

N.D.A.G. Letter to Dahlgren (Sep. 24, 1985)

September 24, 1985

Mr. Albert Dahlgren
North Dakota Board of Massage
508 21st Ave. S.
Fargo, ND 58103

Dear Mr. Dahlgren:

Mrs. Barbara J. Larson asked that I write to you concerning Janos Takacs' application to register as a massage therapist. Mr. Takacs is a Romanian refugee who has resided in North Dakota since late July, 1985. He would like to take the next massage therapy examination administered by the North Dakota Board of Massage.

On Mr. Takacs's behalf, Mrs. Larson requested answers to the following questions:

1. Can the six-month residency requirement be waived for taking the [massage therapy registration] test due to [Mr. Takacs'] refugee status and six years on-the-job experience in Romania?
2. Can an interpreter be allowed to assist him, if necessary, during the test? Or can the time be extended for taking the test to allow for language difficulties?

N.D.C.C. §43-25-07 was recently amended and now provides:

43-25-07. REQUISITES FOR EXAMINATION --SUBJECTS --
MINIMUM PASSING GRADE -- FEES. Any person who shall furnish to the board satisfactory proof that he or she is eighteen years of age or more, a high school graduate and a bona fide resident of the state of North Dakota for at least one month immediately preceding his or her application to take the examination, and of good moral character and temperate habits, and shall present a diploma or credentials issued by a recognized, approved school of massage or like institution of not less than one thousand hours of study and who passes a reasonable demonstrative, oral, and written examination, conducted by and under the supervision and direction of the board in the art of body massage by hand, or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths, and shall pay the fees hereinafter specified, which fees shall accompany the application to the secretary-treasurer of the board, shall be entitled to be registered and to be issued a certificate of registration as a massage therapist. Minimum requirements for certificate of registration shall

be a general average score in the examination of seventy-five percent in all subjects involved and not less than fifty percent in any one subject.

Any applicant failing to pass the requirements shall be entitled within six months to a reexamination upon payment of an additional fee of ten dollars, but two such reexaminations shall exhaust the privilege under the original application.

Conviction of an offense shall not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1

According to the terms of the statute, Mr. Takacs need only be a bona fide North Dakota resident for one month before applying to take the Board of Massage's examination. It appears from the information provided me that Mr. Takacs meets this residency requirement and should be permitted to take the examination if he possesses the other statutory qualifications.

Nothing in the North Dakota Century Code, the North Dakota Administrative Code, or North Dakota court decisions either allows or forbids the assistance of an interpreter during the Board of Massage's registration examination. The terms of the statute do not mandate that the test be administered in English. Similarly, no provision of the North Dakota Century Code, the North Dakota Administrative Code, or North Dakota court decisions either allows or forbids the extension of the test time in individual cases because of language difficulties. These matters are, thus, within the discretion of the Board of Massage. The Board should decide whether either an interpreter or an extension of time will be permitted in this instance.

I urge you to accommodate Mr. Takacs in this regard.

Sincerely,

Nicholas J. Spaeth

cv

cc: Mrs. Barbara Larson