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, (the “Act”) 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

HEARING DATE: Conducted by way of written submissions closing on June 12, 2019

APPEARING: For the Applicant: Self-Represented

For the College: Andrea Greenwood, Counsel

REVIEW OF REGISTRATION DECISION
STAGE 2 HEARING

[1] The Applicant plans to become a licensed Denturist. He was approved and registered as an Intern Registrant on August 2, 2017. His Internship Portfolio was approved on June 1, 2018, and on July 13, 2018, he was advised that he had passed the required Theory Examination. Concurrently the Applicant challenged the required Clinical Examinations which are in two parts – the Objectively Structured Clinical Examination (OSCE) and the Complete Denture Examination (CDE).

[2] On August 13, 2018, the Applicant was advised that he did not pass the CDE although he was attributed a passing score on the OSCE. Because of the failure on the CDE he was not eligible for full registration until he successfully completes both examinations. He is seeking a review and reconsideration of his grading on the CDE. He asks that his mark be changed to a pass and he be entitled to registration.

[3] I decided that it is appropriate to adjudicate this matter by way of a Stage 2 hearing to have the submissions of the College as well as the Applicant.
I  BACKGROUND

[4] 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.

[5] 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.

[6] The examination process consists of the CDE and the OSCE.

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

[8] 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.

[9] The Registration Committee approved the Applicant’s score as 67% for the OSCE, which is a “pass” mark.

[10] In regard to the CDE, the Applicant achieved 95% for the first section and 100% on the third section. However, in the second, “Clinical,” section, the Applicant achieved only 60%. As a score of 65% is required for each section, the Applicant received an overall “fail” mark for the CDE. The Registration Committee accepted the recommendation of the examiners and confirmed that the Applicant had failed the CDE component of the registration examinations.

[11] The Registration Committee notified the Applicant by 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.”

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

[13] The Applicant has applied to the Review Board with a request for reconsideration of the Registration Decision, in which he raised concerns that the methods used in the one section of the CDE involving measurements were not standardized and that there were discrepancies between the examiners which resulted in unfair averaging of the measurements to the detriment of his results. It is also noted that the results can be affected by the patient used for the testing.

[14] The Applicant submits that the Registration Committee failed to consider the significant testing and scoring errors that occurred during his CDE. He submits that
the decision to deny registration thereby fails to adhere to the principles of fairness, natural justice and reasonableness.

[15] Subsequently, in his Statement of Points, the Applicant alleged that there were breaches of the examination protocols and established procedures that resulted in unfairness for him during the exam.

[16] 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.

II REVIEW BOARD

[17] 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.

[18] 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?

[19] A review under s.50.54 of the Act is on the record. On this Stage 2 review I have considered: the application for review, the evidence contained in the Record, the Applicant’s Statement of Points, the Statement of Points submitted by the College and the “Additional Information” affidavit attached. I have also considered the principles and standards in the authorities provided by counsel for the College.

[20] 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

[21] As the Applicant has asked the Review Board to direct the Registration Committee to grant registration it is important to note that the Review Board may only direct the Registration Committee to grant registration if:

50.54(10) (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 ANALYSIS

The CDE and Marking Process

[22] 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.

[23] Dichotomous scoring is used throughout the CDE, meaning that examiners must score each of the examinable criteria with a 1, indicating pass, or a 0, indicating failure. Candidates must complete every item that is listed for each examinable criterion in order to achieve a positive score for that criterion. If one item is not completed, the examiners must assign a score of 0 for the criterion.

[24] Under the majority examiner system, two examiners independently score the examinable criteria. If the first two examiners both reach the same score the candidate will receive that score. If one examiner scores the criterion as a pass and the second examiner scores the same criterion as a fail, a third examiner will conduct an evaluation of that same criterion. The score given by the majority (two out of three examiners) is the score that will be assigned to the candidate.

[25] Each of the three components, Clinical Appearance, Centric Occlusion and Centric Relation has a marking criteria and in this case it is relevant that the criteria for scoring Centric Relation includes a measurement of the Applicant’s denture of the ‘inter-occlusal distance’ (or ‘freeway space’) (IOD). The freeway space measurement must be found to be between 2-4mm. It was in this area that the Applicant lost marks that led to a failing grade for the Clinical section of the exam.

[26] A failure of either the Centric Occlusion or Centric Relation component means a loss of all 40 points and therefore even if a candidate achieves a pass in the other two sections they could not achieve the 65% necessary to pass the CDE examination in total.

[27] In this case the Applicant passed the Clinical Appearance component (20%) and the Centric Occlusion component (40%) which still gave him less than the 65% required to pass the exam. He was assigned 0% for the Centric Relation because
the average scoring by the examiners of the IOD or freeway space of his denture was less than the 2-4 mm acceptable range.

[28] Despite the fact that the Applicant had passed every requirement except the one measurement component of the Centric Relation component of the CDE the Registration Committee determined that: “Based on your overall performance you are not eligible to register as an Active Full denturist...”

Application for Review

[29] In his application for review the Applicant focused primarily on the disparity of the measurements found by all three examiners. He submitted he would have passed if the results of the one examiner with the more consistent measurements were accepted.

[30] If this were the only issue before me I would have found that these variations amongst the examiners are taken into account by the 2-4 mm range of acceptable measurements allowed and the three examiner system. However, the Applicant raised some serious other issues in his statement of points.

Applicant’s Statement of Points

[31] The Statement of Points raises concerns about non-compliance with the established protocols of the CDBC exam process and a failure to ensure “a fair and level playing field” as well as the scoring system.

The Patient

[32] The CDBC “Complete Denture Evaluation – Clinical Criteria (Version 072018)” handbook provides that each candidate must bring a patient to the examination. The patient is then assigned to one of the other candidates. There are requirements that the proposed patient must be found to be suitable in advance. Each candidate must complete and submit a “Confirmation of Patient Suitability” form about their proposed patient before the examination dates. In this case that was required by June 2, 2018, for the July 3, 2018, commencement of the examinations.

[33] The requirements in the suitability form require extensive disclosure about the patient’s oral health and candidates must also bring a completed “Certificate of Oral Health” for their patient signed by a medical practitioner. In most cases this is done by the intern’s mentor. In addition each candidate must bring two sets of appropriate sized teeth and three sets of different sized impression trays for the patient. The form and compliance with these requirements must be witnessed and certified by the candidate at least two weeks in advance.
The process in regard to the suitability of patients requires that the patient also attend to be assessed and be pre-approved by the CDBC exam coordinator and a member of the Denturists Association as suitable for the purpose of the practical work by another assigned candidate.

The Applicant says that in his case he was assigned a patient brought by another applicant who had not provided the Certificate of Oral Health or the Patient Suitability form, and a patient who had not been assessed and approved in advance as required in the Clinical Criteria handbook.

The Applicant submits that the exam coordinator made a unilateral decision to admit this unscreened last-minute patient that created a difficult and unfair situation for him in performing his clinical work.

The Applicant says that the last-minute patient had mouth sores or ulcers and “undercuts” that made his measurements more difficult, and requiring him to work on this unscreened patient was unfair and did not provide a “level playing field.”

The Applicant says that the unscreened patient failed to meet the acceptability standard as set out in the CDBC screening survey. The patient presented with bilateral ulcerations and “excessive anatomical bilateral undercuts of the mylohyoid ridge areas.” He notes that the exam coordinator asked him if he could work with this patient which indicated that the exam coordinator recognized that there were issues with the patient.

The Applicant says the other applicant did not bring the required teeth and impression trays appropriate for the last-minute patient. He submits that the exam coordinator disregarded the exam protocol by requesting other candidates to provide unused “extra sets” of teeth for the Applicant to use for this last-minute patient.

The Applicant submits that the failure to comply with the screening and evaluation of the patient pursuant to the CDBC protocols resulted in a failure to provide him with a suitable patient in a fair and equitable manner. He submits that the broadly inconsistent measurements by the examiners shows that the patient acceptability issues affected even seasoned denturist examiners.

Clinical Measurements

The Applicant submits that two of the three examiners collected gross variations of the inter-occlusal freeway space measurements despite the fact they had the benefit of digital calipers. The Applicant submits that one of the examiners gave him a passing mark and that the score of that examiner was the most consistent and should have been relied on. He submits that where there is broadly inconsistent measuring the system of “measurement averaging” negatively skews the outcomes.
It is submitted that the Registration Committee did not give proper consideration to the discrepancy in marking by the three examiners and did not fairly consider his overall performance.

**College’s Statement of Points**

The College submits that the Complaint’s Clinical Examination was fairly and appropriately conducted.

The College confirms that candidates must provide a completed *Patient Suitability* form and a *Certificate of Oral Health* for the proposed patient and that this form must be completed by a licensed practitioner, most often the candidate’s mentor. The College confirms that the certificate is required to be submitted prior to the examination.

The College confirms that each candidate’s patient is required to be screened by the CDBC prior to the start of the Clinical Examinations to ensure they are a suitable patient for the purpose of the exams.

The College confirms that candidates are also required to bring appropriate sized teeth for the patient to be used for the patient’s denture.

The College describes that, as part of the exam, each candidate fabricates a try-in complete denture for the patient assigned to them at the exam. The denture is then scored on (1) clinical appearance (2) centric occlusion and (3) centric relation.

The College confirms the scoring system described above and notes that each candidate is also allotted 5 minutes to make a case presentation at the end to explain any problems or issues they may have encountered.

The College submits that the Applicant in this case discussed his planned and measured IOD and maintained his freeway measurement was 3mm and did not raise any other issues. The College says that all three examiners measured the freeway space as being below 2mm. The College submits that the Applicant did not recognize the disparity issue and therefore received a failing grade.

The College acknowledges that there is a margin of error allowed-for given that measuring the IOD is “*somewhat subjective in that soft tissues are being measured and the patient’s ability to relax consistently can affect the measurement.*”

The College acknowledges that one of the examiners assigned a passing mark but submits that this was an error by the examiner because he was under the mistaken belief that a 1.51mm measurement should be rounded-up to 2mm. In any case because the other two examiners agreed that the IOD was less than 2mm the majority prevailed.
[52] The College submits that because the Applicant failed to properly measure the IOD and also failed to identify this issue in the case presentation all three examiners recommended that the Registration Committee attribute a failing score to the Applicant’s CDE.

[53] The Registration Committee accepted the recommendation of the three examiners and declined to accept the Applicant for full registration.

**College’s Response to the Applicant’s Statement of Points**

*The Patient*

[54] The College acknowledges that another applicant was permitted to bring in a patient at the last minute. The College now says that this was permitted because the other applicant had proposed two previous patients who were disqualified when assessed and the third proposed patient was not able to attend for assessment in advance of the examination day.

[55] The College acknowledges that the last-minute patient was brought in on the first day of the examinations. The College says that the patient was assessed on the spot by the exam coordinator, a qualified denturist.

[56] The College submits that the rules provide that any licensed denturist can assess the patient. The College says that: “In this regard, all of the candidates’ patients are reassessed by the CDBC prior to the commencement of the examination.”

[57] The College confirms that the last-minute patient had sores in her mouth and that this was noted in the Applicant’s clinical notes made at the time where he notes: “32 soreness area. It’s irritating patient. 44 soreness area.”

[58] The College acknowledges that: “Sore spots and/or ulcerations could be a reason to disqualify a proposed patient during a pre-examination assessment by the CDBC, but only because a candidate would not be starting the examination with an “ideal patient,” free from any complication.” However, the College maintains that, despite this, sore spots do not prevent a denturist from fabricating and fitting dentures.

**College’s Additional Information**

[59] The College submitted additional information with the Statement of Points. This was shared with the Applicant with an opportunity to reply.

[60] The additional information is an affidavit sworn by the exam coordinator who approved the last-minute patient. He attests that he is a licensed denturist and was the coordinator for the July 2018 clinical examinations.
The Affiant confirms that the prescreening is normally done by the exam coordinator along with a member of the Denturists Association. In this case he and a member of the Denturists Association pre-screened each of the other patients being presented for the exams and completed the checklists for suitability. He confirms that even where patients are assessed by an applicant’s mentor they are reassessed by the CDBC prior to the commencement of the examination.

The Affiant confirms that candidates commonly supply appropriate teeth for the proposed patient and sometimes teeth they wish to work with for the patient that gets assigned to them.

The Affiant attests that he examined the last-minute patient before the start of the exams and determined that she was suitable. He says that a member of the Denturists Association was not present to examine the patient. He says that this is not a requirement. He says he did not notice any “excessive” undercuts. He asserts that bilateral undercuts are acceptable if not severe.

The Affiant confirms that the patient had sores in her mouth that appeared to him as minor redness on the gums that had not progressed to ulcers.

The Affiant attests that to his knowledge there is no protocol which prevents him from asking candidates to provide teeth or other materials for another candidate.

The Affiant confirms that one examiner had rounded-up a measurement that would have resulted in an acceptable measurement for the Applicant but with the...
majority examiner system this measurement was not required because the other two examiners indicated an unacceptable measurement.

[70] The Affiant notes that the Applicant did not discuss the measurement issues or problems with the patient in his case presentation and his failure to see his IOD deficiency would raise concerns about his ability to practice independently.

The College Submission

[71] The College submits that the Record and the affidavit confirm that two of the three examiners measured the IOD at less than the required 2 mm requirement and that the majority system means that the third measurement is not used. It is pointed out that without the improper rounding-up the third measurement was also less than 2 mm.

[72] The College submits that decisions relating solely to the evaluation of a candidate’s clinical competence fall squarely within the expertise of the profession and ought not to be disturbed by the Review Board absent some evidence of unfairness or unreasonableness in the procedures underlying the evaluation.

[73] In regard to the submissions of the Applicant about the unfairness of the exam process and failure to follow the established protocols the College submits:

106 The CDBC conducted the portion of the CDE at issue in this case in accordance with well-established and well-documented procedures that were known to [the Applicant] in advance, using as examiners experienced and knowledgeable licensed denturists who had agreed to act in an unbiased and objective manner in evaluating all candidates. Those examiners documented their findings in the evaluation of [the Applicant’s] denture and all of the examiners explained their reasons for independently deciding not to recommend a passing score for [the Applicant]. The Registration Committee received, reviewed and accepted the recommendation of the examiners.

107 In the absence of any evidence calling into question the fairness and integrity of its exam process and examiners, the decisions made by the CDBC’s examiners and the Registration Committee under review in this application fall within a range of acceptable and rational solutions and should be sustained.

[74] The College submits that the Review Board, in this case, may only direct the registration committee to grant registration when all of the conditions described in s.50.54 (10) (a) of the Act are met.

[75] The College submits that the Applicant does not allege that the registration committee acted arbitrarily or in bad faith or that their decision was made for an improper purpose. It is not alleged that the decision was based entirely of predominantly on irrelevant factors or that the Registration Committee failed to take the requirements under the Act into account.
DECISION

[76] There are two aspects to this particular application for review. The first is a complaint about the grading of the IOD in relation to the denture and the second relates to the fundamental fairness in his case of the exam process itself.

IOD Measurements

[77] I can find little merit to the Applicant’s submissions about the grading of the IOD in his case. The Record clearly shows that no combination of any of the 18 measurements done by the three examiners could have resulted in an IOD measurement of sufficient space to meet the passing requirement for this aspect of the examination.

[78] There is no ground submitted upon which to question the professional experience, knowledge or skill of the three examiners. I accept the explanation that one of the examiners improperly rounded-up one of the scores but even if that score was accepted the majority process would eliminate that one measurement.

[79] The method of scoring, including the pass/fail and majority process, is fully explained to the candidates before they challenge the examinations. 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.

[80] The Applicant did not raise any issue at the time of the examination or in his case presentation that the problems he experienced with the patient affected this particular aspect of the examination. This is not something that the Registration Committee could have taken into consideration because it had not been raised until the Applicant filed his statement of points for this review.

[81] Upon review of the Record, I cannot conclude that the registration decision in regard to the results of the examination before them 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.

Examination Protocols

[82] It is apparent from the Record and the affidavit submitted by the College that strict compliance with the protocols set-out in the CDBC Complete Denture Evaluation – Clinical Criteria Version 072018 was not followed in the case of the other candidate and the last-minute patient. It is provided in the booklet very
specifically that the patient documentation must be completed and returned by June 22, 2018.

[83] The Clinical Criteria provides that after the documents are submitted, the protocol is that the patient is personally prescreened by the exam coordinator together with a member of the Denturists Association.

[84] In this case the documents were not provided by June 22, 2018, and there was no personal pre-screening of the patient by the exam-coordinator with a member of the Denturists Association.

[85] In addition, the other candidate did not provide appropriate teeth or moulds for the patient which meant the Applicant was provided with random teeth and moulds requisitioned from other candidates. While it is suggested that the Applicant could have brought his own, there would have been a reasonable expectation that the proper procedures and protocols would have been followed and this is not a reasonable suggestion.

[86] While the exam coordinator is a licensed denturist and approved the patient at the last minute, a member of the Denturists Association was not present. The Applicant’s statement of points, the Record and the affidavit all confirm that the last-minute patient had mouth sores and undercuts, although the exam coordinator says they were not “severe.”

[87] It is significant that the exam coordinator and the College acknowledge that sore spots could be a reason to disqualify a proposed patient during a pre-examination assessment because a candidate would not be starting the examination with an ideal patient, free from any complications.

[88] I have no doubt based on the Applicant’s Statement of Points that this variation from the standard and expected protocols and procedures added a degree of stress for the Applicant that may have affected his work. The option put to him of not accepting the patient and not continuing his exam was simply not realistic given that the next exams would not be until the following year.

[89] It is unfortunate that this issue was not raised at the time or in the Applicant’s 5-minute case presentation. It was not brought to the attention of the Registration Committee prior to their decision being made.

[90] In my opinion the acceptance of the last-minute patient was contrary to the established protocols, in particular because the approval was done without the presence of a member of the Denturists Association. In addition the appropriate teeth and moulds were not provided for that patient. The Applicant was placed in a difficult and unfair situation with a less than ideal patient with mouth sores and random teeth and moulds. It is noteworthy that the College confirms that measuring the IOD is “somewhat subjective in that soft tissues are being measured.”
The difficult situation for the Applicant was recognized by the exam coordinator at the commencement of the exam but it does not appear that the additional challenges for the Applicant were brought to the attention of the three examiners or the Registration Committee.

In considering the recommendation of the examiners the Registration Committee would not have been aware of any unusual issue for the Applicant because of the failure to strictly follow the screening protocols at the examination.

**CONCLUSION AND REMEDY**

I have concluded that there is no reasonable argument to dispute the actual scoring by the examiners and that the Applicant’s IOD measurement was below the minimal threshold.

I have concluded that there was a breach of the standard protocols for the acceptance of the patient assigned to the Applicant that was unfair and a detriment to the Applicant.

The issue remains as to whether there is a remedy for the Applicant at this stage for the unfairness at the examination.

I am satisfied that I cannot direct the Registration Committee to grant registration because none of the preconditions in s.50.54 (10)(a) of the Act apply. It cannot be said that the Registration Committee acted unfairly because the situation with the last-minute patient was not brought to their attention. There is no suggestion that the Registration Committee acted in bad faith, for an improper purpose or took into account irrelevant factors.

I am satisfied that I cannot direct the Registration Committee to make any other decision that could have been made as those options, if any, are properly within the professional expertise of the members of the Registration Committee.

I am concerned that if the challenges faced by the Applicant had been brought to the attention of the Registration Committee by the examination coordinator and given the subjective nature of the IOD measurements that the Registration Committee could have considered more fully the Applicant’s overall performance.

Accordingly I will make an order sending the matter back to the registration Committee to consider the circumstances and challenges faced by the Applicant and to reconsider his application for registration based on his overall performance on the examinations.
ORDER

[100] I order that this matter be sent back to the Registration Committee for reconsideration of the Applicant’s application for full registration as an active and full denturist with the direction that they take into consideration the challenges faced by the Applicant during the examination and acknowledged by the examination coordinator.

[101] I also direct that the Registration Committee considers this matter at their next meeting and publish a reconsideration decision within a reasonable time thereafter.

“John M. Orr”

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