

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 12, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 95-3384

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

Peter J. Mehler,

Petitioner-Appellant,

v.

**The State of Wisconsin Examining Board
of Social Workers, Marriage and Family
Therapists & Professional Counselors,**

Respondent-Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
LAURENCE C. GRAM, JR., Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Peter J. Mehler appeals from the trial court order affirming the decision of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists, and Professional Counselors that Mehler should not be certified as a rehabilitation counselor. We affirm.

The facts involved in this case are undisputed. In 1984, Mehler enrolled at the University of Wisconsin-Milwaukee to get a master's degree in rehabilitation counseling. He completed his course work and, in 1990, he presented his thesis. When the thesis committee concluded that he needed only to make minor revisions, he did not complete the work or receive his degree. As his brief explains, “[p]iqued by UWM's refusal to reimburse the costs of mailing and printing associated with his research, and realizing that obtaining his master's degree meant nothing in terms of his intention to engage in a private practice of rehabilitation counseling, Mehler declined to submit his thesis for final approval and did not bother to graduate.”

As Mehler correctly asserts, his “belief that his failure to obtain his degree had no practical significance was correct at the time; no education or training requirements for professional counselors were then in effect.” Thus, he began to practice psychotherapy and rehabilitation counseling in a clinical setting under supervision of a psychiatrist.

In 1992, however, the legislature enacted 1991 Wis. Act 160, creating Chapter 457, which created the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors. Chapter 457, effective May 1, 1993, was enacted to regulate the certification of such professionals. Further, as relevant here, § 457.12(2) and (3), STATS., provide that:

The professional counselor section shall grant a professional counselor certificate to any individual who:

(2) Submits evidence satisfactory to the professional counselor section that he or she has received a master's or doctorate degree in professional counseling or its equivalent from a program approved by the professional counselor section... [and]

(3) Submits evidence satisfactory to the professional counselor section that he or she has ...:

(a) After receiving a master's degree in professional counseling or its equivalent, engaged in the

equivalent of at least 2 years of full-time supervised clinical professional counseling practice approved by the professional counselors section.

By 1993, Mehler already had spent more than two years in a full-time supervised clinical practice. Aware of the pending change in the law, he decided to complete the steps to obtain his degree. He did so, had his thesis accepted, and received his master's degree in rehabilitation counseling. He then submitted his application for certification. The Professional Counselor Section, however, interpreted § 457.12(2) and (3), STATS., to require two years of *post*-master's supervised counseling practice and rejected Mehler's application because his two years of clinical practice had not been earned *after* receiving his degree.

Following Mehler's appeal of the Section's decision, the Administrative Law Judge issued a proposed decision that would have approved Mehler's application. The Examining Board, however, rejected the ALJ's decision and denied Mehler's application.

The Board held that “[t]he Professional Counselors Section has consistently read that phrase [‘or its equivalent’] to require a master's or doctoral degree in professional counseling, or a master's or doctoral degree in a field closely related to professional counseling.”¹ The Board also rejected any attempt to read the administrative rules regarding professional counselors, *see* WIS. ADM. CODE § SFC 11.01 (Application for certification as a professional counselor) and WIS. ADM. CODE § SFC 14.01 (Academic program equivalent to a master's degree in professional counseling), in a manner inconsistent with its

¹ Mehler challenges the Board's conclusion that “[t]he Professional Counselors Section has consistently read that phrase [‘or its equivalent’] to require a master's or doctoral degree in professional counseling, or a master's or doctoral degree in a field closely related to professional counseling,” because, as he contends, “no evidence of such prior consistent interpretations was introduced at the administrative hearing.” Mehler was, however, given permission to conduct discovery on this issue. The Board responded with three examples of Board denials based on applicant's failure to have the requisite degree. Although the parties debate the legitimacy of two of the responses because the denials came after Mehler's denial, at least one denial—the application by Bonnie Jean Kinate—preceded Mehler's denial and was due to Ms. Kinate's lack of a master's degree.

determination regarding the meaning of the statute, and further held that administrative rules were “subservient to the statute, and no administrative rule may be created to conflict with the statutes.” See § 227.10(2), STATS. (“No agency may promulgate a rule which conflicts with state law.”). Mehler sought certiorari review in the circuit court, and the circuit court affirmed the Board’s decision.

Before we resolve the parties’ debate over the meaning of § 457.12(2) and (3), STATS., we address their arguments over the standard of review. Mehler maintains that our review should be *de novo* because this is a new statute without any published decisions interpreting it. See *Jicha v. DILHR*, 169 Wis.2d 284, 291, 485 N.W.2d 256, 259 (1992). The Board argues that by virtue of its rule-making process, we should accord its decision “a substantial measure of deference.” See *Richland School Dist. v. DILHR*, 174 Wis.2d 878, 890-894, 498 N.W.2d 826, 830-832 (1993). In this case however, we need not pinpoint the exact degree of deference to which the Board’s determination is entitled because even under the least deferential standard, we affirm.

The statutory terminology, “master’s degree in professional counseling or its equivalent,” is at issue in this appeal. Mehler argues that the statute is ambiguous; that “or its equivalent” could refer to some process equivalent to the receiving of a degree. He contends that “or its equivalent” could not refer to the masters degree in “professional counseling” because “professional counseling” is so broad as to include almost every counseling field and that to have a general cross-reference to such all-encompassing subject matter would be absurd. See § 457.01(6), STATS.² The Board argues that “or its

² Section 457.01(6), STATS., defines “professional counseling” as:

applying a combination of human development, rehabilitation and either psychosocial or psychotherapeutic principles, procedures or services that integrate a wellness, pathology and multicultural model of human behavior in order to assist an individual, couple, family, group of individuals, organization, institution or community to achieve mental, emotional, physical, social, moral, educational, spiritual, vocational or career development and adjustment through the life span of the individual, couple, family, group of individuals, organization, institution or community.

equivalent” could only refer to a subject equivalent to “professional counseling.”

We conclude that the phrase “has received a master's degree or doctorate degree in professional counseling or its equivalent” in § 457.12(2) and (3), STATS., is ambiguous. Reasonable minds could differ over whether the statute requires a master's or doctorate degree in professional counseling or some equivalent of professional counseling, or whether the statute allows for some equivalent of the receiving of a master's or doctorate degree. See *State v. Block Iron & Supply Co., Inc.*, 183 Wis.2d 357, 365, 515 N.W.2d 332, 335 (Ct. App. 1994). “When a statute is ambiguous, we will examine the scope, subject matter and object of the statute in order to determine the legislature's intent behind the statute.” *Id.* In construing § 457.12(2) and (3), the entire section and related sections are to be considered. See *id.* Additionally, “[w]hen multiple statutes are contained in the same chapter and assist in implementing the chapter's goals and policy, the statutes should be read together and harmonized if possible.” *Id.*

With these principles in mind, we conclude that subsections two and three of § 457.12, STATS., require a master's or doctorate degree and that the phrase “or its equivalent” refers to the subject matter of professional counseling, and not to the receiving of the degree. This interpretation is consistent with the legislature's intent regarding chapter 457's criteria for the regulation and certification of certain counselors. Additionally, this interpretation is consistent with the legislature's specifically articulated intent in § 457.03 (2), STATS., which provides that a certificate holder “engage[] in the equivalent of at least 2 years of full-time supervised ... professional counseling clinical practice *after receiving the master's or doctorate degree required under s. ... 457.12(2).*” (Emphasis added.)

We reject Mehler's argument that the Wisconsin Administrative Code supports his contention that § 457.12, STATS., does not require receipt of a degree prior to completion of the two years of supervised counseling practice. Indeed, WISCONSIN ADM. CODE § SFC 11.01 (Application for certification as a professional counselor) and WIS. ADM. CODE § SFC 14.01 (Academic program equivalent to a master's degree in professional counseling), strongly support the Board's interpretation of the statute's degree requirement.

WISCONSIN ADM. CODE § SFC 11.01(c) requires “[a]n affidavit from the applicant that the applicant has, *after receiving a master's or doctoral degree*, completed the required period of supervised practice.” (Emphasis added.) Additionally, WISCONSIN ADM. CODE § SFC 11.01(b) provides that an applicant provide verification from “the institution which *awarded the degree*” specified in WISCONSIN ADM. CODE § SFC 11.01(a) as being either a master's or doctoral degree in professional counseling or “the academic program which the applicant proposes as the equivalent of a master's or doctoral degree in professional counseling.”

Mehler also ignores WISCONSIN ADM. CODE § SFC 11.03, which excuses applicants who apply for certification “on or before May 31, 1995” from an examination requirement provided that the applicant has received either a master's or doctoral degree “in professional counseling or an academic program equivalent to” a master's or doctoral degree “in professional counseling, and, *after receiving the degree*,” has engaged in the requisite full-time supervised clinical professional counseling practice. (Emphasis added.) Similarly, WIS. ADM. CODE §§ SFC 14.01 and 14.02 do not support Mehler's reading of the statute. These code sections provide that “[a]n academic program is the equivalent of” a master's or doctoral degree in professional counseling if the “*completed*” coursework from the “*completed*” program “was part of a program of studies leading to a master's degree or doctoral degree in a field closely related to professional counseling.” (Emphasis added.)

Therefore, we conclude the administrative code clearly comports with the meaning of § 457.12, STATS., as interpreted by the Examining Board. Any other interpretation would nullify the meaning of the rules. *See* § 227.10(2), STATS. (“No agency may promulgate a rule which conflicts with state law.”).³ Thus, the Examining Board's interpretation of § 457.12, STATS., must be upheld and, therefore, we affirm the circuit court's order affirming the Board's decision to deny Mehler's application for certification as a rehabilitation counselor.

³ In conjunction with his argument that the Wisconsin Administrative Code supports his interpretation of § 457.12, STATS., Mehler also points to language from various application forms used by the Examining Board. As the circuit court accurately noted, however, “[e]ven if the form were unclear as to the degree requirement, the intent of the legislature in sec. 457.12, STATS.[.] that a degree be received before engaging in supervised practice controls.”

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.