In the matter of an application (the “Application”) under section 50.54 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, for a review of a disposition made by, or considered to be a disposition by, a registration committee

BETWEEN: The Applicant  
AND: The College of Physicians and Surgeons of British Columbia

BEFORE: Brenda L. Edwards, Panel Chair

DATE: Conducted by way of written submissions closing on May 29, 2017

APPEARING: For the Applicant: Self-represented
For the College: Sarah Hellmann, Legal Counsel

DECISION

I INTRODUCTION AND PROCEDURAL BACKGROUND

[1] On October 17, 2016, the Applicant filed an application under the Health Professions Act, R.S.B.C. 1996, c. 183 (the “Act”) with the Review Board seeking a review of a decision made by the Registration Committee in which the Registration Committee declined to grant the Applicant an extension of his registration and licensure under the Provisional; General/Family Practice class of registration and directed that his registration and licensure be cancelled effective December 26, 2016 (the “Registration Committee’s Decision”).

[2] On December 21, 2016, the Applicant applied for a stay of proceedings of the Registration Committee’s Decision and the Chair of the Review Board assigned the determination of the stay application to me to hear on an expedited basis. The College took no position on the stay application.

[3] On December 23, 2016, I granted the stay application and ordered that the Registration Committee’s decision to decline to extend the Applicant’s registration and licensure was stayed and the Registration Committee’s direction to cancel the
Applicant’s registration and licensure effective December 26, 2016, was suspended until the earlier of any of the following:

(a) the Applicant’s withdrawal or abandonment of his Application for Review;
(b) the Review Board’s decision on the merits of the Review; or
(c) until further order of the Review Board.

[4] On January 27, 2017, counsel for the College provided the Review Board with the record of the Applicant’s history of registration and licensure with the College (the “Record”) and, concurrently, applied under s.42 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 to withhold from the Applicant reference forms that had been provided to the College about the Applicant.

[5] The Review Board wrote the Applicant on January 30, 2017, inviting submissions on the College’s request. The Applicant did not reply to the Review Board’s letter and on February 16, 2017, the Chair of the Review Board granted the College’s request and ordered the redaction of the requested documents from the Record. The Chair provided a copy of the redacted record to the Applicant and directed the matter to a Stage 1 hearing, a hearing based only on the Record and submissions from the Applicant. The Chair further directed that the Applicant was to provide the Review Board with his submissions (referred to as a Statement of Points) by March 9, 2017, which he did.

[6] On March 10, 2017, the Chair of the Review Board assigned me to review this matter.

[7] After reviewing the Record and the Applicant’s Statement of Points, I had concerns regarding the Record and on March 22, 2017, I wrote counsel for the College and questioned the completeness of the Record and identified examples of concerns that I had including apparent gaps in the Record and inconsistencies.

[8] On April 6, 2017, counsel for the College provided me (and copied the Applicant) with missing documentation for the Record together with a revised Index to the Record and an explanation of certain apparent inconsistencies in the Record. I will refer to the Record and the additional documents, jointly, as the Revised Record.

[9] On April 10, 2017, after reviewing the Revised Record and the Applicant’s Statement of Points, I concluded that I could not properly decide the matter based only on that information, i.e. at Stage 1, and I directed the matter to a Stage 2 hearing and set a timetable for submissions from the Parties.

[10] Counsel for the College provided the Review Board with the College’s Statement of Points on May 15, 2017.

[11] The Applicant did not submit a supplemental Statement of Points to the Revised Record by April 24, 2017 as invited, nor did he provide a reply to the College’s submissions by the deadline of May 29, 2017.
My task, on behalf of the Review Board is to review the Registration Committee’s decision of September 26, 2016, as conveyed by the Executive Director in a letter emailed to the Applicant and dated October 7, 2016 (the “Decision”).

II THE APPLICANT’S HISTORY OF REGISTRATION AND LICENSURE

Registration Application (2012)

On August 21, 2012, Health Match BC (a health professions recruitment service funded by the government of British Columbia) wrote to the College and identified the Applicant, an Irish trained family physician, as a potential candidate for registration and licensure. Health Match BC provided the College supporting documentation as to the Applicant’s medical training and experience. After reviewing the information package, the Deputy Registrar of the College wrote Health Match BC on October 10, 2012, and stated that, at the time, the Applicant was not eligible for registration in the Full; General/Family Practice class as he lacked training in Canada, examinations of the Medical Council of Canada in their entirety, certification by the College of Family Physicians of Canada (“CFPC”) and permanent residency or Canadian citizenship. The Deputy Registrar noted that the Applicant might, however, be eligible for Provisional; General/Family Practice class under sponsorship and supervision and the Registration Committee would consider his credentials at its November 2012 meeting.

The Applicant applied to the CFPC for certification without exam based on his training and certification in a country recognized by Canada and on November 1, 2012, the CFPC recognized his qualifications and certified him as a member.

December 13, 2012 Registration Committee Resolution

On December 13, 2012, the Registration Committee met and passed Resolution #12-1038 granting the Applicant eligibility for registration and licensure in the Provisional; General Family Practice class under the sponsorship of a Health Authority and supervision by a physician approved of by the College, for a period of one year from a date to be determined, subject to the verification of credentials and subject to obtaining or being exempted from the Medical Council of Canada Evaluating Examination prior to commencing practice.

The Resolution stipulated that subsequent extension of licensure would be dependent upon the Applicant:

- attending the BC Physician Integration Program for International Medical Graduates within the first year of practice in British Columbia,
- becoming a Licentiate of the Medical Council of Canada (LMCC) within three years of commencement of practice in British Columbia,
- receiving satisfactory reviews by his supervising physician, and
- providing annual confirmation of his sponsorship.
The Resolution stated that the Applicant must be certified by the CFPC within five years of commencement of practice in BC, but noted that since he is an Irish physician, he was eligible for CFPC certification without examination, which certification diploma he was required to present to the College within nine months of registration. The Resolution stated that once certified by the CFPC, the Applicant could be advanced to the full register provided he had permanent residency or citizenship, holds a licentiate with the Medical Council of Canada (referred to as obtaining his LMCC) or completed medical licensing examinations in the USA satisfactory to the College. The Resolution concluded:

The Registration Committee’s resolution, as of December 13, 2012, will be honoured for a period of three years on the specific terms and conditions set out in the resolution and on the condition that [the Applicant] is current in practice in accordance with College Bylaw 2-8. Beyond December 13, 2015, [the Applicant] will be required to submit a new application for registration.

The Registration Committee's Resolution decision was communicated to the Applicant by letter from the College’s Deputy Registrar dated December 17, 2012.

December 2012-July 2013: Steps pursuant to the Resolution, prior to the commencement of practice

Pursuant to the Resolution, several steps were necessary before the Applicant could commence practice in British Columbia. His Irish physician credentials were verified, he provided a criminal record check, he received a formal job offer from a health authority, he received a required approval from Service Canada, he obtained a letter of support from the Ministry of Health, he made contact with the CFPC, he paid the College’s fees, the health authority identified a supervisor for the Applicant and the College made clear to the supervisor its expectations regarding the manner and frequency of his reporting to the College.

July 23, 2013: Commencement of Practice

The Applicant commenced practice as a family physician in a northern community in British Columbia on July 23, 2013, under the sponsorship of the regional health authority (the “Health Authority”) and the supervision of an approved physician.

First Certificate of Licensure (Provisional)

The College issued its first “Certificate of Licensure (Provisional),” which was valid from July 23, 2013 to February 28, 2015.

Based on the July 23, 2013, commencement date, the “three year” requirement to achieve the LMCC would expire on July 23, 2016, unless an extension was granted pursuant to College Bylaw 2-14(9), discussed below.

In addition to providing medical services, under supervision, to approximately 1700 patients in a local clinic, in hospital and in care facilities, the Applicant works as
an examiner and teacher at the medical school of a local university. His medical practice includes many elderly patients with complex needs as well as those who are in palliative care.

**February 2014: First Supervisor Evaluation Report, Attendance at the BC Physician Integration Program, CFPC Certification**

[24] In February 2014 the College received the supervisor’s first Supervisor Evaluation Report. That report described the Applicant as “competent,” “ethical” and “professional,” and identified “no specific concerns.” All items referenced on his evaluation form either met or exceeded expectations.

[25] In April 2014, the Applicant attended the BC Physician Integration Program in compliance with one of the conditions attached to his provisional registration.

[26] In May 2014, and in compliance with another of the conditions, he provided the College with an email from CFPC confirming that he had “now met all the requirements for certification with the [CFPC] based on recognition of your training and certification in Ireland…."

**November 2014: Second Supervisor Evaluation Report**

[27] On November 17, 2014, the Applicant’s new supervisor submitted a second Supervisor Evaluation Report about the Applicant to the College. While the supervisor noted that he had assumed that role on short notice, the report described the Applicant in glowing terms referencing his “demonstrated well-rounded knowledge base and practical skills” and his “extremely effective” communications with patients and peers. The Supervisor noted that despite having rapidly assumed a large and diverse patient population not only in the clinic but in Long-term Care, the Applicant was “using appropriate resources to manage this population and his own time well.” The Supervisor commended the Applicant as someone who had already become “a valued member” of the clinic and the medical community and who demonstrated “a superb level of professionalism and respect for his patients and colleagues.”

**Second Certificate of Licensure**


**Two June 23, 2015 College emails to the Applicant**

[29] On June 23, 2015, a Registrar’s Assistant at the College sent two emails to the Applicant, under signature of the Deputy Registrar.

[30] The first email, directed to the Applicant from Registration Assistant Angela Sommerfeld, was headed: “Your Ongoing Registration & Licensure with the College of Physicians and Surgeons of British Columbia.” It stated as follows:
When you were provided licensure on July 23, 2013, you were informed that you would be required to obtain the Medical Council of Canada Qualifying Examinations Part II (LMCC) within three years of commencement of practice in BC.

The College requires you to provide confirmation that you have obtained the MCCQE Part I by July 23, 2015 and the LMCC by July 23, 2016.

[31] Ms. Sommerfeld’s second email, directed to the Applicant’s original supervisor and copied to the Applicant, required a further Supervisor Evaluation Report by July 23, 2015.

[32] College staff’s actions in sending out “reminder” emails was of course appropriate. However, I must observe that, based on the Revised Record before me, the “requirement” imposed on the Applicant to obtain the “Part I” by July 23, 2015 had not previously been communicated to him. There is no evidence of a Registration Committee resolution to this effect. I can only assume that this “requirement” was in fact something College staff purported to impose, the authority for which is unclear to me.

[33] It is also unclear why the second email was sent to the Applicant’s original supervisor, when the Applicant’s new supervisor had already identified himself and had sent his Supervisor Evaluation Report in November 2014.

The Applicant’s June 24, 2015 response

[34] On June 24, 2015, the Applicant responded to Ms. Sommerfeld’s first email, in response to both emails, confirming as follows:

[Dr. P] is currently and has been my supervisor since [Dr. O] retired.

Regarding the LMCC examinations, I am planning to sit the part I in the October sitting and the part II in April 2016.

I wasn’t aware of any deadline for the part I in 2015.

[35] Significantly, this response from the Applicant was not included in the College Record, even though the College’s emails were included.

[36] This omission reflects adversely on the completeness of the Revised Record, but is most troubling because of the perception that appears to have been created within the College and the Registration Committee that the Applicant was in fact non-responsive to the College’s correspondence.

[37] It is clear that the College received the Applicant’s emails.¹ The material provided by the Applicant on this review included an acknowledgement email from the College to his June 24, 2015, response, which acknowledgement the College sent

¹ I say “emails” intentionally because the material provide by the Applicant appears to show that he sent his June 24, 2015 email to the College twice – once at 02:03 a.m. and once at 7:03 p.m.
both to the Applicant and the new supervisor. That email, I note, thanked the Applicant for informing the College of the identity of his new supervisor but was silent with regard to the Applicant’s advice regarding the LMCC examinations. Notably, the College’s submissions were silent with regard to these emails. In my view, they are properly included as being part of the Revised Record in this matter.

**The August 13, 2015 Supervisor Evaluation Report**

[38] On August 13, 2015, the Applicant’s Supervisor provided the College with a further positive Supervisor Evaluation Report. That Report stated that the Applicant was “managing a diverse patient population with demonstration of excellent knowledge and skills,” has been “an effective communicator and demonstrates continued efforts to improve,” “continues to be a valued and effective contributor to this medical group” and “continues to demonstrate a high standard of professionalism.” He again met or exceeded expectations in all fields of practice.

**Third Certificate of Licensure**

[39] Subsequent to this Evaluation Report, the College issued the Applicant a new Certificate of Licensure, valid from March 1, 2016 to February 28, 2017.

**July 15, 2016 email from the College**

[40] On July 15, 2016, the College sent an email to the Applicant. This email, sent more than one year later, was not from Ms. Sommerfeld, but was from a sender - “Provisional Compliance” - with the subject “Your registration and licensure.” It was only by opening this email that one would realize that this was an email from a “Compliance Monitor” with the College.

[41] The July 15, 2016, email referenced Ms. Sommerfeld’s June 23, 2015, email and reminded the Applicant that as a requirement of his registration and licensure, he was to become a LMCC by July 23, 2016. The Compliance Monitor asked the Applicant to reply by July 23, 2016, stipulating whether he had obtained his LMCC and providing the date he was certified.

[42] The Applicant did not respond to the July 15, 2016, email prior to his receipt of the Compliance Monitor’s further August 5, 2016 email regarding his ongoing registration and licensure.

[43] For his part, the Applicant has stated that he did not receive or open this email, as his Application for Review states that “the next email I received to my knowledge having searched through my emails since then was on August the 5th, 2016.”

[44] There is no evidence in the Revised Record that the Registration Committee considered the possibility that the Applicant did not receive or see the July 15, 2016, email. I note that the Compliance Monitor attached the July 15, 2016, email to the August 5, 2016 email – to which email the Applicant responded promptly. The Revised Record shows that the Health Authority itself was confused regarding with
whom it should be in contact. When the Health Authority wrote to Ms. Sommerfeld in October 2015 regarding the Applicant’s situation, the response came from the Compliance Monitor as follows: “Please note that for any queries regarding Provisional registrants, you are welcome to email this email address… My colleague Angela is working in a different department now….” Clearly, there was changeover happening within the College itself during this period.

**August 5, 2016 email from the College**

[45] The Compliance Monitor’s August 5, 2016, email to the Applicant had a new and clear Subject heading: “RE: Your ongoing registration and licensure with the College – Examination Update Overdue.”

[46] The August 5, 2016, email stated that the College “has been in touch with you on two previous occasions requesting an update on your examination status.” but omitted any reference to the Applicant’s June 24, 2015, response. After reviewing the December 13, 2012, terms of his eligibility for registration and licensure, the Compliance Monitor stated:

You commenced practice in BC on July 23, 2013. Due to failure to provide an update on your progress on the LMCC examination and given that the College has not received confirmation of your success in obtaining this examination within the timeline stipulated, your file will be referred to the Registration Committee to consider the following options:

- Continuing your registration and licensure in your current class and granting you another opportunity to obtain both the LMCC examinations in the Fall of 2016, failing which your registration and licensure will be cancelled;

- Cancel your registration and licensure three months following the Committee meeting, allowing you time to wrap up your practice, due to your noncompliance with the requirements for your continued registration and licensure, or

- Other options put forward by the Registration Committee.

[47] The Compliance Monitor instructed the Applicant to provide any additional information that he wished the Registration Committee to review by August 31, 2016. The email stated:

Information that would be helpful for the Committees [sic] review includes:

- The results of your MCCQE Part II examination this should be an official result letter from the Medical Council of Canada)

- Documentation from the Medical Council of Canada that you are registered to sit the Fall 2016 MCCQE Part II examination, including your payment receipt for this examination

- Any other documentation or information relevant to this examination, such as steps you have taken in preparation for this examination, and any prior attempts at the examination,
Any information relating to extenuating circumstances that you would like the Committee to review.

[48] These bullet points were and are significant because they would reasonably be understood by the Applicant as being the factors the Registration Committee considers relevant when it decides among its available options.

[49] On August 24, 2016, the Applicant replied to the Compliance Monitor by email. His email stated as follows:

I wish to confirm that I sat the MCCQE part I and part II in October 2015 and April 2016 respectively.\(^2\) I was successful in part I but unfortunately unsuccessful in part II (results attached).

Due to family and work commitments I did not apply to re-sit the part II again this Fall and had planned to take the exam again in Spring 2017 if allowed.

I committed a substantial amount of time to preparing and sitting the part I and II over the second half of 2015 and in 2016 up until the exam date at the end of April and with a family with 2 young children I felt unable to dedicate sufficient time to successfully sit the part II exam again this Fall.

I have obtained my Certification in Family Medicine (CCFP) – I will send as an attachment in separate email along with some other attachments.

As part of my preparation for part I and II LMCC exams I subscribed to the MCC and Q-bank for sample MCQ questions and OSCEs.

I also took part in an exam preparation course through UBC in Vancouver.

I have been an examiner at [university hospital] for year 1 + 2 medical student OSCEs over the last 3 years and have been involved in teaching 1\(^{st}\), 2\(^{nd}\) and 4\(^{th}\) year students also.

I have a practice of approximately 1500 patients … whom I provide outpatient and inpatient primary care to, and while naturally I do not want to have to close my practice and leave [the community], I would also struggle to find a Family Physician [in the community] to take over their care.

I will send copies of registration for courses and other details…. If you require any further details let me know.

Also, could you let me know if possible when the Registration Committee is next due to meet.

[50] The Applicant provided the College with the exam preparation records referred to in his email, as well as his exam results.

\(^2\) This was precisely as he had undertaken in June 2015.
The Applicant’s results for the MCCQE Part I exam (Fall 2015) showed that he passed with a high mark (a mark of 558, with 427 required to pass, the standard deviation being 87).

The exam results for the Part II exam (Spring 2016) were reported as follows on a test whose range was between 50 and 950:

- Your final result: Fail
- Your total score: 505
- Score required to pass: 509.

On August 30, 2016, the College wrote to the Applicant’s supervisor asking for a further Supervisor Evaluation Report.

**The Original Registration Committee Decision (September 26, 2016)**

The Registration Committee met on September 26, 2016. I have been provided with two versions of the Minutes from that meeting. Both versions of the Minutes:

- State that the Committee reviewed its December 13, 2012 meeting Minutes, the College’s June 23, 2015, July 15, 2016 and August 5, 2016 emails to the Applicant and the Applicant’s August 26, 2016 email correspondence (9 pages).
- Describe the Applicant’s history in identical terms.

The first version of the Minutes sets out the following:

**Registration Committee’s Review September 26, 2016:**

Dr. [X], Committee member, recused himself during both the discussion and the voting of this matter.

The Committee considered [the Applicant’s] registration and licensure history with the College and his email of August 24, 2016. The Committee acknowledged [the Applicant’s] family and work commitments, however considered that obtaining LMCC is a requirement of the profession and [the Applicant’s] initial registration and licensure requirements.

The Committee noted that [the Applicant] did not register for the fall 2016 MCCQE Part II examination, despite having been reminded that this is a requirement for ongoing registration and licensure.

In its deliberation, the Committee did not identify any extenuating circumstances to enable [the Applicant’s] registration and licensure to be extended.

The following resolution was MOVED, SECONDED and CARRIED:

RESOLUTION: 16-805
RESOLVED that the Registration Committee (“the Committee”) of the [College] cancel [the Applicant's] registration and licensure three months following the September 26, 2016 meeting due to his non-compliance with the timeline of obtaining the LMCC by July 23, 2016.

[56] The second version of the Minutes omits the quoted paragraphs and instead states as follows after the history:

Registration Committee’s Consideration:
This matter is brought before the Registration Committee for its review and consideration. The Committee is asked to consider the following options:

1. Continue [the Applicant’s] registration and licensure in the Provisional; General/Family Practice class to allow him the opportunity to sit the spring 2017 MCCQE Part 2 examination, failing which his registration and licensure will be cancelled;

   ....

   h. [The Applicant] must provide by December 31, 2016, confirmation from the MCC that is registered to sit the spring 2017 MCCQE Part 2 examination, failing which his registration and licensure will be cancelled.

   i. [The Applicant] must provide from the MCC confirmation of his success on the spring 2017 MCCQU Part 2 examination by June 30, 2017, otherwise his registration and licensure will be cancelled.

   If [the Applicant] does not complete any of the above or is unsuccessful, or does not sit, either of these examinations, his registration and licensure will be cancelled allowing him three months to wind down his practice, due to his non-compliance with his continuing registration and licensing requirements, unless extended by the Registration Committee in exceptional circumstances.

2. Cancel [the Applicant's] registration and licensure three months following the September 26, 2016 meeting due to his non-compliance with meeting the timeline of obtaining the LMCC by July 23, 2016, as stipulated by the College in resolution #12-1038.

3. Other options.

[57] The College offered no explanation for the difference in content of these two documents, both of which it has represented as being the Minutes. I can only deduce that the second version of the Minutes reflects what the Registration Committee considered before it made its decision, and the first version reflects the discussion and reasoning that informed the Committee’s decision to select option 2 after its deliberation.

[58] The Committee’s decision to “cancel” the Applicant’s registration as of December 26, 2016 reflected that the most recent Certificate was not set to expire until February 28, 2017.
I note that the Supervisor Evaluation Reports were not placed before the Committee. Nor does either version of the Minutes make mentions that the Applicant wrote the Part I and Part II exams in a timely fashion, that he passed the Part I exam with a high score on his first attempt and the “fail” grade on the Part II exam was close to the most marginal fail possible.

What the first version of the Minutes does make clear is that the Committee was not impressed that the Applicant did not register for the Fall 2016 sitting, and did not do so despite being “reminded” of the requirement. The Committee’s concern in this regard carries an obvious implication that the Applicant was being somewhat cavalier in respect of the College’s reminders and the seriousness of the three year requirement.

The centrality of that concern makes it especially regrettable that College staff did not provide the Registration Committee with a copy the Applicant’s June 24, 2015, email response to the College’s June 23, 2015, email, or follow up on whether he received the July 2016 email. The Applicant’s June 24, 2015, email disclosed a prompt response, a considered examination schedule and a respectful expression of surprise as to the required timing for the Part I examination. While the Applicant’s June 2015 email did not of course answer why the Applicant did not sit the Part II examination for a second time in the Fall of 2016, it spoke to any larger implication that the Applicant was being cavalier or non-responsive in his interactions with the College. As will be noted below, the Executive Director’s October 7, 2016, letter, discussed next, makes special reference to the Applicant’s alleged failure to respond to the College’s June 23, 2015 email.

The Executive Director’s October 7, 2016 Letter

Following the Registration Committee’s September 26, 2016, meeting, the College’s Executive Director wrote to the Applicant. She told the Applicant that the Committee had reviewed “in detail” his licensing and registration history, and specifically his “inability to obtain LMCC within three years of practice (by July 23, 2016) as stipulated in your original resolution, #12-1038, passed by the Registration Committee at the time of granting you eligibility for registration and licensure at its meeting of December 13, 2012.” The letter stated:

As you are aware, pursuant to the College’s governing statute …. the Committee is conferred the authority to grant and continue registration to physicians who satisfy the Committee that they meet the conditions or requirement in a class of registration. In the fulfillment of its mandate and given its authority, the Committee obtains sufficient information of an applicant or registrant to ensure that decisions are made using an equitable and transparent process and that parties affected are afforded the opportunity to present their case fully and have decisions affecting their rights, interests or privileges made in a balanced, impartial and open manner. [emphasis added]

The Executive Director’s letter specifically referenced the Committee’s concern arising from the alleged “non-response” to the June 23, 2015 letter:
The Committee noted that College staff emailed you on June 23, 2015 and requested you provide details of your progress towards achieving the LMCC. No response to the email was recorded by the College, however, your success on the MCCQE Part 1, dated June 11, 2015, was independently verified by the College shortly thereafter. [emphasis added]

[64] If, as stated in this paragraph, “no response to the email was recorded by the College,” that failure cannot be visited upon the Applicant. He did respond to the June 23, 2015, email. I note again that after being provided with a copy of this email as part of the Application for Review, the College did not in submissions suggest that it did not receive the email, which should have been included as part of the Revised Record.

[65] The Revised Record is also clear that the Applicant wrote and passed the Part I exam in October 2015, not in July 2015 as stated in the Executive Director’s letter. The statement that the College “independently verified” a successful Part I exam in June 2015 was another error in the Executive Director’s letter. Clearly, busy people, even at the College, do occasionally make mistakes.

[66] The Executive Director’s letter went on to state as follows:

The Committee acknowledged your email of August 24, 2016 in which you advise that you were unsuccessful at the MCCQE Part 2 examination in April 2016. The Committee further noted that you have not registered for the next available sitting of the examination due to family and work commitments; however you do intend to register for the examination in spring 2017.

The Committee considered the role of the College and its overriding mandate to ensure the protection and safety of patients and to ensure that physicians are qualified, competent and fit to practice medicine and meet expected standards of practice and conduct. The Committee reviewed its authority pursuant to governing legislation, the HPA and the College bylaws. The Committee referred to section 2-14 of the bylaws which sets out the requirements for registration and licensure in the provisional class, in particular, the timelines within which registrants are expected to obtain the LMCC.

Based on the Committee’s comprehensive review of the available material and its consideration of the available options, the circumstances of your case, and the legislative and policy framework under which the College operates, the Committee concluded that it could not identify any exceptional circumstances in relation to your request for an extension of your registration and licensure. Given the absence of evidence of exceptional circumstances, the Committee determined that it would not be prepared to grant you a further extension of your registration and licensure on the Provisional; general/family practice class of registration and resolved:

RESOLUTION: 16-805

RESOLVED to cancel (the Applicant’s) registration and licensure three months following the September 26, 2016 meeting due to his non-compliance with meeting the timeline of obtaining the LMCC by July 23, 2016. [emphasis added]
Beyond the letter’s specific reference to the Applicant’s perceived non-response to its June 2015 email, its representation of an “equitable and transparent process” and its substitution of the words “exceptional circumstances” for the phrase “extenuating circumstances” that are used in the approved Minutes, the Executive Director’s letter sheds no further light on the Registration Committee’s reasoning.

**October 17, 2016: The Application for Review**

On October 17, 2016, the Applicant filed this Application for Review from the Registration Committee’s September 26, 2016, disposition. The Application for Review alleged, among other things, that the Registration Committee failed to consider significant extenuating circumstances. Under the heading “Communication Issues,” the Application for Review stated:

When I spoke to the CPSBC regarding the decision to cancel my registration and licensure it was pointed out to me that I failed to respond to an email from the college regarding my licensing requirements.

I would be disappointed if this was a factor in the Committee’s decision to cancel my registration but it was pointed out to me in the short conversation I had with the College’s Registration Department since and was mentioned specifically in the decision letter I received also.

I am not accustomed to any professional body nor have I dealt with any institution (including bank or revenue agencies) where important information or significant or sensitive information is delivered or requested by email only.

I receive a lot of emails daily and it is possible I missed some correspondence unintentionally.

Regarding the specified email that the College stated no response was received – I have searched my inbox and have a record of that email (June 23, 2015) and a subsequent email on June 24, 2015 from the College … requesting details of my progress towards achieving the LMCC plus supervisor details.

I have enclosed a copy of the reply that I sent to the College regarding same and a copy of the reply from the College’s confirming receipt of same; so there are some inaccuracies in the College’s letter.

The College received the Application for Review and attachments. It is not clear why the Applicant’s June 24, 2015, email in question was never put before the Registration Committee, which reconsidered the issue of “exceptional circumstances,” as detailed below.

The Application for Review also stated that, following the Applicant’s email exchange with the College in June 2015 the next email he received was on August 5, 2016 (not July 2016), which was after the June 2016 closing date for sitting the Fall 2016 exam. He stated that given his credentials, and qualifications recognized by the CCFP, “I do not think that I am in any way a risk to patient health and safety for failing to have obtained the LMCC Part II within the time limits imposed.”
On October 18, 2016, the day after he filed his Application for Review, the Applicant wrote to the College requesting that the Committee review his situation again at its next meeting to consider “some extenuating circumstances that they were not aware of at the last meeting / review.” The Applicant advised the Committee:

I did not detail these circumstances in my previous correspondence as having spoken to a number of colleagues who emigrated to [the community] from overseas who have been in Canada longer than I have, and either took more than 3 years to obtain the LMCCs or have yet to obtain the LMCC or CCFP, I did not think I would be required to detail the personal circumstances to be granted an extension to my registration and Licensure.

The Applicant asked the Committee to consider four categories of extenuating circumstances “that significantly impacted me on obtaining the LMCC part I +II within the 3 year timeframe.”

First, the Applicant spoke to the health of his two young children, noting that both had been diagnosed with Coeliac Disease since the family moved to Canada, which disease affected his son particularly badly over a nine month period (the little boy was 18 months at the time of onset). The Applicant stated that “(b)y the time he was assessed and subsequently underwent Gastroscopy and Duodenal biopsy at Children’s Hospital in Vancouver he had lost a lot of weight and regressed significantly in terms of speech and overall development.” He stated that “this was a particularly stressful period for both myself and my wife without any family support here in Canada that we would normally rely on in such circumstances. In particular it made it impossible to prepare for or consider sitting any examinations.”

Second, the Applicant described his father-in-law’s unexpected death in 2015, which required his wife to travel to Ireland while he stayed in Canada with the children. The suspicious circumstances surrounding the death, which required a formal inquest, took over 6 months to conclude and “also was not conducive to study or exam preparation.”

Third, the Applicant referenced the significant financial commitment involved in sitting the LMCC exams (cost of the exams, travel and accommodation, preparation courses and relevant material, cost of time off work). He advised the College that all this arose in the context of larger financial burdens including the loss of value of their home in Ireland due to market collapse, the requirement that they buy a home due to their landlord selling their rental home, and a serious tax issue that befell him resulting from Canada Revenue and accountant errors. He stated:

The overall effect of this is that I am substantially behind on my tax returns over the last 2 years and continue to play catch up with negotiated payment schedules with Canada Revenue to avoid penalties/fines. This has required a lot of overtime on top of an already busy work schedule over the last 18 months. The cost implications of sitting a third exam in 18 months (exam cost, time off work, etc) I really could not afford so soon
and hence my plan to sit the LMCC part II again the Spring 2017 to give myself some breathing space financially.

[76] Fourth, the Applicant emphasized the “patient perspective” – he serves approximately 1,700 patients (including complex care patients of retiring colleagues), there is a physician shortage in the community, he has a positive rapport with his patients and “I have a number of patients with complex care needs and do not feel confident I will be able to find even a small portion of these a physician to take over their care needs.”

[77] The Applicant also notified the College of the two errors in the Executive Director’s letter – (a) that the issue of “no response” to the June 23, 2015, email was incorrect, as his response, and the College’s reply was in his inbox, and (b) that he sat the Part I exam in the fall 2015, not in June 2015. He stated that “I will send on exam results and e-mails I have confirming above details just for the record.”

[78] With the Registration Committee meeting scheduled for November 22, 2016, the Applicant wrote again to the College on November 15, 2016, attaching three letters for the Committee’s consideration – one from the university hospital medical director, one from the physicians the Medical Clinic where he worked and one from three physicians at an after hours clinic:

- The university hospital medical director stated that “As an examiner … for the 1st and 2nd year medical student OSCEs, a teacher to the 1st to 4th year medical students, as well as primary physician to a patient panel of 1500++, [the Applicant] is an asset to [the health authority] in many facets. As there is a significant physician shortage within [the authority], having [the Applicant] close his practice would be a detriment to, not only [the authority], but the community as well.”

- The letter from the after hours clinic physicians provided “an unsolicited support for our esteemed colleague” and full support, on behalf of all the Clinic’s physicians “that he be allowed to continue working in his current roles as a family physician in this community until he can re-try the LMCC of Canada examinations.”

- The letter from the Medical Clinic spoke to the unforeseen events that affected his ability to prepare for the exam, and to his performance at the clinic. The letter described him as a “valued member” and stated that “we … have no reservations regarding his clinical skills and abilities.” The letter emphasized the adverse impact of 1800 patients being “orphaned” and the adverse impact on existing physicians. The letter appealed to the College to extend his licence to practice to afford him a further opportunity to challenge Part II of the exam.

3 It does not appear that the Applicant sent his June 24, 2015, email following this letter. As noted, however, the College has never suggested it did not at all times have that email in its possession, which the Applicant attached again to his Application for Review.
The Registration Committee met on November 22, 2016, to consider the Applicant’s request that it reconsider its previous decision to cancel his registration.

I also have two versions of the Minutes from that meeting. Both versions set out the documentation that was before the Registration Committee. Again, the Applicant’s June 24, 2015, reply to the College’s email was not before the Committee despite the fact that the Applicant had specifically attached it to his Application for Review. The documentation before the Committee referenced, but did not include a copy of, the Application for Review.

One version of the Minutes sets out what appears to have been Staff’s Report to the Registration Committee: Record, pp. 197A-D. That version summarizes the history, and includes a heading “Update for the Registration Committee,” summarizing most of the Applicant’s points and letters of support. However, that Update conspicuously omits reference to the two errors the Applicant pointed out concerning the Executive Director’s letter, one of which spoke to a key factor in the original decision (which omission is important given that the College did not put the June 24, 2015 email before the Registration Committee). That version of the Minutes identified the three options before the Registration Committee, which I summarize below:

(a) Continue his registration subject to Applicant providing by December 31, 2016, confirmation that he registered for the Part II exam, and subject to his passing the exam by June 30, 2017.

(b) Uphold the September 26, 2016, decision “due to his non-compliance with meeting the timeline of obtaining the LMCC by July 23, 2016.”

(c) Other options.

The other version of the Committee Minutes, the substance of which was repeated verbatim in the Executive Director’s December 2, 2016, letter, state that the Committee’s approach was to consider “whether there was any new information or circumstances which would warrant a reconsideration of its prior decision.”

The Registration Committee began by acknowledging that the Applicant had “appealed” its September 26, 2016, decision to the Review Board “and are seeking a 12 month extension of your registration and licensure” to obtain the MCCQE Part II.

The Committee “acknowledged with empathy” the Applicant’s personal circumstances, including his children’s health matters, family bereavement and the financial implications of preparing for and taking the examinations. It also acknowledged his submission regarding the impact of the cancellation of his registration and licensure on his patients and his family. The Committee also acknowledged the letters of support for the Applicant’s request for an extension.
[85] The Committee noted that the Applicant sat but was not successful in the MCCQE Part II spring 2016 examination, and that he did not apply to re-sit the fall 2016 examination due to family and work commitments.

[86] Against this backdrop, the Registration Committee concluded as follows:

In considering [the Applicant’s] submissions, the Committee noted the College’s duty to protect the public interest and ensure that physicians are qualified, competent and fit to practice medicine and meet the expected standards of practice and conduct. The Committee acknowledged its authority to grant registration to applicants who meet the conditions or requirement in a class of registration. It noted that, successful completion of the licensing and/or certification examinations is important as a reliable, independent and objective method of assessing an applicant’s knowledge, skills and judgment.

While the Committee was empathetic with [the Applicant’s] circumstances, it expressed that personal circumstances and factors such as understaffed rural practices are commonly provided by registrants as a rationale for their non-compliance with registration and licensure requirements. The Committee acknowledged that the mandate placed upon the College obligates the Committee to place patient safety above all other considerations. This includes ensuring that physicians meet expected requirements for ongoing registration and standards of practice and conduct.

Following its very detailed review of [the Applicant’s] matter, the Committee was not able to identify any exceptional circumstances or new information in his case which would warrant a reconsideration of the Committee’s prior direction. Accordingly, the Committee reaffirmed its previous decision namely that, in accordance with Resolution 16-805 dated September 26, 2016, [the Applicant’s] registration and licensure be rescinded effective December 26 2016 due to his failure to obtain the MCCQE Part II leading to the LMCC within the required timelines.

The Committee expressed its hope that [the Applicant] will be able to dedicate the necessary time to prepare for and be successful at the MCCQE Part II examinations such that he may be eligible for re-registration with the College in the future.

[87] On December 2, 2016, the Executive Director of Registration wrote to the Applicant communicating the Registration Committee’s reasons to the Applicant.

**December 6, 2016: Applicant’s “further appeal” to the Registration Committee**

[88] On December 6, 2016, the Applicant wrote to the College to make a “further appeal” to the Registration Committee. The Applicant reiterated the family circumstances that arose from the Coeliac illness and diagnosis of both his young children. He stated:

This was a stressful period for both myself and my wife without any family support available here in Canada that we would normally rely on in such circumstances. I found it particularly stressful given that I was working full time in a new country after making a considerable personal and financial commitment to moving, while trying to support my family and be there as much as possible. I could not dedicate any time, nor was I in a mindframe to be able to prepare for, or sit any examinations. Upon reflection, I should
have sought out support, similar to that available to Canadian students and residents, to ensure successful licensure. As an Immigrant Physician, I was not aware of the resources available to me.

[89] The Applicant reiterated the circumstances surrounding his wife’s absence when her father died unexpectedly, and stress arising from his sister-in-law’s breast cancer diagnosis and “this entire period was stressful for my wife and she needed a lot of support from me outside of my work. She is on the waiting list for Genetic cancer screening with the BC Cancer agency. Again this period was not conducive to study, nor was I in the frame of mind where I could dedicate time to or study for the LMCC exams.” The Applicant reiterated that his 1700 patient panel, and his financial constraints, all meant “I was not in the emotional ‘head space’ to prepare for my exams.”

[90] The Applicant emphasized that he respected the College’s concerns for patient safety. He pointed out however that “this is not a competency or patient safety issue” given his CFPC Certification, his supervisor reports and his letters of support. He expressed concern that the decision to remove him from practising medicine was not in his patients’ interests in respect of continuity of care, a particular concern given that there are no physicians who could assume his case load, particularly his patients with complex care needs.

[91] With regard to the “deadline” issue, the Applicant asked the Registration Committee to consider the College’s communication with him:

When informing that my file was being referred to the Committee’s next meeting for review the College requested evidence that I had applied for and proof of payment for the next available sitting of the LMCC Part II in order to grant me an extension of my registration.

As I mentioned before after a stressful 2 years and due to financial pressures I was not in an adequate frame of mind to prepare for and sit the LMCC part II again in October 2016. Had I known before the deadline for application for the exam had passed that my registration would be cancelled, I would have applied to sit regardless of my situation. The College’s communication with me however was well after the application closing date deadline had passed therefore the next available sitting is in May of 2017.

In regards to the exam I am currently challenging the results as I narrowly failed based on exam technique rather than not giving the correct responses. I regret not doing this much sooner….

…If I am unable to work and provide for my family, it is unclear to me that I will be able to remain in Canada. The Committee’s decision will also likely impact my immigration status in this country. My sponsorship with the [health authority] depends on my being able to provide a medical service to patients.

…I humbly request a compassionate review on both my behalf and on behalf of the vulnerable patients who will undoubtedly also be affected by this decision.
[92] The Applicant appended further letters of support from his College-approved supervisor, the Medical Director and Department Heads of the medical school at the local university, and the Team Lead for the local Division of Family Practice. The letters of support referred to the Applicant as “very knowledgeable” and providing “excellent care” with a “very high patient satisfaction rating” and “exceptionally positive” feedback from both his colleagues and patients. The letters also documented the physician shortage in the area and the difficult personal circumstances that had befallen the Applicant. His patient load was now noted at 1800 patients and there were “no concerns with his clinical care.” The Head, Department of Family Practice at the Health Authority, noted his belief that “the extenuating circumstances have simply prevented him from writing his exams within the time limit rather than there being a clinical concern.”

Registration Committee Reconsideration Decision #2: December 15, 2016

[93] On December 15, 2016, the Registration Committee met to consider the Applicant’s December 6, 2016, letter and attachments. The Minutes record the following deliberation after reviewing that material:

The Committee acknowledged the information provided regarding [the Applicant’s] request with the Medical Council of Canada (MCC) for a rescore of the MCCQE Part II examination which he sat in spring 2016. The Committed [sic] noted that rescore requests must be made with the MCC within six weeks of the date on their Statement of Results and that generally, the MCC can take between four and six weeks to review the same. The Committee noted that, to date, [the Applicant] has not provided any further information regarding the MCC’s re-evaluation of his scores from the spring 2016 MCCQE Part II examination.

The Committee reviewed all of the available information and considered whether there were any exceptional circumstances or additional information which would warrant granting [the Applicant] a further extension of his registration and licensure. While the Committee was empathetic regarding [the Applicant’s] personal matters, it did not identify any exceptional circumstances or additional information which would warrant his request for an extension of his registration nor did the Committee feel that [the Applicant] could be relieved of the obligation to meet the requirements for his continued registration and licensure with the College namely, to obtain the LMCC within three years of commencement of practice in British Columbia (i.e. prior to July 23, 2016) as stipulated in his original eligibility resolution, Resolution 12-1038 dated December 13, 2012 and pursuant to section 2-14(8) of the bylaws.

On the basis of all available information and its careful review of the matter, the Committee concluded that it would not be prepared to grant [the Applicant’s] request for an extension of his registration and licensure in the provisional – general/family class and reaffirmed its prior direction, Resolution 16-805 dated September 26, 2016. [emphasis added]

[94] On January 13, 2017, the Executive Director of Registration wrote to the Applicant communicating the Registration Committee’s reasons to the Applicant. After setting out the reasons just quoted from the Minutes, the letter stated:
Further to the above, the College was notified on December 23, 2016 that you were granted a stay by the HPRB. Therefore, in accordance with the College’s governing legislation … your registration and licensure will remain as actively practicing until such time the HPRB has completed its process and your matters have been fully reviewed by the College and the HPRB.

III DECISION

Preliminary Issue

[95] The College submits that the Review Board ought not to consider nine pages of documents submitted by the Applicant with his Statement of Points - namely: two Outpatient Clinic Progress Notes (March 25, 2014 and April 10, 2014) regarding the Applicant’s young son, a pediatric outpatient dietitian report for the Applicant’s son dated August 19, 2014, and an Air Canada receipt for a ticket for the Applicant’s wife from Ireland to the northern community where the Applicant practices, dated October 18, 2015.

[96] The College submits these documents speak to the personal circumstances that impeded the Applicant’s ability to write the LMCC within the three year time frame. The College acknowledges the Applicant’s personal circumstances, and states that “at no time did the Committee question the legitimacy of those circumstances.” As such, the College submits that the information is of minimal probative value and that its disclosure is not reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review under s.50.54(8) of the Act.

[97] Given the College’s acceptance that the Registration Committee accepted as “legitimate” the Applicant’s circumstances, I find that I do not require the nine pages of documents in order to conduct this review.

Material considered on this Review

[98] In reaching my decision, I considered all the information that was before me whether specifically referenced in this decision or not, including:

- the Applicant’s October 17, 2016, Application for a Review;
- the 259-page Record and the 24 pages of additions to the record (jointly the Revised Record);
- the Applicant’s March 9, 2017, Statement of Points; and
- the College’s May 15, 2017, Statement of Points.

Statutory Provisions Governing Registration

[99] Section 20(1) of the Act provides that the Registration Committee is responsible for granting registration of a person as a member of the College. Section 20(2) requires the registration committee to grant registration to every person who, in accordance with the bylaws, applies to the college for registration, pays the required fees and “satisfies the registration committee that he or she meets the conditions or requirements of registration in a class of registrants.”
Sections 20(4.3) and (4.4) of the Act specifically address “provisional registrants”:

20(4.3) If a bylaw under section 19 (1) (i) establishes a class of provisional registrants for the purposes of this subsection, the registration committee may

(a) grant registration in the class for a limited period specified for the registrant by the registration committee,

(b) require the registrant to complete, within the period specified under paragraph (a), any examinations or upgrading of knowledge, skills or abilities the registration committee considers necessary for the registrant, and

(c) impose limits or conditions on the practice of the designated health profession by the registrant.

(4.4) Limits or conditions imposed in accordance with subsection (2.1), (3), (4.2) or (4.3) may be different for different registrants within a class of registrants.

Section 20(4.3) applies only if a College has passed a bylaw under section 19(1)(i) of the Act. Section 19(1)(i) states:

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

(i) establish a class or classes of registrants, including, if authorized in accordance with section 12(2)(g.3), a class of restricted or provisional registrants for the purposes of section 20 (4.2) or (4.3), respectively, and specify if members of a class are eligible to vote in an election referred to in section 17 (3) (a) or to be elected under section 17 (3) (a);

Section 19(1) of the Act also includes several provisions allowing the College to make bylaws concerning conditions or requirements for registration:

19 (1) A board may make bylaws, consistent with the duties and objects of a college under section 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 section 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;

The College Bylaws

[103] College Bylaw 2-9 sets out the classes of registrants established by the College and includes provisional registrants.

[104] College’s Bylaw 2-14 addresses Provisional Registrants, and sets out a series of conditions for a person to become a provisional registrant, starting with the application for provisional registration, the requirement for a sponsor and the requirement for a supervisor followed by conditions which are subject to time restrictions (unless there are “exceptional circumstances”).

[105] College By-law subsections 2-14(8), (9) and (10) state:

2-14(8) A registrant granted provisional registration must

(a) if a general/family practitioner, become a licentiate of the MCC within three years of commencing practice in British Columbia,

(b) if a specialist, become a licentiate of the MCC within five years of commencing practice in British Columbia, subject to section 2-21.

(9) The time periods referred to in section 2-14(8)(a) and (b) may be extended by the registration committee in exceptional circumstances.

(10) A general/family practitioner granted provisional registration must, within five years of commencing practice in British Columbia, obtain certification with the CFPC, failing which registration is cancelled unless extended by the registration committee in exceptional circumstances. [emphasis added]

[106] College Bylaw 2-15 imposes yet further requirements for the grant of provisional registration:
2-15 (1) For the purposes of section 20(2) of the Act, to be granted provisional registration for general/family practice, an applicant must

(a) have a medical degree,

(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,

(iii) have undergone an assessment of competency acceptable to the registration committee in a Canadian province or territory, and

(c) be legally entitled to live and work in Canada.

(2) An affected applicant may be granted provisional registration for general/family practice if, in addition to the requirements in section 2-15(1), the affected applicant has fulfilled the requirements of section 2-10(3).

Statutory Provisions Governing the Review Board

[107] Section 50.54 of the Act allows an applicant in receipt of a registration decision, the right to request a review by the Review Board. "Registration decision" is defined in s. 50.5 of the Act as follows:

"registration decision" means a decision made by a registration committee

(a) to refuse to grant an application for registration as a member of a college under section 20, except for a refusal under section 20 (2.1) or (3),

(b) to grant registration in a class of registrants under section 20 with limits or conditions on the practice of the designated health profession by the registrant, except limits or conditions imposed under section 20 (2.1) or (3), or

(c) if a college has established one or more classes of certified non-registrants, to refuse an application for certification as a certified non-registrant.
The review is a review on the record but the Review Board may hear evidence that is not part of the record if that evidence is reasonably required by the Review Board for a full and fair disclosure of all matters related to the issues under review.

The Review Board is given the following remedial authority on a registration review:

50.54(9) 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.

In contrast to the provisions governing complaint disposition reviews in s.50.6 of the Act, there is no legislated standard of review that governs the Review Board on a registration review except where the Review Board proposes to issue an order directing the Registration Committee to grant registration with or without limits or conditions. An order directing the Registration Committee to grant registration with or without conditions cannot be made unless the following requirements are met:

(10) The review board may 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 of 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;

(iii) the conditions described in subsection (11) (a) or (b) are met, or

(b) the person is a person to whom the registration committee is obliged under the Labour Mobility Act to grant registration or certification.
(11) The following conditions apply for the purposes of subsection (10) (a) (iii):

(a) in the case of a person applying for registration as a member of the college,

(i) the person's knowledge, skills and abilities must be substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications required for registration in a class of registrants, and

(ii) the applicant must meet any other conditions or requirements for registration in the class of registrants;

(b) in the case of a person applying for certification as a certified non-registrant,

(i) the applicant's knowledge, skills and abilities must be substantially equivalent to the training or educational requirements for certification in a class of certified non-registrants, and

(ii) the applicant must meet any other conditions or other requirements for certification in the class of certified non-registrants.

Standard of Review

[111] I start with the standard of review that I ought to apply on this review.

[112] I do not accept the College’s apparent argument that the Review Board cannot grant any form of remedy unless all of the requirements in s.50.54(10) and (11) are first satisfied. The numerous requirements in s.50.54(10) and (11) are confined to the particular remedy they address – the direction to grant registration. Where that is not the remedy, s.50.54 of the Act (in contrast to s.50.6, dealing with complaint disposition reviews) is silent regarding the standard of review the Review Board should apply. Where the remedy is other than a direction to grant registration, the Review Board must determine for itself the appropriate standard to apply. The relevant standard may depend on the nature of the issue.

[113] The issue here is whether the Review Board should interfere with the Registration Committee’s refusal under Bylaw 2-14(9) to extend the three year time limit under Bylaw 2-14(8)(a) and (9). For this kind of question, I do not think I should engage in a de novo assessment that simply substitutes my judgment for that of the Committee. In my view, considerable weight and respect should be given to the rationally expressed views and conclusions of the Registration Committee. That said, where the Registration Committee has given reasons that cannot withstand scrutiny, or has rendered a decision whose rationale is impenetrable, the Review Board may act, and may thereafter consider what remedy is appropriate. The review function would be futile if the Review Board was required to uphold a clearly flawed or unintelligible decision: see e.g., Review Board Decision No. 2015-HPA-065(a) at paras. [230-237]; para. [266].
In seeking to understand the Registration Committee’s rationale, I have considered not only its September 26, 2016, decision from which the Application for Review was filed, but also the Committee’s two subsequent decisions (November 22, 2016 and December 15, 2016), which flowed from its ongoing consideration of whether it ought to extend the time limit. Where, as here, the review concerns the Committee’s ongoing insistence on the time limit the Applicant challenges, it would be artificial, incomplete and unfair to limit my consideration to the September 26, 2016, decision.

Before turning to my analysis, it is appropriate to observe that the Applicant has not in this case asked the Review Board to set aside the requirement that he obtain the LMCC Licentiate itself. The only remedy that he seeks is one that would give him more time to write and pass the examination.

**Analysis**

On what basis did the Registration Committee refuse to extend the time limit?

A key factor that clearly influenced the Registration Committee in September 2016 was that the Applicant did not register for the fall 2016 examination sitting, “despite having been reminded that this is a requirement for ongoing registration and licensure.” The concern about the Applicant’s failure to respond to the College’s reminder was made crystal clear in the Executive Director’s October 7, 2016, letter, and again in the Applicant’s discussion with College staff, when it was emphasized that the Applicant failed to respond to Ms. Sommerfeld’s June 23, 2015, email.

In my view, the Registration Committee’s reliance on this factor was based on a patent error. The Revised Record is clear that the Applicant did, in a single email on June 24, 2015, respond to both of the College’s June 23, 2015, emails, which email the College acknowledged. Unfortunately, the Registration Committee was only given the College’s June 23, 2015, email; it was never given the Applicant’s email in response.

Whatever the cause of that omission, the effect was to seriously prejudice the Applicant. The absence of that key email from the material placed before the Registration Committee made it appear, incorrectly and unfairly, that the Applicant was being cavalier and non-responsive to his professional regulator. The impact of that was completely at odds with the Executive Director’s October 7, 2016, letter, and again in the Applicant’s discussion with College staff, when it was emphasized that the Applicant failed to respond to Ms. Sommerfeld’s June 23, 2015, email. The Registration Committee did not have sufficient information, and the absence of sufficient information caused it to act on a patently incorrect factual basis. This aspect of its reasons cannot withstand scrutiny.

Had the Registration Committee seen the Applicant’s June 24, 2015, email, it would have seen not only that the Applicant was responsive to the College, but that he had in his response specified the timing for the examinations – he would write the Part I exam in October 2015 and the Part II exam in April 2016. This would obviously
inform a recognition that the Applicant then did exactly as he undertook – to write the examinations on the schedule he laid out, passing the Part I examination on his first attempt and only “failing” the Part II examination by the smallest fraction. Instead, his exam results were deemed not even worthy of mention, while his failure to respond to Ms. Sommerfeld’s June 23, 2015, email loomed large.

[121] What about the Applicant’s “failure” to respond, one year later, to the July 15, 2016, email from the new and vaguely identified email sender - “Provisional Compliance?” Did the “failure to respond” to that email influence the Committee? While it is impossible to know what weight it was given, I note that the Executive Director’s October 7, 2016, letter to the Applicant conspicuously refers only to the failure to respond to the June 2015 email. At the very least, evidence of a prompt response by the Applicant to the College’s June 2015 email would have impacted the Registration Committee’s perception of the Applicant. That might have caused the Registration Committee to have College staff follow up to confirm whether the Applicant even received the July 15, 2016 email from “Provisional Compliance,” or to look more closely at how the sender was identified.

[122] As I noted earlier, the Applicant’s so-called “failure” to respond to the College’s June 2015 email was “a key factor” that clearly influenced its September 2016 decision. What else influenced that decision?

[123] Based on the September 26, 2016, Minutes and the October 7, 2016, letter, the Applicant’s failure to register for the fall 2016 exam was clearly a factor in the Registration Committee’s decision. While that factor was relevant, it clearly begged the key question whether the three year time limit should be extended – the very question of “extenuating circumstances” that the College invited the Applicant to address. On this issue, the Committee’s Minutes were conclusory:

In its deliberation, the Committee did not identify any extenuating circumstances to enable [the Applicant’s] registration and licensure to be extended.

[124] One might deduce from the Minutes the Committee’s view that the Applicant’s August 24, 2016, reference to his work commitments and young family did not override his obligation to obtain the LMCC on time. However, the Committee made no reference to the realities that:

- The Applicant did, as he said he would, sit the examinations in October 2015 and April 2016 and demonstrated the efforts he made in an exam preparation course.

- The Applicant passed the Part I exam, and only failed the Part II exam on the most marginal basis.

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4 I should add that if, in November 2016 and December 2016, the Registration Committee attached any weight to the Applicant’s alleged failure to immediately respond to its July 2016 email, it should have been briefed at those meetings of the Applicant’s position, set out in his Application for Review, that he has no record of receiving the July 15, 2016, email - which email was far less clearly identified if it did enter the Applicant’s inbox.
- The Applicant obtained his Certification in Family Medicine.

- Cancelling the Applicant’s registration would adversely affect his patients.

[125] The Applicant had by then received three supervisory evaluation reports, all of which had been delivered to the College, all of which were positive, and none of which was provided to the Registration Committee.

[126] What definition of “extenuating circumstances” did the Committee adopt in September 2016? Did its use of the word “extenuating” rather than “exceptional” make a difference? Why were the Applicant’s substantive exam results not worthy of mention, particularly when this was not a case of an Applicant who failed to sit the exam, or sat and achieved unequivocally poor results? Did the Committee regard the exam results as being irrelevant to the question whether he should be given one more opportunity to write the Part II exam? Was the Committee’s perception of those substantive results, and all the other factors referenced by the Applicant, tainted by its assessment that the Applicant was non-responsive to the College in 2015?

[127] Unfortunately, the Committee’s thinking in respect of these questions is impenetrable. The Committee offered no transparent or intelligible explanation for how it addressed them. Given the significance of the decision it had to make, it is my view that a basic rationale for its decision was required.

[128] Do the Committee’s November 22, 2016, and December 15, 2016, decisions, which decisions were informed by additional information from the Applicant, shed further light on its understanding and application of the “exceptional circumstances” test? In my respectful view, they do not, as is evident from a review of the November 22, 2016, Minutes, reproduced below for convenience:

In considering [the Applicant’s] submissions, the Committee noted the College’s duty to protect the public interest and ensure that physicians are qualified, competent and fit to practice medicine and meet the expected standards of practice and conduct. The Committee acknowledged its authority to grant registration to applicants who meet the conditions or requirement in a class of registration. It noted that, successful completion of the licensing and/or certification examinations is important as a reliable, independent and objective method of assessing an applicant’s knowledge, skills and judgment.

While the Committee was empathetic with [the Applicant’s] circumstances, it expressed that personal circumstances and factors such as understaffed rural practices are commonly provided by registrants as a rationale for their non-compliance with registration and licensure requirements. The Committee acknowledged that the mandate placed upon the College obligates the Committee to place patient safety above all other considerations. This includes ensuring that physicians meet expected requirements for ongoing registration and standards of practice and conduct.

Following its very detailed review of [the Applicant’s] matter, the Committee was not able to identify any exceptional circumstances or new information in his case which would warrant a reconsideration of the Committee’s prior direction. Accordingly, the Committee reaffirmed its previous decision namely that, in accordance with Resolution
16-805 dated September 26, 2016, [the Applicant’s] registration and licensure be rescinded effective December 26, 2016 due to his failure to obtain the MCCQE Part II leading to the LMCC within the required timelines.

The Committee expressed its hope that [the Applicant] will be able to dedicate the necessary time to prepare for and be successful at the MCCQE Part II examinations such that he may be eligible for re-registration with the College in the future.

[129] The first quoted paragraph emphasizes the importance of successfully completing examinations to protect the public interest. However, this misses the issue. The Applicant has not asked to be excused from the requirement to write and pass the LMCC exam. He has only asked for a limited extension of time – provided for in the College’s bylaws - for a rewrite of Part II in circumstances where he sat the exams in a timely way, passed Part I on his first attempt and failed Part II by the narrowest margin imaginable, where writing in the fall 2016 would have been exceedingly difficult (with the College’s July 2016 email having been sent after the registration deadline) and where his substantive medical performance while on provisional registration had been repeatedly assessed as being more than satisfactory by two College-approved supervisors. If all this was irrelevant to an assessment of “exceptional circumstances,” the Committee needed to explain why that was so.

[130] A similar concern arises with the second quoted paragraph, where the Committee refers to its obligation to “place patient safety over all other considerations.” This, also, has never been in question. Indeed, with respect to patient safety, all of the evidence before the Committee was that there was no patient safety issue with the Applicant. There was not a shred of evidence before the Committee that patient safety was at issue. To the contrary, all of the evidence was the other way. In this regard, it is noteworthy that all provisional registrants, such as the Applicant, require a supervisor. The Applicant received glowing praise not only from his supervisor, but from numerous other leading physicians in the health authority. Where, as here, the Applicant “failed” Part II by the narrowest of margins, and all the substantive assessments of his medical practice were positive, one might reasonably expect the Committee’s reference to “patient safety” to be a factor supporting an extension of his provisional licensure for a period of months to enable him to attempt the examination a second time.

[131] It is possible that the Committee took the view that patients cannot be safe until the LMCC exam is successfully written. However, if that were so, it would undermine the very basis for provisional registration. By definition, provisional registrants are entitled to practice medicine for at least three years (and in the case of a specialist, five years) before obtaining the LMCC Licentiate.

[132] The Committee stated that “personal circumstances and factors such as understaffed rural practices are commonly provided by registrants as a rationale for their non-compliance with registration and licensure requirements.” One would expect this to be true – but again, it offers very little in the way of rationale. Is the Committee saying that because a rationale is “commonly” given, it must be rejected outright in every case and cannot be a relevant factor in assessing exceptional circumstances? If
exceptional circumstances cannot at least include personal circumstances, what can they include? If exceptional circumstances can include personal circumstances but the Applicant’s personal circumstances do not suffice, what more is required?

[133] Regrettably, the Committee’s December 15, 2016, Minutes offers nothing further by way of insight into its thinking.

[134] Having done my best to understand the Committee’s thinking, and having taken to heart its various statements that it considered the Applicant’s situation with care, I nonetheless find that its decision-making has given rise to two serious concerns. First, the Committee has, based on patently incorrect information, perceived the Applicant as someone who is non-responsive to the College and who does not appreciate the seriousness of the College’s regulatory time limits. Second, the Committee has, in its September, November and December 2016 decisions, considered its “exceptional circumstances” power using a test whose content and application are not transparent, intelligible or justified based on its reasons and the Revised Record.

[135] In Review Board Decision No. 2015-HPA-088(a) at para. [12], the panel noted some of the key factors that should be present in a “reasonable” disposition.

A reasonable disposition should be transparent (clear as to how the Inquiry Committee arrived at its conclusion), intelligible (clearly expressed, easy to understand) and justified (the reader should be able to understand the factual and legal foundation for the Registration Committee’s conclusion).

[136] Surely a key element of equity and transparency involves providing some guidance as to the considerations that the Registration Committee considers relevant in assessing “exceptional circumstances.” If an applicant is to have a meaningful opportunity to present his or her case “fully,” surely the applicant must have some idea of the sorts of considerations the Registration Committee seeks. Without that transparency – which transparency benefits both the applicant and the Committee itself - the discretion to consider “exceptional circumstances” can be difficult to distinguish from a refusal to exercise discretion, an arbitrary exercise of discretion or an exercise of discretion based on irrelevant considerations.

[137] While I am reluctant to speculate, I have considered the possibility that the Committee might have taken the view that all of the factors identified by the Applicant were simply irrelevant because exceptional circumstances include only circumstances that make it impossible to comply with one of the requirements, such as a debilitating illness befalling the Applicant or an act of God. If that is the test the Registration Committee was applying, a serious issue would arise as to whether that was an unreasonably narrow and fettered view of “exceptional circumstances” – as essentially equating “exceptional” with “physically impossible.” If, however, the test goes beyond physical impossibility, it is difficult to understand why none of the factors identified by the Applicant, individually or cumulatively, was identified as exceptional.

[138] If I could not understand the test the Committee was applying, it is difficult to see how the Applicant could have known the case he had to meet – how he could be
afforded, as represented by the Executive Director in her October 7, 2016, letter, “an equitable and transparent process” and “the opportunity to present [his] case fully and have decisions affecting [his] rights, interests or privileges made in a balanced, impartial and open manner.”

[139] Before turning to the appropriate remedy, I will address a potential argument that the determination at issue in this case is not of particular significance since, as noted by the Committee in its November 22, 2016, letter, the Applicant may re-apply for registration once he sits and passes the Part II exam. On this view, this is a simple case of the Applicant’s time having simply run out on this registration, without prejudice to a possible future registration.

[140] While it is true that the decisions in question are not akin to a decision cancelling registration for cause, it is common ground that the practical implications were significant. The Committee’s decisions had obvious professional and financial consequences for the Applicant and his family, potential immigration implications, and of course implications for his patients and the community. I think it also reasonable to consider that the Committee’s decision to direct the College to cancel the Applicant’s registration and licensure had the potential to harm the Applicant’s professional reputation. The College Bylaws authorize extensions of time in exceptional circumstances for good reason.

IV ORDER

[141] For all the above reasons, I am unable to confirm the registration decision. I have concluded that the Registration Committee’s decision to decline to grant the Applicant his requested extension of time under College Bylaw 2-14(9) to have a further opportunity to sit and obtain his LMCC (and to continue his provisional registration during such period) must be remitted to the Committee.

[142] Pursuant to s.50.54(9)(c), and subject to the proviso set out at para. [145] below, I am sending the matter back to the Registration Committee to reconsider the Application and issue a new disposition and reasons. Before issuing that disposition, the Registration Committee is directed to review these reasons, to review the June 24, 2015, email from the Applicant to Ms. Sommerfeld, to review the Supervisor Evaluation Reports contained in the Revised Record and to review any new information it considers appropriate, including any new examination results. If the Registration Committee decides not to extend the Applicant’s provisional registration upon reconsideration, the Registration Committee’s must explain itself in reasons, which shall include what test it has applied in assessing “exceptional circumstances” and the factors it has considered in applying that test.

[143] Given the Applicant’s provisional licensure and the date of release of this decision, this remedy poses a potential practical problem in that the Applicant’s most recent Certificate of Licensure ran from March 1, 2016, to February 28, 2017. However, I note that the Applicant is currently practising by virtue of the Stay Decision and the College’s January 13, 2017 letter to the Applicant, as follows:
...the College was notified on December 23, 2016 that you were granted a stay by the HPRB. Therefore, in accordance with the College’s governing legislation ...your registration and licensure with the College will remain as actively practising until such time as the HPRB has completed its process and your matters have been fully reviewed by the College and the HPRB. [emphasis added]

[144] I understand the underlined sentence to mean that the Applicant’s ongoing registration and licensure would not be prejudiced if, as I have now ordered, the Registration Committee is required to revisit this matter. It would obviously be most unfair to the Applicant to be prevented from practising while the Registration Committee reconsiders this matter pursuant to this decision in favour of the Applicant.

[145] The proviso referred to in paragraph [142] is that the College will be relieved of the obligation set out in that paragraph if, within 30 days from the date this decision is released, the parties notify the Review Board in writing that based on current circumstances, including any new or revised examination results the Applicant has received, the parties have reached a mutually acceptable resolution of the Applicant’s registration status.

“Brenda L. Edwards”

Brenda L. Edwards, Panel Chair
Health Professions Review Board