INTRODUCTION  AND BACKGROUND

[1] Pursuant to the Health Professions Act, R.S.B.C. 1996, c. 183, (the “Act”), the Applicant first applied under s.50.54 of the Act to review a registration decision of the Registration Committee of the College communicated to him in a letter dated August 17, 2017 (the “First Registration Decision”).

[2] At that time I determined that it was appropriate to proceed by way of a Stage 2 hearing and both the College and the Applicant provided me with additional detailed submissions on their respective positions.
Prior to arriving in Canada, the Applicant completed his medical training in Ireland and England and practiced for about four years as a general adult psychiatrist in Ireland and New Zealand.

The Applicant has been a member of the College since June 18, 2010, through a provisional license to practice. The provisional authorization granted by the College included a requirement that the Applicant practice under the supervision of a specific physician as well as obtaining the Licentiate of the Medical Council of Canada (“LMCC”) within five years and passing the Royal College of Physicians and Surgeons of Canada (“RCPSC”) examinations within the time frame set by the RCPSC.

At that time, the Applicant had completed the Medical Council of Canada Evaluating Examination (“MCCEE”) but had not yet successfully completed the requirements of the LMCC or passed the RCPSC examinations.

A tragic family loss delayed the Applicant’s pursuit of the College’s requirements and the Registration Committee granted a time extension to the Applicant in consideration of his personal circumstances.

The Applicant chose to pursue specialty certification with the RCPSC through a process known as Practice Eligibility Route (“PER”). However, the Applicant failed the PER assessments he undertook in 2016 and 2017. In April 2017 after his 2017 PER assessment the Registration Committee invited the Applicant to provide written submissions explaining his failure. The Applicant’s counsel states that the Applicant was not provided an option to appear before any committee of the College in person or given the option of consulting legal counsel.

While there was some consideration and reconsideration by the Registration Committee, on or about July 27, 2017, the Applicant received confirmation of a ruling originally communicated to him in May of 2017 effectively ending the Applicant’s standing as a licensed psychiatrist in British Columbia and directing him to wind down his medical practice.

On August 21, 2017, the Review Board granted an interim stay of proceedings allowing the Applicant to continue practicing as a psychiatrist in the same fashion as previously pending this application. The College took no position for or against the granting of this interim relief.

Counsel then acting for the Applicant submitted many letters and statements of support for the Applicant attesting to his good character, competence and contribution to the medical community. The Registration Committee took no issue with assertions of the Applicant’s good character and simply pointed out its role in public protection and the imposition of reasonable standards of competence that had remained unmet by the Applicant.
Prior to me deciding this matter, it was put into abeyance with the consent of all parties. On May 17, 2018, the College was advised that the Applicant successfully completed the requirements of the College by passing all necessary assessments on what would have been the Applicant’s third examination attempt.

Upon passing the assessment process, the Applicant sought to change his licensing status from “provisional specialty class” to “conditional-practice setting class.” This latter licensing status would allow the Applicant to practice independently and free from the direct supervision of another psychiatrist.

In a letter to the Applicant dated September 7, 2018, (the “Second Registration Decision”) the Registration Committee declined to change the Applicant’s license status. The Registration Committee advised the Applicant that it will defer any decision to upgrade the Applicant’s license status for a period of one year. Under the heading “Previous Considerations,” the Registration Committee noted the Applicant’s two previously failed assessments that raised concerns about the Applicant in the following areas:

(a) Demonstrated significant areas of weakness in general knowledge and use of psychopharmacology,
(b) Demonstrated severe deficits in his psychopharmacologic knowledge,
(c) Failed to demonstrate a comprehensive awareness about important safety issues in medication use,
(d) Substantial deficits in his knowledge about the use of psychotherapy and understanding of personality disorders,
(e) Demonstrated weak patient interviewing skills, missing important aspects of patient history that could have an impact of patient safety,
(f) Poor understanding of phenomenology that led to inaccurate diagnosis,
(g) Formulation skills were well below expected standard,
(h) Knowledge of psychopharmacology was not comprehensive,
(i) Poor interviewing skills lacking structure to guide the patient,
(j) Charts often lacked sufficient documentation regarding patient and safety and risk assessments.

In addition, the Registration Committee requires the Applicant’s supervisor to complete reports in a form satisfactory to the Registration Committee approximately six and twelve months following the date of the Second Registration Decision. In these reports, the Applicant’s supervisor is to address areas of weakness outlined in the Applicant’s PER assessments from 2016 and 2017. After receipt of these two additional reports, the Registration Committee proposes to then reconsider the licensing status of the Applicant.
The Applicant submits that the conditions imposed upon him in the Second Registration Decision are unfair and arbitrary. The Applicant states that concerns about public safety associated with the Applicant’s full licensure are unsupported by any evidence as the Applicant states in para. [48] of his Statement of Points that the Registration Committee “seems to have unfortunately moved their goal posts several times in my case.”

In addition, the Applicant submits that denying his full licensure is a violation of the Canadian Free Trade Agreement given that the Applicant has fulfilled the legislative criteria for full registration. The Applicant notes that he has a full, unrestricted license to practice medicine with the College of Physicians and Surgeons of New Brunswick. As such, the conditions on his practice the Registration Committee seeks to impose are a violation of the Labour Mobility Act (“LMA”)

II ISSUE

My authority to consider this matter is found at s.50.54 of the Act and pursuant to s.50.54(9) I have the following powers:

(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 considering this matter I am further directed by ss.50.54(10) and (11) of the Act which provide me with guidance regarding criteria I should apply in exercising my authority:

(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;

There is no apparent issue between the Applicant and the Registration Committee that the Applicant has now passed a PER Assessment and can continue working as a psychiatrist in British Columbia. The only issue is whether or not the Applicant should be subject to the supervision and reports required by the Second Registration Decision.

III ANALYSIS

[20] In the First Registration Decision the College states (at page 7):

While the Committee acknowledge the terms of [the Applicant's] original eligibility ruling, it was acutely aware of its mandate to protect the public in the context of the enduring safety concerns identified by the RCPSC and was uncertain around the ability to manage the same through the imposition of limits and conditions on [the Applicant's] practice.

[21] Page 6 of the First Registration Decision also includes:

The Committee once again discussed the role of the RCPSC as the national examining and certifying body for medical specialists in Canada. The RCPSC provides an independent and objective assessment regarding a specialist's medical knowledge and clinical skills which is validated by passing such examinations.

[22] The College and the Registration Committee's submissions suggest that I apply a standard of reasonableness and deference in making my decision. While I agree that reasonableness is likely an appropriate standard, my degree of deference to the Registration Committee's determination should be based on them applying a rational and consistent standard to all registrants. The record [at 0509] points to the Registration Committee giving deference to the standards of the RCPSC where the Registration Committee states:
Moreover, the Committee was mindful that, in this case, it is the RCPSC, *not the College*, who is the appropriate body to determine whether or not [the Registrant's] practice skills meet the standards of care expected of a specialist in the practice of psychiatry in British Columbia. (my emphasis)

[23] This distinction is important in that the College and the Registration Committee appear to be pointing me in the direction of the RCPSC when considering a standard of deference as to what would be acceptable in this situation. This is an inconsistency also pointed to by the Applicant in his most recent submission.

[24] In its most recent submissions, counsel for the Registration Committee now suggests I owe “a significant level of deference” to the College given that this decision was made in fulfillment of the College’s statutory duty of public protection and relied on the specialized expertise of the Registration Committee. Counsel further suggests that the Applicant has been afforded procedural fairness and that decisions respecting the Applicant’s practicing status to this point have been transparent and intelligible.

[25] The Applicant’s final Statement of Points directs me towards the provisions of the LMA and the Applicant points out that he has made his application, provided evidence of his qualifications and good character and finally provided proof of his practicing and restriction free status as a New Brunswick psychiatrist. The College does not dispute that the Applicant is now licensed to practice psychiatry in New Brunswick without restriction.

[26] The Applicant asserts that his continued supervision by another psychiatrist is “wrong, unfair, biased, made arbitrarily, without any transparency for an improper purpose and unreasonable.” The Applicant goes on to state that I should not give deference to the Registration Committee’s decisions because they were “based on faulty, biased and unreasonable conclusions.”

[27] The Applicant further submits that the Registration Committee’s concerns about his previous two fails of the PER Examination were addressed in his ultimate success in passing the PER Examination on his third attempt. This passing of the examination should be sufficient to address any lingering concerns the Registration Committee may have. As the Applicant puts it in point 7 of his most recent Statement of Points:

  The committee citing concern for public safety based on the results of previous failed examination without putting into consideration a recently passed examination which is meant to have remediated and corrected every weakness in the earlier Examination.

  The Committee’s reason in their discussion in rejecting the importance and the significance of the validation of the Traditional Exam conducted by the TCPSC makes ridicule of the whole process (all sic)

[28] I accept that the College must be mindful of its primary duty of public protection in making these determinations. I do not find that the College is acting in bad faith and I agree that I should generally defer to the College in terms of setting practice standards.
There was nothing unfair or arbitrary in requiring the Applicant to successfully complete PER assessments to a standard set by the RCPSC.

[29] Review Board Decision No. 2014-HPA-164(a) (2015 BCHPRB 113) at para. [96] suggests I have significant discretion within my jurisdiction and that there is no generally prescribed standard for granting relief. This is largely confirmed by Review Board Decision No. 2016-HPA-195(b) (2017 BCHPRB 54). When the remedy is something other than a direction to grant registration, I am to determine the appropriate standard which in turn reflects the nature of the issue.

[30] I requested and received additional submissions on the labour mobility issue raised by the Applicant. Specifically, s.50.54(10)(b) of the Act appears to give clear direction respecting Applicants who are fully licensed in other Canadian provinces.

[31] Counsel for the Registration Committee directs me to the Bylaws of the College (the “Bylaws”) including s. 2-11(4):

> Notwithstanding the requirements in section 2-11(2), an applicant may be granted full-specialty registration if the applicant holds a current full unrestricted license or certificate to practice medicine, without limits or conditions, from a medical regulatory authority in a Canadian province or territory. (my emphasis)

[32] The permissive wording of s.2-11(4) of the Bylaws is suggested by the Registration Committee to be a retention of discretion respecting the LMA.

[33] In addition, counsel for the Registration Committee points me towards the Canada Free Trade Agreement ("CFTA") and its provisions permitting the Registration Committee to “…impose terms, conditions, or restrictions on his or her ability to practice if such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to competency, conduct, or character of that worker.”

[34] Counsel further submits that the CFTA provisions were created to foster movement of people between provinces, and does not contemplate the situation before me where a British Columbia resident physician remains licensed in their home jurisdiction, gains license in a second jurisdiction only to apply to transfer to a less restrictive license in their home jurisdiction.

[35] However, counsel for the Registration Committee concedes that neither the Bylaws nor the CFTA are law. There appears to be a legislative oversight in that the LMA makes no reference to the CFTA.

[36] Section 3(1) of the LMA states:

> A worker who holds a certification in relation to an extraprovincial occupation may, if there is a BC equivalent occupation in relation to which certification may be issued,
(a) apply to the applicable BC regulator for certification in relation to that BC equivalent occupation, and

(b) practice the BC equivalent occupation in British Columbia

(iii) after obtaining that certification, and

(iv) in accordance with the governing Act and the applicable regulations, bylaws, rules, resolutions and measures under that Act. (my emphasis)

[37] A similar case to the facts before me was presented in *Risseeuw v Saskatchewan College of Psychologists*, 2017 SKQB 8 ("Risseeuw"). In this case a psychologist applied for registration in Saskatchewan under similar legislation to the LMA after being denied registration based on failing to meet Saskatchewan admission standards.

[38] While the decision before me does not relate to an outright denial of licensure, paras. [148] and [149] of the Risseeuw decision are instructive:

[148] …there is necessarily an inherent tension between mobility rights of professionals and the regulator’s duty to protect the public. In cases such as this, where the applicant wishes to effectively transfer her practice to Saskatchewan, the host regulator (i.e., the respondent) has the right to satisfy itself of the applicant’s professional competence before granting membership. There is no doubt a balance needs to be struck between the competing mobility interests and any refusal or restrictions based on the public interest...

[149] So, notwithstanding that the applicant chose to cast her latest application for membership as purely one involving mobility, was it unreasonable for the respondent to consider the applicant’s known past history of applications and her inability to demonstrate professional competence on multiple occasions when assessing her latest application? I think not. The cases above demonstrate that the public interest mandate is of sufficient importance that the overall suitability of a candidate is engaged on a fresh application being filed.

[39] In essence, counsel for the Registration Committee submits that one ought not to be able to do indirectly what one cannot do directly. The Registration Committee bases its concerns on the Applicant’s two failed attempts at passing the necessary qualification exam with particular emphasis on the Applicant’s “severe fail” on his first exam attempt. The Registration Committee does not seek to deny the Applicant registration as a psychiatrist, but does seek to have some additional, temporary oversight to ensure that its mandate of public safety is properly addressed. A reasonable interpretation of Section 3(1)(b)(ii) of the LMA would provide for this.

[39] While I am concerned about the Registration Committee being somewhat inconsistent in its deference to RCPSC standards, I am satisfied that the conditions imposed on the Applicant are not arbitrary or made in bad faith. The Applicant should be able to satisfy the additional conditions imposed upon him in the coming months and
attain the unrestricted licensure he seeks. I also find that the focus of the Registration Committee is for the proper purpose of protection of the health and safety of the public.

IV DECISION

[40] Pursuant to s.50.94(9)(a) of the Act, I confirm the decision of the Registration Committee of the College.

“John H. O’Fee”

John H. O’Fee, Q.C., Panel Chair
Health Professions Review Board