

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL FROM THE ALASKA BOARD OF SOCIAL WORK EXAMINERS**

In the Matter of:)	
)	OAH No. 11-0203-CSW
EDWIN JOSEF-ISRAEL FERACO, PhD.)	Board Case No. 2011-000498
_____)	

DECISION

I. Introduction

This case presents the question of whether an applicant for licensure by credentials pursuant to AS 08.95.120 provided the statutorily required professional references and verification of continued competency. In addition, this case discusses whether a reprimand in another state can be used as the basis for denying a license in Alaska.

In an application dated April 28, 2010, Dr. Edwin Feraco applied to the Board of Social Work Examiners for a license by credentials to practice social work in Alaska.¹ He re-applied on February 4, 2011,² and included with his application a letter explaining some of his answers.³ The board denied his application on May 13, 2011.⁴ Dr. Feraco appealed that decision and requested a hearing.

An Amended Statement of Issues included five counts as the basis for the board's denial. At the hearing, the Division of Occupational Licensing (division) abandoned two of the counts, leaving three unresolved:

1. Count One, which alleges that Dr. Feraco had not submitted proper verification of having completed 1500 hours of work as a social worker in the past five years;
2. Count Two, which alleges that Dr. Feraco did not submit a required professional reference from a former employer; and
3. Count Three, which alleges that a reprimand from the Connecticut Department of Public Health establishes that Dr. Feraco had engaged in unethical conduct in connection with delivering professional services to a client.⁵

¹ Exhibit G.
² Exhibit A.
³ Exhibit B.
⁴ Exhibit Q.
⁵ See, Amended Statement of Issues, dated September 30, 2011.

With one exception discussed below, the dispute in this case is not over the content of Dr. Feraco's application and supporting documents.⁶ Instead, the dispute concerns whether those supporting documents are legally sufficient to qualify Dr. Feraco for licensure by credentials.

Dr. Feraco's exhibits 1 – 4 and 6 – 26 were admitted at the hearing. The division's exhibits A – Q were admitted.

Based on the evidence at the hearing, Dr. Feraco has not met his burden of proving that he should be granted a license by credentials to practice social work.

II. Facts

Dr. Feraco has a doctorate in counseling psychology, and is a Licensed Clinical Social Worker in Connecticut and a Licensed Independent Clinical Social Worker in Rhode Island.⁷ His resume shows he has provided counseling in a variety of settings since 1988. He worked for Iliuliuk Family and Health Services, Inc. in Unalaska, Alaska from 2010 through March of 2011.⁸ He was the Executive Director for Gateway Center for Human Services in Ketchikan, Alaska in 2008 and 2009, and was the clinical compliance officer for Maniilaq Association in Kotzebue, Alaska in 2007 and 2008.⁹ Prior to that and since 2010, he has worked in various positions in Connecticut and Rhode Island.¹⁰ The exhibits included positive letters of support and positive performance evaluations.¹¹

III. Discussion

A. Introduction

There are two ways to obtain a license to practice clinical social work in Alaska. The first requires an examination in addition to providing proof of meeting a variety of eligibility requirements.¹² The second is licensure by credentials for applicants who have previously been licensed in another state.¹³ Under either method, it is the applicant's burden to prove that he or she is entitled to receive a license.¹⁴ Because the division abandoned two of its allegations in the Amended Statement of Issues, much of the evidence that might have been relevant to those two

⁶ There is a factual dispute as to whether one professional reference was received by the division.

⁷ Exhibit D (Dr. Feraco's resume).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibit F; Exhibit 6, Record 169; Exhibit 7, Record 170; Exhibit 8, Record 179; Exhibit 9, Record 183; Exhibit 13; Exhibit 25; Exhibit.

¹² AS 08.95.110.

¹³ AS 08.95.120.

¹⁴ AS 44.62.460(e)(2).

counts was not relevant for the remaining counts: whether a required professional reference was submitted; whether 1500 hours of past work was sufficiently verified; and whether the Connecticut reprimand establishes unethical conduct.

B. Professional Reference

Applicants for licensure by credentials are required to provide three professional references. When, as here, an applicant was previously employed as a social worker, the references must include

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 paragraph though no fault of the applicant[. ¹⁵]

Dr. Feraco's applications included references from Sonia Handforth-Kome,¹⁶ Iris Bernau,¹⁷ and Heather Smith.¹⁸ Ms. Handforth-Kome was Dr. Feraco's current employer in Unalaska at the time of his application, Ms. Bernau was a co-worker from when he worked in Connecticut, and Ms. Smith was a fellow student in Dr. Feraco's PhD program. The division's position is that none of these references meet the requirement in AS 08.95.120(a)(3)(A) that a reference from a former employer be provided.

Dr. Feraco correctly points out that the form used for professional references contains confusing instructions.¹⁹ Dr. Feraco argued that because he was not currently employed when

¹⁵ AS 08.95.120(a)(3).

¹⁶ Exhibit F.

¹⁷ Exhibit I.

¹⁸ Exhibit M.

¹⁹ At the top of the form, the instructions state that a reference must be from

- (1) a current social work employer;
- (2) a previous social work employer; and
- (3) a reference from one of the following professionals:
 - (a) Master's or doctorate degree social worker;
 - (b) Licensed psychological associate, clinical psychologist, or physician specializing in psychiatry;
 - (c) Licensed medical or osteopathic physician;
 - (d) licensed advance nurse practitioner with a specialty area of practice in mental health;
 - (e) Licensed registered nurse with a master's degree in psychiatric nursing;
 - (f) Licensed marital and family therapist; or
 - (g) Licensed professional counselor.

The reference form also includes a note that says

his first application was considered, he was not required to provide a reference from a former employer but rather could exercise the option to submit references from any of the seven professionals listed in section 3 of the reference form.²⁰ The instructions should be interpreted in a commonsense manner.²¹ The application requests a professional reference from a former employer, a current employer, and one additional person. The clause in the application Dr. Feraco relies on allows an applicant to request an exception from this requirement when an applicant does not have a former employer or does not have a current employer.

It would not make sense to say that because Dr. Feraco did not have a *current* employer, he was excused from providing a reference from a *former* employer. The instructions should be interpreted as requiring an applicant who was previously employed as a social worker to provide a reference from a previous employer regardless of whether the applicant is able to also provide a reference from a current employer. Because Dr. Feraco had previously been employed as a social worker, he was required to provide a professional reference from a former employer.^{22/23}

Dr. Feraco contends that he also provided a fourth professional reference, from Matt Vangeri, who Dr. Feraco says was a former employer. He cites an e-mail from former Commissioner Emil Notti to show that the division had received this reference.²⁴ This e-mail, dated June 11, 2010, says the division had three professional references on file.²⁵ As of that date, there was no other reference in the record that could be considered a professional reference from a former employer; only Ms. Bernau's and Ms. Smith's references had been received by that date. While it is possible that Commissioner Notti was simply mistaken, it is more likely true than not true that Commissioner Notti was referring to the professional reference from Mr.

Applicants who are not currently or were not previously employed in social work must submit three professional references from any of the above-listed individuals in Section (3).

²⁰ Dr. Feraco was informed by e-mail that none of his references were from a former employer. He responded that he would be unemployed in three days (as of March 25, 2011) and therefore, in his view, no longer needed the reference from a former employer. Record page 080.

²¹ Dr. Feraco's interpretation is technically correct based on the grammatical structure of the instructions, but would lead to a nonsensical result. *See Martinez v. Cape Fox Corp.*, 113 P.3d 1226, 1230 (Alaska 2005) (Plain meaning of statute may be ignored where the meaning leads to an absurd result.)

²² A reference from a former employer is not required if "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[.]" AS 08.95.120(a)(3)(A). Dr. Feraco did not present evidence that he was unable to provide this reference through no fault of his own.

²³ Dr. Feraco's argument also fails because, as of the date of his application, he was employed. He was required to provide a reference from both a current and a prior employer, and Ms. Handforth-Kome's reference was counted as the reference from a current employer.

²⁴ Exhibit O, record at 132.

²⁵ *Id.*

Vangeri.²⁶ However, the applicable statute requires more than just submission of references. The references must be acceptable to the board.²⁷ The board must be able to review the reference in order to determine whether it is acceptable.

Dr. Feraco was notified by the division that it did not possess a reference from Mr. Vangeri.²⁸ When Dr. Feraco received this notice, he had several options: he could have asked Mr. Vangeri to resubmit his reference, he could have sought a reference from a different former employer, or he could have attempted to demonstrate why he was unable to obtain a reference from a former employer.²⁹ It is the applicant's responsibility to ensure that the application is complete. Dr. Feraco elected to ignore the statutory requirement that he provide references satisfactory to the board and instead simply insisted that the division had received the reference from Dr. Vangeri.

The board has an obligation to license only those applicants who meet the statutory requirements. It could not fulfill that obligation in this case because it did not have all of the required documents; one of the required references was lost and therefore not available for the board to review. Dr. Feraco has not proven that the board erred when it denied him a license by credentials.

C. 1500 Hours of Work Experience

The second licensing requirement at issue is proof of continued competency satisfactory to the board.³⁰ A non-exhaustive list of methods by which an applicant can prove continued competency is contained in 12 AAC 18.112.³¹ Dr. Feraco submitted evidence to show that within the five years immediately preceding his application, he had performed "1,500 hours of work as a social worker while holding a license similar to that for which application had been made."³² There was no dispute in this case that Dr. Feraco had a similar license from the State of Connecticut.

²⁶ At least one other document related to Dr. Feraco's application may have been misplaced. An e-mail exchange between the division and Ms. Handforth-Kome, dated February 22, 2011, indicates that her January 2011 reference was mailed to the division but could not be found in the division's file. *See* Record at 057.

²⁷ AS 08.95.120(3).

²⁸ *See* Record at 134 (e-mail from Ms. Vinson).

²⁹ AS 08.95.120(a)(3)(A).

³⁰ AS 08.95.120(a)(5).

³¹ This regulation uses the word "includes" which is usually interpreted to mean "includes but not limited to." *See* AS 01.10.040(b).

³² 12 AAC 18.112(2)(A).

Exhibit E verifies 2080 hours of work from June 25, 2007 through June 25, 2008. This verification is for work performed for Maniilaq Healthcare in Kotzebue, Alaska. Dr. Feraco contends that the hours of work performed for Maniilaq Healthcare fulfills this requirement because he maintained his license in Connecticut. The division argues that these hours cannot be counted because Dr. Feraco did not hold an Alaska license while working for Maniilaq Healthcare. The division asserts that because working as a social worker in Alaska without a license is prohibited by statute, it would be counter to the statutory scheme to accept those hours as demonstrating “continued competency.”

To work as a social worker in Alaska, a person must have an Alaska license.³³ The practice of social work in Alaska without a valid Alaska license is disciplinable by the board, as the board may discipline a person for any violation of AS 08.95.³⁴ The board has the discretion to deny a license to an applicant based on actions for which an already licensed person could be disciplined.³⁵ Similarly, the board can reasonably interpret its regulations to preclude counting towards the continuing competency requirement any work that was performed in violation of AS 08.95.

Dr. Feraco argued that because he was working for a federally recognized Native organization, he was exempt from the Alaska licensure requirements. In his written closing argument, he states

[T]he Maniilaq Association is operated by a Native Alaskan Association entity recognized by the Bureau of Indian Affairs and hence subject to the rules and regulations of the United States Department of the Interior: Indian Affairs and Indian Health Services, both United States federal agencies in which their rules and regulation supersede any State of Alaska regulation pertaining to the provision of health care and/or related services. In addition, President Obama signed into law the US Federal Stimulus Act in which this federal law allows for unlicensed health care provides to provide services in any Federal Qualified Health Center (FQHC) without penalty.

Federally recognized tribes/associations are recognized as possessing certain inherent rights of self-government (i.e. tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. Because the Constitution vested the Legislative

³³ AS 08.95.100(a).

³⁴ AS 08.95.050(4).

³⁵ See *In re Craig E. Hill*, OAH No. 10-0250/0387-GUI (Big Game Commercial Services Board 2011).

Branch with plenary power over Indian affairs, states have no authority over tribal governments unless expressly authorized by Congress.^[36]

Certainly, federal law could provide, as suggested by Dr. Feraco, that a person working for a Federal Qualified Health Center or for a Department of the Interior regulated health center can provide health care in a state without a state license. In addition, health care services provided on a tribal reservation may be exempt from state regulation.

One statute, 25 U.S.C. 1621t, provides

Licensed health professionals employed by a tribal health program shall be exempt, if licensed in any state, from the licensing requirements of the State in which the tribal health program performs the services described in the contract or compact of the tribal health program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

Since Dr. Feraco was licensed in Connecticut, this statute would permit him to provide social work services in Alaska if he met the other requirements set out in the statute.³⁷ However, this federal law did not go into effect until March 23, 2010. Dr. Feraco last worked for Maniilaq Association almost two years before this statute went into effect. He cannot take advantage of this exception to Alaska’s licensing requirements.

Although Dr. Feraco has asserted that there are other applicable federal statutes or regulations that allowed him to work for Maniilaq Association without an Alaska license, he has not cited those statutes,³⁸ nor provided evidence that his work at the Maniilaq Association would qualify for any exception that does exist.

Finally, Dr. Feraco attempted to establish continued competency by providing three verification forms from Ms. Bernau, a former co-worker.³⁹ These hours verified in these forms are summarized as follows:

Date signed	Worked Together	Work location	Hours
5/7/2008	Oct 1999 – June 2007	Care Center and Psychiatric Medicine Center	6,600
5/11/2010	Oct 1999 – July 2007	Care Center and Psychiatric Medicine Center	3,200
5/26/2010	Dec 2005 – Dec 2009	Psychiatric Medicine Center	8,000

The verification form used by the division specifically states “**The information below must be completed by the applicant’s employer or supervisor, it may not be completed by**

³⁶ Dr. Feraco’s closing argument, page 2.

³⁷ He was working as a social worker while holding a license similar to that for which he applied.

³⁸ After the hearing concluded, Dr. Feraco was invited to provide citations in support of this argument. He did not do so.

³⁹ Exhibits J, K, and L.

the applicant.⁴⁰ The form has the words “Name of Employer/Supervisor” under the space for the verifier’s name.⁴¹ These instructions are binding on Dr. Feraco. In *Squires v. Alaska Board of Architects, Engineers & Land Surveyors*,⁴² the court considered a form that required verification of work experience. Limitations contained in the form on who could verify work experience were not contained in any statute or regulation.⁴³ The court held that the verification requirements stated in the form were binding on the applicant even though they had not been adopted as a regulation.⁴⁴

It is undisputed that Ms. Bernau was neither Dr. Feraco’s employer nor his supervisor. Dr. Feraco has failed to establish that he submitted the required proof of continued competency.⁴⁵

D. Connecticut Reprimand

Dr. Feraco received a reprimand from the State of Connecticut, Department of Public Health Public Health Hearing Office on February 25, 2010.⁴⁶ Although there were several allegations, only one violation was found to have occurred. Dr. Feraco was reprimanded for violating the Code of Ethics of the National Association of Social Workers (Code of Ethics).⁴⁷

An applicant is not entitled to a license by credentials if he or she has previously had a license revoked or suspended in Alaska or another state.⁴⁸ There is no similar provision for denying an application when the applicant has only been reprimanded. The division, however, sought to use the factual basis underlying the Connecticut reprimand to establish that Dr. Feraco had in fact engaged in unethical conduct. In effect, the division is relying on the doctrine of collateral estoppel to prove that Dr. Feraco acted unethically.

Collateral estoppel “generally prevents relitigation of an issue previously adjudicated.”⁴⁹ For this doctrine to apply, three requirements must be met. First, estoppel must be asserted

⁴⁰ See e.g., Exhibit J, page 1 (emphasis in original).

⁴¹ *Id.*

⁴² 205 P.3d 326 (Alaska 2009).

⁴³ *Squires*, 205 P.3d at 332 – 333.

⁴⁴ *Squires*, 205 P.3d at 335.

⁴⁵ The form does include language suggesting that it can be completed by anyone who worked with or supervised the applicant. The form does not define “work with,” and that language could be interpreted as allowing verification by a co-worker. While this portion of the form, standing alone, is ambiguous, the form itself is clear when read in its entirety.

⁴⁶ Exhibit N, Page 2.

⁴⁷ Exhibit N, Page 10.

⁴⁹ AS 08.95.120(a)(4).

⁴⁹ *Harrod v. State, Department of Revenue*, 255 P.3d 991, 999 (Alaska 2011).

against a party or a person in privity with a party to the first action. Second, the issue to be precluded must be identical to an issue decided in the first action. Third, the first action must have been resolved by final judgment on the merits.⁵⁰

Dr. Feraco was a party to a hearing before the Connecticut Department of Public Health, Public Health Hearing Office.⁵¹ The result of that hearing was that Dr. Feraco was found to have violated the Code of Ethics.⁵² The hearing concluded with a final judgment on the merits.⁵³

The finding that Dr. Feraco violated the Code of Ethics is identical to the finding that the division seeks to establish here.⁵⁴ Thus, Dr. Feraco is estopped from denying that he did violate the Code of Ethics. This code has been adopted by the board, and licensed social workers must adhere to the Code of Ethics.⁵⁵ A licensed social worker may be disciplined by the board for failure to adhere to the Code of Ethics.⁵⁶ As stated in section III B, above, the board may deny a license to an applicant for any action for which a person could be disciplined if already licensed. The board's decision to deny Dr. Feraco's application based on the Connecticut finding is upheld.

IV. Conclusion

Dr. Feraco did not provide to the board all of the necessary documentation to receive a license to practice social work. He has also previously been found to have acted in violation of the Code of Ethics of the National Association of Social Workers. Accordingly, he has failed to establish that he is entitled to a license by credentials. Denial of his application was appropriate.

DATED this 2nd day of March, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

⁵⁰ *Harrod*, 255 P.3d at 999 – 1000.

⁵¹ Exhibit N, page 3.

⁵² Exhibit N, page 10.

⁵³ Exhibit N, page 2.

⁵⁴ At the hearing, Dr. Feraco asserted that the Connecticut finding was that he acted unprofessionally, rather than unethically. That distinction need not be addressed here. The Connecticut hearing concluded that a violation of the Code of Ethics occurred, regardless of how the conduct leading to that violation is characterized.

⁵⁵ 12 AAC 18.150.

⁵⁶ AS 08.95.050(4) (Discipline may be imposed for any violation of a regulation.)

Adoption

The Board of Social Work Examiners adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of June, 2012.

By: Signed
Signature
Gail Henderson
Name
Chair
Title

[This document has been modified to conform to the technical standards for publication.]