DECISION NO. 2012-HPA-184(a)

In the matter of an application under section 50.6 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, (the “Act”) for review of a complaint disposition made by an inquiry committee

BETWEEN: The Complainant

AND: The College of Physicians and Surgeons of BC

AND: A Physician

BEFORE: Michael J. Morris, Panel Chair

DATE: Conducted by way of written submissions concluding on October 9, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

EXTENSION OF TIME DECISION

I DECISION

[1] The Complainant’s application pursuant to s.50.61(4) of the Act to extend the time for filing an application for review is denied and her Application for Review is refused.

II BACKGROUND

[2] The Complainant had eye surgery performed by the Registrant. She later complained to the College that her eyes ache and strain, and that prior to surgery she had not been fully informed by the Registrant of the possible negative effects of the surgery.

[3] The College conducted their investigation into the matter and provided their letter of disposition dated June 18, 2012 to the Complainant. The Complainant, in her application for review received by the Review Board on September 11, 2012, acknowledged receiving the disposition in “late June”, 2012.
[4] By letter dated September 24, 2012 the Review Board informed the Complainant that her application had not been received within the statutory 30 day limit and that she was required to request an extension of time to file her application by delivering a written request explaining the reasons why the application was not received within the required time.

[5] On October 17, 2012 the Review Board received the Complainant’s request for an extension of time. The only argument the Complainant presented in support of her request was that the College did not adhere to the original time line they had first provided to her for their investigation to be completed, and thus, because they were late in providing their disposition, she was late in providing the application for review. I note that the Complainant provided her initial letter of complaint to the College on June 29, 2011 and the disposition letter was dated June 18, 2012.

[6] The College and the Registrant both oppose the request for an extension of time arguing the Complainant has failed to establish that sufficient special circumstances exist to warrant acceptance of her review application.

III RELEVANT LEGISLATION

[7] The relevant provisions of the Act related to this issue are as follows:

Procedural requirements – application for review

50.61 (4) On application, the review board may extend the time for filing an application for review under this Part, even if the time for filing an application has expired, if the review board is satisfied that special circumstances exist.

IV ISSUE

[8] The issue to be determined in this matter is whether special circumstances exist and, if so, whether the time to make an application for review should be extended and the application accepted for review.

V DISCUSSION AND ANALYSIS

[9] In her application for review, the Complainant states that she was notified by the College that they would try to conclude their investigation by December 26, 2011, and if not, by March 10, 2012. The investigation was delayed resulting in the final disposition being rendered on June 18, 2012. The Complainant argues that had the original dates been met, she could have submitted her application for review in a timely manner. In support of her argument, she states that “a couple of days” after receiving the final disposition, she left the province until the end of July, 2012. Upon returning home, she was unable to respond to the disposition as she had company for a further 10 days. Once her company had left, the Complainant advises that she contacted the College for further information. By the time she received the information, she was again out of town and could not deal with the application for review until her return home.

[10] The fact the investigation was prolonged beyond the original date first offered by the College has no connection to the Complainant’s statutory requirement to submit her application for review within 30 days of receiving the College’s disposition. For complainants who are concerned that a College has failed to comply with statutory time
limits to complete an investigation, there is a separate process under section 50.57 of the Act by which a complainant may apply to the Review Board for review of a delayed investigation.

[11] The Review Board has the discretion to extend the time for filing an application for review if it is satisfied that special circumstances exist. During my review of this matter, it became apparent that the Complainant may not have been provided with all the information she needed to make a fully informed application for an extension of time. On January 29, 2013 I provided the Complainant with a letter outlining the points I needed her to cover to satisfy the criteria for special circumstances. On February 7, 2013 the Complainant contacted the Review Board and advised that she would not be making any further submissions with respect to the extension of time application.

[12] Previous Review Board decisions have provided guidance with respect to extension of time applications. Review Board Decision No. 2009-HPA-0001(a) – 0004(a) at paragraphs [55]-[56] states that:

[55] The reference to “special circumstances” reflects that generally speaking, parties are entitled to the finality and certainty of knowing they can get on with their lives if a challenge has not been filed within stated statutory time limits. At the same time, the phrase also acknowledges that circumstances do arise where it would be unjust not to extend the time. While the circumstances of each case are different, the law has over time identified several factors that are properly taken into account in determining whether to extend the time to appeal. Those factors were described this way in the British Columbia Court of Appeal’s recent decision in Clock Holdings Ltd. v. Braich Estate, [2009] B.C.J. No. 2464 (C.A.) at paras. 15 and 24:

On an application to extend the time for taking a step necessary in the prosecution of an appeal, the following questions, with the necessary modifications, will generally be considered: (1) was there a bona fide intention to appeal? (2) when were the respondents informed of the intention? (3) would the respondents be unduly prejudiced by an extension? (4) is there merit in the appeal? (5) is it in the interest of justice that an extension be granted? The fifth question is the most important as it encompasses the other four questions and states the decisive question...

[56] In our opinion, these factors are properly adopted by the Review Board in determining whether special circumstances exist to warrant extending the time to file an application for review. They provide a useful and time-tested structure for deciding such applications, while emphasizing at the same time that each case must be decided on its facts. Focused as they are on the interests of justice, these factors cannot be applied mechanistically, and in some cases one or more of the factors may be conclusive. The onus is on the person asserting special circumstances to satisfy the Review Board that such circumstances exist.

[13] These same factors were also identified in Review Board decision 2009-HPA-0006(a) where at paragraphs [32] and [33]:

[32] What factors should be considered on an application for an extension of time to appeal when determining whether special circumstances exists were described by Craig J.A. in Flair Construction Ltd. (Trustee of) v. Bank of Montreal [1981]B.C.J. 914 at page 2, as follows:
“The governing principle upon which this Court acts on applications to extend time for doing an act is that the applicant must establish special circumstances. I think that the same principle governs an application under s.s. 49(1) of the Bankruptcy Rules. In considering whether there are special circumstances, this Court has always considered such factors as whether (1) the applicant had a bona fide intention to appeal before the expiration date appeal period, (2) he informed the respondent, either expressly or impliedly, of his intention, (3) the respondent would be unduly prejudiced by an extension of time, (4) there is merit in the appeal in the sense that there is a reasonably arguable ground, (5) it is in the interest of justice, i.e., the interest of the parties, that an extension be granted. How much weight will be given to any of these factors in determining whether there are special circumstances will depend on the circumstances of each case.”

[33] This Panel is of the view that factors such as those described by Craig J.A., quoted above, should be considered when determining whether special circumstances exist on an application pursuant to section 50.61 of the Act with such modifications as are necessary to make them relevant to an application for review before the Review Board.

[14] The reasons the Complainant provided for not submitting her application within the statutory 30 day period appear to be mere issues of inconvenience rather than special circumstances. The Complainant did not provide any explanations for the five requirements necessary to determine that special circumstances existed, and I find no evidence I can use to support her request for an extension based upon the facts presented to me.

VI CONCLUSION

[15] In making this decision I have considered all of the information and submissions before me, whether or not specifically reiterated herein

[16] For all the reasons set out above, I find the Complainant’s application for an extension of time did not provide sufficient evidence to satisfy any of the five factors necessary to determine if special circumstances exist. An extension of time will not be granted and the application for review is denied.

“Michael J. Morris”

Michael J. Morris, Panel Chair
Health Professions Review Board

April 5, 2013