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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2068**

In the Matter of Dr. Soumya Nayak Applicant for Licensure

**Filed October 9, 2012
Affirmed
Bjorkman, Judge**

Minnesota Board of Dentistry

Dr. Soumya Nayak, Lakeville, Minnesota (pro se relator)

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General,
St. Paul, Minnesota (for respondent Minnesota Board of Dentistry)

Considered and decided by Kirk, Presiding Judge; Bjorkman, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the decision of respondent board denying her application to take a clinical examination necessary to obtain a dental license. Relator argues that the board (1) did not use the proper legal standard when considering her application and (2) arbitrarily and capriciously denied her application based on unreliable and insufficient evidence. We affirm.

FACTS

Relator Dr. Soumya Nayak studied dentistry in India and is authorized to practice as a dentist in India. In 2007, Nayak applied to respondent Minnesota Board of Dentistry (the board) to take clinical examinations necessary to become a licensed Minnesota dentist. Per the board's standard practice in processing licensure applications, an independent entity, International Credentialing Associates, Inc. (ICA), evaluated Nayak's dental education and clinical experience (training) and submitted a report to the board in September 2007. The board's licensure committee reviewed ICA's report and the documents Nayak submitted, concluded that Nayak does not meet the training requirements for licensure, and denied her application in May 2009.

Nayak asked ICA to reevaluate her training and submit a new report to the licensure committee. For reasons that are not apparent from the record, ICA did not conduct a reevaluation, even after telling the board in January 2010 that it would provide a new report "within the next several weeks." In March 2010, Nayak wrote to the licensure committee, complaining of the issues she experienced with ICA, submitting additional information, and requesting that the licensure committee reevaluate her training without reference to ICA's September 2007 report. The licensure committee considered Nayak's additional information but affirmed its denial of her application in May 2010. It reconsidered and denied her application a third time in June 2011.

Nayak subsequently requested that the full board conduct a hearing to reconsider the licensure committee's decision. Through counsel, Nayak argued that her training satisfies the licensure requirements because it is identical to that of her husband, who also

was educated in India and obtained a Minnesota dental license in 2007. The board disagreed, concluding that Nayak’s training is insufficient to meet the licensure requirements because she has significantly fewer university credit hours than the average graduate of an accredited American dental college. The board denied Nayak’s application, and this certiorari appeal follows.

D E C I S I O N

“Administrative-agency decisions enjoy a presumption of correctness and may be reversed only when they are arbitrary and capricious, exceed the agency’s jurisdiction or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record.” *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003). We defer to the agency’s fact-finding process and will not substitute our findings for those of the agency. *Id.* But we review legal issues de novo. *Dep’t of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn. App. 1989), *review denied* (Minn. Apr. 26, 1989).

I. The board applied the correct legal standard to Nayak’s application.

An applicant for a Minnesota dental license must demonstrate fitness to practice dentistry, which includes passing a clinical examination. Minn. Stat. § 150A.06, subd. 1 (2010). To take the examination, the applicant must have graduated from a “dental program accredited by the Commission on Dental Accreditation of the American Dental Association.” *Id.* If the applicant graduated from a foreign dental college, the applicant must demonstrate that his or her “foreign training . . . is equivalent to or higher than that

provided by a dental college accredited by the Commission on Dental Accreditation of the American Dental Association.” *Id.* The “equivalent to or higher” standard has been the law since 2001. *See* 2001 Minn. Laws ch. 37, § 1, at 103. And that is the standard that the board applied in denying Nayak’s application.¹

Nayak argues that the board changed the standard because it assessed her application in terms of credit hours rather than grade point average, the standard applied to her husband’s application two years earlier. We disagree. First, the only record evidence of the board’s consideration of Nayak’s husband’s 2005 licensure application is his ICA report, which addresses both grade point average and credit hours, just like Nayak’s report. Second, even if total credit hours played a more significant role in the board’s consideration of Nayak’s licensure application than her husband’s, Nayak’s suggestion that the board improperly altered the legal standard by focusing on credit hours is unavailing.

What Nayak characterizes as a new legal standard is nothing more than the board’s current assessment of the training “provided by” an accredited American dental college. The record contains an affidavit from Candace Mensing, D.D.S., a member of the licensure committee, which describes the committee’s efforts in 2008 to survey

¹ Nayak also references Minn. Stat. § 150A.06, subd. 9 (2010), which is a new addition to the licensure statute. *See* 2008 Minn. Laws ch. 326, art. 1, § 5, at 1269. But that provision addresses only the type of license a foreign-educated applicant may receive upon successful passage of the fitness examination, not eligibility to take the examination. *See* Minn. Stat. § 150A.06, subd. 9. Because this subdivision was added during the pendency of Nayak’s application, the board discussed the applicability of this provision to Nayak should her application be granted. But the board did not rely on subdivision 9 in denying her application.

“dental education credit hours at accredited schools in the Midwest region” to develop a standard to determine the equivalency of foreign dental training. Results of the survey were reported in an equivalency summary. The summary includes dental education and clinical dental training, as well as pre-dental university education, because students are not accepted to accredited dental schools without pre-dental education beyond high school and “[o]nly a few students are accepted to dental schools with less than a [bachelor’s degree].” The equivalency summary did not replace the “equivalent to or higher” standard. Rather, the board used the equivalency summary to establish the American dental training standards against which to measure an applicant’s foreign dental training. And while the board may have used a different metric in determining whether Nayak’s husband’s training was equivalent to American dental training standards, Nayak neither cites any authority that prevents the board from periodically reassessing the training standards of accredited dental colleges nor argues that the equivalency summary is inaccurate. We conclude that the board applied the proper legal standard to Nayak’s licensure application.

II. The board’s decision on Nayak’s application is not arbitrary and capricious and has substantial evidentiary support.

Nayak also argues that the board improperly (1) rendered a decision without sufficient information, (2) denied her application based on an unreliable report from ICA, and (3) failed to address her complaints about flaws in ICA’s process. These various arguments essentially charge the board with arbitrary and capricious decisionmaking or challenge the sufficiency of the evidence supporting the board’s determination that her

dental training is not equivalent to the training provided by an accredited dental college. However, our thorough review of the record reveals that the board fairly evaluated the evidence Nayak submitted, accurately determined the nature and extent of Nayak's dental training and that of a graduate of an accredited dental school, and properly rejected Nayak's argument that her training meets the equivalency standard.

The record indicates that graduates of accredited dental colleges attended four years of undergraduate school and four years of dental school, for an average total of 226 university credits. The record also establishes that Nayak's university education, which is typical of a graduate from an Indian dental college, includes only four years of dental education and one year of clinical work, which amounts to a total of university credits that is approximately half of the 226 received by a graduate of an accredited dental college.

Nayak complains that ICA reported that she has a 108-credit total but described her husband's identical training as comprising a total of 120 credits. This disparity is immaterial. As the board observed during the hearing, even if Nayak were deemed to have 120 credits, her training is well short of the 226-credit mark. Indeed, Nayak repeatedly acknowledged that she was "falling short" or "lacking, according to the current standards" because she does not have the equivalent of a four-year undergraduate degree.²

² Nayak explained to the board that in India, high school ends at tenth grade. Students may then attend two years of more focused "preuniversity" education, which she did. But she agreed that she does not have four years of education after twelfth grade equivalent to a bachelor's degree.

Finally, we are not persuaded that alleged flaws in ICA's evaluation process render the board's decision arbitrary and capricious. While understandably frustrating to Nayak, ICA's delays in evaluating her training and responding to her requests for a reevaluation did not affect the board's decision regarding Nayak's application. Rather, the board denied Nayak's application because it determined that her total training was not equivalent to that of a graduate of an accredited dental college. The record amply supports that determination.

Affirmed.