DECISION NO. 2011-HPA-234(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, (the “Act”) of a Registration decision

BETWEEN: The Applicant

AND: The College of Speech and Hearing Health Professionals of BC

BEFORE: John O’Fee, Panel Chair

APPEARING: For the Applicant: Self-represented

For the College: Lisa C. Fong, Counsel

DATE: Conducted by way of written submissions concluding on November 1, 2012

I INTRODUCTION AND BACKGROUND

[1] The Applicant applied under the Act to review a November 22, 2011 decision denying her registration as a member of the College.

[2] The Applicant’s application was for registration as both an Audiologist and Hearing Instrument Practitioner. The distinction is important in that registration under one category does not necessarily mean registration under the other. The initial decision was to deny both applications but to invite the Applicant to apply for registration as a conditional active member in her capacity as an Audiologist. The College offered the Applicant “Conditional Active” status as defined in section 82 of their bylaws which would require her to take written and practical exams to achieve a granting of “Active” status by the College.

[3] The Applicant appealed this decision to the Review Board and as part of the appeal process, the Applicant and representatives of the College met on January 30, 2012 with a view to resolving the issues related to her registration status.

[4] The College reconsidered this matter on February 6, 2012 and granted the Applicant’s application for registration as a Hearing Instrument Practitioner, but confirmed their decision not to register the Applicant as an Audiologist. The Applicant was offered the status of “Conditional Active” which would require her to complete the
certification examination prepared by the Canadian Association of Speech Language Pathologists and Audiologists (“CASLPA”). The College advised the Applicant that it had no discretion to waive what it asserts are mandatory provisions in this regard.

[5] In a letter from the Applicant dated July 25, 2012, the Applicant indicates she only wants her application for registration as an Audiologist pursued.

[6] The Applicant seeks an order from this review panel directing the College to register her as an Audiologist pursuant to section 50.54 (9)(b) of the Act. She asserts that her training and experience are more than sufficient and that, had she applied within the deadline, she would have easily qualified under grand-parenting provisions contained in the College’s bylaws. The Applicant points to her record of conduct when she was a registered member of the Board of Hearing Aid Dealers and Consultants of BC, her work and teaching experience, her up to date education and the fact that she became a member of CASPLA prior to the existence of the now required clinical certification examination.

[7] The College does not appear to dispute the Applicant’s prior training and experience but asserts that the grand-parenting provisions in its bylaws were for a transitional period ending on October 1, 2010. From that date forward the College asserts it has no discretion to waive the requirements set out in its bylaws and that the examination process is compulsory for all new applicants. The reason given for this grand-parenting provision was that the profession of audiology was unregulated in British Columbia prior to April 1, 2010. Further, the transitional provisions set out in the bylaws were expressly limited to a short period of time and admission of members after the October, 1 2010 deadline was expressly prohibited save and except through the completion of the certification exam set out in the bylaws.

II JURISDICTIONAL ISSUES

[8] Pursuant to Section 50.54(9) of the Act, a Review Board is limited to making one of three decisions:

(a) It can confirm the registration decision of the College;

(b) It can direct the registration committee to make a decision that could have been made by the registration committee in the matter; or

(c) It can send the matter back to the registration committee for reconsideration with directions.

[9] While the review board has the power to direct the registration committee to grant registration, with or without limit or conditions, or certification as the case may be, section 50.54(10)(a) of the Act directs that the review board must be satisfied that all of the following apply:

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

(2) 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.

(3) The conditions described in subsection (11) (a) or (b) of Section 50.54 are met.

[10] For the purpose of this decision, the relevant section is 50.54(11)(a) which requires that the person’s knowledge, skills and abilities must be substantially equivalent to those already registered in the same category with the College and the applicant must meet any other conditions or requirements for registration in the class of registrants.

III ANALYSIS

[11] There is no real debate in the record regarding the Applicant’s training and abilities relative to those already admitted to the College. There is no suggestion by the College that the Applicant’s skills fail to meet the threshold requirements for admission. For the purposes of this decision I am satisfied that the Applicant meets the requirements of section 50.54(11)(a) of the Act.

[12] Likewise, there is also no real debate in the record that the Applicant was made aware of the new registration provisions and she indicates that, as she was teaching out of the province, she felt she had no need at the time to register with the College and take advantage of the grand-parenting provisions.

[13] The College has indicated that it will permit the Applicant admission on a provisional status or “conditional active member” that would allow her to practice as an Audiologist while she completed her registration requirements including the successful completion of a certification examination.

[14] The only real issue is whether or not the Applicant should be required to complete the qualification requirements including a certification exam as a condition of admission to the College as a fully qualified Audiologist.

[15] In Decision No. 2010-HPA-079(a) the Review Board considered similar provisions for registration contained in the bylaws of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia. At paragraph [23] the Review Board determined that the bylaws permitted provisional registration based on experience and qualifications but gave no discretion for the exemption from a certification exam. It upheld the College’s decision to require the Applicant to successfully complete this examination requirement.

[16] In Decision No. 2009-HPA-0033(a) the Review Board, at paragraph [68] made it clear that it is in the public interest for colleges to treat their members fairly by providing them with timely and correct information regarding registration and other requirements of a college including changes to the requirements for registration which a college intends to make. In this case the applicant had maintained her membership and completed the required continuing education courses during a three year period she had taken away from the profession for the purposes of having a child. The record was clear that the applicant in this case was in steady communication with the college as to the requirements of maintaining her membership and met all the qualification
requirements that were communicated to her. In the time the applicant was away from her practice, the College of Chiropractors of British Columbia changed its qualification rules without communicating these changes to the applicant. The Review Board held that this treatment was unfair and directed the college to consider the applicant’s education and experience as equivalent to successful completion of a certification examination. However, the record also indicated that the applicant in this case had completed a certification examination as a condition to her initial admission to the college.

[17] Were the Applicant not informed of the new registration requirements, this would be a significant factor in determining whether or not she was being treated fairly by the College. Likewise, had the Applicant successfully completed a certification examination with the College at an earlier time it would be a factor in considering whether or not the College was acting fairly.

[18] In this case, Audiologists were previously unregulated and the requirement of completing a certification examination is relatively new. I accept the submission of counsel for the College that the bylaw provisions are prescriptive and expressly prohibit grand-parenting of members without completing a certification examination after October 1, 2010.

[19] The requirement for all applicants to successfully complete a Canadian standard certification examination is neither unfair nor arbitrary. Its purpose is to set an objective and reliable standard for admission of applicants for membership. The Applicant was made aware of this new criterion as well as the transitional provisions related to the grandfathering of current practitioners as these new standards were established. The fact that the Applicant could have availed herself of the grand-fathering provisions had she chosen to do so is not in and of itself evidence of the Applicant being treated unfairly, arbitrarily or in bad faith by the College.

IV DECISION

[20] My review of the record causes me to conclude that the Applicant has not demonstrated that the conduct of the College meets the criteria set forth in section 50.54(10) of the Act and accordingly pursuant to section 50.54(9)(a) of the Act I confirm the registration decision of the College.

[21] 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.

“John H. O’Fee”

John H. O’Fee, Panel Chair
Health Professions Review Board

April 8, 2013