

Before the  
N.H. Board of Registration in Medicine  
Concord, N.H. 03301

In the Matter of:

Jasmin E. Bihler )  
(Physical Therapist )  
(Application) )

Docket No. 91-007

DECISION AND ORDER

By the Board: Douglas M. Black, M.D., President; Wallace Buttrick, M.D., Robert Charmen, M.D., Albert M. Drukteinis, M.D., and Lawrence W. O'Connell, Ph.D., Board Members. Vice-President, Marcel R. Dupuis, M.D., and Board Member Maureen P. Knepp, P.A.- C., did not participate.

Appearances: Maureen P. Knepp, P.A. - C., Investigator/Prosecutor; W.E. Whittington, IV, Esq., for the Respondent.

Background Information

This proceeding was commenced on December 20, 1991 by the New Hampshire Board of Registration in Medicine ("the Board") pursuant to RSA 328-A:12, RSA 329:18, and Med 804.03e) for the purpose of determining whether Jasmin E. Bihler ("the Applicant") is eligible for licensure as a physical therapist.<sup>1/</sup>

Ms. Bihler was born in West Germany in 1962. She was educated in that country and lived there until 1986 when she took

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<sup>1/</sup> The Board agrees with the Applicant that RSA 328-A:12 and not RSA 328-A:3 is the section which governs the educational requirements for foreign-trained applicants, and the Notice of Hearing was not intended to indicate that a different interpretation of the two statutes would be employed.

a job in the United States. She was first licensed to practice physical therapy in Germany in April 1991, is married to a physician who is a United States citizen, resides in E. Thetford Vermont, and is employed as a supervised physical therapist (under temporary licensure) at Alice Peck Day Hospital in Lebanon, New Hampshire.

Ms. Bihler filed her New Hampshire license application on February 21, 1991, and was granted a temporary physical therapist certificate on April 16, 1991 and again on October 11, 1991. This temporary certificate expires by operation of law on April 11, 1992 and may not be renewed or extended. See RSA 328-A:2.

Ms. Bihler was authorized to take the Professional Examination Service (or "ASI") examination required by RSA 328-A:5 on July 25, 1991, and was notified that she had passed that examination on September 4, 1991. The sole issue specified in the Board's hearing order is whether the Applicant meets the education requirements necessary for permanent licensure under RSA 328-A:12 and Med 804.03(e). Ms. Bihler, however, has raised certain responsive issues of her own which must be addressed as well.

Specifically, the Respondent claims that: 1) the Board has already taken final action to approve her educational credentials and that she no longer has the burden of demonstrating her eligibility in this area; 2) the Board is, in any event, estopped from challenging her educational

credentials at this time; and 3) her specialized training adequately qualifies her to practice physical therapy even if the Board were to conclude that her educational credentials were not equivalent to those which must be met by applicants trained in the United States pursuant to RSA 328-A:3.

#### Findings and Conclusions

The Board relies upon the standards of the American Physical Therapy Association and its affiliated Commission on Accreditation in Physical Therapy Education in approving foreign physical therapy schools pursuant to RSA 328-A:12. Med 804.03(e). The American Physical Therapy Association, in turn, provides for the evaluation of foreign-trained applicants by one of three recognized education credential evaluation agencies or any higher education institution to determine whether the applicant's education is equivalent to an approved United States physical therapy degree program including at least 55 semester hours of professional physical therapy education. Exhibits, 22, E and P.

All United States physical therapy programs approved under RSA 328-A:3, I require a baccalaureate or masters degree. Exhibits E and P. Accordingly, the basic factual inquiry presented by the instant Applicant is whether Ms. Bihler's German education is the equivalent of a United States baccalaureate degree program in physical therapy.

The schools attended, the post-secondary courses taken by and the degrees awarded to the Applicant in Germany are not in dispute. Including Kindergarten, she completed 13 years of primary and secondary education, the last three years of which were in a nonuniversity technical academy (Kidaish Berufsfachschule) which qualified her to be a physical education instructor in Germany. She obtained a diploma (and German physical education instructor license) from the Berufsfachschule in 1982 and worked in the physical education field for two years.

The Applicant entered a specialized educational program for physical therapists (Lehranstalt fuer Krankengymnastik) in Germany in 1987. She completed her course work in October 1989 and was awarded a German physical therapist certification on April 9, 1991, when she completed the required one year clinical internship required for her Krankengymnast degree. She performed this clinical internship in the United States.

In Germany, a university degree program ordinarily takes five years, and requires 13 years of primary and secondary school preparation.

The German Krankengymnast program requires only ten years of primary-secondary education, two years of hospital training and one year of clinical internship, and is not considered to be the equivalent of an United States college or university level program. Exhibit N. The Board has not granted a physical therapist license to any applicant whose post-secondary education was limited to the basic Krankengymnast program.

Licenses have been granted to German-trained physical therapists, but these applicants were certified to have over 120 semester units of post-secondary education by one of the three educational accrediting organizations recommended by the American Physical Therapy Association.

When Ms. Bihler's secondary and post-secondary educational credentials were reviewed by the International Education Research Foundation, Inc., and compared with a typical United States bachelor of science program, she was rated as having earned only 97 semester units instead of 120, with the deficiency being primarily in the area of general education. Exhibits G, H and J.2/

The Applicant's exact course of secondary education study is not in evidence, but, given the vocational orientation of the Kidaish Berufsfachschule (the physical education academy she attended during her 11th, 12th and 13th years of secondary schooling), this course work is unlikely to supply the college level general education credits she is missing. Attachment to Exhibit N.3/

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2/ The American Physical Therapy Association standards provide for evaluating all post-secondary level courses, all "13th year" or "A level" secondary education courses, and all course work in physical therapy. Exhibit 22, at 4.

3/ The Board does not find that Ms. Bihler's education would be equivalent only after completing exactly 27 additional semester units of post-secondary general education courses, but only that there is a substantial deficiency in this category.

Ms. Bihler attended three more years of secondary education than the minimum required for entry to a Krankengymnast program, but this fact is irrelevant given the absence of evidence that specific courses taken during her secondary schooling should be given greater credit towards a United States baccalaureate degree than that awarded by the International Education Research Foundation, Inc.<sup>4/</sup> The record does not even establish that the Applicant's secondary school course work placed her at a higher academic level than the typical Krankengymnast applicant, especially since she was out of school for five years before enrolling in the Krankengymnast program.

Ms. Bihler became a member of the American Physical Therapy Association ("APTA") in January 1992. Exhibit 25. The APTA did not independently evaluate her educational credentials as reported to it by International Education Research Foundation, Inc., because Ms. Bihler possessed a New Hampshire temporary practice certificate. The APTA also recognizes equivalency determinations made by individual licensing jurisdictions, Exhibit 22, at 2, and obviously assumed that New Hampshire had found her educational credentials to be equivalent to an approved United States program. See RSA 328-A:2. Accordingly,

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<sup>4/</sup> Although Ms. Bihler completed the degree requirements of her various primary and secondary education programs, she was described by International Education Research Foundation, Inc., as having "completed somewhat beyond twelve years" rather than 13 full years of study. Exhibits H, I, J, and 23.

Ms. Bihler's membership in the APTA does not establish that she has completed an educational program approved by the APTA for purposes of Med 804.03(e).

The Board's enabling statute and rules clearly contemplate that physical therapy applicants not be allowed to sit for the physical therapy examination or be issued a temporary practice certificate unless they possess adequate educational credentials. Ms. Bihler was granted a temporary certificate in April 1991 and allowed to take the examination in July 1991, pursuant to authority delegated to the Physical Therapy Advisory Committee. These decisions were erroneous.

The error was not recognized until September 6, 1991, when Ms. Bihler was advised that, despite her successful passage of the examination, her permanent license application did not adequately establish her educational qualifications. Exhibit L.

Previous communications to Ms. Bihler by the Board's staff coupled with an understanding of the applicable statutes and rules could have led Ms. Bihler to believe that her educational qualifications were satisfactory and that her permanent license would be routinely granted. There was, however, nothing in these prior communications which could reasonably be construed as an actual grant of the permanent license application or a final approval of Ms. Bihler's educational qualifications for purposes of the permanent license application.

The Board now has before it a pending application which must be finally reviewed and acted upon in light of the requirements RSA 328-A:12 and Med 804.03(e). Prior review revealed a deficiency in the application. Ms. Bihler was notified of the deficiency and given a reasonable opportunity in the form of a second temporary certification period within which to rectify it. Exhibit L. Even if it were assumed that the grant of a temporary license in April 1991 constituted specific approval of Ms. Bihler's education, the permanent license application itself was not granted, and the Board was free to reevaluate its earlier determination prior to taking final action. The September 4, 1991 letter notifying Ms. Bihler that she passed the ASI examination was not such a "final action," and specifically refers to the need for Board approval of any pending permanent license application. Exhibit K.

The burden of proof with regard to all aspects of a permanent application is on the applicant. The errors made in processing Ms. Bihler's application and granting a temporary certificate in this case do not shift that burden, but even if the grant of a temporary certificate did shift the burden to the Board to demonstrate that Ms. Bihler lacked a "baccalaurette equivalent" education, that burden has been plainly met. Ms. Bihler has no degree which is equivalent to a baccalaureate degree and lacks approximately 23 semester units of the general education courses typically required for such a degree.

Ms. Bihler acquired no "vested interest" in a permanent license merely because the Board erroneously granted her a temporary certificate. The doctrine of estoppel does not ordinarily run against governmental entities, particularly when she relied upon governmental action is inconsistent with statutory requirements designed to protect the public health and safety.

There is, in any event, no basis for concluding that Ms. Bihler justifiably changed her position in justifiable reliance upon the Board's April 1991 error to such an extent that the doctrine of estoppel would apply. She was committed to the German educational program long before she applied for licensure in New Hampshire, and could not reasonably view her application for licensure as settled before she received her examination scores on September 4, 1991. Nor has she relocated to New Hampshire, made substantial business investments, or forgone income or educational opportunities which would have otherwise been available to her had the Board correctly declined to issue a temporary certificate in April 1991.

Ms. Bihler also argues that there is no rational basis for the New Hampshire legislature or the Board to insist upon the equivalent of a baccalaureate degree with its attendant emphasis on general education courses, when such requirements have little to do with the actual practice of physical therapy and when there can be no doubt that she is adequately trained in basic physical therapy activities. This argument illustrates

intrinsic differences between the German and the United States educational systems, but provides no basis for granting the instant application. If the more pragmatic German system better achieves some societal goals, the United States system better achieves others, and the Board continues to view the basic policy choice made by Med 803.04(3), the American Physical Therapy Association, and most domestic licensing jurisdictions as both rational and reasonable.

Ms. Bihler is an articulate person who earned a very respectable score on the required physical therapist examination, and who, by all accounts, has performed well as a supervised physical therapist during her clinical training and during the period of her temporary certification in New Hampshire. She does not, however, meet the educational requirements of RSA 328-A:12 and Med 804.03(e) because she does not hold a degree which is substantially equivalent to the baccalaureate degree required by all approved educational programs for United States-trained applicants. Exhibits E, P, G, H, J and Q.

The Board has some flexibility in evaluating equivalency, and may also waive the basic standard established by Med 804.03(e) if a compelling showing involving hardship, the presence of an exceptional quantity or quality of other relevant training, and a willingness to accept special licensure conditions should be made. See RSA 541-A:12, IV and Med Chapter 212. No such showing was, or could have been, made based upon

the record in this case, however, and because Ms. Bihler's credentials plainly do not meet the "baccalaureate equivalent" standard, her pending application for permanent licensure must be denied.

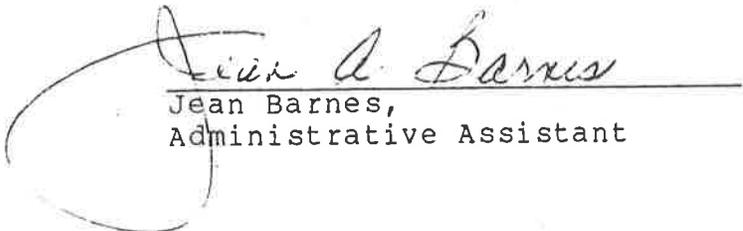
Ms. Bihler's temporary certificate would automatically expire by its own terms at 12:01 A.M., April 11, 1992, but a person whose application for permanent licensure has been denied for lack of educational credentials immediately loses his or her eligibility for temporary certification under RSA 328-A:5 and may not lawfully engage in even supervised physical therapist activities. The Board shall, therefore, delay the effective date of this decision until April 11, 1992 in order to minimize possible confusion or inconvenience to Ms. Bihler or her employer.

THEREFORE, IT IS ORDERED That the February 20, 1991 application of Jasmine E. Bihler for a permanent physical therapist license is denied effective April 11, 1992; and

IT IS FURTHER ORDERED That the temporary physical therapist certificate of Jasmine E. Bihler automatically expires effective April 11, 1992, and that Jasmine E. Bihler may not lawfully practice physical therapy in New Hampshire as of that date.

BY ORDER OF THE BOARD

April 3, 1992

  
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Jean Barnes,  
Administrative Assistant