

NOT DESIGNATED FOR PUBLICATION

No. 92,743

JOHN CAPORALE,  
*Appellant,*

v.

KANSAS BEHAVIORAL SCIENCES  
REGULATORY BOARD,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Shawnee District Court; TERRY L. BULLOCK, judge. Opinion filed March 18, 2005. Affirmed.

*Jeffrey E. Goering*, of Wichita, and *Mark Kahrs*, of Kahrs Law Offices P.A., of Wichita, for appellant.

*Marty M. Snyder*, assistant attorney general, of Topeka, for appellee.

Before HILL, P.J., MALONE and GREENE, JJ.

*Per Curiam*: John Caporale appeals the district court's order affirming the Kansas Behavioral Sciences Regulatory Board's (Board) denial of his application for licensure as

a Ph.D. psychologist. He argues that he adequately met all requirements for the license and that the Board's denial of his application was contrary to law and arbitrary and capricious. We affirm.

### *Factual and Procedural Overview*

John Caporale is a licensed master's level psychologist. He received his doctoral degree in clinical psychology through Walden University's online distance learning program and applied to the Board for licensure as a doctoral level psychologist. Because Walden's doctoral psychology program is not accredited by the American Psychological Association (APA), the Board conducted an inquiry to determine whether the program met the academic requirements of K.A.R. 102-1-12. Based on Caporale's application and information provided by Walden, the Board found that the school's psychology program did not meet the academic requirements. After receiving notification of the Board's initial determination, Caporale submitted a response and additional information for the Board's consideration. The Board's final determination found Caporale ineligible for licensure as a psychologist.

Caporale appealed the Board's decision to the district court pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA). The district

court affirmed the Board's action, finding that the Board's determinations were supported by substantial evidence, that the Board did not unreasonably interpret or apply the law, and that the record did not support Caporale's claim that the Board's decision was arbitrary or capricious. Caporale now appeals.

### *Standard of Review*

On appeal of a district court review of administrative action, we first determine whether the district court followed the requirements and restrictions placed upon it and then make the same review of the agency's action as did the district court. *Lacy v. Kansas Dental Board*, 274 Kan. 1031, 1040, 58 P.3d 668 (2002). The scope of review of such matters is provided by K.S.A. 77-621(c) and includes determinations whether the agency has erroneously interpreted or applied the law, whether the agency action is based on a determination of fact that is not supported by evidence that is substantial when viewed in light of the record as a whole, and whether the agency action is otherwise unreasonable, arbitrary or capricious. K.S.A. 77-621(c)(4), (7), (8). We extend deference to an agency's interpretation of its own regulations. *Reed v. Kansas Racing Comm'n*, 253 Kan. 602, 610, 860 P.2d 684 (1993).

*Was the Agency Action Supported by Substantial Evidence and Based Upon Valid*

*Application of Law?*

Under K.S.A. 74-5310(a)(3), an applicant for licensure as a psychologist in Kansas must show that such person has received a doctoral degree in psychology "from an educational institution having a graduate program with standards consistent with those of the state universities of Kansas, or the substantial equivalent of such program in both subject matter and extent of training." K.S.A. 74-5310(b) authorizes the Board to adopt rules and regulations establishing the criteria which an educational institution must satisfy to meet the requirements of K.S.A. 74-5310(a)(3). To this end, the Board adopted K.A.R. 102-1-12.

Pursuant to K.A.R. 102-1-12(a), if an applicant's doctoral degree program is accredited by the APA, the applicant is deemed to have satisfied K.S.A. 74-5310(a)(3). If the program is not so accredited, the doctoral degree program must meet all of the 20 criteria listed in K.A.R. 102-1-12(a). In this case, because Walden University's doctoral degree program in psychology is not accredited by the APA, the Board evaluated the program's equivalency by determining whether it met the 20 criteria. The Board found that Walden's doctoral psychology program did not meet sections (11), (12)(B)(i), (16), and (18) of K.A.R. 102-1-12(a), and therefore denied Caporale's application for licensure.

We examine each of the five purported bases for denial under four separate regulations but recognize that we must affirm if any single one of such bases is adequate to support the Board's denial of licensure.

K.A.R. 102-1-12(a)(11)

K.A.R. 102-1-12(a)(11) provides that the applicant must complete 2 of the 3 academic training years, or the equivalent, "at the institution from which the doctoral degree is granted, and at least one year shall be in full-time residence, or the equivalent, at the same institution." Caporale argues first that the Board misconstrued the phrase "at the institution from which the doctoral degree is granted." He argues that this does not require *physical presence* at the institution but rather requires that 2 of the 3 years must be completed *at the same institution* where the degree is granted. We concede that the language may be susceptible of either interpretation, but the Board does not support its interpretation on appeal and apparently abandons its defense of Caporale's first argument, relying on the strength of its defense to his second argument under this regulation.

Caporale's second argument related to this regulation is that the Board erred in construing and applying the 1-year full-time residency requirement of the regulation. He argues that his residency need not be a fully contiguous year because the regulation

allows for "the equivalent." The Board notes that the school's materials require only attendance of 4 weekends per academic year plus 2 or 3 weeks during the summer to satisfy the residency requirement at Walden. We agree with the Board that a total of no more than 21 to 29 days does not constitute the equivalent of 1-year "full-time residence." The Board did not err in construing and applying K.A.R 102-1-12(a)(11) as it did, and there was substantial evidence to support a finding that Caporale did not meet the requirement as so construed.

K.A.R. 102-1-12(a)(12)(B)(i)

K.A.R. 102-1-12(a)(12)(B)(i) requires the applicant to have completed a course in "[i]ndividual differences in behavior, including the basis and nature of individuality, intelligence and cognition, and cross-cultural counseling." The Board found that the course listed by Caporale as meeting this requirement, "Psychology of Learning," is not a course in individual differences in behavior. Caporale argues the Board's finding was erroneous because it ignored the evidence.

Caporale identified a course entitled "Psychology of Learning" as the supporting course work to meet this requirement. According to Walden, this course includes:

"Analysis and description of processes used to obtain knowledge and change behavior. Students will increase their understanding of empirical and phenomenological principles that guide the acquisition of knowledge as well as behavioral, mental, emotional, developmental, and interpersonal change. Emphasis on the study of learning, knowledge acquisition and behavioral change."

Caporale more specifically described the content of this course in his letter to the Board, stating that the course required that he read and study three treatises which covered subjects dealing with how cultural qualities contribute to academic performance. He also prepared a paper which addressed individual differences in thinking, learning and intelligence as related and integral components of human development and experience.

The Board does not respond to Caporale's allegations that the course descriptions he and Walden provided for Psychology of Learning meet the definition of the required course, and provides no reasoning, justification, or legal argument supporting its decision to the contrary. It merely states that the Board's psychology representative and the Board determined that Psychology of Learning did not meet the description. We conclude that the Board's interpretation and application of K.A.R. 102-1-12(a)(12)(B)(i) was erroneous.

K.A.R. 102-1-12(a)(16)

Under K.A.R. 102-1-12(a)(16), a doctoral psychology program must advertise "admission requirements that are in part or in full based on objective, standardized achievement tests and measures" in official documents such as course catalogs. The Board found that "Walden does not include objective standardized achievement tests and measures as an admission requirement." Caporale argues the Board erred in failing to recognize Walden's purported admission requirement of a master's degree as a standardized measure of achievement.

Caporale relies on Walden's stated admission requirement for the Ph.D. psychology program which provides, "Bachelor's and master's degrees from regionally accredited institutions. Master's degree must be in psychology or a closely related field . . . ." The Board argues Walden does not *require* a master's degree for admission to the doctoral psychology program, and relies on admission requirements found on Walden's website which states: "Applicants to the Ph.D. in Psychology or Ph.D. in Public Health program *may* have a bachelor's or master's degree." (Emphasis added.) "Admissions decisions are based on a number of factors, including academic degrees and record and, when appropriate, relevant work experience. We also consider the appropriateness of the goals expressed by an applicant to the degree program."

Because Walden's admission requirements for its doctoral psychology program do not require standardized testing and the evidence supports the Board's position that Walden does not *require* a master's degree, Caporale's argument fails. The Board's interpretation and application of K.A.R. 102-1-12(a)(16) is not erroneous.

K.A.R. 102-1-12(a)(18)

K.A.R. 102-1-12(a)(18) requires the program to include "a comprehensive examination, or the equivalent as identified by the program, and requires that the applicant pass this requirement before awarding the doctoral degree." The Board determined it was "not clear from the submitted materials that the program includes a comprehensive examination or the equivalent." Caporale concedes Walden does not require a comprehensive examination but argues Walden identified the requirement of a doctoral dissertation as equivalent to a comprehensive examination and required Caporale to complete the dissertation before awarding the degree.

The language of K.A.R. 102-1-12(a)(16) allows the program to identify its equivalent to a comprehensive examination. Walden clearly did so in this case, as stated in information provided to the Board: "Walden University does not require comprehensive examinations. Appropriate progression through the program,

maintenance of a 3.0 GPA, and completion of a dissertation constitute the criteria deemed equivalent." The Board argues that a dissertation is not equivalent to a comprehensive examination. This argument ignores the regulation, however, which allows the program to identify its equivalent to a comprehensive examination and does not require Board approval. Because Walden required that Caporale pass the requirement identified as an equivalent before it awarded his degree, the Board's interpretation of K.A.R. 102-1-12(a)(18) is erroneous.

Although we conclude that the Board abandoned one of its bases for decision and erred in its construction and application of two of the requirements relied upon, we also conclude that the Board properly construed and applied two other requirements and did not err in denying licensure to Caporale.

*Was the Board's Decision Otherwise Arbitrary and Capricious?*

Caporale finally argues the Board acted unreasonably, arbitrarily, and capriciously because it is biased against online universities. Although the Board's brief before the district court dwelt extensively on the deficiencies and hazards of online universities, there is no evidence the Board acted in an arbitrary or capricious manner when it denied Caporale's licence application.

Notwithstanding problems we have identified in the Board's interpretation and application of its regulations, the Board properly reviewed Caporale's application and supplemental materials provided by Caporale and Walden and came to its conclusion based on those materials. The Board has a duty to protect the public from unqualified psychologists, and it gave Caporale adequate opportunity to present materials to support his position. The Board's action was founded in fact and taken with regard to the benefit or harm to both the public and Caporale. We conclude that the Board did not act in a manner otherwise arbitrary or capricious in denying licensure to Caporale. See *Zinke & Trumbo Ltd. v. Kansas Corporation Comm'n*, 242 Kan. 470, 474, 749 P.2d 21 (1988).

Affirmed.