DECISION NO. 2010-HPA-0079(a)

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

BETWEEN: The Applicant

AND: The College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC

BEFORE: Barbara Cromarty, Member

DATE: Conducted by way of written submissions concluding on February 28, 2011

APPEARING: For the Applicant: Self-represented

For the College: Angela Westmacott, Counsel

I DECISION

[1] Upon considering the preliminary application made by the College for summary dismissal pursuant s.31(1)(f) of the Administrative Tribunals Act (the “ATA”) it is the decision of the Health Professions Review Board (the “Review Board”) that the summary dismissal application is dismissed.

[2] Upon considering the application of the Applicant pursuant s.50.54 of the Health Professions Act R.S.B.C. 1996 c.183 as amended (the “Act”) it is the decision of the Review Board that the disposition of the Registration Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC (the “College”) is confirmed.

II INTRODUCTION AND BACKGROUND

[3] The Applicant is a practitioner of traditional Chinese medicine and acupuncture and has been a practitioner in this field since the early 1970s. Originally, he commenced his practice in the Province of Ontario where he established himself as a pioneer and a leader in this field. Eventually, in 1991, he took his practice to the State of Florida where he has resided and practiced in traditional Chinese medicine and acupuncture ever since. The Applicant was licensed in the State of Florida according to their licensing
requirements. He has had an extensive and distinguished career in his field in both Ontario and Florida.

[4] The Applicant wishes to move to British Columbia and to become registered to practice in traditional Chinese medicine and acupuncture in the Province of British Columbia. Therefore, he submitted his application for full registration to the College. The basis for his application and for his immediate admission into the British Columbia College was through what the parties refer to as reciprocal registration.

[5] On March 10, 2010 the Registration Committee of the College determined that the Applicant was not eligible for reciprocal registration pursuant to section 48(3) of the College by-laws as the Applicant was not currently registered or licensed in a Canadian jurisdiction. The College found that despite his extensive but unregulated practice in Ontario and his regulated practice in Florida, he did not meet the criteria of s.48(3) of the College by-laws. As a result, the Registration application was denied by the College. The College found and stated in its letter that in order to achieve full registration in British Columbia, the Applicant must meet the requirements of s.48(1) of the College by-laws, which include successful completion of the acupuncture examination.

[6] The Applicant has made an application to the Review Board for a review of the College’s decision. The College has made an application for summary dismissal of the application for review.

III ISSUES

[7] The issues to be determined on this application are:

(1) whether the Review Board should summarily dismiss this application for review commenced under s.50.54 of the Act by the Applicant;

(2) whether an order should be made pursuant to s.50.54(9)(a) confirming the registration decision, or whether an order should be made pursuant to s.50.54 (9)(c), sending the matter back to the registration committee for reconsideration with directions.

IV RELEVANT LEGISLATION, BYLAWS AND POLICY

[8] With regards to the summary dismissal application, for convenient reference, the relevant legislation under the ATA is reproduced below:

Summary dismissal

s. 31 (1) At any time after an application is filed the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

. . .

(f) there is no reasonable prospect the application will succeed;
The provisions of the Act relevant to the substantive issue are set out below:

**Review of registration decisions**

50.54 (1) In this section, “applicant” means

(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),

(b) a registrant who is granted registration in a class of registrants under section 20 (2) with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions imposed under section 20 (2.1) or (3), or

(c) a person applying for certification as a certified non-registrant who is refused certification.

(2) An applicant may apply to the review board for a review of a registration decision.

... (9) On completion of its review under this section, 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.

(10) The review board may make an order under subsection (9) directing the registration committee to grant registration with or without limits or conditions, or certification, as the case may be, only if the review board 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.

(11) The following conditions apply for the purposes of subsection (10) (a) (iii):

(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;

(b) in the case of a person applying for certification as a certified non-registrant,

(i) the applicant's knowledge, skills and abilities must be substantially equivalent to the training or educational requirements for certification in a class of certified non-registrants, and

(ii) the applicant must meet any other conditions or other requirements for certification in the class of certified non-registrants.

[10] Section 48 of the College by-laws includes the following relevant provisions:

**Full registration**

48. (1) For the purposes of section 19(2) of the Act, the requirements for full registration are

(a) graduation, from an acupuncture education or training program for registration as an acupuncturist, or from a traditional Chinese herbology education or training program for registration as a traditional Chinese herbalist, or from a traditional Chinese medicine education or training program for registration as a traditional Chinese medicine practitioner or Doctor of traditional Chinese medicine, in accordance with the requirements listed in Schedule “E”,

(a.1) successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee

(b) successful completion of the examinations required by the examination committee, (bold added for emphasis)

(c) 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
(d) evidence satisfactory to the registration committee that the applicant be a Canadian citizen or a permanent resident of Canada or be otherwise authorized under the laws of Canada to work in Canada.

(2) receipt by the registrar of

(a) a signed application for full registration in a form approved by the registration committee,

(b) the application fee specified in Schedule "F",

(c) an original certificate, notarized copy, or other evidence satisfactory to the registration committee of graduation from a program referred to in subsection (1)(a), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(c1) an original diploma, notarized copy, or other evidence satisfactory to the registration committee, confirming successful completion of a program referred to in subsection (1)(a.1), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(d) a statutory declaration as specified in Form 1,

(e) the examination fee set by the College, and

(f) a signed criminal record check authorization form.

[11] There is limited authority to exempt the requirement for completion of an examination under s.48(3) of the College by-laws, which is as follows:

(3) Despite subsections (1)(a), (a.1) and (b), an applicant may be granted full registration by the registration committee if the applicant

(a) holds registration or licensure in another Canadian jurisdiction as the equivalent of a full registrant, which is not subject to any practice limitations, restrictions or conditions in that jurisdiction that do not apply generally to registrants in British Columbia, and provides evidence satisfactory to the registration committee of the applicant’s registration or licensure, and that the applicant is the person named therein, (bold added for emphasis)

(b) provides evidence satisfactory to the registration committee that the applicant meets any applicable continuing competence and quality assurance requirements established by the applicable regulatory or licensing authority in the jurisdiction referred to in paragraph (a),

(c) meets the requirements established in subsection (1)(c) and (d) and (2)(a),(b), (d), (e) and (f).

[12] College by-law 48(4) states as follows:

(4) Despite subsection (1)(a) and (a.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 subsection 1(a) and (a.1), and to grant registration on that basis provided the applicant

(a) provides evidence satisfactory to the registration committee, of such knowledge, skills and abilities, and

(b) meets the requirements established in subsection (1)(c) and (d) and 2(a), (b), (d), (e) and (f).

V DISCUSSION AND ANALYSIS

[13] The summary dismissal application was brought by the College. The applicable legislation is s.31(1)(f) of the ATA. The College submits that the Application has no reasonable prospect of success and therefore ought to be dismissed summarily.

[14] I am mindful of the comments in the case cited by the College with regard to the test for a summary dismissal application as set out in Review Board Decision 2009-HPA-0052(a). In that case, the Review Board provided a comprehensive and detailed analysis of the summary dismissal applications before it in the context of a registration decision.

[15] Applying that analysis to the case here, the College has not discharged the onus of demonstrating that the application of the Applicant has no prospect of success. There is at issue the interpretation of the whether College by-law s.48(3) requires current registration in another Canadian jurisdiction as it does not expressly state so. In addition, at issue is whether or not the Applicant’s qualifications in Ontario enable him to meet the requirements of College by-law s.48(3) and whether or not the Registration Committee has properly considered and applied his Ontario qualifications. The Applicant raises several concerns regarding the manner in which his application to the College was handled by the staff of the College that require full consideration and comment.

[16] The person applying for summary dismissal bears the onus of satisfying the Review Board that summary dismissal is appropriate. If a person relying on s.31(1) of the ATA cannot satisfy the Review Board on a preliminary application that the prospect of success is unreasonable in all of the circumstances, the appropriate decision is to dismiss the application for summary dismissal.

[17] With respect to the substantive issues, the Applicant submits that because he is currently licensed in the State of Florida, and was formerly a practitioner in the Province of Ontario that he is more than duly qualified to practice in the Province of British Columbia. As a result, he should be granted full registration in British Columbia immediately and should not be required to complete the acupuncture examination. He also submits that he was treated unfairly by the College staff throughout the registration process and raises several issues and concerns in this regard.
As mentioned, upon reviewing the Applicant’s application for full registration, the Registration Committee of the College determined that he was not eligible for reciprocal registration pursuant to s.48(3) of the College by-laws because the Applicant did not hold registration or licensure in another Canadian jurisdiction as the equivalent of a full registrant. As a result, the College determined that in order to be fully registered he must meet the requirements of s.48(1) of the College by-laws, including successful completion of the acupuncture examination.

The College had examined s. 48(3) of the College’s by-laws and found that there was limited authority that would allow the College to exempt the Applicant from the requirement for completing the examination as noted above. The College acknowledged that the Applicant is registered and licensed to practice in the State of Florida according to that State’s requirements. However, this jurisdiction is clearly not a Canadian jurisdiction, therefore, the College’s hands are tied. The question therefore arose as to whether or not the Applicant’s practice in Ontario from 1972 to 1991 met the requirements of s.48(3) of the College’s by-laws.

The Applicant submits that because the College’s by-law does not specifically state that his practice and registration in Ontario must be current that to interpret the by-law this way is wrong. He also submits that even if his licensure is not current, due to the fact that he practiced in Ontario until 1991, that this still enables him to meet the requirements of the College By-law. The College interprets the by-law to mean that his registration or licensure in Ontario must be current. Furthermore, the College is aware that the Province of Ontario does not yet license or regulate the practice of acupuncture through a regulatory authority.

I agree with the College’s interpretation of the by-law. The only logical interpretation that can be drawn from the wording of the by-law is that his registration in Ontario must be current. The by-law states: “holds registration or licensure in another Canadian jurisdiction as the equivalent of a full registrant”. This is the present tense, meaning current. To conclude otherwise is illogical and would place the health and safety of the public at risk. For example, by permitting a scenario whereby an individual who was qualified to practice in another province 20 years previously, and had not practiced and was not registered for some length of time in that province, could then apply and be immediately registered with the College in British Columbia is not an intended result. This individual would be able to practice in spite of not having established that they meet current standards of practice in the field.

Furthermore, I agree with the submissions of the College that they did consider the Applicant’s practice in Ontario from the 1970’s until 1991, and then appropriately made a finding that Ontario does not yet regulate the practice of acupuncture. Therefore, the College concluded that the Applicant does not meet the requirement of being registered or licensed in another Canadian jurisdiction, current or otherwise.

In addition, upon examination of s.48(4) of the College by-laws, which provides that the College can consider registration with some exemptions if conditions are met, this section does not allow for an exemption from completing the examination, as by-law
48(3) permits. Therefore, the Applicant cannot rely on this by-law as a basis for exemption from the requirement to complete the licensing examination.

[24] It is clear from the College’s by-laws what conditions must be met for full registration and the by-laws are clear as to what conditions must still be met when some exemptions or exceptions are permitted. The Registration Committee of the College had no other option available to it that would have enabled it to provide full registration to the Applicant. The Registration Committee has no discretion to waive the requirements for full registration for individuals who do not hold current full registration in another Canadian jurisdiction. This is unfortunately so, despite the Applicant’s long standing and distinguished career in Ontario and in Florida as a practitioner of Chinese medicine and acupuncture.

[25] In summary, the College considered that the Applicant was currently licensed in the State of Florida according to that State’s requirements, but clearly Florida is not a Canadian jurisdiction. The College was aware and considered the fact that the Applicant had extensive but unregulated practice experience in the Province of Ontario until 1991, but he was clearly not practicing under a current Canadian regulated licence.

[26] As a result, I find that the College was not in a position to declare that the Applicant met the conditions of College by-law s.48(3) as the Applicant submits.

[27] I have reviewed and considered s.50.54(10) of the Act, in addition to the issues and concerns that the Applicant has raised in regard to the treatment of him by the College during the course of this matter. I find that this section does not apply here as there are no facts that would support a finding that the conditions of s.50.54(10)(a) are present in this case.

[28] The Applicant further submits that in any event, the Labour Mobility Act applies to his case and that the Review Board is able to consider his appeal with this in mind pursuant to s. 50.54(10)(b) of the Act. I have therefore considered this section of the Act. I agree with the College’s submissions that the Applicant is simply not a person to whom the Registration Committee is obliged under the Labour Mobility Act to grant registration or certification. The Applicant does not fit within the definition of a “worker” nor does he hold current “certification” set out and clearly defined in the Labour Mobility Act.

[29] I wish to address specifically the Applicant’s allegation of negligence against the Staff of the College, in the handling of his application. The Applicant states that the College “never even bothered to check with the College of Physicians and Surgeons of Ontario (CPSO) in regards his status and did not inquire about his status with the Ministry of Health”. With respect, the onus is not on the College to look for evidence of the Applicant’s qualifications in Ontario. The College by-law s.48(3)(a) clearly states that it is up to the Applicant to submit the evidence of his qualifications to the Registration Committee of the College. There was no onus on the College to actively look into and obtain additional information regarding the Applicant’s specific qualifications.
[30] In light of all of the above findings, it is not necessary for me to specifically address the balance of the Applicant’s submissions respecting the manner in which this matter was handled by the Staff and the College that he was treated unfairly in numerous ways by the College staff throughout the registration process. Nor do I need to address the College’s response, except to state that these concerns, valid or not, would in no way affect my decision that, ultimately, the College made the correct decision.

VI CONCLUSION

[31] In making this decision, I have considered all of the information and submissions before me, whether or not they are specifically referred to in these reasons.

[32] For all of the reasons set out above, I confirm the disposition of the Registration Committee.

“Barbara Cromarty”

Barbara Cromarty, Member
Health Professions Review Board

October 12, 2011