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, of a registration decision made by registration committee

BETWEEN: The Applicant APPLICANT

AND: The College of Denturists of British Columbia COLLEGE

BEFORE: Robert McDowell, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions closing on February 20, 2017

APPEARING: For the Applicant: Self-represented

REVIEW OF REGISTRATION DECISION

[1] The Applicant wanted to become a licensed Denturist. He attended an accredited school and did well in both his courses and internship. He passed all of his exams, with the exception of one specific section of one of the exams, where three examiners graded him – each with very different results. Much to his dismay, he failed to be registered, and he is seeking clarification of his examination results.

[2] I have decided that it is appropriate to adjudicate this matter by way of a Stage 1 hearing and therefore my review of the Registration Committee’s decision will be based solely on the record provided by the College (the “Record”) and submissions from the Applicant.

I INTRODUCTION

[3] This matter concerns the Applicant’s request for review of the decision of the Registration Committee (the “Decision”) to deny the Applicant a license to practice as an active full denturist.

[4] Part of the requirements under the College’s By-laws to be registered in the active full category is successful completion of the examinations required by the Registration Committee.
The examination process consists of the Complete Denture Evaluation (“CDE”) and Objectively Structured Clinical Examination (“OSCE”).

The CDE is comprised of three sections: 1) Laboratory, 2) Clinical, and 3) Treatment Planning, Patient Records and Clinical Presentation Criteria.

A passing score of 65% is required for each section of the CDE and the overall OSCE or the candidate is deemed to have failed, subject to the discretion of the Registration Committee to pass the candidate.

The Registration Committee approved the Applicant’s score as 74% for the OSCE, which was a “pass” mark. In regard to the CDE, the Applicant achieved 100% for the second and third sections. However, in the Laboratory section, the Applicant achieved only 35%. Due to this, the Applicant received an overall “fail” mark for the CDE.

The Registration Committee advised the Applicant in its letter dated August 31, 2016: “Regretfully, based on your overall performance, you are not eligible to register as an Active Full Denturist in the province of British Columbia until both the (CDE) and the (OSCE) are successfully completed.”

The Applicant filed a Request for Reconsideration of a Registration Decision, noting “the results of the laboratory section of my examination differed greatly among examiners. As it is my goal to consistently produce excellent dentures, I wish to seek understanding as to why my work was graded in this way.”

The Applicant also had concerns about his accredited educational institution: “the high percentage of students who pass the education program and continue on to fail the examination concerns me.”

II ISSUES

An Applicant, having applied for and been refused registration, may apply to the Review Board for review of the registration decision. The Review Board must conduct a review under s.50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, (the “Act”).

In reaching their decision, did the Registration Committee act arbitrarily, in bad faith, or improperly? Did they act based on irrelevant factors, or fail to follow the Act? Did they act reasonably? The Record will be reviewed with these questions in mind.

On completion of the review, I may make an order as specified in s.50.54(9) of the Act. Accordingly, I could decide:

(a) to confirm the Registration Committee’s decision;
(b) direct the registration committee to make a decision that could have been made by the registration committee in the matter; or
(c) send the matter back for reconsideration with directions.
The Applicant applied to the Registration Committee for registration as a Student on April 23, 2015, and was accepted on May 25, 2015. The Applicant passed the College’s Theory Examination on July 3, 2015, with a percentage score of 57 percent, and received an invitation to challenge the College’s Clinical Examinations in July 2016. Prior to writing the exam, the Applicant had to fulfil the requirements of the College’s “Internship Portfolio,” which consisted of reporting, technical and minimum hour requirements.

The requirements are numerous, and include providing College transcripts; registering as an intern with the College; acquiring a Mentor; and demonstrating a variety of clinical management and technical skills.

The Applicant’s official transcript outlined the courses undertaken over four terms and indicated an overall high GPA of 3.60, which should indicate an overall mastery of the coursework.

The Applicant’s Mentor appeared very satisfied with his experience with the Applicant. In subsequent testimony, he noted that the Applicant “has become a valued member of my team, …(and) has demonstrated …his excellent lab skills and attention to detail which have impressed me.” The Mentor also noted that the “dentures (the Applicant) has made or worked on have been exemplary.”

In preparation for the Clinical Examination, the College provided the Applicant with an information package, which outlines the role of the examining team: “The examiners are active full Denturists who have been selected to participate in the process of licensure. They are qualified practitioners and professionals.”

The information package also explains: “(at) the laboratory criteria evaluation stage, a majority examiner system is used. Three examiners independently score the examinable items listed in the laboratory criteria. If the first two examiners both score the criteria as (1) or (0), the candidate will receive that score. If one examiner scores the criteria as (1) and the second examiner scores the same criteria as (0), the third examiner’s score for that criteria will be considered, and the candidate will receive the score assigned by a majority (two out of three) of the examiners.”

The information package includes a section titled “Complete Denture Evaluation, Laboratory Criteria”, which outlines the specific marking regime for the examiners. It includes mention of the “Impression Material,” with a score of (1) being accorded to “Impression material well mixed and of suitable consistency,” and (0) for “Not well mixed or too thin / too thick or inadequate or excessive material.”

The examination criteria also include the statement: “All teeth must be fully secured in the wax” for the section on “Artificial Tooth Arrangement.”

The Applicant took the test on July 12, 2016, and was informed of the results on August 31, 2016. As noted previously, he had passed the OSCE and passed two of the
three CDE criteria, but, as he had failed the Laboratory Criteria, he failed to reach the minimum threshold established, and did not pass the CDE.

IV ANALYSIS

[24] The test for determining if an action is reasonable is whether it falls within a range of possible acceptable outcomes that are defensible on a review of the facts and the law. While there may be more than one reasonable conclusion I am not able to challenge the Registration Committee’s disposition if that disposition can be justified and is transparent and intelligible.

[25] Upon review of the Record, the Review Board should be able to determine that some consideration has been given to discrepancies, inconsistent findings and possible explanation for outcomes where more than one explanation may exist.

[26] The letter to the Applicant of August 31, 2016, advising of his fail mark, also included a Complete Denture Examination report which indicated the differences in scoring of the Laboratory Section by the three examiners. The first examiner approved six of eight of the criteria as having been met. The second examiner appears to have approved two; the third examiner approved four.

[27] The Applicant believes that this was due to the fact that “teeth fell off in the process of the dentures being marked” and alleges that “the teeth may have been knocked off of the wax by Examiner 1 and Examiners 2 and 3 would have been marking dentures that were damaged, giving me a failing grade.”

[28] When marks are simply “0” or “1,” they may appear particularly subjective and differing marks become more prominent, as opposed to, for example, utilizing a sliding percentage marking system. To an outside observer, this may appear arbitrary. However, it falls within the range of reasonableness when one considers that there may be technical or other implications regarding the exam. The selected evaluation system clearly falls within the jurisdiction of the Registration Committee, as long as it is transparent and applied uniformly. The evaluation system was explained fully in the information package distributed to all participants prior to attending the examination.

[29] The Applicant states that the “Final Impressions” stage of the exam is “arbitrary as it is based solely on the impressions. As evidenced by the photo in the records, as well as the precise fit and suction of the stabilized base wax denture, my final impressions were accurate and suitable to be used to produce an excellent final product.”

[30] The Registration Committee, consisting of three Registrants and one staff member, met on October 12, 2016, and reconsidered the Decision. Referring to the Applicant’s request to review, the minutes of that meeting state: “Examiner notes do not mention any damage to the applicant’s denture as the applicant refers to.” The Committee determined that “they do not feel they can make an adjustment to the marks and as the examiners believe he does not meet the criteria the Registration Committee upholds the original decision; the mark stands.”
The minutes of a subsequent meeting on October 24, 2016, shed additional light on the decision. The minutes acknowledge that the Applicant “expressed concern regarding damage to the dentures. Teeth had fallen out when the dentures were handled indicating that the teeth were not set so as to be secure.” However, it concluded that “the dentures did not meet the criteria, fewer than three contacts worked and centric was off. The teeth not being well secured may explain why the examiners got varying results.” The minutes clearly indicate that a discussion occurred relating to the marks provided to the Applicant.

In a letter dated November 8, 2016, the Registrar informed the Applicant that they had “reviewed all materials submitted for consideration. In particular, the process involved an analysis of the CDE materials, including the treatment plan, patient records, photographs, marking sheets and self-assessment sheets.”

The Registrar stated “after careful consideration, I regret to inform you that the Committee agreed to uphold their previous decision and accept your 2016 CDE scores as presented by the College’s examiners.”

The Registration Committee considered the Applicant’s examination results and Examiner’s notes. The minutes of the Registration Committee meeting on October 24, 2016, demonstrates the existence of justification, transparency and intelligibility in the circumstances of what appears to be a not straightforward result.

The Registration Committee reviewed the initial finding of “fail” with the Applicant, and provided a reasonable explanation for adhering to that finding. The Registration Committee provided a reasonable explanation of their procedure, and reviewed their original findings when asked to do so.

It should be noted that the Registration Committee’s minutes of August 19, 2016, during which the original test results were discussed and certified, also include a reference to a “Topic of discussion for a future Registration Committee meeting – Teeth coming off when examiners are reviewing at try in – should anything be changed in the current description?” and another for future Board Meeting discussions which asked “What material should be used for impressions?” These notations indicate that potentially, discussions are occurring that may provide additional clarity to future students undertaking the examination. This appears to be a positive step in minimizing future confusion.

In regard to the Applicant’s concern relating to his educational institution and the “high percentage of students who pass the education program ... and fail the examination,” I certainly share his concern. Unfortunately, this discussion should be taken up with the educational institution in question. As that issue does not fall within the Review Board’s mandate under the Act, this is not the forum for such a conversation. Nevertheless, I hope that the College has noticed this concern and will take action to address it, in some form.
While I am sympathetic to the Applicant’s concerns, I find that the Applicant has failed to establish that the Registration Committee acted unreasonably by failing to reassess the results of the one specific section of the examination that he did not pass.

Upon review of the Record, I cannot conclude that the registration decision was made arbitrarily or in bad faith, or was made for an improper purpose, was based on irrelevant factors, or failed to take into the requirements under the Act. In my view, the actions taken by the Registration Committee are reasonable and are within the jurisdiction and reasonable discretion of the Registration Committee.

V DECISION

In making this decision, I have considered all the information and submissions before me, whether or not specifically mentioned here.

The disposition of the review is that the matter of the Registration Committee’s decision regarding the Applicant’s registration is upheld.

“Robert McDowell”

Robert McDowell, Panel Chair
Health Professions Review Board