Health Professions Review Board  
Suite 900, 747 Fort Street, Victoria, BC V8W 3E9

Applicant v. The College of Physicians and Surgeons of British Columbia

DECISION NO. 2016-HPA-032(a)

October 26, 2016

In the matter of an application (the “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 made by registration committee

BETWEEN:  
The Applicant  

AND:  
The College of Physicians and Surgeons of British Columbia

BEFORE:  
David A. Hobbs, Panel Chair

DATE:  
Conducted by way of written submissions closing on October 10, 2016

APPEARING: For the Applicant: Self-Represented

DECISION ON APPLICATION FOR REVIEW

I STAGE 1 OR STAGE 2

[1] This application has been referred to a Stage 1 hearing. At this stage the following results are possible:

(a) I may confirm the Registration Committee dispositions under section 50.54(9)(a) of the Act if the application for review can be fairly, properly and finally adjudicated on the merits without the need for submissions from the College; or

(b) I may determine that the application requires adjudication after a Stage 2 hearing, in which case no decision will be made until submissions from the College, and further, reply submissions from the Applicant have been provided.

[2] I have concluded it is appropriate to proceed by way of a Stage 1 hearing and accordingly, this review of the Registration Committee’s dispositions is based solely on the Record of investigation provided by the College (the “Record”) and submissions of the Applicant.
II INTRODUCTION

[3] The Applicant applies for review of two decisions of the Registration Committee imposing conditions on his eligibility to be registered and licensed under the Educational-clinical trainee class and denying his eligibility to be registered and licensed under the Provisional class.

III BACKGROUND


[5] The College wrote the supervising physician on December 6, 2011, and advised the College was prepared to grant the Applicant “temporary registration for educational purposes.” The December 6, 2011, letter sets out various requirements the Applicant had to satisfy including producing certain documents, obtaining insurance and demonstrating an ability to meet the English language proficiency requirements.

[6] On December 12, 2011, the Applicant completed and signed a form to apply to the College for educational registration as a clinical trainee. The Applicant indicated on the form his purpose in applying for educational registration was “enhancing clinical experience and also preparing for residency and exams.” The form includes information regarding the Applicant’s personal data, English proficiency, Medical Council of Canada examination status, licensing status, postgraduate training, certifications, previous practical experience, current activity, historical licensing and an authorization for the College to make inquiries.

[7] All necessary steps were taken and the Applicant was issued a Certificate of Licensure Educational-clinical trainee subject to the following limits and conditions: as a clinical trainee in Family Medicine at (address) under the supervision of (name of supervising physician) valid from January 1, 2012, to December 31, 2012 (“License 1”).

[8] With a letter of approval from the department head of hospitalists dated January 17, 2012, the Applicant’s License 1 was amended to state its limits and conditions were: as a clinical trainee in the hospitalists’ department of (hospital name) under the supervision of (name of a different supervising physician) valid from January 19, 2012, to December 31, 2012. (“License 2”).

[9] License 2 was deactivated by the College on February 25, 2012, as the supervising physician notified the College that the commitment to supervise ended on February 24, 2012. The College invited the Applicant to get a new supervisor to fill out the CTA.

Licenses 1 through 4 did not permit the Applicant to practice medicine independently. On September 5, 2012, the Applicant expressed financial concerns and asked the College to provide a license sufficient for “training and financial survival.”

By letter dated September 21, 2012, the College advised the Applicant that as he had not completed an accredited and approved postgraduate training program in either family practice or a speciality which would be recognized by either the College of Family Physicians of Canada (“CFPC”) or the Royal College of Physicians and Surgeons of Canada (“RCPSC”) he was not eligible for any class of independent medical practice. The College cited its bylaw revised January 1, 2012, Provisional – general/ family 2-15 in the letter setting out the mandatory requirements for granting of Provisional registration.

The Applicant extended his CTA with the supervising physician and approval of the interim chief of the hospital to June 30, 2013.

The College issued the Applicant a Certificate of Licensure with limits and conditions as a clinical trainee in Family Medicine at (hospital name) under the supervision of (the supervising physician in License 4) and (name of a second supervising physician) valid from February 1, 2013, to June 30, 2013 (License 5”).

Around March 2013 the Applicant wrote an examination, the results of which impacted whether the Applicant would be considered for a clinical assessment program. The Applicant scored 53 and the minimum acceptable score on the examination for entry into the program was 65. The College had no jurisdiction over the program which was funded by the Ministry of Health. Given his score the Applicant was advised he was not considered for the clinical assessment program.

The Applicant entered a new CTA with a new supervising physician on July 23, 2013. The College issued the Applicant a Certificate of Licensure Educational – clinical trainee with limits and conditions: as a clinical trainee in Family Medicine at (name of medical clinic) under the supervision of (name of supervising physician) valid from July 26, 2013, to September 30, 2013 (“License 6”).

The Applicant entered new CTAs with new supervising physicians on October 8, 2013, and February 8, 2014, obtaining Certificates of Licensure valid to June 30, 2014 (“Licenses 7 and 8”).

In March 2014 the Applicant applied for a position as a physician at a fully staffed turn-key medical clinic in a rural town in British Columbia and was advised he needed to be licensed for independent practice. Licenses 1-8 expressly state on the Licenses in bold letters, “This license is not an entitlement to independent practice.”
The Applicant forwarded the negative reply he had received to his application for a position as a physician to the College by email dated March 6, 2014.

By email dated March 6, 2014, the College reminded the Applicant of the content of its September 21, 2012, letter and stated that as the Applicant did not meet the requirements for either the Full or Provisional classes the College could not assist the Applicant to obtain registration and licensure for independent practice. The College did inform the Applicant, given he was a Canadian citizen and had achieved a pass mark in the Medical Council of Canada evaluating examination, he met some of the prerequisites to apply to an international medical graduate program affiliated with a hospital.

By email dated March 24, 2014, the Applicant detailed his education, training and experience to the College and asked that his license be “upgraded” to allow him to be paid for work.

By memorandum dated March 26, 2014, the College’s Manager of Registration expressed various detailed concerns including the Applicant’s training, examinations completed, English language proficiency, representations made to the College and practice readiness. The Manager concluded the Applicant did not meet the requirements for a Full or Provisional general / family practice class of registration. These concerns and conclusions were communicated to the Applicant in an email from the College’s Director of Registration dated March 27, 2014.

As to one of the concerns raised in the March 27, 2014, email to the Applicant from the Director of Registration, the Applicant provided copies of some missing United States Medical Licensing examination results. Around April 21, 2014 the Applicant also provided the Director of Registration with his TOEFL exam results but was advised the current College requirement on the TOEFL (Academic) was a score of 24 in each category on a single exam. The Applicant’s TOEFL scores did not meet this requirement. The TOEFL is an English language proficiency examination.

The Applicant entered a new CTA on April 24, 2014, with three new supervising physicians, subject to limits and conditions as a clinical trainee in Family Medicine at (name of clinic) under the supervision of (name of supervising physician) and as a clinical trainee in internal medicine at (name of specialty centre) under the supervision of (names of two supervising physicians) valid February 11 to June 30, 2014, respectively (“License 9”).

On May 7, 2014, one of the Applicant’s supervisors approved a written review and approval form regarding a complaint against the Applicant concerning a report prepared by the Applicant that was not dated, signed and contained many errors.

The Applicant entered a new CTA with another supervising physician and License 9 was amended to add limits and conditions: as a clinical trainee in Family Practice at (name of clinic) under supervision of (name of supervising physician) valid from August 5 to December 1, 2014 (“License 10”).
The Applicant went to the College on August 20, 2014, to discuss the requirements for Provisional registration but, the College staff members he wished to meet with were not available.

The memorandum to file prepared by a College staff person on August 20, 2014, states that the clinical trainee class is not designed to train physicians for entry into independent practice but rather to help international medical graduates become familiar with the Canadian medical system, practice environment, and English language as the primary means of communication with patients and other medical professionals.

By email dated December 23, 2014, the College informed the Applicant the maximum amount of time he could remain a clinical trainee registrant was 36 months and he was at 30 months at the end of December 2014. The College advised the Applicant he needed to pursue post graduate training and obtain an educational license, if he wished to proceed to obtain his last six months licensure as a clinical trainee and, as a first step, in either case, successfully meet the College’s English language proficiency requirements.

On January 14, 2015, the College advised the Applicant that if he wanted a one month clinical trainee license he would have to satisfy the English language proficiency requirements by undergoing certain testing and obtaining adequate scores.

By email dated January 26, 2015, the College changed its position and advised the Applicant that for the remainder of his clinical trainee time, being six months, he would not need to meet the English language proficiency requirements.

It is noted that the Applicant scored 189 on his U.S. Medical License exam and the passing grade required is 190.

The Applicant entered a new CTA with a supervising physician dated March 20, 2015, and a program medical director for a hospital provided a letter to the College approving the Applicant’s request for clinical traineeship in Obstetrics/Gynecology for the period April 1-30, 2015, under the supervision of a physician. The College issued a License to this effect (“License 11”).

The usual process ensued and the College issued the Applicant an Educational-clinical trainee license as a clinical trainee in Pediatrics at the same hospital as License 10 with a new supervising physician valid May 1-30, 2015 (“License 12”).

By email dated April 27, 2015, the Applicant continued to raise with the College the issue of obtaining a license that would permit him to do paid work such as assisting with surgery or working as a locum. The Applicant also expressed difficulty obtaining further clinical trainee arrangements.

The usual process ensued and the Applicant obtained an Educational-clinical trainee license subject to limits and conditions as a clinical trainee in Family Medicine at (name of clinic) under the supervision of (name of supervising physician) valid from August 13 to October 12, 2015 (“License 13”).
During September 2015 the Applicant had an incident with staff at a hospital and was removed from the hospital by its security staff. The hospital medical director also conveyed to the College concerns regarding the Applicant’s clinical judgment based on concerns expressed by other physicians to the medical director. This lead to the hospital terminating any privileges the Applicant had as a clinical trainee to attend at the hospital around September 4, 2015.

An earlier letter dated July 8, 2015, addressed to the Deputy Registrar had been written by a pediatric site specific educational leader of a hospital the Applicant attended as a clinical trainee expressing numerous detailed concerns about the Applicant. As of September 15, 2015, the Deputy Registrar appeared to have never seen the July 8 letter. The July 8 letter expressed many clinical concerns, professional concerns and contained addendums added September 4, 2015, and September 8, 2015, with further concerns expressed.

The Deputy Registrar, College legal counsel and the Director of Registration services met with the Applicant on September 22, 2015, at the College. At the meeting the attendees discussed information regarding the Applicant’s clinical traineeship. As the Applicant had no insurance coverage the College had no choice but to cancel the Applicant’s registration and licensure immediately. The Applicant was experiencing financial stress. The Applicant also needed to complete a criminal record check to be eligible for ongoing registration and licensure.

At the conclusion of the September 22, 2015, meeting the Applicant was advised a summary of his registration file would be presented at the Registration Committee meeting on October 22, 2015, to determine the Applicant’s eligibility for re-registration and licensing as a clinical trainee. The Applicant was informed the Registration Committee might refer his matter to the Inquiry Committee. The matters discussed are set out in a detailed Memorandum to File dated September 22, 2015, prepared by the Director, Registration services.

The Applicant completed his criminal record check and confirmed he could obtain insurance coverage submitting same to the College on October 2, 2015. The Applicant asked if he could attend for his clinical training at a medical office. The College responded on October 2, 2015, by email that the Applicant was not eligible for reactivation of his clinical trainee registration status notwithstanding the information provided. The College reiterated the matter would be considered by the Registration Committee on October 22, 2015.

The Registration Committee met on October 22, 2015, considered various documents and the historical background to the Applicant’s clinical traineeship and resolved to refer the Applicant’s registration file to the Inquiry Committee to investigate the information provided to the College regarding the Applicant’s competency, professionalism and failure to maintain insurance coverage. The Registration Committee deferred making a decision as to whether the Applicant would be eligible for registration and licensure until the Inquiry Committee matters were completed. The
Registration Committee’s decision was set out in a letter to the Applicant dated November 3, 2015.

[43] On December 11, 2015, the Applicant attended for an investigative interview at the College attended by the Director, Complaints and Practice Investigations and Senior Deputy Registrar, Complaints and Practice Investigations. The Record contains a Memorandum of the interview. The Memorandum indicates the Applicant expressed a belief he could obtain Full or Provisional licensure in B.C. without completing at least two years of accredited post graduate training contrary to the advice he had been given by the College staff in the past.

[44] The Applicant emailed the Deputy Registrar for Registrations on December 16, 2015, and stated the Senior Deputy Registrar, Complaints and Practice Investigations, advised the Applicant on December 11, 2015, there was “a possibility of remaining registered while the Inquiry Committee reviews my file.” The Memorandum of this interview suggests the Applicant was told any decision on his registration status was deferred until the Inquiry Committee matters were completed.

[45] In reply to the Applicant’s December 16, 2015, email the Deputy Registrar asked for any new information the Applicant might have and stated the matter would be reviewed again by the Registration Committee at its January 19, 2016, meeting.

[46] The Inquiry Committee sent the Applicant a copy of the Memorandum to File containing the Senior Deputy Registrar’s account of the December 11, 2015, meeting on January 6, 2016.

[47] The Registration Committee considered the Applicant’s matter at their meeting on January 19, 2016. Having reviewed related documents and the history of events the Registration Committee resolved the Applicant was eligible for re-registration and licensure in the Educational-clinical trainee class for a remaining total of 70 consecutive days, subject to the following being completed to the satisfaction of the College:

(a) The Applicant must complete his remaining time as a clinical trainee (70 days) in one continuous licensing period;

(b) The College must review any proposed supervisor and provide its approval of the supervisor;

(c) The Executive Director, Registration must speak to any potential supervisor for the Applicant to reinforce the College’s expectations of the supervisor in the Applicant’s case;

(d) Once a supervisor has been approved by the College, the Applicant must complete an interview with the Executive Director, Registration prior to registration to review the parameters of this class of registration;

(e) The Applicant must complete his remaining time in an appropriate community based practice setting approved by the College;
(f) The Applicant may not complete any of his remaining time as a clinical trainee in a hospital setting;

(g) Any and all clinical contact the Applicant has with any patients must be directly overseen by his supervising physician. The Applicant is not permitted to interact with any patients independently and without direct supervision;

(h) Prior to commencement of licensure, the Applicant must provide official documentation from the CMPA confirming his CMPA coverage;

(i) The Applicant must obtain verification of the academic credentials provided and to his compliance with the provisions of the Health Professions Act and the Bylaws under the Health Professions Act with respect to registration and submission of a current application satisfactory to the Registration Committee;

(j) The Applicant will be required to sign Undertakings committing to the above requirements prior to registration and licensure; and

(k) Following the completion of his 70 remaining consecutive days of clinical traineeship, the Applicant will not be eligible for any type of registration and licensure in British Columbia unless he completes further postgraduate training or is accepted into a Canadian residency program, as approved by the College.

[48] The decision of the Registration Committee made January 19, 2016, was communicated to the Applicant by letter dated January 27, 2016 (the “January 27 Decision”).

[49] The Applicant wrote the Review Board by letter dated February 26, 2016, asking the Review Board for “nullifications of all of the decisions and conditions imposed on my training by the Registration Committee ...” The Applicant stated in his letter “I am asking for modification of my clinical trainee license to provisional license...” The letter contains a lengthy review of the Applicant’s educational, training and work background coupled with the Applicant’s arguments to support his desired outcome that he be granted a Provisional license to independently practice.

[50] On March 3, 2016, the Applicant and three supervising physicians signed a CTA for exposure to infectious disease treatment and management at a hospital valid from March 7, 2016, for 70 days.

[51] By email dated March 4, 2016, the College reiterated to the Applicant, to be clear, that all the conditions in the January 27 Decision, in addition to the regular registration and licensure requirements, must be met prior to the College granting a license to the Applicant.

[52] By letter dated April 23, 2016, a regional department head of hospitals for a health authority advised the College that he supported the Applicant’s training experience with a modified license.
[53] The Applicant attended a Registration Committee meeting for an interview on May 24, 2016, to discuss the Applicant’s request for removal of the condition:

(the Applicant) may not complete any of his remaining time as a clinical trainee in a hospital setting.

Prior to the interview, the Applicant submitted a written submission to the Registration Committee dated May 6, 2016, supporting his position with many attachments.

[54] After the interview of the Applicant and consideration of the matter as recorded in the minutes of the meeting of the Registration Committee held May 24, 2016, the Registration Committee reaffirmed the January 27 Decision.

[55] The Registration Committee communicated its decision arising from the May 24, 2016, meeting to reaffirm the January 27 Decision by letter to the Applicant dated June 8, 2016 (“June 8 Decision”).

[56] The Inquiry Committee issued its final disposition report on June 20, 2016, and forwarded same to the Applicant by letter dated June 28, 2016 (the “IC Disposition”).

[57] In the IC Disposition the Inquiry Committee directed it was critical of the Applicant for unprofessional conduct, substandard clinical skills and contravention of College’s bylaws regarding liability insurance. The Inquiry Committee directed the Registrar staff to convey its criticisms to the Applicant via correspondence.

[58] The Registration Committee further considered the Applicant’s matter at its meeting on June 23, 2016, and wrote a letter to the Applicant dated July 21, 2016, advising the Applicant he was not eligible for registration and licensure in the Provisional class. The letter set out the relevant bylaws and missing requirements in the Applicant’s circumstances which required satisfaction for reconsideration by the Registration Committee (the “July 21 Decision”).

[59] The College and Applicant agreed by exchange of correspondence around July 2016 that the Applicant’s application for review would encompass both the January 27 Decision and July 21 Decision.

IV DISCUSSION AND ANALYSIS

[60] The Review Board’s mandate to review Registration Committee decisions is governed and limited by s.50.54(9) of the Act. On completion of the 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 to the registration committee for reconsideration with directions.
My mandate in this application is to determine whether the January 27 and July 21 Decisions were reasonable. To that end I have considered the application for review, the evidence contained in the Record, the Applicant’s submissions and attached materials received by the Review Board on September 7, 2016, and emails from the Applicant to the Review Board dated October 7 and 10, 2016, with enclosures.

The duty of the College at all times is to serve and protect the public. In part, the College has the object to govern its registrants according to the Act, the regulations and bylaws of the College. The College has the further object to establish conditions or requirements for registration of a person as a member of the College. These duties and objects are set out in s.16(1) and (2) of the Act along with other duties and objects.

Under s.19 of the Act the Board of the College may enact bylaws, consistent with the duties and objects of the College that it considers necessary or advisable. In particular the board may establish bylaws which:

- s.19(1)(i) establish classes of registrants including restricted or provisional registrants;
- s.19(1)(k) establish standards, limits or conditions for the practice of the designated health profession by registrants;
- s.19(1)(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;
- s.19(1)(m.1) specify academic or technical programs that are recognized by the College as meeting a standard established under paragraph (m)(i).

The Review Board extends deference to the College in performing its gatekeeper function in governing its registrants according to the Act, the regulations and bylaws of the College as the College is best suited, obligated and empowered by the Act to perform the exercise of its powers and to discharge its duties under all enactments in the public interest.

The duties and objects of the College must be adhered to even if doing so causes financial hardship to the Applicant as the paramount duty is to serve and protect the public.

The powers of the Review Board are limited under s.50.54(9) of the Act in that the Review Board may only make an order under subsection (9) directing the Registration Committee to grant registration, with or without limits or conditions, or certification, as the case may be, only if the Review Board is satisfied that:

(a) all the following apply:
i. the Registration Committee failed to act fairly in considering the application for registration or certification;

ii. 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.

[67] In my view the reasons for the July 21 Decision have been expressed clearly, fully and repeatedly to the Applicant. The Applicant is not eligible for Provisional registration for general/family or specialty practice because he does not meet the mandatory requirements of the College’s bylaws which set out the requirements. The details of these unmet requirements were set out in detail to the Applicant in the July 21 Decision. They are:

2-15(1)(b)(i)(ii): (1) For the purposes of section 20(2) of the Act, to be granted provisional registration for general/family practice, an applicant must:
(b) meet one of the following requirements:

(i) have completed a general/family medicine program in Canada after July 1, 2010, but has not passed the CFPC examinations, provide a recommendation from the applicant’s Program Director and Chairperson of the Department of Family Medicine, attesting to competence and successful completion of all program requirements, acceptable to the registration committee,

(ii) have successfully completed a minimum of two years of accredited postgraduate training in a foreign jurisdiction recognized by the CFPC for the award of certification without examination, with a basic core of 44 weeks, consisting of eight weeks in each of medicine, surgery, obstetrics/gynecology, and paediatrics, and four weeks in each of psychiatry, emergency medicine, and general family practice,

2-16(1)(b)(ii)(iii): (1) For the purposes of section 20(2) of the Act, to be granted provisional registration for specialty practice, an applicant must:
(b) meet one of the following requirements:

(i) have obtained RCPSC certification;

(ii) if the applicant trained in an RCPSC specialty program in Canada but has not passed the PCPSC examinations, provide a recommendation from the applicant’s Program Director and Chairperson of the Department, attesting to competence, acceptable to the registration committee;
(iii) have completed postgraduate training and obtained certification in the applicant’s specialty from an international accrediting body where such training meets the criteria for postgraduate specialty education as set by the RCPSC regarding standards, content and duration which, in the opinion of the registration committee, should provide access to RCPSC certification through its specialty examination or PER,

[68] Further, the July 21 Decision explained to the Applicant:

(a) He has not provided any evidence of any formal accredited postgraduate training in any jurisdiction recognized by either the CFPC or RCPSC;
(b) He has not provided any evidence of completion of an assessment of competency as per the requirements of the bylaws;
(c) His USMLE Step 3 score is recorded as “fail” notwithstanding the Applicant’s argument that a score of 189 is only one point short of the required 190;
(d) There is no information regarding the Applicant’s activities in certain specified periods of time in 2007, 2008, 2014, and 2015; and
(e) The Applicant’s score on his English proficiency test does not meet the scoring requirements.

[69] There is no evidence, save the protestations and disagreement of the Applicant with the July 21 Decision, that there is any reason for the July 21 Decision other than to address the various above deficiencies in the Applicant meeting the requirements in various respects as established under the College’s bylaws. In my view the Applicant has failed to establish any basis for a decision of the Review Board other than to confirm the July 21 Decision.

[70] The January 27 Decision is a series of conditions or limitations placed on the Applicant’s eligibility to be granted registration and licensure for 70 consecutive days as an Educational-clinical trainee.

[71] Bylaw 2-28(1) of the College’s bylaws informs that Educational-clinical trainee class is to afford an educational experience for graduates hoping to enter a post graduate training program as explained in the January 27 Decision. Clinical trainees are to be supervised and are not authorized to practice independently.

[72] The Registration Committee expressed concern in the January 27 Decision about the Applicant’s conduct, including reference to the incident at the hospital under investigation by the Inquiry Committee at that time.

[73] The Registration Committee also noted in the January 27 Decision the Applicant’s failure to maintain professional liability insurance coverage in contravention of the registration and licensure requirements.
In my view the January 27 Decision was reasonable in that the Applicant could apply for the 70 consecutive days reactivation with conditions and limitations to be satisfied as directed by the Registration Committee in light of all the surrounding circumstances and the overriding duty to protect the public interest. The January 27 Decision was reaffirmed by the June 8 Decision after further consideration.

There is no evidence to support a finding that the January 27 Decision was arrived at in a manner that offends s.50.54(10) of the Act in the sense of being unfair or in violation of any of the other provisions of that section.

In my view the January 27 and July 21 Decisions are reasonable and should be confirmed for my reasons expressed above.

V DECISION

The January 27, 2016 and July 21, 2016 Decisions of the Registration Committee are hereby confirmed.

In my view this Application can be dealt with fairly, properly and finally adjudicated on its merits without the need for submissions from the College.

I have read the Record, other documents referred to above and the submissions of the Applicant though not referred to in their entirety herein. This includes reviewing the late filed submissions of October 7, October 10 and the October 25, 2016 submission that the Applicant sent in despite my October 11, 2016 letter to him informing that his continued submissions of further material prevents the preparation of a decision or directions.

“David A. Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board