

1  
2 BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
3 ON REFERRAL FROM THE BOARD OF SOCIAL WORK EXAMINERS

4 In the Matter of: )  
5 )  
6 John W. Contway )  
7 ) OAH No. 05-0451-CSW  
8 ) Board Case No. 0850-05-002  
9 \_\_\_\_\_)

10 **BOARD DECISION AND ORDER**

11 **I. Introduction**

12 John W. Contway (Contway) submitted an application for a license as a clinical  
13 social worker by examination in Alaska. The Board of Social Work Examiners (Board)  
14 denied Contway's application at its meeting on April 29, 2005, because Contway had  
15 not established that he met the requirements of AS 08.095.110(a)(2) and 12 AAC  
16 18.115(b)(2). Contway requested a hearing, which was conducted on October 4, 2005,  
17 with Administrative Law Judge (ALJ) Andrew M. Hemenway presiding, under the  
18 provisions of the Administrative Procedure Act.<sup>1</sup>

19 The ALJ issued a proposed decision recommending that the Board allow Mr.  
20 Contway to sit for the examination as a clinical social worker, thus completing the final  
21 step in the licensure process. The Board hereby rejects that proposed decision and  
22 adopts this final Decision and Order in the case.

23  
24  
25 <sup>1</sup> AS 08.01.090 applies the Administrative Procedure Act (AS 44.62) to all board  
26 proceedings, with listed exceptions not applicable in this case. AS 44.62.370 provides  
for a hearing in the event a license application is denied.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**II. Facts**

John Contway was born in 1954; he earned a bachelor of fine art degree in 1985.<sup>2</sup> Contway worked as a social worker in the Montana Department of Family Services from 1989-1996.<sup>3</sup> After a one-year period of primarily administrative work, Contway worked again as a social worker from 1997-2001, for different county programs in Montana.<sup>4</sup> Towards the end of that time, in September, 2000, Contway was admitted to the graduate program at Walla Walla College. Contway was awarded a master's degree in social work (M.S.W.) in June, 2002, with a cumulative GPA of 3.85.<sup>5</sup>

Since November 19, 2002, Contway has been employed as a mental health clinician by the Aleutian Pribolof Island Association, Inc. at its clinic on St. Paul Island, in the Bering Sea. Dr. Jeffrey Ickes (Ickes), in Anchorage, has been Contway's off-site supervisor.<sup>6</sup>

Ickes has a bachelor of science degree in psychology, a master's degree in education and counseling, and a doctorate in counseling psychology from Kent State University. After receiving his doctorate, Ickes became a licensed psychologist in Louisiana and provided clinical psychological services in that state beginning in 1981.

---

<sup>2</sup> Exhibit A, page 35.

<sup>3</sup> Exhibit A, pages 32-34, 46-47.

<sup>4</sup> Exhibit A, page 33.

<sup>5</sup> Exhibit A, page 50.

<sup>6</sup> Exhibit A, pages 32, 54.

ATTORNEY GENERAL, STATE OF ALASKA  
LIMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

1  
2 Ickes came to Alaska in 1993 and established a master's program in counseling  
3 psychology at Alaska Pacific University. He is the dean of the psychology program at  
4 the university. Ickes has experience in the supervision of candidates for professional  
5 licensing, both on - and off-site, in the fields of psychology, clinical social work, and  
6 counseling. He has taught courses in clinical psychology at Louisiana State University  
7 and at the Alaska Pacific University.  
8

9 Beginning in 2000, Ickes provided clinical consulting services to the Aleutian  
10 Pribolof Island Association, Contway's employer. In that capacity, Ickes supervised  
11 Contway. Under Ickes' supervision, Contway provided clinical counseling services to  
12 chemically dependent, mental health impaired and dual diagnosis clients, including  
13 intake assessment, treatment planning, discharge summaries, and aftercare planning.<sup>7</sup>  
14 During that time, Ickes was a licensed professional counselor (LPC) in Alaska, but he  
15 was not a licensed clinical social worker, a licensed psychologist, or a licensed  
16 psychiatrist in Alaska or in any other licensing jurisdiction. (Ickes' Louisiana license as  
17 a psychologist lapsed around the time he moved to Alaska.)  
18

19 On August 17, 2004, Contway submitted to the Division of Corporations,  
20 Business & Professional Licensing (Division) his application for a license by  
21 examination as a clinical social worker.<sup>8</sup> On October 19, 2004, the Division received a  
22 Professional Reference form and Post Graduate Clinical Social Work Supervision form  
23

24  
25 <sup>7</sup> Exhibit A, page 54.

26 <sup>8</sup> Exhibit A, pages 53-55.

1  
2 from Ickes.<sup>9</sup> On October 21, 2004, Division staff advised Contway that Ickes'  
3 supervision did not satisfy the requirements of AS 08.95.110(a)(2) because Ickes does  
4 not have one of the professional licenses required by the statute.<sup>10</sup>

5 Following correspondence between the Division and Contway regarding the  
6 status of his application, the Board denied the license application on April 29, 2005,<sup>11</sup>  
7 and Contway requested an administrative hearing.  
8

9  
10  
11 <sup>9</sup> The Division has created license application forms that must be submitted by  
12 applicants to demonstrate their qualification for the particular category of license being  
13 sought. The forms that must be submitted to apply for a clinical social work license are  
14 all designated "08-40896" in the lower left hand corner. The "Post Graduate Clinical  
15 Social Work Supervision" form (designated 08-40896b) must be filled out by the  
16 applicant's approved supervisor. The second page of the form requires the supervisor to  
17 check one of three boxes to show that the supervisor meets the requirements of AS  
18 08.95.110(a)(2). The three listed categories are: licensed clinical social worker,  
19 licensed psychologist, and licensed psychiatrist. Hearing testimony of Division  
20 Licensing and Records Supervisor Cori Hondolero.

21 The post graduate clinical social work supervision form that Ickes submitted in  
22 support of Contway's application contained the correct first page, but the second  
23 (signature) page was taken from a completely different form, a "Verification of  
24 Working Experience" form (designated 08-4089d) for use only by those applying for  
25 licensure as a clinical social worker by credentials (not examination). Exhibit A, pages  
26 40-41. Because the licensure by credentials requirements in AS 08.95.120 are different,  
the second page of the working experience form does not include the series of boxes  
that a supervisor must check to demonstrate that he or she meets the requirements of  
AS 08.95.110(a)(2). Hearing testimony of Hondolero.

When asked at the hearing how this substitution of pages could have occurred,  
Contway replied that he was "not sure".

<sup>10</sup> Exhibit A, pages 38-39.

<sup>11</sup> Exhibit A, page 3.

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

### III. Applicable law

#### Sec. 08.95.110. License requirements.

(a) The board shall issue a license to practice clinical social work to a person who

(1) has received a master's degree or a doctoral degree in social work from a college or university approved by the board;

(2) has completed, within the 10 years before application for licensure and under the supervision of a licensed clinical social worker, licensed psychologist, or licensed psychiatrist either

(A) a minimum of two years of continuous full-time employment in postgraduate clinical social work; or

(B) a minimum of 3,000 hours of less than full-time employment in a period of not less than two years in postgraduate clinical social work;

(3) is of good moral character;

(4) is in good professional standing and is fit to practice social work as determined by the board;

(5) has provided three professional references that are acceptable to the board, including, if the applicant

(A) was previously employed to practice social work, one reference from a person who was the applicant's employer while practicing social work unless the applicant demonstrates to the satisfaction of the board that the applicant is unable to satisfy the requirement of this subparagraph through no fault of the applicant; and

(B) is currently employed to practice social work, a reference from the applicant's current employer;

(6) has satisfactorily completed the examination given by the board for clinical social worker licensing; and

(7) has paid required fees.

#### 12 AAC 18.115. Supervision of experience for clinical social work license

(a) To meet the requirements of AS 08.95.110 (a)(2), an applicant for a clinical social work license must document at least 100 hours of direct clinical supervision equitably distributed throughout the supervised period. No more than 50 hours required by this subsection may be in group supervision. For good cause shown, the board will, in its

1  
2 discretion, grant a written request from an applicant for an  
3 exception to the limitation on the number of group  
supervision hours.

4 (b) The board will, in its discretion, approve the  
5 supervision of experience of an applicant for a clinical social  
6 work license to satisfy the requirements of  
7 AS 08.95.110(a)(2) if the clinical supervisor

8 (1) documents the applicant's supervised  
9 experience on a form provided by the department; and

10 (2) is a clinical social worker, psychologist, or  
11 psychiatrist who holds an unrestricted license to practice that  
12 profession in this state or other licensing jurisdiction during  
13 the period of supervision.

14 (c) To be accepted by the board,

15 (1) direct clinical supervision must be provided  
16 in face-to-face meetings between the supervisor and the  
17 applicant unless the board, for good cause shown, has granted  
18 an exception allowing for an alternate form of supervision;

19 (2) if direct clinical supervision is not provided  
20 to the applicant within the applicant's agency of employment,  
21 the applicant must provide the board with a written release  
22 from the administrator of the applicant's agency for the  
23 applicant to be supervised outside the applicant's agency  
24 setting; and

25 (3) the clinical supervisor must be responsible  
26 for direct clinical supervision of the applicant within the  
following content areas:

(A) clinical skills;

(B) practice management skills;

(C) skills required for continuing

competence;

(D) development of professional identity;

(E) ethical practice;

(F) legal and regulatory requirements.

#### IV. Decision

As stated above, the requirements for licensure as a clinical social worker are set out in AS 08.95.110(a). The statute provides: "The board shall issue a license to practice clinical social work to a person who . . ." This language makes it clear that a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

person who meets the statutory requirements is entitled to be licensed.  
AS 08.95.110(a)(2) requires that the applicant "has completed, within the 10 years before application for licensure and under the supervision of a licensed clinical social worker, licensed psychologist, or licensed psychiatrist either (A) a minimum of two years of continuous full-time employment in postgraduate clinical social work; or (B) a minimum of 3,000 hours of less than full-time employment in a period of not less than two years in post graduate clinical social work."

The Board of Clinical Social Work Examiners was created in 1988 in AS 08.95.010.<sup>12</sup> At that time, the Board licensed only clinical social workers. In 1998 the legislature revised state law to add two new categories of licensure: "master social worker" and "baccalaureate social worker".<sup>13</sup> While the two new license categories created title restrictions only<sup>14</sup> the law imposes a practice restriction on clinical social workers. AS 08.95.100(a) provides that, unless a statutory exception applies, a person "who practices clinical social work without obtaining a license under [AS 08.95] to practice clinical social work is guilty of a class B misdemeanor". A class B misdemeanor crime is punishable by up to 90 days in jail and a \$2,000 fine.<sup>15</sup>

---

<sup>12</sup> Sec. 2, ch. 126, SLA 1988.  
<sup>13</sup> Secs. 12 & 13, ch.118, SLA 1998.  
<sup>14</sup> A person may not claim to be a master or baccalaureate social worker if he or she is not licensed as such; AS 08.95.100(b)(3) and (4).  
<sup>15</sup> AS 12.55.035(a)(6), 12.55.135(b).

1  
2 The state legislature amended AS 08.95.110(a) in 1998 to set out with great  
3 specificity the requirements for licensure as a clinical social worker in Alaska, and has  
4 established criminal penalties (including incarceration) for a person who practices in  
5 violation of the law. "Where the terms of the statute are preemptory and exclusive,  
6 where no discretion is reposed or where penalties are provided for its violation, the  
7 provisions of the act must be regarded as mandatory."<sup>16</sup>  
8

9 The rule of *expressio unius exclusio alterius est* applies here. In this context, the  
10 rule means that "if a statute provides one thing, all others implied are excluded."<sup>17</sup>  
11 "Where a statute grants authority to do a thing and prescribes the manner of doing it, the  
12 rule is clear that the provision as to the manner of doing it is mandatory, even though  
13 the doing of it in the first place is discretionary. . . . Where a new law directs a thing to  
14 be done in a certain manner, it may not be done in any other manner and have legal  
15 effect under the act."<sup>18</sup> Thus, a clinical social work license by examination may be  
16 issued only under the circumstances set out in AS 08.95.110, and no other.  
17

18 An administrative agency such as the Board has only the authority delegated to it  
19 by the legislature, and does not have the power to promulgate regulations that ignore or  
20

21  
22  
23 <sup>16</sup> 3 Singer, *Statutes and Statutory Construction*, 57:8 at 33 (Sixth Ed. 2001),  
24 quoting *Tuthill v. Rendleman*, 387 Ill. 321, 56 N.E.2d 375 (1944).

25 <sup>17</sup> 3 Singer, *Statutes and Statutory Construction*, 57:10 at 39 (Sixth Ed. 2001).

26 <sup>18</sup> 3 Singer, *Statutes and Statutory Construction*, 57:10 at 39-40 (Sixth Ed. 2001).



1  
2 conflict with state statutes.<sup>19</sup> Administrative rules must be construed in a manner  
3 consistent with their governing statutes. Provisions must be interpreted in a way  
4 harmonious to and consistent with the legislative design.<sup>20</sup>

5 The decision proposed by the ALJ indicates that the Board, by adopting 12 AAC  
6 18.115(b)(2), created standards for approved supervisors that differ from those  
7 established in AS 08.95.110(a)(2). But the Board does not have the power to adopt a  
8 regulation that conflicts with a state statute, and did not do so when it adopted 12 AAC  
9 18.115.  
10

11 Alaska Statute 08.95.030 provides the Board with the general authority to adopt  
12 regulations, including regulations to establish "standards for supervisors and for  
13 supervision that is required under AS 08.95.110(a)"; AS 08.95.030(2)(D). That general  
14 grant of regulatory authority does not authorize the Board to disregard the express  
15 provisions of a state statute, however.  
16

17 During the time that Ickes supervised Contway he held a license as a licensed  
18 professional counselor.<sup>21</sup> This is not one of the categories of approved supervisor listed  
19 in AS 08.95.110(a)(2). In fact, at the time AS 08.95.110 was amended in 1998, LPC  
20

21  
22  
23 <sup>19</sup> *Chevron U.S.A. Inc. v. LeResche*, 663 P.2d 923, 930-932 (Alaska 1983); 2 Am.  
24 *Jur. 2d, Administrative Law*, sec. 223 (2005).

25 <sup>20</sup> 2 Am. *Jur. 2d, Administrative Law*, sec. 247 (2005).

26 <sup>21</sup> Hearing testimony of Dr. Jeffrey Ickes: Exhibit A, page 43.

1  
2 was not even a category of occupational license recognized in Alaska.<sup>22</sup> Ickes has a  
3 degree as a bachelor of science in psychology and used to be licensed as a psychologist  
4 in Louisiana. That license lapsed around the time that Ickes moved to Alaska.

5 At page 4 of his proposed decision, the ALJ construed the language in 12 AAC  
6 18.115(b)(2) "psychologist . . . who . . . holds an unrestricted license to practice that  
7 profession" to refer not to a psychologist who holds an unrestricted license to practice  
8 psychology (which is what it means), but to "a license, *of whatever type*, that has not  
9 been restricted beyond whatever limitations inhere in the license itself." (Emphasis  
10 added.) The ALJ then concludes that Ickes, the holder of an unrestricted license as a  
11 professional counselor, may practice the profession of psychology in Alaska, and thus  
12 meets the Board's requirements for an approved supervisor.<sup>23</sup>

13  
14 AS 08.86.180(a) provides that a person may not practice psychology in Alaska  
15 unless licensed under AS 08.86. AS 08.86.180(b) sets out several exclusions from the  
16 scope of AS 08.86.180(a), including students, licensed physicians, and some designated  
17 public and private employees. AS 08.86.180(b)(3), in relevant part, excludes:  
18  
19

20  
21 <sup>22</sup> Both the amendments to the social work laws and the law creating the new  
22 license category of LPC were adopted in 1998. Ch. 118, SLA 1998 (social work) was  
23 approved by the governor on June 22, 1998; the license requirements took effect on  
24 January 1, 1999 (sec. 34, ch. 118, SLA 1998). Ch. 75, SLA 1998 (LPC) was approved  
25 by the governor on June 4, 1998; the license requirements took effect on March 1, 1999  
26 (sec. 10, ch. 75, SLA 1998).

<sup>23</sup> As authority for this conclusion the ALJ cites AS 08.86.130(b)(3) (footnote 14,  
at page 4), but no such statutory section exists. The intended reference is probably  
AS 08.86.180(b)(3).

1  
2 a qualified member of another profession, in doing work of a  
3 psychological nature consistent with that person's training and  
4 consistent with the code of ethics of that person's profession,  
5 if the person does not hold out to the public by title or  
6 description of services incorporating the words "psychology,"  
"psychological," [or] "psychologist" . . . or represent to be  
trained, experienced, or qualified to render services in the  
field of psychology.

7 This language does not authorize persons other than psychologists to practice  
8 psychology in Alaska. The purpose of AS 08.86.180(b) is to make it clear that the law  
9 that prohibits the practice of psychology in Alaska without a license does not interfere  
10 with the right of a holder of *another professional license to practice his or her licensed*  
11 *profession*. Thus, for example, a LPC can practice professional counseling in Alaska,  
12 *so long as* the LPC does not hold himself out to be a psychologist, purport to be  
13 practicing psychology, or represent that he is qualified to render psychological services.

14 Regulations, like statutes, must be interpreted with common sense.<sup>24</sup> The  
15 language in 12 AAC 18.115(b)(2) that refers to "a clinical social worker, psychologist,  
16 or psychiatrist who holds an unrestricted license to practice *that profession*" (emphasis  
17 added) obviously refers to the profession practiced by the designated license holder: a  
18 psychologist who practices psychology, a psychiatrist who practices psychiatry, and a  
19 clinical social worker who practices clinical social work. That language does not  
20  
21  
22  
23  
24  
25

26 <sup>24</sup> 2 Am. Jur. 2d, *Administrative Law*, sec. 247 (2005).

ATTORNEY GENERAL, STATE OF ALASKA  
EDMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

include a person such as Ickes, who holds a bachelor of science degree in psychology, is not licensed as a psychologist in any licensing jurisdiction, and practices in Alaska as a LPC.

**V. Conclusion**

During the time that he was supervising Contway's work, Ickes was not a licensed social worker, a licensed psychologist, or a licensed psychiatrist, either in Alaska or in any other licensing jurisdiction. Therefore, he does not meet the requirements for a supervisor set out in AS 08.95.110(a)(2) and 12 AAC 18.115(b)(2). Contway thus has not established that he has met the supervised experience requirements of AS 08.95.110(a)(2) and 12 AAC 18.115(b)(2), and his application for licensure (approval to sit for examination) is hereby denied.

Dated: 4/7/06

By: \_\_\_\_\_  
Chair  
Board of Social Work Examiners

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

Contway  
MAG HURTSKI  
Ch. Hurdolara - Dept. of Commerce  
Ch. Governor's Office  
\_\_\_\_\_  
Signature Date

4.19.06