DECISION NO.  2015-HPA-208(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 Physicians and Surgeons of BC

BEFORE: Douglas Cochran, Panel Chair

DATE: Conducted by way of written submissions concluding on June 6, 2016

APPEARING: For the Applicant: Self-represented

DECISION ON APPLICATION FOR REVIEW

I INTRODUCTION

[1] The Applicant is an anesthesiologist currently practicing in another country. He seeks registration with the College with a specialty in anesthesiology.

II BACKGROUND

[2] The Applicant was previously registered with the College and worked in the Anesthesia Department in a B.C. Hospital on a provisional classification from 2004 to 2010. Prior to that, the Applicant practiced anesthesiology in the other country from 1995 to 2000 before taking a position in another Canadian province from 2000 to 2004. Pursuant to the governing bylaws of the College, the policy on provisional class employment is that a doctor may work in British Columbia under this classification for a maximum of five years. Successful completion of the Royal College of Physicians and Surgeons of Canada, (the “RCPSC”) certification examinations is a requirement of full specialty class registration. The Applicant registered for and wrote the RCPSC certification examinations in 2009. He was unsuccessful in this one attempt at the certification examination and has not attempted the examination since, as he returned to the other country due to family matters and has been practicing as an anesthesiologist there.
[3] The Applicant applied for registration with the College and by Disposition Letter dated October 14, 2015, the College declined to grant registration.

[4] The Applicant’s application for review by the Review Board in relation to the denial of his registration application by the College was received on October 27, 2015.

III DISCUSSION AND ANALYSIS

[5] The role of the Review Board on an application for review of a registration decision is set out in s.50.54 of the Act. The Review Board’s remedial jurisdiction is set out in s.50.54 (9) as follows:

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.

[6] Subsections 19(1)(m) to (m.4) of the Act in relation to a board of a college state as follows:

A board may make bylaws, consistent with the duties and objects of a college under s.16 that it considers necessary or advisable, including bylaws to do the following:

.....
(m) establish conditions or requirements for the registration of a person as a member of the college, including the following:

(i) standards of academic or technical achievement;
(ii) competencies or other qualifications;
(iii) requirements for providing evidence of good character;

(m.1) specify academic or technical programs that are recognized by the college as meeting a standard established under paragraph (m)(i);

(m.2) provide for the examinations that may be required, used or relied on by the registration committee in satisfying itself under s.20 that a person meets the conditions or requirements for registration as a member of the college;

(m.3) establish conditions or requirements for eligibility to take examinations referred to in paragraph (m.2) and procedures respecting the conduct of examinations, and authorize a committee established under paragraph (t) or the registrar to establish additional examination procedures consistent with the bylaws;
(m.4) confer discretion on the registration committee, in satisfying itself under section 20, that a person meets the conditions or requirements for registration as a member of the college, to consider whether the person’s knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established under paragraph (m), and to grant registration on that basis;  

[7] As part of the duty of the College to serve and protect the public it has the obligation to set conditions or requirements for registration of a person as a member of the College. This duty and objective is set out in s.16(1) and (2) of the Act.

[8] Sections 2-14(11) and (12) of the College’s Bylaws state;

(11) A specialist granted provisional registration must,

(a) within one year of commencing practice in British Columbia, submit an application and appropriate documentation of his or her postgraduate training for an assessment of his or her eligibility to sit the examinations of the RCPSC or access PER [“Practice Eligibility Route”],

(b) within one year of commencing practice in British Columbia, confirm the route chosen to RCPSC certification through the provision of an undertaking, in a form satisfactory to the registration committee, and

(c) within the period designated by the RCPSC, obtain the RCPSC certification in his or her specialty, failing which registration is cancelled unless extended by the registration committee in exceptional circumstances.

(12) In section 2-14, exceptional circumstances includes the unavailability of PER in a particular specialty, in which case the registration committee may extend registration as required to permit the specialist, following two years of practice in British Columbia under supervision, to undergo an assessment of competency satisfactory to the registration committee.

[9] In reviewing a decision to decline to register an Applicant, I must extend deference to the College in its determination of appropriate examination requirements for registration as a member of the College. It is not my role to substitute my opinions for those of the College. The legislators have empowered the College to make bylaws regarding registration or re-registration of applicants. The College has concluded that the applicant does not qualify for a further provisional registration notwithstanding having worked in a B.C. Hospital in that capacity from 2004-2010.
[10] As a remedy I cannot consider granting registration, as the Applicant has not met the requirement for registration, including having written and passed the RCPSC Examination. The only remedial jurisdiction I might exercise is to send the matters back to the Registration Committee for reconsideration with directions.

[11] I do not see any evidence in the record of investigation provided by the College (the “Record”) of unfairness, bad faith, improper purpose or of the decision makers taking into account entirely or predominantly irrelevant factors. The policy that an applicant is only eligible for one provisional registration term of five years is a reasonable provision to protect the public and I have no jurisdiction to change this requirement. While there is provision to extend the provisional period in exceptional circumstances and the Applicant makes a sympathetic argument, it is not for me to decide what constitutes exceptional in a specialized regulatory environment. It is the College’s statutory duty to establish academic standards, which it concludes are necessary for protection of the public and to apply them in a fair and reasonable manner, when an applicant seeks registration.

[12] I have concluded that the Decision meets the justifiable, transparent and intelligible test of reasonableness as set out in Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190 as it recognizes the circumstances relating to the Applicant and applies the facts to the criteria, which the College has established in a clear and rational manner.

IV CONCLUSION

[13] I confirm the Decision to decline the registration application of the Applicant.

[14] I have considered the Record and the submissions of the parties though not referred to in their entirety herein.

“Douglas S. Cochran”

Douglas Cochran, Panel Chair
Health Professions Review Board

July 22, 2016