

**Before the
Office of Licensed Allied Health Professionals
Physical Therapy Governing Board
Concord NH 03301**

In the Matter of:

DOCKET # 04-01

**Nazife Atis Tulgar
(Adjudicatory Matter)**

DECISION AND ORDER

By the Board: Ann W.B.Greiner, PT, Hearing Officer, Luann Udell, Public, Member
Elizabeth Cary, Public Member, and Wendy Farricy, PTA.

Also present for the Board: Veronique C. Soucy, Administrative Assistant

Appearances: Margaret (Maggie) Donohue, PT, and Prosecutor
Attorney Joel Shaw representing Nazife Atis Tulgar

On April 21, 2004, the Physical Therapy Governing Board ("Board") commenced a hearing in the matter of Nazife A. Tulgar ("the Applicant") pursuant to the Board's "Notice of Hearing" dated April 1, 2004. The "Notice of Hearing" was mailed via certified mail-return receipt requested, to the business address of The Applicant's Attorney, Joel Shaw. The receipt signed by Janet Jaworski, was received in the office April 12, 2004.

The administrative due process hearing is commenced pursuant to, inter-alia, New Hampshire statute RSA 328-A:6, II, (supp 2001) and New Hampshire administrative rule Ahp 301.02 (e), in which The Applicant shall be provided an opportunity to appear before the Board to address her qualifications for licensure.

The Board accepted into evidence Exhibits 1-6 from Maggie Donohue, Prosecutor. The board accepted Attorney Shaw's exhibits A, B, and C.

On November 1, 2001, the Board received Ms. Tulgar's physical therapy Initial Application for Licensure. No documentation was provided that The Applicant met the qualifications for licensure set forth in RSA 328-A:3, I, (supp. 2001) that the physical therapy education program must be approved by the United States Department of Education and the Council on Postsecondary Accreditation.

Pursuant to RSA 328-A:5, II, (c), (supp 2002) a report dated March 5, 2002 was received from the Foreign Credentialing Commission on Physical Therapy ("FCCPT") and date stamped at the Office of Allied Health Professionals, March 11, 2002. The FCCPT report summary of The Applicant's foreign education indicated that The Applicant's education was not substantially equivalent in content to the first professional degree (a U.S. baccalaureate degree) in physical therapy.

The FCCPT report provided an evaluation tool, which specified deficiencies in Chemistry (organic with laboratory), Chemistry (inorganic with laboratory), and Biology.

In a letter dated November 12, 2002, The Applicant requested permission to meet with the board at the meeting scheduled for Wednesday, November 20, 2002, as her licensure file was complete. The Applicant was recognized during the board meeting and was extended the courtesy of an informal discussion of the deficiencies as stated in the FCCPT report.

In conclusion of that meeting, The Applicant was made verbally aware of the identified deficiencies and, that her application could not be acted upon by the governing board until she met the requirements of a U.S. bachelor's degree in physical therapy. The Applicant was advised that there were two options available to her to meet the deficiencies. The Applicant was told to look into what is required to take and pass a College Level Examination Program (CLEP), or take the recommended courses in chemistry and biology. Upon successful completion of either, The Applicant would provide a refreshed FCCPT report that reflects her education is now substantially equivalent to a U.S. bachelor's degree in physical therapy.

On May 29, 2003 the board received an updated FCCPT report dated May 27, 2003. The updated FCCPT report reflected changes from the original report received March 11, 2002. This FCCPT report evidenced compliance in the area of biology sciences and geriatrics. However, there was

no evidence found that The Applicant met licensure requirements in chemistry, (organic and inorganic with laboratory). The revised report concluded that Ms. Tulgar's education was still not substantially equivalent to a U.S. bachelor's degree in physical therapy.

In a letter dated June 30, 2003, and received July 1, 2003, from Attorney Joel Shaw of Shuchman, Krause & Vogelmann. Attorney Shaw provided (an additional original) FCCPT revised report dated May 29, 2003, which proved to be identical to the board's aforementioned report of the same date. The letter contained a request that the board rule formally on her application as it now stands. The letter alleged but did not document that other foreign-trained licensees have been granted physical therapy licenses and did not have a finding of equivalency from an evaluation of their foreign education.

On July 16, 2003, the board performed a formal review of Ms. Tulgar's file. It was determined that Ms. Tulgar's application was not in compliance with Chapter 328-A:5, (c), (supp.2002) in that the updated FCCPT report advised that the education is not substantially equivalent. Following the formal denial of license, a hearing was requested and scheduled.

Ms. Donohue made an opening statement explaining the reasons this board adopted exclusive use of the Foreign Credentialing Commission on Physical Therapy (FCCPT) in February of 2002 for evaluations of foreign education. The board chose the FCCPT because they are the only credentialing agency with a valid and reliable coursework evaluation tool. The standards of an FCCPT evaluation are that a foreign applicant's education must be deemed substantially equivalent to a U.S. baccalaureate degree in physical therapy, and meets the curriculum standard determined by the Commission on Accreditation of Physical Therapy Education (CAPTE).

Ms. Tulgar's education has been deemed to be not substantially equivalent to a U.S. Baccalaureate Degree in Physical Therapy according to the FCCPT report of May 27, 2003 as it lacks the chemistry component of a U.S. curriculum.

In conclusion, Ms. Donohue expressed the hope that until the completion of chemistry as recommended by the report, the board has no authority to circumvent the law and its requirements.

Following Ms. Donohue's statement, Attorney Shaw made a brief statement and asked that Ms. Tulgar be sworn in for questioning.

In response to Attorney Shaw's questions, Ms. Tulgar provided information on her birthplace and education and graduation in 1988 from Hacettepe University in (Ankara) Turkey.

Ms. Tulgar started her career as a physical therapist in Turkey. In 1990 Ms. Tulgar moved to the U.S., and as she was not proficient in the English language, she took English courses and passed the National Physical Therapy Examination (NPTE) and has worked in the profession since.

Ms. Tulgar held a New York license and worked as an in-patient therapist for over two years.

Ms. Tulgar then moved to Indiana due to her husband's job change, and was licensed by the state of Indiana. In Indiana, Ms. Tulgar was the director of rehab services in a long-term care setting. Her duties there were supervisory in nature staffing, scheduling staff, liaison with the employer and hospital management directors. Ms. Tulgar stated she had about six therapists and three aides under her supervision in this position.

When asked if she had passed the national examination to qualify for licensure in New York and Indiana, Ms. Tulgar responded that she passed the NPTE in 1991 for her New York license.

In January of 2001 Ms. Tulgar moved to New Hampshire. She requested and was sent an application prior to moving east. In the interim, the application forms were changed and Ms. Tulgar was provided with an updated form that was received on November 1, 2001. Remaining supportive documentation for The Applicant's application was received and the file was prepared for an informational review by the board at the November 20, 2002 meeting, with Ms. Tulgar in attendance.

Ms. Tulgar responded to questions regarding the total credits earned regarding her overall education as stated in the updated FCCPT report. Ms. Tulgar stated that it was her impression that the updated report reflected that she satisfied the total number of credits required for a U.S. baccalaureate degree and meets the minimum requirements for semester credits.

As a result of this dialogue Board member Luann Udell had questions to clarify the statements made regarding the number of credits earned. While the report indicated that Ms. Tulgar's professional education was found to be complete, however the report determined that the general education was not substantially equivalent to a U.S. Bachelor of Science in Physical Therapy degree as it is lacking chemistry and organic chemistry classes. Chemistry classes were not a requirement in the program in Turkey.

Attorney Shaw redirected. When asked why Ms. Tulgar did not take these (chemistry) undergraduate studies or CLEP the classes as recommended at the November 2001 meeting for New Hampshire licensure, Ms. Tulgar responded that she did not agree with the board's decision or recommendation nor did she see the relevance of getting those classes now, as 20 years in practiced has elapsed. It is her opinion that in her practical experiences and passing the national examination, she has satisfied all requirements. She stated further, in her 16 years of U.S. practice she has never been confronted with a situation that she was not fully competent to handle because of a lack of knowledge of chemistry. Attorney Shaw closed his questioning.

Questioning was opened. Board member Luann Udell asked for clarification of her understanding of the testimony and had three questions for Ms. Tulgar. To the question is it a matter of principle because you've been at work all this time, to which she responded "yes", it's the principle (of the matter). To the question, is it my understanding that the point was made that chemistry or the lack of chemistry was an issue, her response "yes". Lastly, would Ms. Tulgar agree to take the classes if the board suggested an area of concern where chemistry would be important, she responded "yes".

Attorney Shaw made a clarifying statement that the argument is not that chemistry has no relation to physical therapy, but rather that, she has acquired those skills through her sixteen years of practice.

Ms. Donohue redirected with a hypothetical situation for Ms. Tulgar's opinion. Ms. Tulgar had expressed her belief that the board has discretion over issues when there is a question of meeting licensure requirements. Ms. Tulgar was asked if it is reasonable for the board to adopt a standard

and hold all applicants to that standard, even though each application could have a unique variable to consider. In this case, it is the FCCPT report is the standard the board has adopted, and there is no deviation from this standard. Ms. Tulgar stated she did not concur with the board's determination that all applicants should be held to the FCCPT standard.

Ms. Donohue then asked Ms. Tulgar for her opinion of the fairness of the board to indiscriminately waive any standard set by the board for the State of New Hampshire and allow licensure by board action. Ms. Tulgar agreed that one standard to which all candidates are held to is fair.

Ms. Donohue reiterated the standard of an FCCPT evaluation and criteria is what the board will use to consider licensure.

Hearing Officer, Ann Greiner asked Ms. Tulgar about the New York and Indiana requirements for licensure and how they differ from New Hampshire. As Ms. Tulgar was licensed in 1991, her response would be relative to that time frame. At that time New York did their own evaluation of foreign-trained education for applicants and did not use any credentialing agencies. Her New York evaluation was accepted for Indiana licensure.

Board member Elizabeth Cary asked about her response of being denied a license in the state of Michigan. Ms. Tulgar's response was that Michigan did not accept her evaluation from an agency in Delaware and accepted only FCCPT evaluations. Ms. Tulgar did not pursue Michigan licensure further as they were moving out of Michigan.

Attorney Shaw summarized and read from RSA 328-A:5, II, the statute in effect at the time of the application, specifically (c), in regard to a discretionary use of another board-approved entity performing credentials evaluations.

Attorney Shaw argued these statutes and rules are directly relevant to this hearing, as it makes it clear that the board had the discretion to look at another source for a credential evaluation and make a determination. The law amended and effective July 1, 2003 has taken that discretionary capability away. Attorney Shaw concluded by stating that the board should consider Ms. Tulgar's work history, education, and experience in their deliberations of her qualifications.

In her closing statement, Ms. Donohue expressed the fact that in February of 2000, it was the consensus of this board that the FCCPT was named exclusively to be the agency to evaluate the credentials of foreign educated applicants. Ms. Donohue stated it was the intent of the Governing Board to have one standard that would be fair and equitable and that all applicants for licensure would be held to that standard.

Ms. Donohue expressed an opinion that the law changes of 2003 validated past board action on applicants who are foreign educated. The result of that change set a standard by law, and holds all applicants to that same standard.

In closing, Attorney Shaw reinforced his argument that this board does have discretion in this matter and the recent law change closes the door on future foreign-trained applicants. Any decision made in their deliberations should be made in accordance with the law, and addresses the heart of the matter is that the education be substantially equivalent. It is Attorney Shaw's opinion that the board has the authority by law to exercise discretion.

FINDINGS OF FACT

At the February 2000 meeting of the Physical Therapy Governing Board, it was board consensus that the organization known as the Foreign Credentialing Commission on Physical Therapy was named as the sole source of evaluation of an applicant's foreign education.

Ms. Tulgar had two reviews of her application. The first, an informal meeting with the board on November 20, 2001 in which it was verbally explained directly to Ms. Tulgar what steps would be necessary for Ms. Tulgar to meet the requirements of a foreign educated applicant. Upon completion of additional courses, Ms. Tulgar would need to provide her file with a refreshed FCCPT report stating that she meets the requirements and her education is substantially equivalent to a U.S. baccalaureate degree in physical therapy.

As recommended by the Governing Board to Ms. Tulgar's Attorney in March of 2003, a refreshed FCCPT report was received and identified courses that were not originally acknowledged in the report of November 2001.

Ms. Tulgar's application was formally reviewed at the Governing Board meeting held July 16, 2003. The application was denied as deficient as The Applicant did not meet the educational equivalency of a U.S. baccalaureate degree in physical therapy.

An informal investigation was conducted and an Administrative Hearing was scheduled in accordance with Ahp 301.02 (e).

A hearing was held on April 21, 2004 pursuant to 328-A:3, I, (supp 2001), or RSA 328-A:5 (supp 2002), and RSA 328-A:6, (supp 2003).

DISCUSSION and CONCLUSION

The standard that the board has applied, regardless of the opportunity to act independently on an application, has been one of consistency in upholding the laws and rules and the legislative mandate to protect the public. All other applicants approved prior to the law changes were held to the standard set in February 16, 2000 and before the July 1, 2003 law change.

In the deliberations and to the best of the board's knowledge, in Ms. Tulgar's practice there have been no reported instances of endangerment to the community she served. The board considered the requirements of compliance with the law at the time of her application. In evaluating the revised standard of 2000, against the subsequent changes in law, would the board's decision hold up to a challenge in a higher court. The basis for denial of The Applicant's Initial Application was identified as a conscious decision in maintaining the applicable standard by the board.

This hearing was the opportunity to have due process afforded to the applicant. At the hearing, there was no further evidence presented in the testimony to sway the board from its original decision to deny Ms. Tulgar's application for licensure. Following the meeting with the board in November of 2001, The Applicant acted on the board's recommendation and did get a refreshed evaluation that indicated acceptance of other credits. That evaluation summarized that The Applicant's education was not substantially equivalent to a U.S. baccalaureate degree in physical therapy.

The Applicant chose to not complete the deficient educational component of chemistry as a matter of principle. There was no evidence of any other good faith effort made by Ms. Tulgar to compensate for the identified deficiencies by pursuing formal or informal continuing education.

In hindsight and regardless of a perception of discretionary capability in decision-making by this board, this board can state unequivocally that it has historically adhered to one standard for consistency and fairness in all their decisions when approving or denying licensure. This board has never allowed any foreign-educated physical therapy applicant to receive their license unless the FCCPT report stated that their education is substantially equivalent to a U.S. baccalaureate degree in physical therapy. It was then and it remains the board's intent to have a consistent, identifiable and acceptable educational standard for all applicants. The ruling made in 2000 served a two-fold purpose: to protect the general public as mandated by the legislature and preserve the integrity of the profession for all candidates for licensure.

Since the board acted formally in February of 2000 to use FCCPT exclusively for evaluations, the law sustained two changes, one in 2002 and another in 2003. What changes are recognizable is that the law now validates board action taken in February of 2000 regarding evaluation, and affirms the decision to be guided by the expertise of the FCCPT evaluation.

DECISION AND ORDER

Considering the testimony and in discussion of the applicable laws, rules and standards in place even prior to the ruling of February 16, 2000 and from that point forward the board did not exercise any discretionary judgements.

THEREFORE IT IS ORDERED the board will uphold the original decision of denial of The Applicant's licensure as dated July 16, 2003.

IT IS FURTHER ORDERED, That the licensee shall be permitted to apply for license only if the licensee has completed the outstanding educational requirements as identified in the FCCPT report, and provide a refreshed FCCPT report that documents the education is substantially equivalent to a U.S. baccalaureate degree in physical therapy.

IT IS FURTHER ORDERED, That a copy of this order shall be mailed to the business address of The Applicant's attorney, via certified mail-return receipt requested.

BY ORDER OF THE BOARD//*

Dated: 7-15, 2004

Ann W. B. Greiner, PT

Ann W. B. Greiner, PT
Hearing Officer