IS OUALIFIED TO PRACTICE PSYCHOLOGY ON THE DOCTORAL LEVEL IN THE STATE OF UTAH.

The purpose of licensure under the statutory scheme governing the practice of psychology is to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons already licensed. The undisputed evidence in this case is that Juanita J. Fussell is eminently qualified, by education and experience, to practice psychology. There is no contrary evidence, and even a witness for the agency testified that Dr. Fussell completed the academic casework prerequisite to the practice of psychology at the doctoral level. The only evidence of record offered by the agency which can be martialed against Dr. Fussell's qualifications are several short, extremely general paragraphs from course catalogs, which do not accurately describe Dr. Fussell's degree at all. The agency's attempt to establish arbitrary and undisclosed requirements for licensure is contrary to the Utah Supreme Court's mandate as set forth in Athay v. State Department of Business Regulation, 626 P.2d 965 (Utah

1981). Dr. Fussell's qualifications, experience, and skills mandate the conclusion that she is qualified to practice psychology.

POINT II.

THE AGENCY'S DENIAL OF DR. FUSSELL'S
APPLICATION FOR LICENSURE ON THE GROUNDS
ASSERTED WAS ARBITRARY AND CAPRICIOUS.

The agency relied upon four short paragraphs in a course catalog generally describing the institutional department which granted Dr. Fussell her degree. In doing so, the agency shifted its focus from an analysis of Dr. Fussell's individual degree to an evaluation of the institutional department which granted her degree. This shift in focus is contrary to the language of the statute governing licensure, as the statute requires a focus on the content of the student's program of studies, not the evaluation of an institutional program. The agency attempted to justify its focus on the HDC department rather than on Dr. Fussell's coursework by arguing that her overall program was unstructured and that she had selected courses on her own without supervision. This conclusion is wholly unfounded, and contrary to Dr. Fussell's testimony that her coursework was structured by her academic advisor to prepare her to practice psychology. The ultimate conclusion as to Dr. Fussell's program of studies is a mixed question of law and fact. The court may grant relief in such a case if an agency has erroneously interpreted or applied

the law. In failing to follow the statutory directive, the agency has misapplied the law and acted arbitrarily, requiring reversal in Dr. Fussell's favor.

POINT III.

REGULATION 4(b) IS OUT OF HARMONY WITH THE
STATUTE AS APPLIED TO THIS CASE.

Regulation 4(b) requires that the degree granting program, wherever administratively housed, be labeled as psychology. Essentially, the regulation requires a degree in psychology, which requirement has no support in the governing statute. It is undisputed that had Dr. Fussell taken the same coursework at the University of Utah that she did at the Peabody College of Vanderbilt University, she would qualify for a doctoral degree in counseling psychology. To the extent the regulation requires that her degree be labeled a "psychology" degree, the regulation is out of harmony with and exceeds the scope of the statute. As a result, the administrative rule is a nullity and must be stricken. In the alternative, Regulation 4(b) must be read to require an analysis of Dr. Fussell's specific coursework. The intent of the courses she completed and their specific purpose was to educate and train her to be a psychologist. This is apparent from the course descriptions and syllabi presented as part of the record herein, which the Agency failed to consider. The Agency determination, grounded upon Regulation 4(b), must be reversed.

ARGUMENT

POINT I.

JUANITA J. FUSSELL IS QUALIFIED TO PRACTICE PSYCHOLOGY ON THE DOCTORAL LEVEL IN THE STATE OF UTAH.

Because the practice of psychology affects the public health, safety and welfare, the licensure of psychologists is required in order to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons already licensed. This is the substance of current U.C.A. §58-25a-1. While the purpose of licensure was not expressly recited under former 58-25-1, et seq. U.C.A., 1953, (the statute under which Dr. Fussell's application for licensure must be evaluated)², it can hardly be disputed that the

² Juanita Fussell submitted her application for licensure as a doctoral level psychologist to the Division of Occupational and Professional Licensing on August 5, 1987. At that time, former U.C.A. 58-1-25 et seq. governed the licensing of psychologists in the State of Utah. Effective July 1, 1989 U.C.A. §58-25-1 was repealed and replaced by §58-25a-1 et seq. The law establishing substantive rights and liabilities when a cause of action arises, and not a subsequently enacted statute, governs the rights of parties. See Carlucci v. Utah State Industrial Commission, 725 P.2d 1335, 1336-37 (Utah 1986) and cases cited therein. In addition U.C.A. §68-3-3 provides "[N]o part of these revised statutes is retroactive unless expressly so declared." Newly enacted U.C.A. 58-25a-1 et seq. makes no provision for retroactive effect. Additionally, §68-3-5 U.C.A. entitled "Effect of Repeal" states that "[t]he repeal of a statute does not . . . affect any right which has accrued, . . . or any action or proceeding commenced under or by virtue of the statute repealed." Based on the foregoing, since Dr. Fussell initiated this licensure process on August 5, 1987, while U.C.A. 58-25-1 was in effect, the provisions of the former statute govern Dr. Fussell's application and eligibility for licensure as a psychologist.

protection of the public from unqualified persons practicing psychology was the principal reason underpinning the former statute. See e.g. Fillmore Products, Inc. v. Western States Paving, Inc., 561 P.2d 687 (Utah 1977) (Contractor's licenses).

In this case, under the substantial evidence or "whole record test",³ Juanita J. Fussell is qualified by education and experience to practice psychology at the doctoral level. Indeed, there is no contrary evidence. The testimony is undisputed that in the course of obtaining her doctoral degree, she successfully completed courses offered by the Psychology Departments of George Peabody College and/or Vanderbilt University, taught by eminent psychologists, sufficient to fulfill all of the course and distribution requirements established by Regulation 4(i) promulgated under U.C.A. §58-25-2. Even the Board's own witness,

³Under the Utah Administrative Procedures Act, specifically, Section 63-46b-16(4)(g) U.C.A., 1953, findings of fact of the agency will be affirmed only if they are "supported by substantial evidence when viewed in light of the whole record before the Court." As noted in Grace Drilling Co. v. Bd. of Review, 776 P.2d 63 (Ut. App. 1989), under the "whole record test" this Court must consider not only the evidence supporting the agency's factual findings, but also the evidence that "fairly detracts from the weight of the [agency's] evidence." 776 P.2d 68. Petitioner here must show that despite any supporting facts, and in light of any conflicting or contradictory evidence, the agency's 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" 776 P.2d 68, citing Idaho State Ins. Fund v. Hunnicutt, 110 Idaho 257, 715 P.2d 927, 930 (1985). Further, "substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". Id. (quoting Consolo v. FMC, 383 U.S. 607, 620, 86S.Ct. 1018, 1026, (1966)).

Dr. Addie Fuhrman, has admitted that Dr. Fussell has met or exceeded all of the course requirements to practice psychology at the doctoral level. Dr. Fuhrman, a member of the Psychologists Licensing Board that denied Dr. Fussell's application, could not recall how she had voted on Dr. Fussell's application. At first, she recollected that she had voted against the application and later recalled that she may have abstained. When asked why she may have abstained, Dr. Fuhrman testified, "It may have been that [Dr. Fussell] obviously has taken a good number of courses, it may have been that she had an [American Psychological Association] accredited internship. I mean, those have meaning; they're not without meaning." (R. 101.) When asked "Do you know of any course that Dr. Fussell has not taken that she should have, or that would be required of another applicant, to practice psychology at the doctorate level in Utah?," Dr. Fuhrman testified "No, I think she's taken -- she's probably taken more than she needs." (R. 102-103.)⁴

⁴The agency's other witnesses, Drs. Malouf and Schenkenberg, stated they had not reviewed or considered Dr. Fussell's academic record, coursework or course descriptions because they concluded from the generalized and non-specific description in the Peabody course catalog describing the HDC department or from the fact her degree granting program was not listed in the publication "Designated Doctoral Programs in Psychology," that Dr. Fussell's degree was not labeled psychological nor generally intended to train and educate professional psychologists. See generally R. 89-90, 174-175, 146-47, 152-53.

Dr. Weston H. Morrill, Professor of Educational Psychology at the University of Utah and Director of the University of Utah Counseling Center, reviewed Dr. Fussell's transcripts, course descriptions, syllabi, and dissertation, and concluded that her coursework and dissertation were "primarily psychological" in nature. Dr. Morrill has served as an accreditation site visitor for the American Psychological Association to evaluate doctoral programs and internship programs as they relate to APA accreditation criteria. He also headed the Counseling Center at the University of Utah during the time that Dr. Fussell completed her psychological internship there. Dr. Morrill testified that, in his opinion, had Dr. Fussell completed the same courses and dissertation at the University of Utah, she would have earned a doctoral degree in counseling psychology. (R. 51-54.) Dr. Morrill's testimony is unrebutted on the record.

Dr. Fussell's supervisors at the internship program, Drs. Morrill, Spinelli and Paul found her to be one of the two best interns in the psychology program during its existence. (R. 69-70; 65; 51). Their testimony was unanimous that the psychology internship was competitive and that candidates are selected based upon their qualifications as psychologists. (R. 58-60.) Dr. Fuhrman, who testified on behalf of the Board, was also familiar with Dr. Fussell at the Utah internship program. When asked about her specific recollection of Dr. Fussell's abilities and

her experience with Dr. Fussell she stated, "This was a good experience." (R. 107-108.)

Dr. Southwick is Director of the Counseling and Psychological Services Center at Weber State College where Dr. Fussell has been employed for more than four years as a psychologist under an exception from the licensure requirements permitted in the statutory scheme. Dr. Southwick hired Dr. Fussell based upon recommendations from her internship supervisors at the Counseling Center at the University of Utah, based upon her academic record at Vanderbilt University, and his familiarity with the program from which she graduated. He concluded in hiring her that Dr. Fussell was well prepared academically as a psychologist. (R. 73-74.)

All of the witnesses familiar with Dr. Fussell testified about her excellent grasp of psychological principles and methods and her successful academic achievements. There is no evidence on the record which in any respect questions Dr. Fussell's individual qualifications to perform successfully as a psychologist in this state. The purpose of licensure, protection of the public from the practice of psychology by unqualified persons, is not threatened by the licensure of Dr. Fussell.

The only evidence of record offered by the agency which can be marshalled against Dr. Fussell's qualifications for licensure

are several short and extremely general paragraphs from course catalogs describing the institutional department at Peabody/Vanderbilt from which Dr. Fussell received her degree. (R. 477-478.) All evidence respecting Dr. Fussell's individual qualifications is contrary to those four general paragraphs. In fact, those paragraphs do not accurately describe Dr. Fussell's degree, which heavily emphasized psychology in all of the core areas of learning required of applicants for licensure. See Regulation 4(i), R153-25-8(4)(i), Appendix B. The witnesses for the agency also relied upon a pamphlet entitled "Designated Doctoral Programs in Psychology," in which the institutional department which granted Dr. Fussell's degree is not listed. That document was not introduced as an exhibit and is not a part of the record of this proceeding. Neither the statute governing licensure of psychologists at issue in this matter nor any of the regulations interpreting the same require that an applicant's "degree granting program" be listed in that publication.

The Board's witnesses recognized that doctoral programs are designed by students working with supervising faculty members to accommodate a wide variety of interests within certain bounds established to obtain a degree. (R. 135, 136.) Dr. Fuhrman acknowledged that Dr. Fussell has completed adequate coursework in all of the required core areas (Regulation 4(i)). Drs. Malouf and Schenkenberg did not even consider Dr. Fussell's coursework

in determining that her degree did not qualify her for licensure. (R. 135, 138 and R. 173-175.) Without even examining her coursework, Dr. Malouf concluded that Dr. Fussell's doctoral degree does not qualify because: "Dr. Fussell's program does not take account for the fact that this [courses in learning, motivation, perception and thinking] 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." That conclusion is wholly unfounded. Admitting that he did not evaluate Dr. Fussell's coursework, the descriptions of those courses or her transcript in deciding that her "degree granting program" did not qualify, Dr. Malouf cannot opine that Dr. Fussell lacked training in any critical area. To the contrary, it is undisputed on this record that Dr. Fussell has had the required courses in learning, motivation, perception and thinking, the core areas of psychology. See Dr. Fussell's transcript, course descriptions, syllabi and Application for Licensure as a Psychologist wherein all core areas have been fulfilled, as acknowledged by Dr. Fuhrman, who at least did examine Dr. Fussell's coursework and transcript.

The core requirements for licensure set forth in Regulation 4(i) were promulgated just prior to the decision of the Supreme Court of Utah in Athay v. State Department of Business Regulation, 626 P.2d 965 (Utah 1981). Under the same statute at

issue here, but without the curriculum distribution requirements of Regulation 4(i), Appendix B, the agency had determined that Athay's degree did not qualify her for licensure. The court affirmed and quoted the trial court's ruling which reversed the agency:

"no rules, regulations, guidelines or descriptions 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." 626 P.2d 966. (Emphasis added.)

Because no objective, identifiable standard existed against which an applicant's qualifications could be judged, the court found the agency's denial of licensure a denial of the applicant's rights to due process of law. 626 P.2d 966.

What the court criticized in Athay was (1) the lack of objective standards by which an applicant could determine eligibility for licensure before application, and (2) the lack of an objective standard by which applicants could be measured in the licensure process itself. The court required the establishment of uniform, published, identifiable, and objective standards for licensure, establishing a curriculum of courses required for licensure. Regulation 4(i) satisfies the Athay requirement and sets forth a curriculum for a specific number of

semester or quarter hours in various fields or disciplines within the broad rubric of psychology. Dr. Fussell satisfies these criteria.

What the court was attempting to avoid in Athay and the problem facing Dr. Fussell in this proceeding, is the Agency's attempt to establish arbitrary and undisclosed requirements for licensure, including, apparently, a requirement that an institutional degree granting program be listed in the publication entitled "Designated Doctoral Programs in Psychology." Neither the statute nor the regulations require that an institutional department from which a candidate obtains her degree be listed in that publication. A student has no means of discerning such a requirement before enrolling in an institutional degree granting program prefatory to seeking licensure as a psychologist. The Athay rationale that required the agency to specify objective, identifiable prerequisites for licensure mandates that any additional requirements the agency intends to apply must be consistent with the statute and disclosed in regulations. That is the only way the agency can avoid denial of an applicant's rights to due process of law in the application process. Because no such requirement was either authorized by statute or set forth in the regulation, it may not be used to deny Dr. Fussell licensure in this action without denying her due process.

Consideration of Dr. Fussell's individual qualifications, her coursework, the faculty and departments by which those courses were offered, analysis of the course requirements established by Regulation 4(i), Dr. Fussell's satisfaction of those requirements, and her experience and skills established through the testimony of four licensed doctoral level psychologists⁵ mandates the conclusion that Dr. Fussell is qualified to practice psychology and poses no threat to the public of practice by an unqualified person. There is no state interest in protecting the public by excluding Dr. Juanita J. Fussell from practice of psychology. She should be granted a doctoral level psychology license as soon as the licensure process can be completed.

POINT II.

THE AGENCY'S DENIAL OF DR. FUSSELL'S APPLICATION FOR LICENSURE ON THE GROUNDS ASSERTED WAS ARBITRARY AND CAPRICIOUS.

The Agency has concluded that Dr. Fussell has not completed a program of studies whose content was primarily psychological as required by §58-25-2(1)(b) and as further defined in R.153-25-4(b). (Findings of Fact, Conclusions of Law, R. 484.) The Agency appears to have relied exclusively upon four short paragraphs in the 1976-77 course catalog generally describing the Human Development Counseling Program of the George Peabody

⁵Drs. Morrill, Spinelli, Paul and Fuhrman.

College at Vanderbilt University. (Findings of Fact Nos. 7, R. 477-478.)⁶

Given the wide range of flexibility and variation in doctoral degree programs, it is unfair, indeed arbitrary, capricious and unreasonable to judge a doctoral candidate's degree by three or four general paragraphs at the introduction to a course catalog, which attempt in such a short space to describe an institutional department. The statute under which licensure is governed acknowledges as much. The statute requires that an applicant:

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. 58-25-2(1)(b).

There is no issue in this proceeding respecting production of "transcripts of credit acceptable to the representative

⁶ The Agency also considered the 1985 catalog but, as was pointed out at the hearing, Dr. Fussell completed her doctoral coursework at Peabody/Vanderbilt in the summer of 1983. Her doctoral dissertation and her internship at the University of Utah were completed between 1983 and 1985. Her degree was actually conferred in 1985. None of the course descriptions nor the general description of the department in the 1985 catalog were available to Dr. Fussell when she enrolled at Peabody/Vanderbilt or when she selected any of the courses in which she enrolled preparatory to receiving her degree. Thus, the description in the 1985 catalog should not be considered. Even if it were, however, its consideration suffers the same deficiencies as the Agency's consideration of the 1976-77 catalog.

committee." Dr. Fussell has produced acceptable transcripts. Nor is there any issue respecting the accreditation of Peabody College or Vanderbilt University. (R. 142) The nut of the problem is whether Dr. Fussell has received a doctoral degree "based on a program of studies whose content was primarily psychological." As already noted, Athay v. State Department of Business Regulation, supra, mandated objective requirements, especially a fleshing out of the coursework required to determine whether a degree was "based on a program of studies whose content was primarily psychological."

Notably, in denying Dr. Fussell's application, the Agency has shifted its focus from an analysis of her individual degree to an evaluation of the institutional department from which she received her degree. In other words, the Agency has interpreted the statute to require a doctoral degree from a program of studies, rather than based on a program of studies primarily psychological in content. The statute specifically states that the degree be based on such a program. It does not require that "the program, whenever it may be administratively housed", be "labeled as a psychology program." (Regulation 4(b)).

Contrary to the statute, and as the agency's witnesses repeatedly remarked, the concern over Dr. Fussell's application was not so much with her individual qualifications as with the need for uniform standards and precedent. (R. 139.) Dr. Fuhrman

testified that one of the reasons she objected to licensure of Dr. Fussell was the precedent it would set. (R. 102.) Also on direct examination, Dr. Malouf was asked:

Q. Have you reviewed the transcripts of --

A. I didn't review the transcripts, because from where I sit, the thing I was looking at, it wasn't really relevant what classes she had taken. I just didn't think, as I looked at it, that it was really an important factor. The important factor was: Is that a program designed to train psychologists?

R. 130.

And Dr. Schenkenberg testified:

Q. My question is: In its deliberations, did the Board read the word "program" to have reference to an institutional department of a university, a program of studies at a university, or is it the program of the individual student on which the doctoral degree was based?

A. It's the program of studies at the University that they are attending, as is further elaborated on.

(R. 169)

. . .

Q. The use of the word "program" in the regulation clearly refers to an institutional unit in the university, does it not?

A. That's right.

(R. 170)

This shift from an analysis of Dr. Fussell's specific qualifications to a vague evaluation of the institutional department from which she received her degree is precisely what

the Utah Supreme Court prohibited in Athay. No objective standard could have alerted Dr. Fussell of any potential licensure problem, particularly when she satisfied the specific course requirements set out in the agency's regulations.

Furthermore, to ignore and refuse to analyze Dr. Fussell's coursework and base a denial of licensure solely upon 3 or 4 overly general paragraphs from a course catalogue that have not been shown to have the least relevance to Dr. Fussell's degree exceeds the bounds of reasonableness and rationality. The course catalog descriptions relied upon by the agency do not adequately describe Dr. Fussell's degree. Fifty eight (58%) percent of the courses she took toward that degree were taken from the psychology department of Peabody/Vanderbilt. Eighty to ninety (80% to 90%) percent of the coursework Dr. Fussell completed was crosslisted to psychology, meaning it was available for credit to psychology students. It is undisputed that Dr. Fussell's academic advisers guided her in her selection of courses in order to insure that she was prepared to function as a professional psychologist. See R. 178-181. Dr. Schenkenberg's conclusions to the contrary (R. 153-154) are entirely without factual foundation since he testified he did not review her coursework or academic record. (R. 174-175.) Dr. Fussell satisfied the requirements of Regulation 4(g) in that her program was an organized sequence of study, planned by those responsible for her

training program, to provide an integrated, educational experience appropriate to the professional practice of psychology. (R. 178-81.)

The ultimate conclusion of whether or not Dr. Fussell has completed a doctoral degree based upon a program of studies whose content is primarily psychological is a mixed question of law and fact. Thus on appeal, under the rule of Pro-Benefit Staffing v. Bd. of Review, 775 P.2d 439 (Ut. App. 1989), the court may grant relief in review of mixed questions of law and fact if an "agency has erroneously interpreted or applied the law." 775 P.2d 442 (emphasis original). See also U.C.A. 63-46b-16(4)(d). In considering only the institutional program which granted Dr. Fussell's degree and in failing to follow the statutory directive that the applicant be required to have a degree "based on a program of studies whose content was primarily psychological", the agency has misapplied the law, requiring reversal in Dr. Fussell's favor. The Agency's decision cannot be supported under the intermediate standard of reasonableness and rationality and is arbitrary and capricious in its failure to consider her individual program of studies. See Pro-Benefit Staffing Inc. v. Bd. of Review, 775 P.2d 439 (Ut. App. 1989) and 63-46b-16(4)(d) and (h). This requires reversal of the Agency's determination that Dr. Fussell has not completed a doctoral degree based on a program of studies whose content is primarily psychological.

POINT III.

REGULATION 4(b) IS OUT OF HARMONY WITH THE
STATUTE AS APPLIED TO THIS CASE.

The relevant statute (58-25-2(10(b))) does not require a degree in psychology. It requires a degree "based on a program of studies whose content was primarily psychological." However, Regulation 4(b), (R153-25-8(4)(b)) promulgated under the statute, requires that the degree granting "program wherever it may be administratively housed, must be labeled as a psychology program." This is tantamount to requiring a degree in psychology. This portion of Regulation 4(b) has no support in the statute. The statute requires a focus upon the individual degree of the applicant as opposed to analysis of an institution or institutional program. This is only logical given the wide variation of degrees within institutional programs, even those labelled psychology programs, depending upon the particular interest of the doctoral candidate and her dissertation committee members and faculty advisors.

It is undisputed in this case that if Dr. Fussell had taken the same coursework at the University of Utah as she took at Peabody College of Vanderbilt University she would qualify for a doctoral degree in counseling psychology. (Unrebutted testimony of Dr. Weston Morrill, R. 49-52.) Additionally, Julius Seeman explains in his affidavit that the psychology programs at Vanderbilt University and Peabody College were geared toward

research in psychology. He explains that a number of students who preferred the role of service providers (counseling psychologists as opposed to research psychologists) matriculated in the HDC program at Peabody College and were licensed as psychologists at the doctoral level by the State of Tennessee. Dr. Fussell was one such candidate. (Affidavit of Julius Seeman, R. 302-304, paragraphs 3-5 and 8, Appendix E.)

To the extent Regulation 4 requires a degree granted by an institutional program that is "labeled" as a psychology program or to the extent it requires focus upon an institution as opposed to inquiry into the nature of an applicant's individual degree and qualifications, the regulation is out of harmony with and exceeds the scope of the statute.

The initial letters to Dr. Fussell from the agency explaining the rationale for denying her licensure advance this interpretation of the regulation. (R. 308-310). As noted in the letter of Ann Peterson dated January 31, 1989:

Although you have taken courses in a psychology department, your degree is not in psychology.

The only reasonable course of action that we can recommend is that you earn a doctorate in a psychology program. (R. 310.)

U.C.A. §58-25-2(b) does not require the applicant's degree program to be "identified and labeled" as a psychology program. Nor does the statute require an applicant's degree program to

specify in institutional catalogs and brochures its intent to educate and train professional psychologists. Rather, U.C.A. §58-25-2(b) expressly requires a candidate for licensure to receive a doctoral degree "based on a program of studies whose content was primarily psychological." If the legislature had intended to restrict licensure to those applicants whose degree programs were "labeled and identified" as psychology programs or to programs which used certain "magic words" in broad general descriptions of institutional departments in their catalogs, the legislature would have expressly so provided. Instead the legislature saw fit to provide licensure to applicants whose degrees were based on a program of studies whose content was primarily psychological.

The representative committee which promulgated Administrative Rule 4(b) rendered an interpretation of U.C.A. §58-25-2(b) which is "out of harmony with and contrary to the express provisions of the provision of the statute." Administrative Rule 4(b) exceeds the scope of the statute and as a result is a nullity and must be stricken. Robert H. Hinckley, Inc. v. State Tax Commission, 404 P.2d 662, 668 (Utah 1985). See also Utah Hotel Co. v. Industrial Commission, 151 P.2d 467 (Utah 1944) (a valid administrative regulation must be reasonable and consistent with the enabling statute, furthermore a regulation out of harmony and contrary to the express provisions of the

statute is a nullity.)

In McPhail v. Montana Board of Psychologists, etc., 640 P.2d 906 (Montana 1982), the Montana Supreme Court held an administrative rule promulgated by the Montana Board of Psychologists invalid because the rule imposed an additional requirement for licensure as a psychologist that was not required by the Montana Psychologists Licensure Act. The court noted:

The courts have uniformly held that administrative regulations are "out of harmony" with legislative guidelines if they: " (1) "engraft additional and contradictory requirements on the statute" (citing cases); or (2) "if they engraft additional, noncontradictory requirements on the statute which are not envisioned by the legislature." (citing cases.) Id. at 908.

In the instant proceeding, as in McPhail, Administrative Rule 4(b)'s requirement that an applicant's degree or degree granting program be "labeled as a psychology program" or that a brief catalog description of an institutional department specify its intent to educate and train professional psychologists are additional requirements imposed by the committee promulgating the rule. They are not required by the statute. To the extent they impose additional requirements the regulation is a nullity.


In the alternative, to the extent the regulation allows the Board to look solely to a brief institutional description in a course catalog and to ignore the coursework and program of studies actually completed by the applicant, the regulation does

not comport with the statutory mandate that the applicant's degree be "based on a program of studies whose content is primarily psychological." Regulation 4(b) must be read to require an analysis of Dr. Fussell's specific coursework, including the descriptions of the courses she completed, as opposed to arbitrarily disqualifying her because of a four paragraph general description of an institutional department at the college she attended. Those course descriptions clearly reference their intent and purpose to educate and train students to be psychologists. To the extent Regulation 4(b) requires "labels" and shifts the focus away from the applicant's program of study to an institutional level, it is out of harmony with the statute and a nullity.

CONCLUSION

Juanita J. Fussell is qualified to practice psychology. The agency's arbitrary and capricious denial of her licensure is based on a regulation that is out of harmony with its enabling statute. The agency's decision to reject Dr. Fussell's application, based only upon the labeling of the department from which she received her degree, or a general description of an institutional department in a university catalog without evaluating Dr. Fussell's actual program of study must be reversed and the agency directed to proceed with the licensing process.

DATED this 8th day of November, 1990.



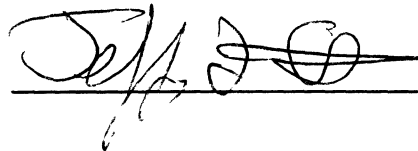
Jeffrey L. Silvestrini
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Attorney for Petitioner
Juanita J. Fussell

MAILING CERTIFICATE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, postage fully prepaid, on the 8th day of November, 1990 to the following:

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da/fussell.brf

Appendix A

History: C. 1953, 58-24-15, enacted by L. 1985, ch. 254, § 12.

Repeals and Enactments. — Laws 1985, ch. 254, § 12 repealed former § 58-24-15 as

enacted by Laws 1959, ch. 101, § 15, relating to register of licensees, and enacts the above section, effective July 1, 1985.

58-24-16. Violation — Class B misdemeanor.

Any person who violates this chapter is guilty of a class B misdemeanor.

History: L. 1959, ch. 101, § 16; 1985, ch. 254, § 13.

Amendment Notes. — The 1985 amendment, effective July 1, 1985, deleted "any of the provisions of" following "violates"; substi-

tuted "chapter is" for "act shall be"; and inserted "class B" before "misdemeanor."

Cross-References. — Penalty for misdemeanors, §§ 76-3-204, 76-3-301.

CHAPTER 25 PSYCHOLOGISTS

Sunset Act. — Section 63-55-7 provides that Chapter 25, Title 58 terminates on July 1, 1989.

Section		Section	
58-25-1.	Qualifications for license.	58-25-7.	Practice of medicine prohibited.
58-25-2.	Requirements for applicants — Examination, license, and renewal fees.	58-25-8.	Privileged communications.
58-25-3.	Examination of applicants.	58-25-9.	Repealed.
58-25-4.	Practice of psychology defined.	58-25-10.	Fees for licenses and certificates — Continuing education requirements.
58-25-5.	License required — Penalty for violation.	58-25-11.	"Unprofessional conduct" defined.
58-25-6.	Exemptions from operation of chapter.	58-25-12.	Administration of chapter.

58-25-1. Qualifications for license.

Any person who possesses the necessary qualifications of learning and ability may apply for a license to practice as a psychologist in this state.

History: L. 1959, ch. 100, § 1; 1975, ch. 18, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers §§ 11, 28.
C.J.S. — 53 C.J.S. Licenses § 32 et seq.; 70 C.J.S. Physicians and Surgeons § 6 et seq.

Key Numbers. — Licenses ⇌ 11(1); Physicians and Surgeons ⇌ 4, 5, 6, 15(23).

58-25-2. Requirements for applicants — Examination, license, and renewal fees.

- (1) Each applicant for a license to practice as a psychologist shall:
 - (a) produce satisfactory evidence that he is of good moral character;
 - (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;

(c) produce documentary evidence which is acceptable to the representative committee that he has had at least two years of satisfactory experience in rendering psychological services;

(d) pass an examination in psychology under the rules of the division; and

(e) pay a fee to the Department of Business Regulation determined by it pursuant to Subsection 63-38-3(2) for admission to the examination, for an original license and certificate, and for a renewal license and certificate.

(2) Each license shall expire on December 31 of each odd-numbered year.

History: L. 1959, ch. 100, § 2; 1961, ch. 133, § 1; 1975, ch. 18, § 2; 1980, ch. 6, § 28; 1984 (2nd S.S.), ch. 15, § 88; 1985, ch. 187, § 67.

Amendment Notes. — The 1984 (2nd S.S.) amendment substituted "Division of Registration" for "department of registration" in Subsection (2); substituted "rules of the division" for "rules and regulations of the department of registration" in Subsection (4); substituted the first sentence of Subsection (5) for "Pay a fee to the department for admission to the examina-

tion and for an original license of \$50, and for a renewal license, a fee of not less than \$25 nor more than \$50 as determined by the department"; and made minor changes in phraseology, punctuation and style.

The 1985 amendment designated the introductory language as present Subsection (1); redesignated former Subsections (1) through (5) as present Subsections (1)(a) through (1)(e); deleted "of Registration" at the end of Subsection (1)(b); and designated the last sentence as present Subsection (2).

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Patient-psychologist privilege.

Constitutionality.

Where plaintiff was refused to be seated to take the examination required of applicants for a license to practice as a psychologist because her program of study was not deemed to be "primarily psychological," and there were no established guidelines for a curriculum or a criteria for course content which was "primarily psychological," such refusal constituted arbitrary action and deprived plaintiff of her

rights to due process of law. *Athay v. State, Dep't of Bus. Regulation*, 626 P.2d 965 (Utah 1981).

Patient-psychologist privilege.

Trial court properly refused to allow defendant to claim the privilege where the psychologist's own testimony indicated he had not become a licensed psychologist as required by this section. *State v. Gotfrey*, 598 P.2d 1325 (Utah 1979).

58-25-3. Examination of applicants.

Examination of applicants for licensing as a psychologist shall be made according to methods and in such subject fields as may be deemed by the representative committee to be the most practical and expeditious to test the applicant's qualifications.

History: L. 1959, ch. 100, § 3; 1975, ch. 18, § 3.

58-25-4. Practice of psychology defined.

The practice of psychology is defined as the application of established principles of learning, motivation, perception, thinking, emotional response, and social interaction to problems of personal evaluation, group relations, and behavior adjustment in the areas of work, school, marriage, family and personal relationships by persons claiming skill or competence in such areas on the basis of their education and training in psychology. The application of said principles includes, but is not restricted to, measurement and testing of intelligence, personality, aptitudes, skills, attitudes and opinions; research on problems relating to human behavior; and psychological diagnosis, counseling, psychotherapy, behavior therapy, hypnosis and biofeedback.

History: L. 1959, ch. 100, § 4; 1975, ch. 18, § 4.

Cross-References. — Medical malpractice actions, § 78-14-1 et seq.

58-25-5. License required — Penalty for violation.

Any person granted a license for the practice of psychology may hold himself out by the title of "psychologist" and may offer to render and render psychological services to individuals, corporations, or to the general public. No person may represent himself to be a psychologist nor hold himself out to the public by any title applied to himself, or by any description of the services he offers using the words "psychology," "psychologist," or "psychological" nor offer to render or render psychological services described in this chapter unless he is licensed under this chapter or exempted under § 58-25-6. No corporation, partnership, or association may represent itself as engaging in the practice of psychology by offering psychological services unless the services rendered by the corporation, partnership, or association are in fact performed by a psychologist or psychologists licensed under this chapter. No psychologist may refer to anyone in his employ, tutelage, or supervision as a psychologist who is not licensed under this chapter. The penalty for violation of this chapter is as set forth in Chapter 1, Title 58.

History: L. 1959, ch. 100, § 5; 1975, ch. 18, § 5; 1985, ch. 187, § 68.

Amendment Notes. — The 1985 amendment substituted "chapter" for "act" throughout; deleted "the provisions of" throughout;

substituted "chapter is" for "act shall be" and "Chapter 1, Title 58" for "section 58-1-38" in the last sentence; and made minor changes in phraseology and punctuation.

58-25-6. Exemptions from operation of chapter.

This chapter does not limit the activities and the use of an official title on the part of a person who has not obtained a license and is in the employ of a federal agency or a duly chartered educational institution, if those activities are a part of the duties in his salaried position, and if those activities are performed solely on behalf of a federal agency or the educational institution. Any person employed as a psychologist by a state, county, or municipal

agency or other political subdivision of the state before July 1, 1981, and who maintains employment in the same state, county, or municipal agency or other political subdivision, may continue to use the official title without obtaining a license to practice psychology in this state. This chapter does not limit the activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited educational institution recognized by the division as providing qualified training and experience for psychologists, if those activities and services constitute a part of his supervised course of study, and if that person is designated by such titles as "psychological intern," "psychological trainee," or other title clearly indicating his training status. This chapter does not prevent members of other professions from doing work of a psychological nature if those persons do not represent themselves to the public as being psychologists, except when so licensed.

History: L. 1959, ch. 100, § 6; 1961, ch. 133, § 2; 1975, ch. 18, § 6; 1981, ch. 26, § 1; 1985, ch. 187, § 69.

Amendment Notes. — The 1981 amendment substituted "person who has not obtained a license and is in the employ of a federal agency" in the first sentence for "person in the employ of a federal, state, county, or municipal agency, or other political subdivision"; substituted "a federal agency or the educational institution" at the end of the first sentence for "his employer"; inserted the second sentence; and deleted a last sentence which read: "Serving on the representative committee of five psychologists prior to December 31, 1962, shall not be construed to be holding out as a psychologist."

The 1985 amendment substituted "This chapter does not limit the activities and the

use of an official title" for "Nothing in this act shall be construed to activities, and use of official title" at the beginning of the first sentence; deleted "and services" and "or services" following "activities" in the first sentence; deleted "thereafter" following "who" in the second sentence; substituted "This chapter does not limit" for "Nothing in this act shall be construed to limit" at the beginning and "division" for "department of registration" and "if those activities" for "provided that such activities" near the middle of the third sentence; substituted "This chapter does not prevent members" for "Nothing in this act shall be construed as preventing members" and "if those persons" for "so long as such persons" in the last sentence; and made minor changes in phraseology and punctuation.

58-25-7. Practice of medicine prohibited.

Nothing in this act shall be construed as permitting persons licensed as psychologists to engage in any manner in the practice of medicine as defined in the laws of this state. Psychologists may provide psychological services to mentally ill as well as other persons provided that such services do not include prescription of drugs, surgery, or electroconvulsive therapy.

History: L. 1959, ch. 100, § 7; 1975, ch. 18, § 7; 1975, ch. 67, § 5.

Meaning of "this act". — The term "this act," referred to in this section, means Laws

1959, ch. 100, which appears as this section and §§ 58-25-1 to 58-25-6, 58-25-11, and 58-25-12.

58-25-8. Privileged communications.

A psychologist licensed under the provisions of this act cannot, without the consent of his client or patient, be examined in a civil or criminal action as to any information acquired in the course of his professional services in behalf of the client. In other matters a licensed psychologist's relationship with his client or patient shall be accorded the same privileged communication as the relationship between an attorney and his client.

History: C. 1953, 58-25-8, enacted by L. 1975, ch. 18, § 8.

Meaning of "this act". — The term "this act," referred to in the first sentence, means

Laws 1975, ch. 18, §§ 1 to 11, which appear as §§ 58-25-1 to 58-25-11.

Cross-References. — Records of patient, inspection and copying by attorney, § 78-25-25.

NOTES TO DECISIONS

Unlicensed psychologist.

Trial court properly refused to allow defendant to claim the privilege where the psychologist's own testimony indicated he had not be-

come a licensed psychologist as required by § 58-25-2. *State v. Gotfrey*, 598 P.2d 1325 (1979).

COLLATERAL REFERENCES

Utah Law Review. — The Scope of the Psychologist-Patient Testimonial Privilege in Utah, 1980 Utah L. Rev. 385.

58-25-9. Repealed.

Repeals. — Section 58-25-9 (L. 1975, ch. 18, § 9), relating to fees paid by applicants for a

license as a psychologist, was repealed by Laws 1977, ch. 257, § 13.

58-25-10. Fees for licenses and certificates — Continuing education requirements.

(1) The Department of Business Regulation shall collect a fee for new licenses and certificates issued under this chapter and a fee for biennial renewal of licenses and certificates, as determined by the department pursuant to Subsection 63-38-3(2).

(2) The representative committee may require evidence of continued education of a nature prescribed by the committee for the reissuance of a license.

History: C. 1953, 58-25-10, enacted by L. 1975, ch. 18, § 10; L. 1981, ch. 26, § 2; 1984 (2nd S.S.), ch. 15, § 89.

Amendment Notes. — The 1981 amendment inserted Subsection (1); and designated the existing section as Subsection (2).

The 1984 (2nd S.S.), amendment rewrote

Subsection (1) which read: "The division shall collect a fee not to exceed \$100 for new licenses and certificates issued under this chapter and a fee not to exceed \$75 for biennial renewal of licenses and certificates, as determined by the director"; and made a minor change in phraseology.

58-25-11. "Unprofessional conduct" defined.

The words "unprofessional conduct" as relating to psychologists are defined to include:

- (1) Conviction of a felony, or of any offense involving moral turpitude.
- (2) Using any narcotic or any alcoholic beverage to an extent or in a manner dangerous to himself, any other person, or the public, or to an extent that such use impairs his ability to perform the work of a psychologist with safety to the public.
- (3) Advertising in a way that has a tendency to deceive the public, or that may be harmful to public morals or safety.
- (4) Making public claims of superiority, in training or skill, as a psychologist, or in the performance of professional services.

(5) Impersonating another person holding a psychology license or allowing another person to use his license.

(6) Using fraud or deception in applying for a license or in passing the examination provided for in this act.

(7) Aiding or abetting a person, not a licensed psychologist, in representing himself as a psychologist.

(8) Communicating, without the consent of the client, information acquired in dealing with the client necessary to enable the psychologist to act for such a client.

(9) The use of psychological techniques for entertainment or other purposes not consistent with the development of psychology as a profession, as a science, and as a means of promoting human welfare.

(10) Any form of unethical conduct as defined in "Ethical Standards for Psychologists" as adopted and published by the American Psychological Association, 1953, and as revised.

History: L. 1959, ch. 100, § 11; 1975, ch. 18, § 11.

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62; 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers §§ 11, 80 et seq.

C.J.S. — 53 C.J.S. Licenses § 44; 70 C.J.S. Physicians and Surgeons § 31.

Key Numbers. — Licenses ⇨ 38; Physicians and Surgeons ⇨ 10, 11, 11.2.

58-25-12. Administration of chapter.

The Division of Occupational and Professional Licensing shall administer this chapter as set forth under Chapter 1, Title 58.

History: L. 1959, ch. 100, § 12; 1985, ch. 187, § 70.

Amendment Notes. — The 1985 amendment rewrote this section.

CHAPTER 26

PUBLIC ACCOUNTANTS

Sunset Act. — Section 63-55-7 provides that Chapter 26, Title 58 terminates on July 1, 1987.

Section		Section	
58-26-1.	Short title.		censes — Qualifications — Applicants with out-of-state certificates.
58-26-2.	Definitions.		
58-26-3.	General requirements for certificate or license.	58-26-7.	Persons holding certificates or licenses on effective date of chapter.
58-26-4.	Exemption from educational and examination requirements.	58-26-8.	Temporary license.
58-26-5.	Education and examination requirements for certificate — Registration of certificate holders.	58-26-9.	Registration of firm.
		58-26-10.	Renewal of licenses — Refusal, suspension, or revocation.
58-26-6.	Initial issuance and renewal of li-	58-26-11.	Additional grounds for refusal, sus-

Appendix B

Laws/Rules

1. Every person desiring to obtain a license....shall apply to the Division of Registration i writing upon blanks prepared an furnished by the Division. Each application shall contain proof of the particular qualifications required of the applicant, shall be verified by the applicant and shall be accompanied when so required by the examination fee fixed by the Division of Registration (58-1-17).
- 2 A 2 x 2 1/2 inch picture of the applicant must be affixed to the application. The applicant's signature must appear on the bottom of the picture. The picture must be recognizable for identification purposes when the applicant appears for examination.

58-25-2 Requirements for Applicants (P.L.A.)

"Every applicant for a license to practice as a psychologist must:

- (1) Produce satisfactory evidence that he is of good moral character.
- (2) 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 of Registration.
- (3) Produce documentary evidence which is acceptable to the representative committee that he has had at least two years of satisfactory experience in rendering psychological services.
- (4) Have satisfactorily passed an examination in psychology under the rules and regulations of the Division of Registration."

Laws/Rules

1. Produce satisfactory evidence that he is of good moral character" shall mean that the applicant must have submitted to the Committee three letters attesting to the applicant's moral character which are written to the Committee within three months of receipt of the application by the Division. Letters need not be from psychologists. No member of the Committee may write a letter of recommendation for any candidate. The letters should deal with moral character and not with professional competence or achievement.
2. "Produce transcripts which are acceptable to the Committee" means an official transcript from an accredited educational institution and must cover all undergraduate, graduate and postgraduate classes.

3. "....received a doctoral degree..." means that at the time of submitting an application for licensure the degree has been conferred upon the applicant or a notarized letter of completion from the registrar of the University conferring the degree has been submitted stating that all requirements for the degree have been satisfied and stating the date when the degree will be conferred.

53-25-8 (4.)

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

- a. Training in psychology is doctoral training offered in a regionally accredited institution of higher education.
- 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 catalogues and brochures its intent to educate and train professional psychologists.
- c. The psychology program must stand as a recognizable, coherent organizational entity within the institution.
- d. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.
- e. 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.
- f. There must be an identifiable psychology faculty and a psychologist responsible for the program.
- g. The program must have an identifiable body of students who are matriculated in the program for a degree.
- h. The program must include supervised practicum, internship, field, or laboratory training appropriate to the practice of psychology.
- i. The curriculum shall encompass a minimum of three academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

- I. Biological bases of behavior such as psychological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation, etc.
- II. Cognitive-affective bases on behavior such as learning, thinking, cognition, motivation, emotion, etc.
- III. Social bases of behavior such as social psychology, organizational and systems theory, group processes, etc.
- IV. Individual differences such as human development personality theory, abnormal psychology, etc.

NOTE: Item i identifies the core psychology curriculum. In addition to these criteria, all professional education programs in psychology will include course requirements in specialty areas.

- 5. An applicant whose doctoral degree was based upon a course of studies in a program that meets the criteria specified in 4.a. through 4.h. above, but which was deficient in the core or specialty areas of psychology as defined in 4.i. above, may be allowed to supplement the deficient doctoral training with post-doctoral graduate level course work.
- 6. The Committee will not accept courses and degrees from accredited educational institutions if the Committee has reason to believe that courses or degrees were not based upon content that was primarily psychological in nature and did not meet the standards set forth under rule 4.i.
- 7. "At least two years of satisfactory experience in rendering psychological services" means:
 - a. Internship, residency, post-doctoral fellowship, or employment (but does not include clerkship practicum for which academic credit was given or which was part of any class activity).
 - b. Work must be in the area of psychology and not in allied fields or in administration.
 - c. One year is the equivalent of 2,000 on-the-job hours (50 forty hour weeks).
 - d. Only work experience which follows at least two academic years of graduate study in psychology at the doctoral level will be credited.
 - e. At least one year must be post-doctoral.
 - f. Both years of experience must be supervised on a regular basis and the application for licensure must be accompanied by a statement from such supervisor(s).
 Institution name
 Duration of supervised experience
 Total hours of individual supervision
 Nature of duties

Performance rated as either satisfactory or less than satisfactory and, if the latter, the reasons and recommendations and signature and title or position of supervisor.

- g. When letters from supervisors indicate that the applicant's work experience was not satisfactory, the Committee may reject the application.
- h. Supervision of an applicant by a relative, spouse, parent or child will not be accepted by the Committee.
- i. Supervision consists of regular consultation with a supervisor(s) during which the quality of the applicant's skill is developed and can be evaluated.
- j. No supervised work experience of less than three consecutive months shall be counted.
- k. There shall be at least one hour of individual one-to-one supervision per forty (40) hour work week of supervision during the two (2) years of work experience. Individual one-to-one training or staff conferences. There shall be a total of 100 hours of supervision for the two years (4,000 hours) of work experience.
- l. Overall supervision of the psychologist's professional growth resides in the licensed psychologist. Supervision of candidates for licensing requires that the supervisor has experience beyond journeyman practice levels. Supervising psychologists shall have at least two years experience beyond the granting of their license and shall have training in the specific area of practice in which they are offering supervision. Specific skill training may be assigned to other specialists under the authority of the supervising psychologist. The non-psychologist supervisor shall have clearly established practiced and teaching skills demonstrable to the satisfaction of both the supervising psychologist and the supervisee.
- m. The licensed psychologist who provides supervision for the candidate for licensure must have legal, administrative and professional responsibility for the work of the supervisee. This means that the supervisor must be available to the supervisee at the point of the decision making. The supervisor's relationship with the supervisee shall be clearly differentiated from that of consultant, who may be called in at the discretion of the consultee, and who has none of the legal, administrative or professional accountability for the services performed or for the welfare of the client.
- n. Work experience which follows formal completion of the doctoral degree, but precedes conferral of the degree, may be accepted as post doctoral provided that the educational institution conferring the degree furnishes the Committee with a letter stating the date when all formal requirements had been met.

Appendix C

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	:	
FOR LICENSURE AS A PSYCHOLOGIST	:	ORDER
IN THE STATE OF UTAH	:	
	:	

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



David E. Robinson
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.

Appendix D

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

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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 "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 psychology is only one of six areas combined to offer what is referred to as an "interdisciplinary program". Significantly, neither of these catalogs reflect that the Human Development Counseling program is designed to train and educate professional psychologists. Thus, the applicant has completed a "program" of studies "whose content was primarily psychological", as was required by Section 58-25-(1)(b) and as further required by R153-25-4(b).

RECOMMENDATION

WHEREFORE, IT IS RECOMMENDED that the applicant, Fussell, be licensed for licensure as a psychologist in the State of Utah because

Appendix E

1/17/2018 2.

Jeffrey L. Silvestrini (2959)
Claire G. Zanolli (5019)
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, Suite 500
P. O. Box 11008
Salt Lake City, Utah 84147-0008
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Attorneys for Dr. Juanita J. Fussell

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
SPECIAL APPEALS BOARD

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In the Matter of the)	
Application of)	AFFIDAVIT OF JULIUS SEEMAN
Dr. J. J. Fussell for)	
Licensure as a Psychologist)	License No. 9557-2501-0
)	

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STATE OF TENNESSEE)
) ss.
COUNTY OF Davidson)

Julius Seeman, being first duly sworn and upon oath,
deposes and states as follows:

1. He is Professor Emeritus, Psychology and Professor
in the Human Development Counseling Program with the George
Peabody College For Teachers at Vanderbilt University in
Nashville, Tennessee.

2. Affiant has been both a member and chair of the Tennessee State Board of Examiners in Psychology.

3. Affiant is familiar with Dr. Juanita J. Fussell. Dr. Fussell was a student of your Affiant in classes taught in the Department of Psychology of the George Peabody College for Teachers at Vanderbilt University. Attached hereto are photocopies from the Peabody Catalog listing relevant faculty members in Psychology from whom Dr. Fussell took classes at the George Peabody College for Teachers at Vanderbilt University in connection with completion of her doctoral degree from that institution.

4. A number of doctoral students who took their degree in Human Development Counseling from the George Peabody College for Teachers at Vanderbilt University also took appropriate courses in the Department of Psychology in order to qualify for licensure as psychologists. Dr. Fussell was one such student.

5. The major distinction between the Psychology Department and the Human Developmental Counseling Program at the George Peabody College for Teachers at Vanderbilt University is that the Human Development Counseling Program emphasized the role of service providers whereas the Psychology Department emphasized the research role.

6. While I was formerly a Professor of Psychology with the Psychology Department at George Peabody College for Teachers

at Vanderbilt University, I am now Professor Emeritus in that Department and a Professor of Human Developmental Counseling in the Human Development Counseling Program of George Peabody College. I consider myself no less a psychologist on that account.

7. Throughout Dr. Fussell's enrollment as a doctoral student at George Peabody College for Teachers at Vanderbilt University, I was director of the Clinical Psychology Doctoral Program at George Peabody College. I came to know Dr. Fussell well. I regard Dr. Fussell as an excellent psychologist, fully qualified in every way for independent practice in psychology.

8. Based upon my review of Dr. Fussell's academic credentials, including her transcript and evaluations from her internship at the University of Utah, and based upon my familiarity with Dr. Fussell's training and the courses in which she was enrolled at the George Peabody College for Teachers at Vanderbilt University, it is my opinion that Dr. Fussell has earned a doctoral degree which was based on a program of studies whose content was primarily psychological.

9. The courses taken by Dr. Fussell from the Psychology Department of the George Peabody College for Teachers at Vanderbilt University were APA approved courses.

FURTHER AFFIANT SAYETH NOT.

DATED this 3rd ^{April} day of ~~March~~, 1990.

Julius Seeman
Julius Seeman, Ph.D.

~~March~~ April SUBSCRIBED AND SWORN to before me this 3 day of ~~March~~, 1990.

Heidi R. Thomas
NOTARY PUBLIC
Residing at: Davidson County

My Commission Expires:

3/11/91

(fuss)

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