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 a registration committee

BETWEEN: The Applicant

AND: The College of Denturists of British Columbia

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

DATE: Conducted by way of written submissions closing on December 28, 2018

APPEARING: For the Applicant: Kyle Sandulescu, Counsel

For the College: Andrea Greenwood, Counsel

REVIEW OF REGISTRATION DECISION

[1] The Applicant wanted to become a licensed Denturist. She attended an accredited school and did very well in her courses and internship. She has excellent references. She passed all of her exams, with the exception of one section of the Complete Denture Examination which she took on July 18, 2018. She was informed on August 13, 2018, that she had failed this required examination and that she would not be registered. She is seeking a review and reconsideration of her grading. She asks that her mark be changed to a pass and she be entitled to registration.

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

I BACKGROUND

[3] This matter concerns the Applicant’s request for review of the decision of the Registration Committee (the “Decision”) to deny the Applicant a license to practice as an active full denturist in British Columbia.
[4] Part of the requirements under the College’s By-laws to be registered in the active full category is successful completion of the examinations required by the Registration Committee.


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

[8] The Registration Committee approved the Applicant’s score as 71% for the OSCE, which was a “pass” mark. In regard to the CDE, the Applicant achieved 90% for the first section and 100% on the third section. However, in the second, “Clinical,” section, the Applicant achieved only 40%. As a score of 65% is required for each section, the Applicant received an overall “fail” mark for the CDE.

[9] The Registration Committee notified the Applicant in its letter dated August 13, 2018, that: “Regretfully, based on your overall performance, you are not eligible to register as an Active Full Denturist in the province of British Columbia until both the (CDE) and the (OSCE) are successfully completed.”

[10] The Registration Committee advised the Applicant that the next opportunity to challenge the CDE will be in July 2019.

[11] The Applicant requested that the Registration Committee reconsider her scoring on the one section of her CDE and requested that she be granted a “recommended pass” despite the fact she scored less than the required 65% passing score. That request was denied and the Applicant was notified of the decision by letter dated December 19, 2018.

[12] The Applicant has applied to the Review Board with a Request for Reconsideration of a Registration Decision, in which she raised concerns that the methods used in the one section of the CDE testing were not standardized and that different equipment was used by the examiners than by the Applicant. The differences between the equipment used can result in significant variation and that there were even discrepancies between the examiners themselves. It is also noted that the results can be affected by the subject patient used for the testing.

[13] The Applicant submits that the Registration Committee failed to consider significant testing and scoring errors that occurred during her CDE and that the Registration Committee failed to appropriately consider the Applicant’s skills and abilities to practice. She submits that the decision to deny registration thereby fails to adhere to the principles of fairness, natural justice and reasonableness.
The Applicant asks that the Review Board order that the Registration Committee grant the Applicant registration as an active full Denturist in BC pursuant to s.50.54(10) and (11) of the Act.

In the alternative the Applicant seeks an order that the August 13, 2018, registration decision be sent back to the Registration Committee for reconsideration with directions to consider and correct scoring errors and reconcile scoring errors between examiners. It is also requested that there be a direction for clear, transparent reasons for any further decision.

In a further alternative the Applicant seeks an order from the Review Board directing the Registration Committee to grant the Applicant limited registration pursuant to the College Bylaws.

II ISSUES

An Applicant, having applied for and been refused registration, may apply to the Review Board for review of the registration decision. The Review Board must conduct a review under s.50.54 of the Act.

The Review Board must consider if in reaching its decision, the Registration Committee acted arbitrarily, in bad faith, or improperly? Did they act based on irrelevant factors, or fail to follow the Act? Did they act reasonably?

A review under s.50.54 of the Act is on the record. On this Stage 1 review I have considered: the application for review, the evidence contained in the Record, the Applicant’s Statement of Points and additional information and documents submitted by the Applicant.

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

(a) to confirm the Registration Committee’s decision;
(b) direct the registration committee to make a decision that could have been made by the registration committee in the matter; or
(c) send the matter back for reconsideration with directions.

III BACKGROUND

The Applicant graduated in 2017 from the CDI college Denturist program with honours and is registered as an “intern registrant” with the College of Denturists. She has a position at a Denture Clinic in British Columbia.

Prior to writing the CDE exam, the Applicant had to fulfil the requirements of the College’s “Internship Portfolio,” which consisted of reporting, technical and minimum hour requirements. The requirements are numerous, and include providing College
transcripts; registering as an intern with the College; acquiring a Mentor; and
demonstrating a variety of clinical management and technical skills.

[23] The Applicant has passed all of the required licensing examinations, the OSCE
and the CDE, except for one section of the CDE. This “Clinical” section of the exam has
three components and is graded on (1) Clinical Appearance (2) Centric Occlusion and
(3) Centric Relation. A candidate must score a minimum of 65% to pass this portion of
the exam. A candidate who passes the Clinical Appearance aspect is awarded 20 out of
100 available points, Centric Occlusion and Centric Relation are each worth 40 points.

[24] Each of these components has a marking criteria and in this case it is relevant to
take into consideration that the criteria for scoring Centric Relation includes
‘interocclusal distance’ (or ‘freeway space’), clinical appearance and a criterion
described as “heavy contact of teeth during speech.” It was in these areas that the
Applicant lost marks that led to a failing grade for the Clinical section of the exam.

IV ANALYSIS

Application for Review

[25] In her application for review the Applicant focused primarily on her poor grade for
the “freeway space.” She submitted that her poor grade was the result of different
instrumentation being used by the examiners. She pointed out that she used an analog
Boley gauge whereas the examiners used a digital gauge. She submits that examiners
should have used the same type of gauge as the candidate because there can be
significant differences in the two measurements. She also points out that difficulties with
her patient should have been taken into consideration.

Statement of Points

[26] The Statement of Points provides further details about the difficulties with the
patient to whom the Applicant was assigned. It is submitted that the Applicant was
required to spend over one hour getting the patient to relax, which prejudiced her ability
to properly complete the examination, including the clinical appearance section.

[27] It is submitted that despite the Applicant’s efforts to bring the above noted
problems to the examiners attention during the examination and case conference, the
examiners failed to give them any weight in evaluating her exam performance.

[28] It is submitted that the Registration Committee did not give proper consideration
to the discrepancy in marking by the three examiners.

[29] Shortly after receiving the Registration Committee’s letter of August 13, 2018, the
Applicant requested the Registration Committee to reconsider its decision. The
Applicant submits that the Registration Committee conceded there were difficulties with
the patient but that it was up to the Applicant to bring forward these issues during the
case conference portion of the exam. The Registration Committee declined to change
its decision.
[30] The Applicant submits that the decision of the Registration Committee was unfair by not considering her point about the inconsistent results caused by the different instruments and for not giving due consideration to the difficulties she had with the patient. It is submitted that the failure to do so meant that the decision was arbitrary, was based on irrelevant factors and made without justification.

[31] The Applicant submits that the decision did not provide careful and detailed explanation of the process of how the decision was arrived at and was not transparent and intelligible.

Consideration

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

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

[34] The Applicant contends that her failing grade was due to inconsistent marking in the Clinical section of her CDE and in particular to the interocclusal distance criterion, or Freeway Space, for the denture that she created for the exam. However the Clinical section is scored on three separate aspects of the denture (1) the Clinical Appearance, (2) the Centric Occlusion and (3) the Centric Relation. The Record shows that both examiners one and two failed the denture on Clinical Appearance and reasons were provided for their opinions.

[35] Examiners one and two also failed the denture on Centric Relation. There was a discrepancy between the examiners on the freeway space issue but both examiners failed the denture on the “heavy contact” component. The Record shows that because both examiners one and two found “heavy contact” that was sufficient to assign a failing mark on the Centric Relation aspect of the denture regardless of the Freeway Space measurements.

[36] Given that the Centric Relation aspect counts for 40 points the failure of this aspect meant that the Applicant could not receive the required 65% necessary to pass the exam.

[37] The Applicant expressed particular concern about the discrepancy in the grading of the freeway space which she felt was unfair. However the Record shows that the practice is that if there is a discrepancy a third examiner is asked to score the denture. In this case the third examiner agreed that the freeway space was not sufficient and so also failed the denture in relation to the Centric Relation aspect. The Record indicates that the third examiner also assessed failing grades for Clinical Appearance and Centric Occlusion.
[38] A significant issue raised by the Applicant is that the examiners were using digital gauges resulting in variations of measurements. The Record shows that the College took this into account and that it is typical for students to use the analog gauges and that the examiners have used digital gauges for several years. It is noted that despite the different tools students are still able to attain passing marks. The Record shows that the College also takes into account that the behaviour of the patient can be a factor.

[39] The Record shows that the freeway space measurements issue is only one of the considerations in assessing the grade in the Centric relation category and that other factors were considered such as the 'heavy contact during speech' and that the Applicant’s denture bases were loose and unstable in the patient’s mouth.

[40] The Applicant has raised issues of fairness and arbitrariness in the Fail decision but the Record shows that at the end of the exam all candidates are provided with an opportunity to present their dentures and describe any issues they have encountered. It is an opportunity to openly discuss the issues. It is noted that the Applicant did not discuss with the examiners the problems with speech or the loose and unstable denture.

[41] It is recognized that there is a subjective element during the case presentation stage and that a student who has not met the objective standards has an opportunity to still achieve a passing grade based on this case presentation. However, the Record shows that all three examiners found that the Applicant’s case presentation was not sufficient for them to recommend a passing grade despite the objective finding of failings in the denture.

[42] When marks are simply “0” or “1,” they may appear particularly subjective and differing marks become more prominent, as opposed to, for example, utilizing a sliding percentage marking system. To an outside observer, this may appear arbitrary. However, it falls within the range of reasonableness when one considers that there may be technical or other implications regarding the exam. The selected evaluation system clearly falls within the jurisdiction of the Registration Committee, as long as it is transparent and applied uniformly. The evaluation system and the dichotomous scoring regime were explained fully in the extensive information package distributed to all participants prior to attending the examination (Record page 80-118).

[43] By letter dated September 7, 2018, the Applicant requested that the Registration Committee reconsider her marks and the decision not to give her a Pass despite the score below 65%.

[44] The Registration Committee, consisting of three Registrants and one staff member, met in December 2018, and reconsidered the Applicant’s mark for the Clinical Criteria portion of the CDE and its decision, based on that mark, not to grant registration. The Committee reviewed the exam score, the original decision and the Applicant’s submission in her letter dated September 7, 2018. The Committee confirmed the scores for the Clinical Criteria portion of the exam and also the decision not to recommend a pass despite the scores.
By letter dated December 19, 2018, the Registrar provided the Applicant with a detailed report of the reasons for the Committee’s reconsideration decision. It is a five page letter that explains the scoring, the variations in scoring and in particular reference to the freeway space issue which was the main focus of the Applicant’s concerns. The letter addresses the issue of the analog and digital measurement tools and it addresses the case presentation component. The letter records that the Committee noted that all three examiners agreed that the Applicant did not achieve passing marks for Clinical Appearance and Centric Relation and that all three examiners felt that the case presentation was insufficient to qualify for a recommended pass.

The December 19, 2018, letter from the Registrar setting out the reasons for the decision of the Registration Committee demonstrates the existence of justification, transparency and intelligibility in the circumstances of what appears to be a straightforward result. The letter is written in clear language and provides a detailed, understandable and rational basis for the Registration Committee’s decision.

While I am sympathetic to the Applicant’s concerns and recognize her achievement of high academic grades, her success on other tests and her superlative references, I find that the Applicant has failed to establish that the Registration Committee acted unreasonably by failing to reassess the results of the one specific section of the examination that she did not pass.

V DEcision

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

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

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

“John M. Orr”

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