I

STAGE 1 OR STAGE 2

[1] The Applications have 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 applications 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 Applications require 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 Applicants have been provided.
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 Applicants.

As the Agent has made the submissions on behalf of the Applicants in the same document, I have decided to render one decision for all the Applicants as being the most efficient and reasonable manner to communicate my findings. The educational backgrounds of each Applicant are unique and dealt with separately in this decision.

II INTRODUCTION

The Applicants apply for review of decisions of the Registration Committee refusing their applications for registration as an acupuncturist (Applicant 1), traditional Chinese medicine practitioner (Applicant 2) and acupuncturist (Applicant 3), respectively.

III BACKGROUND

In my Review Board Decisions 2013-HPA-175(a), 177(a) and 209(a) dated December 2, 2014, I ordered the Registration Committee to reconsider its decision to close the Applicants’ files on the basis that it would not permit the Applicants to write the Pan-Canadian Competency examination (the “Examination”). I directed that the Applicants, if otherwise qualified, be permitted to write the Examination. I made it clear in my December 2, 2014, decision I was not ruling that the College was required to grant registration to the Applicants if the Applicants wrote the Examination and achieved a passing grade.

APPLICANT 1

Applicant 1 successfully completed her acupuncture program at a local college in August 2013.

The Registration Committee met and approved Applicant 1 to write the Examination on December 11, 2014.

Applicant 1’s registration expired on March 31, 2015, so Applicant 1 applied in June, 2015, to have her student registration renewed and this was granted.

In her renewal application form Applicant 1 described her two year university education achieved in 1986 to 1989 as 2344 hours of a program called “banking & insurance” obtained from a university in Taipei.

The form filled out by Applicant 1 for renewal of her registration states that the documentation requirements for proof of the two year university education requirement is an “Official Transcript for 2-year university completed in Canada or Basic ICES report for 2-year university completed outside Canada.” ICES is the acronym for International Credential Evaluation Service.
The Registrar advised Applicant 1 she was approved to write the Examination by letter dated August 18, 2015. In the letter the Registrar also stated:

Please note that the educational requirements under s.48(1)(a.1) will be considered at the stage of assessing your application for full registration once you have passed your competency examination.

Applicant 1 wrote the written part of the competency examination on October 17, 2015, and took the clinical part of the competency examination on January 23, 2016, passing both exams, thereby achieving a pass in the Examination.

Applicant 1 proceeded with the application process for full registration to practice as a registered acupuncturist.

The Registration Committee met on April 20, 2016, and resolved to invite the Applicants to submit any updated information they might have regarding their two year university education. This invitation was sent by letter to the Applicants on April 25, 2016.

By email dated May 10, 2016, Applicant 1 sent a five page email to the Registration Committee presenting many arguments to the effect that the requirements of Bylaw s.48(a)(a.1) being the two year rule requiring “60 credits of exclusively liberal arts or sciences study” will produce an “absurd result” in the opinion of Applicant 1.

Applicant 1 produced to the Registration Committee the ICES report which concluded Applicant 1’s Taipei university credentials were “generally comparable to the completion of the first three years of post-secondary study (three-year Advanced Diploma) at a recognized post-secondary institution in British Columbia or elsewhere in Canada.”

The Registration Committee met on May 18, 2016, and resolved to reject Applicant 1’s application to register as an acupuncturist as her documentation did not establish that her education included two years of liberal arts or sciences study in an accredited college or university acceptable to the Registration Committee as required under Bylaw s.48(1)(a.1).

The Deputy Registrar provided a letter to Applicant 1 dated May 26, 2016 (the “Decision”), citing Bylaws s.48(1)(a.1) and s.48.4, and further, rejecting the application for registration on the basis that the two year rule was not satisfied.

Bylaw s.48.4 gives discretion to the Registration Committee to grant registration to an applicant who doesn’t satisfy Bylaw s.48(1)(a.1), but the Registration Committee declined to exercise such discretion in favour of the Applicants.

Applicants 2 & 3

Applicants 2 and 3 experienced the same treatment and Decision from the College as Applicant 1, ultimately passing the Examination, but receiving virtually the
same rejection letter on May 26, 2016, for the same reasons expressed as given to Applicant 1.

[21] Applicant 2 described her two year university education in her form as “International trade, 3 year program 162 credits” obtained from a college in Taipei during the period 1978-1981.

[22] Applicant 2 was seeking to be registered as a traditional Chinese medicine practitioner.

[23] Applicant 2’s ICES Report stated her education was “generally comparable to the completion of the first three years of post-secondary study (three-year Advanced diploma) at a recognized post-secondary institution in British Columbia and elsewhere in Canada.”

[24] Applicant 3 described her two-year university education as “two years full time equivalent post-secondary program in Chinese language and literature (2560 hours)” at a university in China.

[25] Applicant 3 was seeking registration as an acupuncturist.

[26] Applicant 3’s ICES Report stated her education was “generally comparable to the completion of the first two years of post-secondary study (two-year diploma) at a recognized post-secondary institution in British Columbia and elsewhere in Canada.”

IV DISCUSSION AND ANALYSIS

[27] 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.

[28] My mandate in these Applications is to determine whether the Decisions each Applicant received were reasonable. I have considered the Applications, the evidence contained in the Record and the Applicants’ submissions.

[29] 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, 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.
[30] 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).

[31] The Review Board extends deference to the College in performing its gatekeeper function in governing its registrants according to the Act, 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.

[32] The duties and objects of the College must be adhered to even if doing so causes disappointment and hardship to the Applicants as the paramount duty is to serve and protect the public.

[33] 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, if the Review Board is satisfied under s.50.54(10) 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.
In my view the reasons for the Decisions regarding the Applicants have been expressed clearly to the Applicants. The Applicants are not eligible for registration for acupuncture or traditional Chinese medicine practice as the case may be, because they do not meet the mandatory requirements of the College’s bylaws. Those pertinent requirements are:

Full registration

48. (1) For the purposes of section 19(2) of the Act, the requirements for full registration are

(a) graduation from a traditional Chinese medicine education program recognized by the board for the purpose of registration and specified in Schedule H,

(a.1) successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee,

(b) successful completion of the examinations required by the education and examination committee,

(c) evidence satisfactory to the registration committee of the good character of the person consistent with the responsibilities of a registrant and the standards expected of a registrant, and

(d) evidence satisfactory to the registration committee that the applicant be a Canadian citizen or a permanent resident of Canada or be otherwise authorized under the laws of Canada to work in Canada.

(2) receipt by the registrar of

(a) a signed application for full registration in a form approved by the registration committee,

(b) the application fee specified in Schedule "F",

(c) an original certificate, notarized copy, or other evidence satisfactory to the registration committee of graduation from a program referred to in subsection (1)(a), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(c1) an original diploma, notarized copy, or other evidence satisfactory to the registration committee, confirming successful completion of a program referred to in subsection (1)(a.1), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(d) a statutory declaration as specified in Form 1,

(e) the examination fee set by the College, and

(f) a signed criminal record check authorization form.

(3) Despite subsections (1)(a), (a.1) and (b), an applicant may be granted full registration by the registration committee if the applicant
(a) holds registration or licensure in another Canadian jurisdiction as the equivalent of a full registrant, which is not subject to any practice limitations, restrictions or conditions in that jurisdiction that do not apply generally to registrants in British Columbia, and provides evidence satisfactory to the registration committee of the applicant’s registration or licensure, and that the applicant is the person named therein,

(b) provides evidence satisfactory to the registration committee that the applicant meets any applicable continuing competence and quality assurance requirements established by the applicable regulatory or licensing authority in the jurisdiction referred to in paragraph (a), and

(c) meets the requirements established in subsection (1)(c) and (d) and (2)(a), (b), (d), (e) and (f).

(4) Despite subsection (1)(a) and (a.1), the registration committee has discretion, in satisfying itself under section 20 of the Act that the applicant meets the conditions or requirements for registration as a member of the College, to consider whether the applicant’s knowledge, 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), and to grant registration on that basis provided the applicant

(a) provides evidence satisfactory to the registration committee, of such knowledge, skills and abilities, and

(b) meets the requirements established in subsection (1)(b) to (d) and 2(a), (b), (d), (e) and (f).

[35] It is not my role to substitute my opinion as to whether the Applicants’ should or should not be granted registration for the Decision of the Registration Committee, unless I was satisfied the significant criteria set out in s.50.54(10) of the Act for ordering a grant of registration have been met. There is no evidence the Registration Committee failed to act fairly in considering the applications for registration or made the Decisions arbitrarily, in bad faith, for an improper purpose, based entirely or predominantly on irrelevant factors or failed to take requirements under the Act into account. The Decisions were made because the requirements of Bylaw s.48(1)(a.1) were not met and the Registration Committee elected to not exercise its discretion under Bylaw s.48.4 in favour of the Applicants. For these reasons I confirm the Decisions made regarding the Applicants.

V DECISION

[36] The Decisions of the Registration Committee are hereby confirmed with respect to Applicants 1, 2, and 3.
In my view these Applications can be dealt with fairly, properly and finally adjudicated on their merits without the need for submissions from the College.

I have read the Record, other documents referred to above and the submissions of the Applicants, though not referred to in their entirety herein.

“David Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board