

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 BSW 04491

NORTH CAROLINA SOCIAL WORK)
CERTIFICATION AND LICENSURE BOARD,)
 Petitioner,)
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STEPHANIE HELBECK CORNFIELD)
 Respondent.)

PROPOSAL FOR DECISION

THIS MATTER comes before the undersigned Augustus B. Elkins II, Administrative Law Judge, on the North Carolina Social Work Certification and Licensure Board (hereinafter “Petitioner” or “Board”) having moved for Summary Judgment. A motion’s hearing was conducted on October 8, 2015 in Raleigh, North Carolina. Appearing for the Petitioner were attorneys Catherine E. Lee and M. Jackson Nichols. The Respondent, Stephanie Helbeck Cornfield, did not appear nor did any representative for Respondent appear.

A hearing on the Motion for Summary Judgment was scheduled for September 10, 2015. On September 9, 2015, the Undersigned received communication from an attorney, Grey Powell, stating that Respondent was in the process of retaining him and that a continuance was necessary. A continuance was granted. Later the Undersigned was notified that Mr. Powell would not be representing Respondent. The motion’s hearing was rescheduled for October 8 and Petitioner and Respondent were notified by both mail and email. Moreover, Respondent, Ms. Cornfield, notified the Undersigned’s paralegal that October 8, 2015 was an acceptable date.

The undersigned Administrative Law Judge, the requested Court Reporter and the Petitioner’s attorneys and witnesses were present at the Office of Administrative Hearings in Raleigh, N.C., at 10:30 a.m. on October 8, 2015 for the contested case hearing. Respondent was not present nor was a representative of the Respondent present. The undersigned Administrative Law Judge waited until 11:00 a.m. to allow Respondent time to appear for the contested case hearing. The Respondent failed to appear and no representative for the Respondent appeared. At 11:07 a.m., the undersigned Administrative Law Judge officially called the contested case hearing to order, and heard Petitioner’s Motion to for Summary Judgment. As of the close of business on October 9, 2015, no communication from Respondent was made to explain her absence.

FINDINGS OF FACT

1. The Board is a state occupational licensing agency, created by Chapter 90B of the North

- Carolina General Statutes, which exists to set “the standards for qualification, training and experience for those who seek to represent themselves to the public as certified social workers or licensed clinical social workers.” N.C. Gen. Stat. § 90B-1.
2. A licensed clinical social worker is “a person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.” N.C. Gen. Stat. § 90B-3 (6a).
 3. The Board is tasked with examining and passing “on the qualifications of all applicants for certificates and licenses under [Chapter 90B].” N.C. Gen. Stat. § 90B-6 (c).
 4. To establish eligibility for licensure as a clinical social worker, an applicant must: (a) hold or be qualified for a current certificate as a Certified Master Social Worker; (b) show to the satisfaction of the Board that s/he has had two years of clinical social work experience with appropriate supervision in the field of specialization in which the applicant will practice; and (c) pass the Board examination for the certification of persons in this licensure. N.C. Gen. Stat. § 90B-7 (d).
 5. An individual who wishes to become licensed as a clinical social worker but who has not yet met the eligibility requirements may apply for a provisional (a/k/a an associate) license to practice clinical social work, if s/he holds a masters or doctoral degree from a college or university with an approved social work program. N.C. Gen. Stat. § 90B-7 (f).
 6. While practicing with an associate license, individuals must be supervised by a licensed clinical social worker or Board-approved alternate.
 7. The Board is prohibited by statute from issuing an associate license for a period of time longer than two (2) years, unless the individual passes a qualifying clinical examination prescribed by the Board within the two (2) year period. N.C. Gen. Stat. § 90B-7 (f). Moreover, associate licensees are required to complete all requirements for full licensure within six (6) years, unless otherwise directed by Petitioner Board. *Id.*
 8. Petitioner Board has enacted certain rules regarding associate licenses, as authorized to do under N.C. Gen. Stat. §§ 90B-6 (h) and 90B-7. Specifically, Petitioner Board requires that “all associate licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board forms every six months for review and evaluation by the Board.” 21 N.C. Admin. Code .0210 (e).
 9. For an individual who is licensed as a social worker in another jurisdiction, the Board may grant reciprocal licensure in North Carolina. N.C. Gen. Stat. § 90B-8 (a). However, to show eligibility for reciprocal licensure, an applicant must show that the criteria for licensure in the licensing state are at least substantially equivalent to those in North Carolina. Moreover, the applicant must show that s/he has passed an examination in the licensing state that is equivalent to the examination required for the level of licensure sought in North Carolina. *Id.*
 10. On April 8, 2003, the Board received a letter from Respondent requesting licensure as a Provisional Licensed Clinical Social Worker (“P-LCSW”). Following a statutory change, the P-LCSW is now referred to as a Licensed Clinical Social Worker Associate (“LCSWA”).
 11. On May 2, 2003, the Board staff wrote a letter to Respondent notifying her of approval for a P-LCSW license. Board staff also informed Respondent that she would be required to take and pass the ASWB clinical level exam during the two-year period of her provisional licensure.

12. On May 9, 2003, the Board issued Respondent P-LCSW License No. P002508.
13. During Respondent's period of provisional licensure from May 9, 2003 - May 31, 2005, Respondent did not report any clinical practice or supervision as required by 21 N.C. Admin. Code 63 .0210(e), nor did she take and pass the ASWB clinical exam as required by N.C. Gen Stat 90B-7(f) and 21 N.C. Admin. Code 63 .0301.
14. For all times relevant to this proceeding, the clinical examination provided by the Association of Social Work Board ("ASWB") has been the only qualifying clinical examination prescribed by Petitioner Board for provisional licensure.
15. On May 31, 2005, Respondent's P-LCSW license expired.
16. On April 30, 2015, the Board received Respondent's application for LCSW licensure by comity, based upon Respondent's licensure with the South Carolina Board of Social Work Examiners ("S.C. Board"). Although Respondent indicated in her application that she currently is licensed to practice social work in New York, a search of the New York Office of the Professions database revealed that Respondent is not currently registered to practice social work in New York State.
17. On May 11, 2015, the Board received the S.C. Board's certification of Respondent's license.
18. On May 12, 2015, the Board staff wrote to Respondent requesting that she submit the Clinical Social Work Supervision Forms documenting her clinical supervision received within the past four years.
19. The May 12, 2015 letter also stated that the Board would review any forms that Respondent submitted and, if the hours were approved, the Board could grant Respondent eligibility to take the ASWB examination.
20. On May 14, 2015, the Board received the S.C. Board's Verification of Licensure Form.
21. On the Verification form, the S.C. Board verified Respondent's licensure as a Licensed Master Social Worker but responded "no" to question #6 that asked whether Respondent had taken the ASWB exam.
22. In addition, the S.C. Board noted that the exam taken by Respondent in 1985 was given by New York State. The New York State exam administered in 1985 is not considered by the Board to be substantially equivalent to the ASWB clinical exam required by the Board for LCSW licensure or licensure by comity.
23. On the Verification form, the S.C. Board responded "no" to #9 which asked whether Respondent completed "Regulatory Agency or Board approved supervision."
24. On May 19, 2015, Respondent sent the Board staff an email, requesting a provisional license to begin practicing clinical social work immediately, while her request for LCSW licensure by comity was under review.
25. On May 19, 2015, in response to Respondent's email, the Board staff informed Respondent that she was not eligible for a provisional license since she previously held a P-LCSW and still had not taken and passed the ASWB Clinical exam. The Board staff reiterated that the Board required appropriate supervision information before it could complete its review of Respondent's application for LCSW.
26. On May 28, 2015, the Board received Respondent's request to appeal the determination of the Board's staff that she was not eligible for a provisional license and that she must submit documentation of the clinical supervision that she had received within the past four years.
27. On June 1, 2015, the Board's Executive Director, Micki Lilly, wrote a detailed letter to Respondent regarding the status of her application for licensure. (Exhibit 11.) Specifically,

Ms. Lilly informed Respondent that the Board had not denied her application for licensure. However, Ms. Lilly also informed Respondent that, based on her review, Respondent had not yet demonstrated eligibility for LCSW licensure or for provisional licensure for the following reasons:

- a. She had applied for LCSW licensure by comity, but without having passed the required clinical exam;
 - b. Her LMSW license was not equivalent to the North Carolina LCSW license and she had not taken and passed the ASWB clinical exam as required for LCSW licensure;
 - c. She had not taken and passed the ASWB clinical exam while provisionally licensed between May 9, 2003 and May 31, 2005; and
 - d. Her six-year allotted time frame for completing the supervised clinical practice for LCSW licensure as a provisional licensee had expired.
28. On June 1, 2015, Respondent emailed the Board staff requesting that the Board consider her appeal from the Board staff's determination that Respondent was not qualified for licensure, and Ms. Lilly responded to that email on June 2, 2015, explaining again why Respondent had not yet demonstrated eligibility for licensure, in accordance with Petitioner Board's governing statutes and rules.
 29. At the June 5, 2015 Board meeting, Respondent's request was submitted to the Board, and the Board decided to refer the matter to the Office of Administrative hearings for a decision.
 30. On June 10, 2015, the Board staff received Respondent's Clinical Social Work Supervision Form completed by Ms. Penni Sutton, LISW, licensed in South Carolina.
 31. Ms. Sutton indicated on the Supervision Form that, although she acted as Respondent's supervisor in South Carolina, she did not provide supervision for licensure.
 32. On June 6, 2015, in accordance with accordance with N.C. Gen. Stat. §§ 150B-38, 150B-40(e); N.C. Gen. Stat. § 90B-7 *et. seq.*; and 21 N.C. Admin. Code 63 .0209, Petitioner Board filed a Petition for a Contested Case Hearing requesting a determination on Respondent's eligibility for licensure under the Board's governing statutes and rules.
 33. On July 8, 2015, the undersigned Administrative Law Judge Presiding issued an Order for Prehearing Statements from both parties within 30 days.
 34. On August 5, 2015, Petitioner filed its Prehearing Statement. On August 5, Petitioner also filed a Motion for Summary Judgment, a Memorandum of Law in Support of the Motion for Summary Judgment, and other supporting documents.
 35. As of October 8, 2015, Respondent had not filed a Prehearing Statement as ordered by the Undersigned's July 8, 2015, Order for Prehearing Statements.

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings ("OAH") as OAH has both personal and subject matter jurisdiction over this case. The parties were properly noticed for hearing. To the extent that the Findings of Fact contain Conclusions of Law, or that Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523, 723 S.E.2d 744, 747 (2012) (quoting N.C. Gen. Stat. § 1A-1, Rule 56(c)) (citations omitted).

3. This case involves the determination under N.C. Gen. Stat. §§ 90B-6(c)(g), 90B-7(d)(f), 90B-8(a)(b) and 21 NC Admin. Code 63 .0209, .0210(a), .0211(a), .0301 as to whether Respondent currently is eligible for licensure under the Board’s governing rules and statutes.
4. Respondent cannot show that she is eligible for licensure as a clinical social worker (LCSW) by comity. Despite having represented in her 2015 licensure application that she has done so, Respondent has not taken and passed the ASWB clinical examination, which is the only qualifying clinical examination prescribed by the Board. Moreover, Respondent has not taken and passed an equivalent examination in South Carolina, which is the only state from which Respondent holds an active license to practice clinical social work. Although Respondent passed an examination in New York State in 1985, she is not currently registered to practice in New York and therefore cannot rely on the passage of such examination for comity purposes, pursuant to N.C. Gen. Stat. § 90B-8 (a).
5. Respondent cannot show that South Carolina’s licensure criteria are at least substantially equivalent to those in North Carolina. Specifically, evidence shows that South Carolina did not require Respondent to complete any Board-approved supervision prior to being licensed as a LMSW in South Carolina. A LMSW license in South Carolina is not equivalent to an independent LCSW license in North Carolina. North Carolina requires applicants to demonstrate two years of clinical social work experience with appropriate supervision prior to independent licensure. N.C. Gen. Stat. § 90B-7 (d)(2). By contrast, South Carolina statute provides that LMSW licensees “may engage only in supervised practice . . . and may not practice privately or independently.” S.C. Code Ann. 40-63-20 (26). As such, Respondent is not eligible for licensure by comity by virtue of her active licensure in South Carolina.
6. Respondent cannot show that she is eligible for licensure as an associate clinical social worker because she failed to pass a qualifying clinical examination prescribed by Petitioner Board while previously licensed as a LCSW Associate between May 9, 2003 and May 31, 2005. During this time period, the only qualifying clinical examination offered by Petitioner Board was the ASWB clinical examination. Moreover, Respondent failed to submit any reports of her clinical social work experience and supervision while provisionally licensed between May 9, 2003 and May 31, 2005, in violation of 21 N.C. Admin. Code .0210 (e). Pursuant to N.C. Gen. Stat. § 90B-7 (f), Respondent was statutorily required to pass the ASWB clinical examination prior to May 31, 2005 in order to renew her LCSW Associate license. Respondent did not do so. Therefore, Petitioner Board has no discretion to renew Respondent’s LCSW Associate.
7. To date, Respondent has not applied for a new LCSW Associate license. However, Respondent is not eligible for a new LCSW Associate license without first passing the ASWB clinical examination. N.C. Gen. Stat. § 90B-7(f) requires associate licensees to complete all requirements for full licensure—including passage of the ASWB clinical examination—within six years of obtaining an associate licensee. *See* N.C. Gen. Stat. § 90B-7 (f). Respondent obtained her first associate license in May 2003; the six-year period by which she was required to complete all requirements for full licensure expired in May

2009. Therefore, Petitioner Board cannot grant Respondent a new associate license if she has not yet passed the ASWB examination. Allowing individuals to repeatedly apply for new associate licenses rather than follow renewal requirements for existing associate licenses, without complying with mandated deadlines for passing the clinical examination, would defeat the purposes of the provisional license, which is to promote the advancement of unlicensed individuals toward full LCSW licensure.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on the Findings of Fact and those Conclusions, the undersigned Administrative Law Judge grants Petitioner's Motion for Summary Judgment and proposes that the North Carolina Social Work Certification and Licensure Board find Respondent not currently eligible for licensure as an LCSW or an LCSW Associate.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Social Work Certification and Licensure Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 14th day of October, 2015.

Augustus B. Elkins II
Administrative Law Judge