DECISION NO. 2009-HPA-0033(a)

In the matter of an application for review of a Registration decision under section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended

BETWEEN: The Applicant APPLICANT

AND: The College of Chiropractors of British Columbia COLLEGE

BEFORE: A Panel of the Health Professions Review Board

Donald A. Silversides, Q.C., Member, Panel Chair
Michael J.B. Alexandor, Member
Barbara L. Cromarty, Member

DATE: February 2, 2010

PLACE: Richmond, BC

APPEARING: For the Applicant: Self-represented

For the College: Donald B. Lebans, Counsel

I DECISION

[1] Upon considering the request for review of a registration decision dated August 17, 2009 made by the Applicant pursuant to section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended (the “Act”) and the submission by the College of Chiropractors of British Columbia (the “College”) made in its preliminary motion dated November 2, 2009 that the Health Professions Review Board (the “Review Board”) lacks jurisdiction to consider the request and that the matter should therefore be summarily dismissed pursuant to section 31(1)(a) of the Administrative Tribunals Act, it is the decision of the Review Board that it does have jurisdiction to review the registration decision for the reasons that follow and that the College’s summary dismissal application should therefore be dismissed.

[2] Having decided that the Review Board does have jurisdiction to review the registration decision the Review Board, for the reasons that follow, orders pursuant to
section 50.54(9)(c) of the Act that the matter of the Applicant’s application for registration to the College be sent back to the registration committee of the College for reconsideration with those directions that follow.

II  INTRODUCTION

[3] The Applicant has been a chiropractor since 1991, originally practicing in California, and became a member (now called a registrant) of the College in 1998 and has continued to be a member or registrant since then. The Applicant decided to take time away from active practice in order to have a child and to devote herself to childrearing duties with the intention that she would return to active practice within a few years. At the Applicant’s request, the College changed her status from Regular to Retired on February 24, 2006.

[4] Before deciding to change her status to Retired, the Applicant determined from the College what its requirements were for her to change her status back to that of an actively practicing chiropractor and was informed by the College that those requirements were that she maintain her membership in the College, fulfill the requirements for continuing education and pay a reinstatement fee. The Applicant confirmed these requirements with the College in 2006, 2007 and 2008 and renewed her membership and complied with all of the requirements of the College for continuing education during each of these years.

[5] On March 1, 2009, the rules of the College were repealed and were replaced with bylaws. The bylaws contemplated a new regime for non-practicing registrants to be granted full registration, including the successful completion of a clinical skills examination conducted by the Canadian Chiropractic Examining Board (the “Clinical Examination”), and satisfying the registration committee that their registration would not pose an undue risk to public health or safety.

[6] The Applicant was not informed by the College of the proposed bylaws before they were made or after they took effect until the Applicant received a letter sent by the College to all non-practicing registrants dated June 19, 2009.

[7] In late 2008 or early 2009, the Applicant decided to return to the active practice of chiropractic in the fall of 2009 and on July 14, 2009, applied to the College to become a full registrant. On July 22, 2009, the registration committee of the College decided to grant the Applicant full registration on the condition she successfully complete the Clinical Examination. The Applicant has applied for a review of this registration decision and submits that she should not be required to complete the Clinical Examination.

III  ISSUES

[8] The first issue to be determined is whether the Review Board has jurisdiction to review the decision made by the registration committee of the College.
If the Review Board does have jurisdiction to review the registration decision, the next issue to be determined is what order should be made by the panel of the Review Board pursuant to section 50.54(9) of the Act.

IV RELEVANT LEGISLATION AND BYLAWS

The provisions of the Act and the bylaws of the College which are relevant to the issues are set out below.

Section 20 of the Act sets out the powers and duties of the College when dealing with an application for registration and the relevant provisions of that section are the following:

20 (1) The registration committee is responsible for granting registration, including reinstatement of registration, of a person as a member of its college.

(2) The registration committee must grant registration as a member of its college to every person who, in accordance with the bylaws,

(a) applies to the college for registration,

(b) satisfies the registration committee that he or she meets the conditions or requirements for registration in a class of registrants, and

(c) pays the required fees, if any.

Section 19 of the Act authorizes the College to make bylaws regarding the conditions or requirements for registration of a person as a member of the College and the relevant provisions of that section are:

19 (1) A board may make bylaws, consistent with the duties and objects of a college under section 16, that it considers necessary or advisable, including bylaws to do the following:

(m) establish conditions or requirements for the registration of a person as a member of the college, including the following:

(i) standards of academic or technical achievement;

(ii) competencies or other qualifications;

(iii) requirements for providing evidence of good character;

(m.1) specify academic or technical programs that are recognized by the college as meeting a standard established under paragraph (m) (i);

(m.2) provide for the examinations that may be required, used or relied on by the registration committee in satisfying itself under section 20 that a person meets the conditions or requirements for registration as a member of the college;
(m.3) establish conditions or requirements for eligibility to take examinations referred to in paragraph (m.2) and procedures respecting the conduct of examinations, and authorize a committee established under paragraph (t) or the registrar to establish additional examination procedures consistent with the bylaws;

(m.4) confer discretion on the registration committee, in satisfying itself under section 20 that a person meets the conditions or requirements for registration as a member of the college, to consider whether the person's knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established under paragraph (m), and to grant registration on that basis (emphasis added);

[13] Section 50.54(1) of the Act contains the following relevant definition of “applicant” for the purposes of a review of a registration decision to the Review Board:

(a) a person applying for registration as a member of a college who is refused a grant of registration under section 20, except for a refusal under section 20 (2.1) or (3),

[14] Section 50.5 of the Act defines a “registration decision” to include a decision made by a registration committee:

(a) to refuse to grant an application for registration as a member of a college under section 20, except for a refusal under section 20 (2.1) or (3),

[15] Section 50.54(9) of the Act provides that when the Review Board has completed its review of a registration decision, the Review Board may make an order:

(a) confirming the registration decision,

(b) directing the registration committee to make a decision that could have been made by the registration committee in the matter, or

(c) sending the matter back to the registration committee for reconsideration with directions.

[16] Section 50.54(10) of the Act provides that The Review Board may only make an order pursuant to section 50.54(9) directing the registration committee to grant registration if it is satisfied that:

(a) all of the following apply:

(i) the registration committee failed to act fairly in considering the application for registration or certification;

(ii) the registration decision

(A) was made arbitrarily or in bad faith,
(B) was made for an improper purpose,

(C) was based entirely or predominantly on irrelevant factors, or

(D) failed to take requirements under this Act into account;

(iii) the conditions described in subsection (11) (a) or (b) are met, or

(b) the person is a person to whom the registration committee is obliged under the Labour Mobility Act to grant registration or certification.

[17] Section 50.54(11)(b) of the Act does not apply to the Applicant. The conditions which are relevant to the Applicant are described in section 50.54(11)(a) of the Act, which are the following:

(a) in the case of a person applying for registration as a member of the College,

(i) the person's knowledge, skills and abilities must be substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications required for registration in a class of registrants, and

(ii) the applicant must meet any other conditions or requirements for registration in the class of registrants;

[18] Prior to their repeal and replacement with the bylaws which became effective March 1, 2009, the rules of the College contained the following as part of rule 6.05:

6.05 To be registered in British Columbia, a chiropractor who has been out of practice for:

(a) More than three years but not more than five years must complete 100 hours of postgraduate technique training at a college that is acceptable to the Board and must pass on oral and written examination administered by the Examining Board;

(d) A non-practicing chiropractor who is not a member of the College, must satisfy the registration requirements under s.7 of the Act and complete the requirements under either paragraphs (a), (b), or (c) of this section. The Board may waive the requirements of a written examination under paragraphs (a), (b), or (c) in application for membership in the College by non-practicing chiropractors.

[19] The bylaws of the College which became effective March 1, 2009, include the following relevant provisions:

43 The following classes of registrants are established:
(a) full registration;
(d) non-practising registration;

44 (1) For the purposes of section 20(2) of the Act, the requirements for full registration are

(a) graduation from one of the recognized chiropractic education programs listed in Schedule “B”,
(b) successful completion of the examinations conducted by the Canadian Chiropractic Examining Board,
(c) successful completion of the jurisdiction examination required by the registration committee,
(d) evidence satisfactory to the registration committee of the good character of the person consistent with the responsibilities of a registrant and the standards expected of a registrant, and
(e) receipt by the registrar of

(i) a signed application for full registration in Form 2,
(ii) the application fee specified in Schedule “C”,
(iii) a notarized copy, or other evidence satisfactory to the registration committee, of his or her degree or diploma and evidence satisfactory to the registration committee that he or she is the person named therein,
(iv) a statutory declaration in Form 3,
(v) the fee for the jurisprudence examination,
(vi) a signed criminal record check authorization form,
(vii) a certified passport size photograph taken with in 1 year prior to the date of application,
(viii) a notarized copy, or other evidence satisfactory to the registration committee, of Canadian citizenship or his or her right to work in Canada, and
(ix) proof of professional liability insurance as required under section 84.

(4) Despite subsection (1), the registration committee has discretion, in satisfying itself under section 20 of the Act that the applicant meets the conditions or requirements for registration as a member of the college, to consider whether the applicant’s knowledge, skills and abilities are substantially equivalent to the
standards of academic or technical achievement and the competencies or other qualifications established in section (1)(a) and (b), and to grant registration on that basis, if the applicant also meets the requirements established in subsections (1)(c) to (e).

47 (4) A non-practising registrant must be granted full registration by the registration committee if he or she

(a) has been a non-practising registrant for less than three years, and meets the requirements established in section 54(1) as though his or her registration had been expired during the time that he or she has been a non-practising registrant; or

(b) has been a non-practising registrant for three years or more, and meets the requirements established in section 54(2) as though his or her registration had been expired during the time that he or she has been a non-practising registrant.

54 (2) The registration of a former registrant whose registration has been expired for three or more years must, subject to sections 20 and 39 of the Act, be reinstated by the registration committee if the former registrant

(a) was in good standing upon the expiry of his or her previous registration,

(b) is not in contravention of the Act, the regulations or these bylaws,

(c) submits to the registrar

(i) a reinstatement application in Form 6,

(ii) an authorization for a criminal record check in the form required by the Criminal Records Review Act,

(iii) in the case of an applicant who has practiced chiropractic or another health professions in another jurisdiction, an authorization for a criminal record check in that jurisdiction,

(iv) proof of completion of all requirements under Part 5 as though he or she had been a registrant for the period since the expiry of his or her registration,

(v) the registration reinstatement fee set out in Schedule C,

(vi) any other fee, fine, levy or debt owed to the college under the Act or the Chiropractors Act,

(vii) proof of professional liability insurance as required under section 84,

(viii) evidence satisfactory to the registration committee that he or she is a person of good character suitable for registration as a member of the college, and
(d) successfully completes a clinical skills examination conducted by the Canadian Chiropractic Examining Board, or its successor, and satisfies the registration committee that his or her registration will not pose an undue risk to public health or safety.

V BACKGROUND AND EVIDENCE

[20] In addition to the Registration Record of the College, several other documents were filed with the statements of points by the College and the Applicant which both the College and the Applicant agreed would constitute evidence before the Review Board in this matter.

[21] In addition to the Registration Record and additional documents which, by consent, became evidence in this matter, the Applicant gave evidence at the hearing under oath and the current registrar of the College gave evidence under affirmation.

[22] The Applicant originally practiced chiropractic in California and became a member (the equivalent of what is now a registrant) of the College in 1998 after successfully completing the clinical skills examination conducted by the Canadian Chiropractic Examining Board which is described in bylaw 54(2)(d) of the College and continued to actively practice chiropractic in British Columbia until early 2006.

[23] Sometime before January 31, 2006, the Applicant decided she wished to stop actively practicing chiropractic for a few years in order to have and raise a child with the intention that after a reasonably short period of time she would return to full active practice. It was very important to the Applicant that if she temporarily stopped practicing to have a child she would be able to return to active practice without having to re-qualify. To ensure she could do so, she telephoned the College and was referred to the executive assistant of the College, who informed the Applicant that if she changed her membership status from Regular to Retired she could at any time return to active practice if she:

    (a) continuously maintained her membership in the College;
    
    (b) attended the minimum number of credit hours of accredited continuing education hours which all practicing chiropractors are required to attend; and,
    
    (c) paid a reinstatement fee.

[24] Relying upon the advice given to her by the executive assistant of the College, the Applicant wrote to the College on January 31, 2006 requesting that her status be changed from active to retired/non-practicing. The College changed her status to retired effective March 1, 2006.

[25] All chiropractors were, and are, required to renew their membership or registration annually on or before July 31st.
[26] The Applicant intended to be a non-practicing chiropractor only for a few years following the birth of her child and was very concerned that she would be able to return to full practice within a few years merely by applying and paying the appropriate reinstatement fee. Because of this concern, the Applicant, on several occasions, including annually before renewing her membership, spoke to the executive assistant of the College and confirmed that all she would be required to do in order to return to active practice was to apply and pay the reinstatement fee provided she continued to maintain her membership and attended the required hours of accredited continuing education. Every time she made this enquiry she was reassured by the executive assistant of the College that this was all that would be required. During several telephone conversations, the executive assistant of the College emphasized that it was extremely important for the Applicant to maintain her membership in the College in order to avoid the necessity of writing examinations or otherwise re-qualifying.

[27] The last enquiry made by the Applicant regarding the requirements for returning to active practice was just before she renewed her membership in 2008.

[28] After renewing her membership in 2008, the Applicant decided to return to active practice in 2009 and made arrangements with another chiropractor to join their clinic. It was the Applicant’s intention to convert her status from a non-practicing chiropractor to a practicing chiropractor when it became time for her to annually renew her membership on or before July 31, 2009.

[29] The College was constituted under, and governed by, the Chiropractors Act, R.S.B.C., c. 48 until March 1, 2009. Section 7 of the Chiropractors Act empowered the Board of Chiropractors, subject to that statute and with the approval of the Lieutenant Governor in Council, to make rules for the registration of chiropractors as members of the College, for the admission of chiropractors to practice in British Columbia, establishing the qualifications of persons to admitted and registered, and the proof to be provided as to education, good character and experience and similar matters.

[30] On March 1, 2009, the College was continued under the Act, the rules made by the College pursuant to section 7 of the Chiropractors Act were repealed and bylaws made by the College pursuant to the Act came in effect.

[31] Although the College sent a letter by email to some of its members prior to March 1, 2009 informing them of the proposed repeal of the rules and enactment of the bylaws which would replace those rules, this letter was not sent to the Applicant and the Applicant was not aware that there would be any change in the requirements for a non-practicing registrant to return to active practice.

[32] The College acknowledges that some of its non-practicing members had been informed by the College that they would be allowed to return to active practice upon payment of a reinstatement fee if they had completed the continuing education requirements of the College and that the Applicant was one of the non-practicing members who had been given this information.
[33] For at least ten years before 2009, the College had no experience with any non-practicing chiropractor choosing to return to practice after three years or more of being a non-practicing chiropractor.

[34] There were 85 non-practicing registrants of the College and the registrar of the College sent each one of them an identical letter dated June 19, 2009, the text of which was the following:

Re: Non-Practicing Status

This letter is to inform you that the requirements for re-registration under the Health Professions Act have changed significantly.

If you are a Non-Practicing registrant wishing to reinstate as a Full Registrant these conditions apply:

• Members that have been non-practicing for less than three years must comply with the completion of the necessary Continuing Education requirements as though they had never been away from practice.

• Members that have been non-practicing for three years or longer will be required to successfully complete a clinical competency exam provided by the Canadian Chiropractic Examining Board before being allowed to re-register.

Because of your non-practicing status, we wanted to you to be making an informed decision. Please review the continuing education requirements should you choose to remain in the Non-Practicing registrant status.

Enclosed are the sections of the HPA Bylaws that pertain to this rule. Please inform us of your decision by July 16, 2009.

[35] The requirements for re-registration by a member who had been a non-practicing registrant for three years or longer set out in this letter contradicted in a significant way the advice which the College had consistently given the Applicant over the previous three years.

[36] The current registrar testified the June 19, 2009 letter was sent to non-practicing registrants before the annual renewal notice was sent to all registrants because the College anticipated it might be deluged with applications by non-practicing registrants to become full registrants. His evidence regarding this letter was unsatisfactory. He denied the letter was sent because he, or anyone else at the College, believed there had been a change in the requirements for full registration after a person had been a non-practicing registrant for three years. This testimony was inconsistent with the text and tone of the letter, with the testimony of the Applicant and with the submissions made by the College. We are satisfied that this letter was sent because the College believed there had been a significant change in the requirements.
[37] The Applicant became a non-practicing member for more than three years on March 1, 2009. This was also the date on which the requirements for full registration changed. Notice of the change was not given by the College until three and one-half months later. If the Applicant had known she would be required to take and successfully complete the Clinical Examination if she remained a non-practicing chiropractor for more than three years, she would have applied to return to active practice before March 1, 2009 and she would have been entitled to be reinstated upon payment of the reinstatement fee because she had maintained her membership in the College and had fulfilled all of the College’s requirements for continuing education.

[38] The current registrar of the College was appointed on March 1, 2009 and, prior to that date, he had no dealings with the Applicant nor does he have any personal knowledge of any dealings the College had with the Applicant before that date. After the Applicant received the June 19, 2009 letter from the registrar, the Applicant and the registrar had several discussions. The Applicant testified that during these discussions, the registrar acknowledged she had been told by the College that all she needed to do in order to become reinstated as a full member would be to pay the reinstatement fee but that the requirements for reinstatement had been changed as a result of the bylaws which came into effect on March 1, 2009. The registrar testified that he never said this to the Applicant. We accept the Applicant’s testimony with respect to this issue.

[39] On July 14, 2009, the Applicant applied to the College to become a full registrant. At its meeting on July 22, 2009, the registration committee of the College passed a motion “that the reinstatement of [the Applicant] be accepted in accordance with the requirements listed in bylaw 54(2)(a)-(d) and that her registration fee be prorated to the date of completion”. The minutes show this meeting lasted for only 15 minutes and during this time the registration committee dealt both with business arising and with two separate motions, one of which was the reinstatement of the Applicant.

[40] In a July 23, 2009 letter to the Applicant, the College stated:

Thank you for your request for reinstatement as full registrant under Section 54 of the College Bylaws. The Registration Committee (the committee) has approved your application to practice as a full registrant.

However, because you have been out of active practice for more than three years, the committee accepts your application based upon your completion of a clinical competency exam. This is identified in Section 54(2)(d) as the following:

(d) successfully completes a clinical skills examination conducted by the Canadian Chiropractic Examining Board, or its successor, and satisfies the registration committee that his or her registration will not pose an undue risk to public health or safety.

You will be granted permission to practice once you have fulfilled this requirement. Your dues, prorated on a quarterly basis, will be adjusted to the date of approval.
The Applicant does not wish to incur the time, trouble or cost of preparing for, and taking, the Clinical Examination which she already successfully completed once before. The Applicant believes she is fully qualified to practice chiropractic and submits it is unfair she should now be required to take the Clinical Examination when, if she had been given the correct information regarding the requirements for reinstatement by the College, she could have applied for reinstatement just a few months before she did and would have been granted full registration upon paying the required reinstatement fee.

VI DISCUSSION AND ANALYSIS

The preliminary issue to be determined is whether the Review Board has jurisdiction to review the decision made by the registration committee of the College.

With respect to the jurisdiction of the Review Board to review the decision made by its registration committee, the College submits that the Review Board does not have jurisdiction to deal with this matter because:

(a) the Applicant is not an “applicant” within the meaning of section 50.54(1) of the Act; and,

(b) the Applicant is not seeking the review of a “registration decision” as required by section 50.54(1) of the Act.

With respect to the Applicant not falling with the definition of “applicant” under section 50.54(1) of the Act, the College submits the Applicant is not a person who has been refused a grant of registration under section 20 of the Act or a registrant who has been granted registration in a class of registrants under section 20(2) of the Act with limits or conditions on their practice. The College submits that her application for reinstatement was not denied by the College but, instead, the College has approved her application if she completes the applicable requirements for reinstatement.

The College submits the decision made by the registration committee on July 22, 2009 is not a “registration decision” because the registration committee did not deny the Applicant registration or grant the Applicant registration with conditions.

Section 43 of the bylaws of the College establish full registration and non-practicing registration as separate classes of registrants. We are satisfied the application for registration as a full registrant made by the Applicant to the College dated July 13, 2009 is an application for registration in a class of registrants within the meaning of section 20(2) of the Act. This was not an application for registration to take effect upon fulfillment of a condition subsequent, such as the successful completion of the Clinical Examination. It was an application for registration as a full registrant based on the Applicant’s then current qualifications. The registration committee refused to grant the Applicant registration as a full registrant based on the qualifications she then had. We have determined that this decision was a refusal to grant an application by the Applicant for registration as a member of the College under section 20 of the Act.
[47] Since the decision made by the registration committee on July 22, 2009 was a refusal to grant an application for registration under section 20, it follows that that decision was a “registration decision” as defined in section 50.5 of the Act and that the Applicant is an “applicant” as defined in section 50.54(1) of the Act. We are therefore satisfied that the Review Board does have jurisdiction to review the registration decision made by the registration committee on July 22, 2009.

[48] The Applicant has requested that the Review Board make an order directing the registration committee of the College to grant her full registration. The Review Board could only do so by making an order pursuant to section 50.54(9)(b) directing the registration committee to make a decision that could have been made by the registration committee in this matter. In order to make such an order the Review Board must be satisfied that all of the circumstances described in section 50.54(10)(a) of the Act exist, including that the conditions described in sub-section 11(a) of section 50.54 have been met. It is unnecessary for this panel to deal with the circumstances described in sub-sections 10(a)(i) and (ii) because no evidence was before us from which we could satisfy ourselves that the conditions described in subsection 11(a) had been met. We are therefore unable to make an order pursuant to section 50.54(9)(b) of the Act.

[49] We must then determine whether an order should be made pursuant to section 50.54(9)(a) confirming the registration decision or whether an order should be made pursuant to section 50.54(9)(c) sending the matter back to the registration committee for reconsideration with directions.

[50] The College submits that, because the Applicant had been a non-practicing registrant for more than three years at the time she applied to the College to be reinstated, sections 47 and 50.54(2) of the bylaws of the College require that she successfully complete the Clinical Examination before returning to full registration and the decision of the registration committee should therefore be confirmed.

[51] The Applicant submits she has all of the qualifications required for full registration. She also submits that she acted in accordance with the advice and information which she was repeatedly given by the College regarding the requirements for her return to full practice and that she should therefore be reinstated as a full registrant because she complied with those requirements.

[52] The College submits that former rule 6.05 applied to the Applicant and it required non-practicing members of the College who had been out of practice for more than three years to complete 100 hours of post-graduate technique training at a college that was acceptable to the Board of Chiropractors and to pass an oral and written examination administered by the Examining Board and that this requirement is more onerous than the requirement that the Applicant take and successfully pass the Clinical Examination and that the Applicant is therefore in the same, or a better, position under the bylaws with respect to re-qualification requirements than she would have been under the old rules.
Whether or not rule 6.05 would have applied to the Applicant, it is clear that the College, through the executive assistant to the registrar, did, on more than one occasion, tell the Applicant that upon payment of the reinstatement fee she would be entitled to be reinstated as a full practicing registrant if she maintained her membership and complied with the requirement of the College for continuing education, both of which the Applicant did.

We are satisfied that now being required to take and successfully complete the Clinical Examination would constitute a significant hardship to the Applicant. Not only will she incur significant cost in terms of the fees payable for taking the examination, the Applicant has lost, and will, until she passes the examination, continue to lose, income that she could have earned as a full registrant. In order to prepare for the taking of the examination, the Applicant will have to spend considerable time studying for the examination and she will also suffer the emotional distress and anxiety of being required to now take an examination which she has already successfully passed after previously studying extensively for it.

The College submits that requiring a non-practicing registrant to successfully complete the Clinical Examination represents a fair and reasonable requirement following an absence from practice of three years or more and that it is not unfair or unreasonable to require an applicant for reinstatement to full registration who has been away from practice for that length of time to complete a clinical competency examination. We note that the College did not in the record, its statement of points or other evidence provide any reasons why it would be in the public interest to make it mandatory for every person who has not practiced chiropractic for three years to successfully complete the Clinical Examination as a condition of returning to full registration.

We are satisfied the Applicant relied, in good faith, on the information given to her by the College regarding reinstatement requirements that, if the Applicant had been given the correct information by the College, she would have applied for full registration before March 1, 2009 when her time as a non-practicing registrant exceeded the three year period of time and that she would have been granted full registration by the College.

The College submits that even though the Applicant was given incorrect information regarding the requirements for reinstatement as a full registrant and that she will incur expenses and spend time in preparation for the Clinical Examination and will lose income she might otherwise have earned, the registration committee was not able to make any other decision because non-practicing registrants must, pursuant to sections 47(4)(b) and 54(2)(d) of the bylaws successfully complete a Clinical Examination.

The registration committee of the College must comply with and act in accordance with the bylaws of the College. The question is whether the College has correctly interpreted its bylaws as they apply to the Applicant and the registration decision which is the subject of this review. We are of the opinion that the College has not correctly interpreted its bylaws.
The College, in its submissions, describes the requirements for a person who has been a non-practicing registrant for more than three years to become a full registrant in the following ways: "...under sub-section 54(2)(d), all registrants who have been non-practicing for three years or more must also successfully complete a "clinical skills examination conducted by the Canadian Chiropractic Examining Board" or its successors..." The College also submits that there is no provision in the bylaws for waiver of the section 54(2)(d) examination requirement.

Section 20(2)(b) of the Act provides that if a person has applied for registration and paid the required fee, the registration committee must grant them registration in a class of registrants if the committee is satisfied they meet the conditions or requirements for registration in that class. Section 19(1) of the Act authorizes the College to make bylaws to establish the conditions or requirements for registration and the College has done so. The requirements for full registration are set out in section 44(1) of the bylaws of the College which provides that for the purposes of section 20(2) of the Act, the requirements for full registration are those set out in subsections (a) to (e) of section 44(1).

As permitted by section 19(m.4) of the Act, section 44(4) of the bylaws of the College gives the registration committee discretion, in satisfying itself under section 20 of the Act that an applicant meets the conditions or requirements for registration, to consider whether the applicant's knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established in sub-sections (1)(a) and (b) of section 44 of the bylaws. Those qualifications are graduation from one of the recognized chiropractic education programs listed in Schedule “B” and successful completion of the Clinical Examination.

Section 44 of the bylaws of the College does not exclude non-practicing registrants from its application and applies to all persons who apply for full registration and who have paid the required fees, including non-practicing registrants. Section 44(4) gives the registration committee the discretion, in satisfying itself under section 20 of the Act whether a person who has been a non-practicing registrant for three years or more meets the requirement for full registration, to consider whether that person's knowledge, skills and abilities are substantially equivalent to having successfully completed the Clinical Examination and to grant full registration to them without requiring them to successfully complete the Clinical Examination provided they otherwise meet the requirements established in sub-sections (1)(c) to (e) of section 44.

Section 47(4)(b) of the bylaws provides that a person who has been a non-practicing registrant for three years or more must be granted full registration by the registration committee and meet the requirements established in section 54(2). We have considered the meaning of this section and whether it conflicts with or overrides section 44 of the bylaws. The word “must” in section 47(4)(b) applies to the registration committee and not to the non-practicing registrant. The same is true for section 54(2)(d). In both cases, these sections require the registration committee to grant full registration and neither state that the conditions are mandatory for the
applicant nor what requirements a person must fulfill before being granted full registration.

[64] By contrast with section 47(4)(b), section 52(1) of the bylaws, which sets out the requirements for renewal of registration, make it clear that fulfillment of the requirements are mandatory by making the verb “must” applicable to the registrant using the following words “to be eligible for a renewal of registration, a full or non-practicing registrant must...” which is followed by a list of the things they must do (emphasis added).

[65] In our opinion section 47(4)(b) does not make it mandatory for a person who has been a non-practicing registrant for three years or more to successfully complete the Clinical Examination. Even if section 47(4)(b) could be interpreted to provide that it is mandatory for a person who has been a non-practicing member for three years or more to successfully pass the Clinical Examination, this section is overridden by the provisions of section 44 of the bylaws which set out the requirements for full registration and take precedence over section 47(4)(b).

[66] Section 44 of the bylaws of the College applied to the Applicant’s application for full registration and the registration committee therefore had the discretion to consider whether her knowledge, skills and abilities were substantially equivalent to the qualification of successfully passing the Clinical Examination. The registration committee did not, however, believe it had such discretion and did not consider whether the Applicant had the knowledge, skills and ability necessary for full registration without being required to again successfully complete the Clinical Examination.

[67] Section 44(1)(b) does not stipulate when the Clinical Examination must have been successfully completed and, since the Applicant did, in fact, complete that examination before becoming a member of the College, it was also open to the registration committee, to determine that the Applicant’s having done so was sufficient.

[68] It is in the public interest for the College to treat its members fairly and to provide them with timely and correct information regarding registration and other requirements of the College and, in appropriate circumstances, notice of any significant changes to its requirements which the College intends to make. We are not satisfied that the College did so in this case.

[69] We have concluded that it is in the public interest and it would be both reasonable and fair to the Applicant for the registration committee to reconsider its decision to refuse to grant full registration to the Applicant unless she retakes and successfully completes the Clinical Examination. The registration committee, when reconsidering their decision, should do so on the basis that the registration committee does have the power and the authority to grant full registration to the Applicant without her again successfully completing the Clinical Examination if they are otherwise satisfied she has met the requirements for full registration set out in section 44 of the bylaws.
VII CONCLUSION

[70] In making this decision, we have considered all of the evidence and submissions before us, whether or not specifically reiterated herein.

[71] For all of the reasons set out above, we order that the decision of the registration committee of the College to refuse to grant full registration to the Applicant be sent back to the registration committee for reconsideration with the following directions:

(a) in reconsidering their decision, the registration committee must not interpret sections 47(4) and 54(2) of the bylaws of the College as requiring the Applicant to successfully complete a Clinical Examination as a pre-condition to full registration;

(b) the registration committee must determine whether the Applicant’s current knowledge, skills and abilities are substantially equivalent to her successfully completing a clinical skills examination conducted by the Canadian Chiropractic Examining Board, or its successor, and if she has met the requirements in sub-sections 1(c) to (e) of bylaw 44 of the College; and,

(c) if the registration committee is not satisfied that the Applicant’s current knowledge, skills and abilities are equivalent to successfully completing the Clinical Examination, they must give the Applicant written reasons for making that determination.

“Donald A. Silversides”
Donald A. Silversides, Q.C., Panel Chair

“Michael J.B. Alexandor”
Michael J.B. Alexandor, Member

“Barbara L. Cromarty”
Barbara L. Cromarty, Member

March 23, 2010