DECISION NO.  2014-HPA-187(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 Dental Technicians of BC COLLEGE

BEFORE: David A. Hobbs, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on May 6, 2015

APPEARING: For the Applicant: In Person

For the College: Registrar

DECISION ON A REGISTRATION MATTER

I  INTRODUCTION

[1] The Applicant seeks review by the Review Board of a decision of the Review Panel dated December 4, 2014, upholding the fail mark the Applicant received for an assignment being part of the practical component of the Registration Examination. As a result the Applicant did not meet the requirements for registration as a dental technician.

II  BACKGROUND

[2] The Applicant submitted his application for registration as a dental technician to the College on January 30, 2014 (the “Form”).

[3] To be eligible for registration applicants must provide evidence they have, among other things, satisfied certain “training and education/experience” requirements as noted on the Form.

[4] The Applicant indicated on his Form he had a German educational background and had received diplomas or certificates as a German Dental Technician (attended 1993 to 1997) and Master School of Dental Technicians (attended 1998 to 2002).
The Applicant submitted, with the Form and other materials, three very positive letters of reference attesting to his competence as a dental technician based on work performed.

On January 31, 2014, the College acknowledged receipt of the Form but, advised the Applicant it was missing a Comprehensive Evaluation Report and a Supplemental Report from ICES (International Credential Evaluation Service) (the “ICES Report”).

As the Applicant’s German school had closed he could not provide certain official educational documentation needed for the ICES Report. In the circumstances the members of the Registration Committee resolved on April 16, 2014, to accept the Applicant’s submitted proof of education, noting that the examination process would adequately test the Applicant’s knowledge, skills and abilities.

On April 28, 2014, the Applicant submitted his Theory Exam Scheduling Form and paid $340.00 to take the Jurisprudence and Competency exams. The two exams were scheduled on May 16, 2014.

The Applicant successfully completed the Jurisprudence (67%) and Competency (66%) and was notified by letter dated May 23, 2014, of his eligibility to sit the practical examinations.

The Applicant submitted his Practical Examination Scheduling Form on June 11, 2014, and paid $850.00 (the “Practical Exam”).

The Practical Exam consists of six assignments: complete dentures; crown & bridge; ceramics; orthodontics (removable); orthodontics (fixed); and cast partial dentures.

The Applicant completed the Practical Exam during August 18 to 22, 2014. The Applicant failed the sixth Assignment: cast partial dentures.

I note during the sixth assignment the Applicant damaged his refractory model and it broke on August 20, 2014. On August 21, 2014, the Applicant complained there was some dirt or debris in the dipping liquid for the refractory models. It was suggested the debris might be from the breakage incident the day before.

In the Applicant’s Comment Sheet dated August 21, 2014, he stated “I did everything as instructed by (name), instructors”.

There were two examiners marking the Applicant for the failed assignment and the mark given was the average of the two marks. The Applicant received two marks and an average mark for each of 26 criteria. On the sixth assignment one examiner gave total marks of 61% and the other 57.25%, the average being 59.1%.

By letter dated October 7, 2014, the College advised the Applicant of his marks achieved in each of the six assignments. The Applicant was required to score 65% or
better on each assignment to pass. The Applicant passed each assignment save the cast partial dentures where he scored 59.1%.

[17] The College advised the Applicant that to continue with the registration process he would have to re-sit “these exams and obtain a passing mark of 65% or better on each failed examination”.

[18] As permitted by s. 34 (7) of the Bylaws, by letter dated October 22, 2014, the Applicant requested from the College’s Review Panel a review of the failed assignment.

[19] In the Applicant’s October 22 letter seeking review he explained:

As I had to redo the duplicate refractory cast, the Master cast had gotten wetted which is why it wouldn’t allow to mark as clearly as originally possible. It was faded through the duplication process and remarked as best as it was possible. The blue, red and charcoal lines were indeed recognizable. The refractory model hardener was not filled and to be able to cover the whole model I had to lift the container, which brought debris all over the model and stained it unfavorably. I asked if I had to redo it and got the answer that it would be fine. These happenings were stated in my daily exam comments, where I explained what occurred.

[20] The Review Panel considered a memo from the Registrar and attached materials including the Applicant’s letter, Exam Invigilator’s notes, Candidate comment sheets, marks, and marking criteria at their exam Review Panel meeting held November 19, 2014.

[21] The Review Panel was sympathetic to the Applicant having experienced difficulties but noted: there was some visible debris on the refractory model; the master model did not clearly show certain lines, points and design as required in the exam directions; the comments of the examiners were consistent with their written comments and the marks granted; there was no correlation between the marks achieved for the Master Cast and the Refractory Wax Up as they are two separate aspects of the assignment; there was no evidence of bias, extreme anomaly or compelling indication that written standards were not adhered to; and all examination candidates were subject to the same conditions. The Registrar writing for the Review Panel gave the Applicant a letter dated December 4, 2014, explaining the reasons for the Review Panel’s decision to uphold the failed mark for the one assignment (the “Decision”).

[22] The Applicant filed an Application for Review of the Decision. The Applicant asks the Review Board to add 5.9% to his mark of 59.1% on the failed assignment to bring it up to the required 65% or better.

[23] In his application the Applicant points to what he describes as irregularities in the marking process and examination process.

[24] On February 26, 2015, I directed and the College supplemented the Record produced with the Practical Examinations Directions and Marking Criteria.
On March 26, 2015, the Applicant submitted to the Review Board his Statement of Points. The Applicant explains in his Statement of Points how he came to break his model when he was shaking the model side to side to cover it with liquid a second time. The Applicant says the amount of liquid was inadequate hence the need to shake the model in the liquid to achieve full cover.

The Applicant submits that whereas written examination instructions specify candidates must supply the refractory model material, the Invigilator influenced him to use not the material he brought but, different material that was supplied at the examination. The Applicant says "he strayed from my known materials and followed the verbal instructions provided by the instructors". The Applicant says each manufacturer’s materials have their own procedures to follow. This, says the Applicant, became a house of cards leading to insufficient liquid and debris, shaking to cover and breakage, all impacting the master model and a failed mark on his assignment. The Applicant points to other irregularities in his Statement of Points.

The Applicant says in his Statement of Points that he was asked by the Registrar if he wished to address the Review Panel before the Decision but, was advised by the Registrar there was a good chance he would be awarded his missing marks. The Applicant says he was told he would only need to speak to the Review Panel “if things go south”.

The Applicant says that when he learned the Review Panel had upheld the fail mark he spoke to the Registrar and was told “they didn’t want to talk to me”.

The Applicant notes the mark differences between the first examiner and the second examiner on criteria 2, 6, 8, 9, 10, 17, 18, and 27 would lead to an additional 8.22% if the higher marks were applied rather than the average mark. He notes the marking inconsistency between the two examiners.

The College’s Practical Examination Guide states on page 5 under the section 9. Materials and Equipment:

Candidate to Bring

Candidates must bring the materials, supplies, and instruments they prefer or are accustomed to in order to complete their exam assignments. Such items include, but are not limited to:

Die hardener / Sealer

Note: Candidates are advised to be as self-sufficient as possible, both in materials and equipment...

On April 21, 2015, the College provided its Statement of Points.

The Record indicates the Exam Coordinator, one of two Exam Invigilators and the College Registrar are the same person. There was one other Exam Invigilator and
a third person who is said to be present at the practical examination of the Applicant “only as a representative of...[the] College to ensure safety regulation and WCB requirements are being observed and to ensure the safe operation of...any equipment...”. The third party appears to be the person the Applicant calls an Invigilator in his application for review to the Review Panel.

[33] The College criticizes the Applicant for seeking advice during the exam from the third party.

[34] The College in its Statement of Points says:

(The Applicant) alone is responsible for the decision to use something other than the material he was instructed to bring and had planned to use and any problems that occurred and the outcome resulting from that decision.

[35] The College provided with its Statements of Points an additional document being the 2014 Exam Orientation Session Introduction (the “Intro”).

[36] I note the Intro states:

(The third party) will have some further introductory comments on the use of the facilities and provide some demonstration of the equipment operation a little later on...

Ensure candidates understand that they come to me (the Registrar) or (other Exam Coordinator) with all concerns, questions or any situations related to the administration of the exams...

Remind the candidates that the exam administration staff do not mark the exams so please don’t ask for comments, advice or opinions from us...

Follow direction from exam staff – it is for the benefit and safety of everyone.

(The third party) will assign equipment to those that need it.

Advise candidates that when the model has been confirmed as O.K...they are then responsible for damage that occurs. Candidates should not expect replacement models once the exam begins.

[37] The Applicant filed his Reply to the College’s Statement of Points on May 6, 2015. In his Reply the Applicant says:

(a) the Registrar/Exam Coordinator was not at the exam when the Applicant’s mishap occurred;
(b) the advice given by the third party to the Applicant was volunteered to the Applicant by the third party;
(c) the Exam Coordinator and third party did not follow the examination protocol and interfered by offering advice
(d) both the Exam Coordinator and third party refused to be witnesses for the Applicant; and

(e) the College in its Statement of Points, offers no explanation as to why one examiner gives a 100% mark and another examiner 25% on the same criteria; and

(f) the Intro is not provided to candidates.

III DISCUSSION/ANALYSIS

[38] On an application for review of a registration decision the Review Board must under s. 50.54(6) and (7) of the Act conduct a review of the registration decision as a review on the Record.

[39] Under s. 50.54(8) of the Act the Review Board may hear evidence that is not part of the Record as reasonably required for a full and fair disclosure of all matters relating to the issues under review.

[40] Under s. 50.54(9) of the Act, upon completion of its review, 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 for reconsideration with directions.

[41] Under s. 16 of the Act, the statutory duty of the College, in part, is to protect the public. A statutory object of the College is to establish the conditions or requirements for registration of a person as a member of the College.

[42] Consistent with its duties and objects, under s. 19 of the Act, the board of the College may make bylaws it considers necessary or advisable, including bylaws described in s. 19 of the Act.

[43] Section 20(1) of the Act prescribes that the Registration Committee is responsible for granting registration of a person as a member of the College.

[44] The letter of the Review Panel dated December 4, 2014, advises the Applicant, “I write to inform you of the results of the review of your Assignment “F” conducted by the Review Panel during its meeting of November 19, 2014.” This is consistent with Bylaw 34(8) which states, “On receipt of a request for a review under subsection (7) the Registration Committee must

(a) appoint a panel to review the applicant’s examination, and

(b) advise the applicant in writing of the results.”
The December 4 letter concludes by stating the Review Panel’s review was a registration decision that the Applicant could seek review of by the Review Board.

The Review Panel derives its power and authority from the Registration Committee and the only power granted to the Review Panel was a power to review, not a power to issue a registration decision which power is prescribed by s. 20 of the Act to a different body being the Registration Committee.

I do not think the Registration Committee may lawfully delegate the power to grant or deny registration to a committee or panel. In my view the Review Panel in this instance may advise the Applicant and Registration Committee of the results of its review and, nothing more, consistent with its delegated power. The matter of registration granting or denial is left to the Registration Committee as the proper body to make that decision.

I note that s. 19 of the Act includes bylaw s. 19(1)(m.4) wherein the Registration Committee has discretion to grant registration on a substantial equivalency basis but, there is no evidence before me that the College has such a bylaw. It would be unfortunate if the Registration Committee were inclined to exercise its discretion to grant the Applicant registration, but had no power under the College’s bylaws to exercise such discretion. I do not have a full set of the bylaws of the College.

Reviewing the evidence of the practical examination as a whole I am not satisfied regarding certain aspects of the investigation of the evidence. The evidence does not seem to have been fully and properly investigated by the Review Panel before reporting the results of the review to the Registration Committee. For example:

(a) the Registrar, other Exam Coordinator and third party were all witnesses to the practical examination process and dealings with the Applicant yet there is no evidence in the Record these witnesses were properly or independently interviewed and their full evidence assessed and considered by the Review Panel before completing its review;

(b) the acts and omissions of the third party are of particular importance as on the one hand he is said to have volunteered advice to the Applicant during the examination but, on the other hand, the Applicant is said to be instructed to not seek such advice. Query whether the third party was instructed to not give advice to candidates. I note it is said the Registrar, acting as an Examination Coordinator, was not present at the examination when the mishap regarding the model breaking occurred; and

(c) there appears to be no investigation as to why die hardener/sealer was provided to the Applicant when the examination instructions mandated and recommended the Applicant bring and use his own materials so as to be familiar with their use. There is no explanation why a situation involving insufficient die hardener/sealer was permitted to occur during the examination process. It may be proper examination protocol was not adhered to in this regard which may have created unfairness or confusion in the examination process. This will be for the Review Panel to review and report on.
[50] It is of concern that the Registrar was also acting as the Examination Coordinator. There is a possibility the Registrar would be defensive as to the proper running of the exam given he also acted as its coordinator. The Registrar is a witness and should not be involved in the investigation by the Review Panel so as to remove any possibility of conflict of interest, perceived or actual.

[51] In my view there has not yet been an adequate, independent investigation of the evidence by the Review Panel to constitute a proper review and its results should be reported to the Registration Committee for further handling within its authority and power.

IV DECISION

[52] I order that matter be sent back to the Review Panel and Registration Committee for reconsideration with directions that:

(a) a suitably qualified, independent person be appointed by the Registration Committee to review the Record, including this decision and the submissions of the parties hereto, and thereafter, interview each of the Applicant, Registrar, other Exam Coordinator, and third party and report such evidence to the Review Panel in writing within 60 days of this decision. The Review Panel may take the evidence of these witnesses in person if it so chooses. The Review Panel will then report in writing to the Applicant and Registration Committee;

(b) as soon as reasonably possible after completion of step a) above, the Registration Committee will convene, consider the Review Panel’s report and render a registration decision; and

(c) if the College seeks judicial review of this decision they may advise the Review Board and if an application for judicial review is filed in a timely manner this order shall be stayed from the date of filing of the application for judicial review pending the outcome of the application for judicial review.

[53] I have read and considered all the materials submitted by the parties though not referred to in their entirety herein.

“David A. Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board

July 20, 2015