DECISION NO.  2012-HPA-149(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                        APPLICANT

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

BEFORE: Maurice Mourton, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on July 29, 2013

APPEARING: For the Applicant: Gael MacLean, Agent

For the College: Angela R. Westmacott, Counsel

I INTRODUCTION AND BACKGROUND

[1] The Applicant advises she is a doctor licenced to practice medicine for 42 years and is recognised as such in Israel, Russia, and Armenia. She is also a licenced acupuncturist in those Countries and acts as a consultant on acupuncture in Germany. She has provided substantial evidence to support these stated qualifications.

[2] She has specialised in acupuncture for 33 years.

[3] She claims in September 1998 the College, then called the Acupuncturist’s Association of British Columbia, indicated to her she would qualify as an Acupuncturist if she immigrated to Canada.

[4] On November 11, 2011 the Applicant wrote to the College applying for registration. The College advised her on April 19, 2012 she would need to make a formal application and successfully complete a competency examination to qualify for registration with their College as the grandfathering section of the College’s registration bylaws had been repealed June 20, 2001.


[6] She has not made a formal completed application for registration to the College as they have indicated they remain of the view that she has to successfully complete
the examinations required by the Registration Committee, which she is not prepared to do.

[7] The Applicant in her letter of July 7, 2012 requests she be granted full licensure as an acupuncturist with the College. She also requests a substantial equivalence examination given by someone qualified at the College who recognises the advance methodology of acupuncture in which she is a specialist.

II JURISDICTIONAL ISSUES

[8] Pursuant to Section 50.54(9) of the Act, the 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 to make such a direction 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 the act into account
(3) The conditions described in subsection (11) (a) or (b) of Section 50.54 are met.

[10] While I am considering the matter bearing in mind the above criteria, I am also allowing far more latitude than required by the Act, as technically an application has not been formally made for registration pursuant to s.48(1) of the College Bylaws, as the Applicant is not prepared to sit a qualifying examination as prescribed by the College. The matter has however been considered by the Registration Committee without a fully completed application and they have ruled the examination is required. On this basis the Review Board has jurisdiction to entertain the Applicant’s application for review.

III ANALYSIS

[11] This is a long outstanding issue, dating back to 1998, when the Applicant was allegedly given assurance by someone at the Acupuncture College of the day that she
would qualify as an Acupuncturist without further examination if she was to immigrate to Canada.

[12] By the time she came to Canada the College in its current form had been established and any grandfathering provisions had been eliminated. Also there is no record in the College files of any such assurance or commitment.

[13] The Applicant has had numerous communications with the Registrar or her staff at the College who offered on more than one occasion to meet with her and guide her through the application process, however always indicating she will have to sit the competency examination required of all out of country applicants as required in their bylaws.

[14] While the Applicant is trained and qualified in the “classical method, the electro method and the medical acupuncture method” she has not been trained or otherwise qualified in the Traditional Chinese Medicine method of acupuncture, (which she appears to feel is less than the best method).

[15] Section 48(4) of the College bylaws provides discretion to consider whether an applicant’s 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) which govern formal education training. However, it does not give the Registration Committee the power to waive the requirement under subsection 1(b) to successfully complete the examinations required by the Examination Committee.

[16] The College does not have the regulatory authority to grant registration to persons from outside Canada who do not pass the Traditional Chinese Medicine competency examination. It is after all the regulator of Traditional Chinese Medicine and Acupuncture, and while other methodologies may well have internationally recognised merit it is not their mandate to regulate such methodologies.

[17] I am advised other Colleges such as the College of Physicians and Surgeons can provide competency requirements that their registrants must meet to practice acupuncture, but that is not the issue on which I have to rule. (Although if the Applicant is a medical doctor whose qualifications meet the British Columbia standards to practice medicine that avenue could potentially be explored).

[18] Contrary to some statements made in the Applicant’s letters that the examination is in Chinese, in fact it can be in English, and as the Applicant qualified according to the record in this matter as a Doctor of Traditional Chinese Medicine (“TCM”) in 1980, and has extensive experience in acupuncture, that minimal training might well enable her to qualify with the College if she wished, by sitting the examination.

IV DECISION

[19] My review of the record causes me to conclude the College has acted in good faith, has offered assistance in the process, and the Registration Committee has ruled in an appropriate manner. While this is a preliminary as opposed to a final registration decision, as no formal application has been completed, I concur in the actions of the College on the record.
If the Applicant remains dissatisfied she may well wish to take up the matter of the registration difficulty for non TCM approved acupuncturists with the Ministry of Health.

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.

“Maurice Mourton”

Maurice Mourton, Panel Chair
Health Professions Review Board

September 10, 2013