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

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

DECISION NO. 2016-HPA-197(a)

March 24, 2017

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

AND: The College of Physicians and Surgeons of British Columbia

BEFORE: John M. Orr, Q.C., Panel Chair

DATE: Conducted by way of written submissions closing on February 28, 2017

APPEARING: For the Applicant: Self-represented

DECISION ON APPLICATION FOR REVIEW

I SUMMARY

[1] The Applicant is an Anesthesiologist trained and qualified in South Africa. The Applicant moved to British Columbia and was registered in the Provisional: Specialty Practise class of licensure on April 14, 2011. The Applicant was provisionally approved for the practice of anesthesiology in a restricted location and under supervision. Her eligibility for registration was granted dependent on several conditions that included the successful completion of Royal College of Physicians and Surgeons of Canada (“RCPSC”) examinations by April 14, 2016.

[2] The Applicant failed to complete the conditions for registration and on September 26, 2016, the Registration Committee resolved to cancel the Applicant’s registration and licensure three months following the meeting due to her non-compliance with the requirement to obtain RCPSC certification by April 14, 2016.

[3] The Applicant has applied for review of the Registration Committee’s decision. In her Statement of Points the Applicant states that she does not disagree with the decision of the Registration Committee but seeks registration in one of two alternative categories. The remedy sought by the Applicant is beyond the scope of this review.
process. As she agrees with the Registration Committee’s decision in regard to her current registration her application for review of that decision is dismissed.

II DECISION

[4] The Decision of the Registration Committee is hereby confirmed for the reasons below.

III REASONS

Stage 1 or Stage 2

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

(a) I may confirm the Registration Committee dispositions under s.50.54(9)(a) of the Health Professions Act, R.S.B.C. 1996, c. 183, (the "Act") if the application for review can be fairly, properly and finally adjudicated on the merits without the need for submissions from the College; or

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

[6] In my view this Application can be dealt with fairly, properly and finally adjudicated on its merits without the need for submissions from the College. I have concluded it is appropriate to proceed by way of a Stage 1 hearing and accordingly, this review of the Registration Committee’s dispositions is based solely on the Record of investigation provided by the College (the “Record”) and submissions of the Applicant.

IV FACTS

[7] The Registration Committee determined the following facts:

(a) The Applicant was registered on the Provisional: Specialty Practice class of licensure as of April 14, 2011;

(b) The Applicant was provisionally licensed for the practice of anesthesiology in a restricted location and under supervision of a designated physician;

(c) The Applicant’s eligibility for registration was granted by the Registration Committee on October 15, 2009, (with subsequent extensions) dependent upon:

(i) Submitting an application and appropriate documentation of postgraduate training for an assessment of eligibility to sit the examination of the RCPSC within one year of commencement of practice in British Columbia;
(ii) Obtaining the qualifying examinations of the Medical Council of Canada ("MCC") leading to the Licentiate of the Medical Council of Canada ("LMCC") within five years of commencement of practice in British Columbia;

(iii) Obtaining a final ruling from the RCPSC confirming eligibility to access their certification examinations in anesthesiology and the appropriate dates; and

(iv) Successfully completing the RCPSC examinations leading to certification in her speciality licensure.

(d) The Applicant was required to achieve RSPSC certification by April 14, 2016.

(e) The Applicant was able to provide the necessary documentation to get her Provisional status and commenced employment in the designated location and continued to work at that location under supervision until her registration was cancelled as of December 26, 2016.

(f) The Royal College created an alternative route for assessment in place of the examinations. The Practice Eligibility Route ("PER") (route B) is a route to certification for internationally trained physicians who are already licensed and practising as specialists in Canada. Certification is granted on the basis of proof of credentials and a scope of practice review by members of the discipline committee of the applicant’s speciality.

(g) In June 2013 the Applicant applied to pursue the PER assessment route but she subsequently realised that this route was not available for specialists in anesthesiology and she reverted to the examination route.

(h) In September 2015 the College received confirmation of the Applicant’s eligibility to sit the certification examination and her registration to sit the examination in the spring of 2016.

(i) The Applicant was not successful in the examination because she withdrew from the oral part of the examination and she was informed that she had “failed, incomplete.”

(j) The Applicant informed the Registration Committee that she found studying to be too much of a challenge, time consuming and quite demoralizing. She said preparing for the oral examination with help of colleagues was discouraging.

**The Registration Committee’s Decision**

[8] The Registration Committee took into consideration the history of the Applicant’s election in 2013 to pursue the PER route and in 2015 to revert to the examination route as the PER route was not available in anesthesiology.

[9] The Registration Committee considered the Applicant’s comments in regard to her stress levels and acknowledged that the certification can be stressful and expressed empathy for the Applicant. However, on the other hand, the Committee pointed out 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 within reasonable time frames.

[10] The Registration Committee reviewed its authority under the Act and the College bylaws. In particular it referred to s.2-14(11) of its bylaws which sets out the requirements for registration and the timelines within which registrants are expected to obtain RCPSC certification:

(11) A specialist granted provisional registration must,

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

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

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

[11] The Registration Committee concluded that it could not identify any exceptional circumstances in relation to an extension of the Applicant's Provisional registration and licensure and passed the resolution to cancel her registration effective three months after their September 26, 2016, meeting.

[12] The decision of the Registration Committee was communicated to the Applicant by letter dated October 7, 2016.

V DISCUSSION AND ANALYSIS

The Application for Review

[13] In her Application for Review the Applicant submitted that the Registration Committee failed to consider that the unavailability of the PER route in her specialty was an exceptional circumstance and that she had not utilized all three tries allowed to pass the RCPSC Specialty Examination.

[14] In the Application for Review the Applicant asks for the possibility of an “assessment of competency” by the College or alternatively to be considered for registration as a locum in Anesthesiology or as a General Practitioner (“GP”) Anesthetist.

Statement of Points

[15] In her subsequent Statement of Points the Applicant states that:
I do not disagree with the decision of the Registration Committee about my registration as Provisional Anesthesiologist as my one and only attempt at the exam was not successful.

[16] The Applicant is not seeking to apply the “exceptional circumstances” provision to be allowed to re-sit the examination. She states:

The Examination route (A route) proved to be a challenge I was not able to overcome, 17 years after originally qualifying as an Anesthesiologist. I do not anticipate more success at another attempt, and therefore chose not to enroll again.

[17] The Applicant does not disagree with the facts, process or decision of the Registration Committee. Instead, the Applicant submits that:

My appeal at this stage is for registration as a GP Anesthetist (without any other GP work) or as a Surgical Assistant.

VI DECISION

[18] The Review Board’s mandate to review Registration Committee decisions is governed and limited by s.50.54(9) of the Act. 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.

[19] The mandate of this Review Board in this application is to determine whether the September 26, 2016, decision was reasonable. To that end I have considered the application for review, the evidence contained in the Record, and the Applicant’s Statement of Points.

[20] My powers are limited under s.50.54(9) of the Act in that I may only make an order under subsection (10) directing the Registration Committee to grant registration, with or without limits or conditions, or certification, as the case may be, only if I am satisfied that:

50.54(10) (a) all the following apply:

i. the Registration Committee failed to act fairly in considering the application for registration or certification;
ii. the registration decision

(A) was made arbitrarily or in bad faith,
(B) was made for an improper purpose,
(C) was based entirely or predominantly on irrelevant factors, or
(D) failed to take requirements under this Act into account.
There is no evidence to suggest the registration decision was made arbitrarily, in bad faith or for any improper purpose. I have reviewed the Record and find that the factors upon which the decision was based are fully supported by evidence contained in the Record.

In the Application for Review it was suggested that the Registration Committee failed to consider the exceptional circumstance that the PER (route B) was not available in anesthesiology and that the Applicant had only tried one time to pass the exam and could have been allowed two more attempts. However, in her subsequent Statement of Points it is made clear that the Applicant does not choose to retake the RCPSC examinations.

In my opinion the Registration Committee did consider the matter of the unavailability of the PER (route B) but did not consider this constituted an exceptional circumstance given that it applies equally to all applicants in anesthesiology. There is no suggestion that this decision was made unreasonably. In fact, the Applicant states in her Statement of Points that she does not disagree with the decision of the Registration Committee in this regard.

Rather than challenging the Registration Committee decision the Applicant is seeking registration in a different capacity or category. She is asking for registration as a GP Anesthetist or a Surgical Assistant. However, I do not have the power to make such a direction as provided in s.50.54(9) of the Act.

Under the Act (s.19) it is the College that has the authority to establish the classes of registrants and the standards and requirements for registration in those classes. This would include the criteria for registration as a GP Anesthetist or Surgical Assistant. The Review Board extends deference to the College in performing its function in governing its registrants according to the Act, the regulations and bylaws of the College as the College is best suited, obligated and empowered by the Act to perform the exercise of its powers and to discharge its duties under all enactments in the public interest.

In my opinion the Decision of the Registration Committee was not unreasonable and should be confirmed for the reasons expressed herein.

“John M. Orr, Q.C.”

John M. Orr, Q.C., Panel Chair
Health Professions Review Board