



# Health Professions Review Board

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**DECISION NO. 2015-HPA-176(a); 2015-HPA-181(a); 2015-HPA-183(a); 2015-HPA-184(a); 2015-HPA-185(a); 2015-HPA-186(a); 2015-HPA-187(a)**

In the matter of an application for review under section 50.54 of the *Health Professions Act*, R.S.B.C. 1996, c. 183, as amended, (the "Act") of a Registration decision

<b>BETWEEN:</b>	The Applicants	<b>APPLICANTS</b>
<b>AND:</b>	The College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC	<b>COLLEGE</b>
<b>BEFORE:</b>	David A. Hobbs, Panel Chair	<b>REVIEW BOARD</b>
<b>DATE:</b>	Conducted by way of written submissions concluding on April 3, 2016	
<b>APPEARING:</b>	For the Applicants in 2015-HPA-185, 186 and 187:	By Agent
	For the Applicants in 2015-HPA-176, 183 and 184:	Self-represented
	For the Applicant in 2015-HPA-181:	Richie Wong, Counsel
	For the College:	Nitya Iyer, Counsel

## DECISION ON APPLICATION FOR REVIEW

### I INTRODUCTION

[1] The Applicants are seven student registrants who applied for reviews of decisions (the "Applications") by the Examination and Education Committee (the "EEC") which declared that each of them was not eligible to write the 2015 Pan-Canadian Entry-Level examination (the "Examination").

[2] Section 37 of the *Administrative Tribunals Act* ("ATA") allows the Review Board, when two or more applications involve the same or similar questions to:

- (a) combine the applications or part of them,
- (b) hear the applications at the same time,

- (c) hear the applications one immediately after the other, or
- (d) stay one or more of the applications until after the determination of another one or more of them.

[3] Here the Applications all involve the same or similar questions and therefore have been considered at the same time. By letter dated November 25, 2015, the Review Board advised the Applicants of its decision to hear these Applications together.

## II BACKGROUND

[4] The Applicants applied after April 1, 2015, to write the Examination. Acceptance of application forms to write the Examination began on June 1, 2015, and the final deadline for application forms was July 31, 2015.

[5] I issued Review Board Decision No. 2013-HPA-176(a) on December 2, 2014, (the "2014 Decision") concluding at that time, in part, the Registration Committee had acted unreasonably in applying its bylaw s.48 (1)(a.1) to deny ten other student registrants eligibility to write the Examination. Part of the basis for the 2014 Decision was that the criterion for the denial was a policy, not a bylaw.

[6] In light of the 2014 Decision the College made amendments to its bylaws.

[7] The College made the following revisions to its bylaws which were approved by Order-in Council on April 1, 2015:

- (a) Section 15.2 entitled Examination Committee was deleted in its entirety;
- (b) Section 19 was repealed and substitution was made with language as follows:

### Education and Examination Committee

19. (1) The education and examination committee is established consisting of at least 9 persons appointed by the board.
- (2) The education and examination committee must include at least 3 public representatives, at least 1 of whom must be an appointed board member.
- (3) The education and examination committee is responsible for
- (a) determining eligibility to write examinations,
  - (b) reviewing the programs listed in Schedule H for compliance with Schedule E, and
  - (c) reviewing and making recommendations to the board regarding:
    - (i) approval of examinations, and
    - (ii) the amendment of Schedule E and Schedule H.

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- (c) Section 22 entitled Committee Panels was amended to add reference to the Education and Examination Committee; and
- (d) Section 48.(1)(b) was amended by adding "education and" before "examination committee".

[8] The whole of s.48 following the amendments to s.48(1)(b) reads as follows:

48. (1) For the purposes of section 19(2) of the *Act*, the requirements for full registration are

(a) graduation from a traditional Chinese medicine education program recognized by the board for the purpose of registration and specified in Schedule H,

(a.1) successful completion of not less than two (2) years of liberal arts or sciences study (comprised of at least 60 credits) in an accredited college or chartered/approved university acceptable to the registration committee,

(b) successful completion of the examinations required by the education and examination committee,

(c) evidence satisfactory to the registration committee of the good character of the person consistent with the responsibilities of a registrant and the standards expected of a registrant, and

(d) evidence satisfactory to the registration committee that the applicant be a Canadian citizen or a permanent resident of Canada or be otherwise authorized under the laws of Canada to work in Canada.

(2) receipt by the registrar of

(a) a signed application for full registration in a form approved by the registration committee,

(b) the application fee specified in Schedule "F",

(c) an original certificate, notarized copy, or other evidence satisfactory to the registration committee of graduation from a program referred to in subsection (1)(a), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(c1) an original diploma, notarized copy, or other evidence satisfactory to the registration committee, confirming successful completion of a program referred to in subsection (1)(a.1), and evidence satisfactory to the registration committee that the applicant is the person named therein,

(d) a statutory declaration as specified in Form 1,

(e) the examination fee set by the College, and

(f) a signed criminal record check authorization form.

(3) Despite subsection (1)(a),(a.1) and (b), an applicant may be granted full registration by the registration committee if the applicant

(a) holds registration or licensure in another Canadian jurisdiction as the equivalent of a full registrant, which is not subject to any practice limitations, restrictions or conditions in that jurisdiction that do not apply generally to registrants in British Columbia, and provides evidence satisfactory to the registration committee of the applicant's registration or licensure, and that the applicant is the person named therein,

(b) provides evidence satisfactory to the registration committee that the applicant meets any applicable continuing competence and quality assurance requirements established by the applicable regulatory or licensing authority in the jurisdiction referred to in paragraph (a), and

(c) meets the requirements established in subsection (1)(c) and (d) and (2)(a), (b), (d), (e), and (f)

(4) Despite subsection (1)(a) and (a.1), the registration committee has discretion, in satisfying itself under section 20 of the Act that the applicant meets the conditions or requirements for registration as a member of the College, to consider whether the applicant's knowledge, skills and abilities are substantially equivalent to the standards of academic or technical achievement and the competencies or other qualifications established in subsection 1(a) and (a.1), and to grant registration on that basis provided the applicant

(a) provides evidence satisfactory to the registration committee, of such knowledge, skills and abilities, and

(b) meets the requirements established in subsection (1)(b) to (d) and 2(a), (b), (d) (e) and (f).

[9] Section 51.(1) entitled Student Registration was amended to provide for a new statutory declaration of student registrants, which states in part,

I have read the Health Professions Act of British Columbia and the regulations and bylaws of the College of Traditional Chinese Medicine Practitioners and Acupuncturist of British Columbia made pursuant to that Act. I understand the requirement in s.55.1 of the bylaws, including s.48.(1)(a.1) regarding eligibility to take competency examinations.

[10] The following section was added after s.55:

#### Examinations

55.1 (1) all examinations required to be taken under this part must be approved by the board,



(2) an applicant is eligible to take any required examinations upon receipt by the registrar of

(a) a signed application for registration for the examination in a form approved by the education and examination committee,

(b) the applicable examination fee,

(c) for competency examinations, proof, in a form satisfactory to the education and examination committee, of satisfaction of the education requirements in subsection 48(1)(a), and

(d) for competency examinations, proof, in a form satisfactory to the education and examination committee, of satisfaction of the education requirements in subsection 48(1)(a.1).

[11] The main effect of the revisions to the bylaws, relevant to these Applications, was the creation of an Education and Examination Committee (the "EEC") with the responsibility to determine eligibility to write competency examinations such as the Examination.

[12] In my 2014 Decision I held that the Registration Committee could not deny a student registrant the opportunity to write the Examination if they did not meet the requirements of s.48(1)(a.1) (the "Two Year Rule"), as this was a registration requirement, not an Examination eligibility requirement established by bylaw. I also noted the substantial equivalency discretion enjoyed by the Registration Committee existed despite subsections s.48(1)(a) and (a.1).

[13] Under s.55.1 of the bylaws as revised, a student registrant is only eligible to write the Examination upon receipt by the Registrar of proof in a form satisfactory to the EEC that the educational requirements in s.48(1)(a) and (a.1) have been satisfied.

[14] The educational credentials required under s.48(1)(a) and (a.1) to be eligible to write the Examination are subject to the Registration Committee's discretion to grant registration on the basis of substantial equivalency based on established knowledge, skills and abilities as set out in s 48 (4). The EEC and Registration Committee give consideration to the substantial equivalency discretion when they advise applicants their educational credentials are not satisfactory. I take this to mean that if an applicant had unsatisfactory educational credentials but, the application submitted raised the prospect that substantial equivalency might be recognized by the Registration Committee, such an applicant might be granted eligibility to write the Examination.

[15] The Applicants as student registrants each applied to write the Examination.

[16] The EEC met on August 12, 2015, and reviewed the Applicants' applications to write the Examination. In the case of each Applicant the EEC decided by motion, seconded that: "the exam application be rejected due to failure to meet the exam requirements."

[17] Following the meeting of the EEC on August 12, 2015, each of the Applicants were sent a letter with similar wording dated August 18, 2015, citing the requirements for eligibility to write the Examination under s.48(1)(a.1) having not been satisfied (the "Decision").

[18] The EEC advised each Applicant that their general studies background submitted did not meet the requirement under s.48(1)(a.1) of an educational background comparable to two years of liberal arts and sciences study in an accredited college or charter/approved university in British Columbia (the "Two Year Rule").

[19] In the instances of six of the seven Applicants the EEC had before it a report of an International Credential Evaluation Service ("ICES") confirming the general studies background of the six Applicants was not comparable to the s.48(1)(a.1) requirement i.e. the Two Year Rule. These six Applicants had educational backgrounds from schools in Taiwan and China. In the instance of the seventh Applicant the educational background was two certificates and a nursing program completed at a local college. The seventh Applicant was invited to provide verification that the programs taken met the Two Year Rule but the seventh Applicant was unable to provide such verification and the Decision of the EEC remained unchanged.

[20] The Applicants filed applications for review with the Review Board of the Decision of the EEC.

### III DISCUSSION AND ANALYSIS

[21] The role of the Review Board on an application for review of a registration decision is set out in s.50.54 of the Act. The Decision of the EEC has the same effect as a decision of the Registration Committee, and therefore, as the Review Board has held in the past regarding decisions where prospective registrants have been held to not meet threshold requirements for registration by registrars or committees, I treat the Decision of the EEC as a registration decision consistent with my jurisdiction in this matter. The Review Board's remedial jurisdiction is set out in s.50.54 (9) as follows:

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.

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[22] Subsections 19(1)(m) to (m.4) of the Act state as follows:

A board may make bylaws, consistent with the duties and objects of a college under s.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 s.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;"

.....

[23] The duty of the College at all times is to serve and protect the public. In part, the College has the object to establish the conditions or requirements for registration of a person as a member of the College. This duty and object is set out in s.16(1) and (2) of the Act.

[24] I note that the Act, specifically under s.19(m.3) empowers the College to establish "conditions or requirements for eligibility to take examinations ..." In enacting



bylaw 55.1 the Two Year Rule became a condition or requirement for eligibility to take the Examination.

[25] The Decision sent to each Applicant is signed by the Registrar of the College and only refers to the decision maker as being the EEC stating each Applicant was not eligible to write the Examination.

[26] The College acknowledges the educational credentials in s.48(1)(a) and (a.1) of the bylaws are subject to the discretion regarding substantial equivalency contained in s.48(4). In the affidavit of the Registrar Mary Watterson sworn February 25, 2016, which was filed as additional evidence, Ms. Watterson testified at paragraphs [27-29] that where applicants who do not meet the Two Year Rule submit documentation to support their "knowledge, skill and abilities" such applications are flagged for consideration by the EEC and Registration Committee as to whether the applicant meets the substantial equivalency exception in bylaw s.48(4). I conclude either the Applicants' applications were flagged, considered and the Decision rendered in any event or the applications were not considered for substantial equivalency discretion exercise by the Registration Committee based on the materials submitted.

[27] I do not see any basis for the Applicants' argument that they should be exempted from the Examination eligibility requirements. These requirements are part of the College's performance of its duty to protect the public and all persons seeking to write the Examination would be subject to the bylaws lawfully enacted by the College. The requirements were not applied retroactively but were applied to the Applicants when they sought eligibility to write the Examination.

[28] I must extend deference to the College in its determination of appropriate academic requirements for registration as a member of the College. It is not my role to substitute my opinions for those of the College in this regard. The legislators have empowered the College to make bylaws regarding examination eligibility requirements. The College has concluded that to be eligible to write the Examination an applicant must meet the Two Year Rule or substantial equivalency to fulfil its duty to keep the public reasonably safe. The EEC and Registration Committee perform a gate keeper function in this regard. This bylaw has been in place as a policy since December 2009. My 2014 Decision resulted in a process leading to the policy becoming a bylaw in April 2015. There is evidence in the Record supporting that the policy, now bylaw, has been well publicized and available to applicants for registration.

[29] I note the College offers an opportunity to have educational credentials pre-evaluated and foreign education credential equivalency evaluated by ICES as the College lacks the resources to perform this function.

[30] As a remedy I cannot consider granting registration as none of the Applicants have met the requirements for registration, including having written and passed the Examination. The only remedial jurisdiction I might exercise is to send the matters back to the Registration Committee for reconsideration with directions.



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[31] I do not see any evidence in the record of investigation provided by the College (the "Record") of unfairness, bad faith, improper purpose or taking into account entirely or predominantly irrelevant factors. The Two Year Rule establishes a base level of education the College concludes is necessary for registrants to possess to protect the public and I have no jurisdiction to change this requirement. The Applicants do not have background educations that meet the requirements of the Two Year Rule in the opinions of the EEC and ICES. It is not my role to substitute my opinion on such matters. It is the College's statutory duty to establish academic standards which it concludes are necessary for protection of the public and to apply them when an applicant seeks eligibility to write the Examination.

[32] I have received new evidence from the Applicants and the College. I have decided to admit all new evidence under s.50.54 (8) of the Act to achieve full and fair disclosure of all matters relating to the issues under review.

[33] I have concluded that the Decision meets the justifiable, transparent and intelligible test of reasonableness as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 in that it explains to the Applicants the EEC's reason for denying eligibility to write the Examination being the failure to satisfy the Two Year Rule in the opinion of the EEC, including the results of the ICES report.

[34] I note that the denial of the eligibility to write the Examination is effectively a refusal to grant registration to the Applicants as it is the last hurdle they must cross, and therefore, the Decision amounts to a registration decision. No party challenges this conclusion.

#### IV CONCLUSION

[35] I confirm the Decision as to all Applicants.

[36] I have considered the Record and the submissions of the parties though not referred to in their entirety herein.



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David A. Hobbs, Panel Chair  
Health Professions Review Board

May 17, 2016