UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of **Docket No. 97-80-EA**

Karola Marcinkowskiego University of Health Sciences, Emergency Action
Show Cause Proceeding

Respondent.

Appearances: William A. Bradford, Jr., Esq., and Elizabeth B. Heffernan, Esq., Hogan & Hartson, L.L.P., Washington, D.C., for Karola Marcinkowskiego University of Health Sciences.

Paul G. Freeborne, Esq. and Russell B. Wolff, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Richard I. Slippen

DECISION

On May 28, 1997, the Office of Student Financial Assistance Programs (SFAP) of the U.S. Department of Education (Department) imposed an emergency action against the Karola Marcinkowskiego University of Health Sciences[See footnote 1][1] (the "University"), of Poznan, Poland, in accordance with 20 U.S.C. § 1094(c)(1)(G) and 34 C.F.R. §§ 600.41 and 668.83. On June 12, 1997, the University requested an opportunity to show cause why the emergency action was unwarranted.[See footnote 2][2] Pursuant to the Delegation of Authority from the Secretary to conduct proceedings and issue final decisions in circumstances where educational institutions request an opportunity to show cause why an emergency action is unwarranted, I conducted a hearing on July 29, 1997.

According to the notice in this case, the emergency action was based upon the University's failure to satisfy the definition of an institution of higher education, as set forth in 20 U.S.C. §§ 1088(a)(2)(B) and 1141(a), and 34 C.F.R. § 600.56. This emergency action is based on the determination of the National Committee on Foreign Medical Education and Accreditation (NCFMEA), a panel of experts appointed by the Secretary to determine whether a foreign country has standards of accreditation that are comparable to standards applied to U.S. medical schools. 20 U.S.C. § 1088(a)(2)(B). For a foreign medical school to qualify as an institution eligible to participate in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV), 20 U.S.C. § 1070 *et seq.*, and 42 U.S.C. 2751 *et seq.*, it must have standards of accreditation that are comparable to those applied to U.S. medical schools. 20 U.S.C. § 1088(a)(2)(B). If its standards of accreditation are determined not to be comparable, the institution must be accredited by a nationally recognized accrediting agency or association. Alternatively, if not so accredited, the institution may be granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. 20 U.S.C. §§ 1088(a)(2)(B) and 1141(a)(5).

The facts are undisputed here. On March 3, 1997, the NCFMEA determined that the country of Poland did not have standards of accreditation comparable to U.S. medical schools, as required by 20 U.S.C. § 1088(a)(2)(B). (Respondent's Exhibit 3 at p. 5-6). Further, the University presented no evidence that it was accredited or had been accorded pre-accreditation status by a nationally recognized accrediting agency. 20 U.S.C. § 1141(a)(5). Although the University argues that NCFMEA's review process is flawed, it is not within my authority to consider challenges to the action of the

accrediting agency.See footnote 3[3] 34 C.F.R. § 600.41(e)(1) (1996). If the basis for the loss of eligibility is the loss of accreditation or preaccreditation, the sole issue before me is whether the institution, location, or program has the requisite accreditation or preaccreditation. *Id.* As the hearing officer who is to decide whether the emergency action is warranted, I have no authority to consider challenges to the action of the accrediting agency. *Id.*

Therefore, since it has been determined that Poland does not have standards of accreditation comparable to U.S. medical schools and the University is not accredited by a nationally recognized accrediting agency, I find that the definition of an eligible institution of higher education has not been met.

If the Secretary believes that an educational program offered by an institution that was previously designated as an eligible institution does not satisfy relevant statutory or regulatory requirements that define that educational program, the Secretary may initiate an emergency action. 34 C.F.R. § 600.41(b). Pursuant to 34 C.F.R. § 668.83(c), an emergency action should be upheld if: 1) there is reliable information that the institution violated any provision of the HEA; 2) immediate action is necessary to prevent misuse of Federal funds, and 3) the likelihood of financial loss from the misuse of funds outweighs the importance of adherence to the procedures for limitation, suspension, and termination actions.

First, it is undisputed that the University has failed to demonstrate that it meets the statutory definition of an eligible institution. Second, due to its failure to meet the statutory definition of an eligible institution, allowing the University to continue to participate in the Title IV, HEA programs would constitute a misuse of federal funds and immediate action is necessary to prevent such further misuse of funds. Third, because all Title IV aid disbursed by an ineligible institution is invalid and done in error, the likelihood of loss does outweigh the importance of awaiting completion of the procedures for termination of eligibility.See footnote 4[4] Accordingly, I find that the three criteria for imposing the emergency action are satisfied.

Having found that the three-pronged test for imposition of an emergency action has been met, I affirm the emergency action.

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Judge Richard I. Slippen

Dated: August 6, 1997

SERVICE

A copy of the attached document was sent to the following:

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Footnote: 1 [1]*At the show cause hearing, Respondent informed the tribunal that the institution's preferred name is the one listed above, not the Karola Marcinkowskiego Academy of Medicine (Tr. at 9).*

Footnote: 2 [2]*Of its own accord, the University also submitted a pre-hearing brief on July 25, 1997, to which SFAP raised no objection.*

Footnote: 3 [3]*The University also offered two exhibits into evidence, identified as Respondent's Exhibits 5 and 6. Respondent's Exhibit 5 is an affidavit of Professor Janusz Gadzinowski, M.D., Ph.D. who testified at the hearing and Exhibit 6 is a letter written by an American student attending the University. Respondent's Exhibit 5 details the history of the University and its recent English language program as well as the potential loss of students in its English language program due to this emergency action. Respondent's Exhibit 6 is a testimonial from a student about the quality of the institution. Firstly, Professor Gadzinowski was able to testify at the hearing as to the matters raised in his affidavit. Secondly, neither of these exhibits are germane to the issue of whether the University meets the statutory and regulatory requirements to participate in the Title IV, HEA programs and to whether the University can show cause as to why this emergency action should be lifted. Therefore, I find that these exhibits are not relevant to the matter before me and are hereby not admitted to the record.*

Footnote: 4 [4]*Even if the University should become an eligible institution in the future by virtue of NCFMEA's reassessment of Poland's accreditation standards, this does not negate the potential loss of Title IV funds during the period of ineligibility.*