DECISION NO. 2010-HPA-0016(d)

In the matter of an application under section 50.6 of the Health Professions Act, R.S.B.C. 1996, c. 183, as amended, (the “Act”) for review of a complaint disposition made by an inquiry committee

BETWEEN: The Complainant

AND: The College of Psychologists of British Columbia

AND: A Psychologist

BEFORE: Donald A. Silversides, Q.C., Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of an oral hearing on July 12, 2013

APPEARING: For the Complainant: Self-represented

For the College: Jason Herbert, Counsel

For the Registrant: Joel Morris, Counsel

HEARING DECISION

I DECISION

[1] Upon considering an application made by the Complainant pursuant to s. 50.6 of the Act for a review of a disposition made by the inquiry committee of the College (the “Inquiry Committee”) on December 18, 2009, I order the disposition by the Inquiry Committee be confirmed.

II INTRODUCTION

[2] The Registrant is a psychologist to whom a patient (Mr. A) was referred by a physician (Dr. B) for an assessment. The Registrant prepared a written report of her assessment of Mr. A (the “Assessment Report”) and delivered copies to Mr. A and Dr. B.

[3] Mr. A, an adult, is the son of the Complainant and was residing with his mother and father. After reading a copy of the Assessment Report, the Complainant complained
to the College that the following statements made about her in the Assessment Report were untrue and had damaged her:

(a) the Complainant has been diagnosed as bipolar and takes medication;
(b) the Complainant had a very traumatic childhood and was beaten by her grandfather;
(c) the Complainant has been in the psychiatric ward twice;
(d) the Complainant reportedly has a problem with alcohol; and,
(e) the Complainant and Mr. A’s father tend to berate Mr. A continually (about his gender identity disorder).

[4] The College disposed of the complaint by requesting that the Registrant sign a resolution agreement regarding the contents of any future psychological assessment reports.

[5] The Complainant has applied for a review of the disposition of her complaint by the Inquiry Committee because she believes the Registrant should have been required to apologize for including incorrect statements about her and to remove these statements from the Assessment Report.

III ISSUES

[6] The issues to be determined are:

(a) whether the investigation conducted regarding the complaint was adequate; and,
(b) whether the disposition of the complaint against the Registrant was reasonable.

IV RELEVANT LEGISLATION, BYLAWS AND POLICY

[7] The following provisions of the Act are relevant:

33 (6) After considering any information provided by the registrant, the inquiry committee may

(a) take no further action if the inquiry committee is of the view that the matter is trivial, frivolous, vexatious or made in bad faith or that the conduct or competence to which the matter relates is satisfactory,

(b) in the case of an investigation respecting a complaint, take any action it considers appropriate to resolve the matter between the complainant and the registrant,
50.6 (1) A complainant may apply to the review board for a review of a disposition described in section 50.53(1)(c).

... 

(5) On receipt of an application under subsection (1), the review board must conduct a review of the disposition and must consider one or both of the following:

(a) the adequacy of the investigation conducted respecting the complaint;

(b) the reasonableness of the disposition.

...

(8) On completion of its review under this section, the review board may make an order

(a) confirming the disposition of the inquiry committee,

(b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or

(c) sending the matter back to the inquiry committee for reconsideration with directions.

[8] The following bylaws of the College are relevant:

62. Professional conduct

(1) Registrants must comply with the applicable provisions of the Code of Conduct set out in Schedule F.

[9] The following standards contained in the November 2, 2006 version of the Code of Conduct of the College which the Inquiry Committee considered when it made its disposition are relevant:

3.12 Objectivity of opinions and interventions

A registrant must provide professional opinions and interventions in an objective and unbiased manner.

3.13 Accuracy

A registrant must ensure that his or her reports and public statements accurately reflect the information provided or available to him or her.

3.15 Basis for opinion

A registrant giving a formal professional opinion about a client must do so only after direct and sufficient professional contact with or a formal assessment of that client.

11.1 Responsibility for assessments

A registrant is solely responsible and accountable for the assessment process and for the information contained in the assessment report.
11.2 Gathering information
Registrants must gather assessment information in a fair and balanced manner.

11.11 Limitations in assessments
A registrant must include in their report of the results of a formal assessment procedure for which norms are available, any limitations of the assessment norms for the individual assessed and any relevant reservations or qualifications which affect the validity, reliability, or other interpretation of results.

11.26 Direct examination of individual
A registrant must not provide a report or give testimony respecting the psychological characteristics of an individual unless the registrant has first conducted a direct, in-person examination of the individual which is adequate to support the registrant's statements or conclusions.

11.32 Truthfulness and candor
In testimony and reports, a registrant must
(a) testify truthfully and candidly,
(b) consistent with applicable legal procedures, describe fairly the basis for their testimony and conclusions, and
(c) acknowledge any limits of their data or conclusions when that acknowledgement is necessary to avoid being misleading to those individuals reading their reports or hearing their testimony.

V BACKGROUND

[10] Mr. A suffered from a gender identity disorder and wanted to receive medical treatment from Dr. B which would change his gender from male to female. Dr. B would not undertake the treatment without first receiving a psychological assessment of Mr. A and Dr. B referred Mr. A to the Registrant for assessment.

[11] Before preparing the Assessment Report, the Registrant met and otherwise communicated with Mr. A on several occasions and administered certain assessments which consisted of a number of questions which Mr. A answered in writing. The Registrant then prepared the Assessment Report based on her interviews of Mr. A and his written responses to the written assessment questions.

[12] The Assessment Report was four and one-third pages long. Although it is clear from reading the Assessment Report that the Registrant interviewed Mr. A and obtained information from him, it is not possible to determine from the report itself that Mr. A was the only source of the information obtained by the Registrant which formed the basis for the Assessment Report.

[13] The Assessment Report refers to Mr. A in the female gender second person. The following statements are included in the section of the Assessment Report which sets out the personal history of Mr. A:
Her mother is diagnosed as Bipolar and takes medication. Her mother was raised in Ireland and had a very traumatic childhood and was beaten by her grandfather and abused by her brothers. She has been in the psychiatric ward twice and she reportedly has a problem with alcohol.

[14] The Registrant gave a copy of the Assessment Report to Mr. A. Mr. A gave his copy of the Assessment Report to the Complainant and told her the Registrant had recommended that he ask the Complainant to read it.

[15] A copy of the Assessment Report was sent by the Registrant to Dr. B.

[16] At the hearing of this review the Complainant stated that she had another son who was a commercial pilot and that approximately 13 years ago he was killed in a flying accident. She said his death caused her such severe emotional distress that she required medical treatment which resulted in her being hospitalized in a psychiatric ward. She said that, except for this mental health problem, none of the statements in the Assessment Report which she complained to the College about were true. There was no evidence in the Record or otherwise before me to the contrary and I therefore accept the Complainant’s position with respect to the statements made in the Assessment Report which are the subject of her complaint.

[17] At the hearing of this review the Complainant submitted that the Inquiry Committee did not read her complaint to the College. When asked what basis she had for believing they did not read the complaint she said this had been stated in a letter she received but she was not able to locate it.

[18] Initially, the Complainant made a complaint to the College of Physicians and Surgeons of British Columbia in a letter dated December 2, 2008. She supplemented her initial letter of complaint with a second letter to the College of Physicians and Surgeons of British Columbia dated December 3, 2008. By way of a letter of a letter dated December 16, 2008, the College of Physicians and Surgeons of British Columbia informed the Complainant that they had ascertained the Registrant was a psychologist and not a medical doctor and that, because the College of Physicians and Surgeons of British Columbia has no jurisdiction over the actions of psychologists, they had forwarded her two letters of complaint to the College.

[19] The record of the investigation and the Inquiry Committee’s disposition of the complaint (the “Record”) is required to identify in its index those parts of the Record that were before the Inquiry Committee. The index to the Record shows that the Complainant’s letter of complaint to the College of Physicians and Surgeons dated December 2, 2008 and the subsequent letter of complaint to the College of Physicians and Surgeons dated December 3, 2008 were before the Inquiry Committee.

[20] The College sent a letter to the Complainant dated December 18, 2009. Enclosed with that letter was the formal decision report of the Inquiry Committee (the “Decision Report”) which set out how they disposed of her complaint and their reasons for doing so.
The Decision Report states that the Inquiry Committee had reviewed all documents provided by the Complainant.

I therefore find that the Inquiry Committee did receive and consider the Complainant’s letters of complaint dated December 2, 2008 and December 3, 2008.

The College sent a letter to the Registrant dated July 23, 2009 asking the Registrant to provide the College with a complete and accurate copy of all of her records that related in any way to her provision of psychological services to Mr. A.

On October 1, 2009, the College wrote to the Registrant asking her to provide a response to the complaint made by the Complainant. In this letter the College also asked the Registrant to:

(a) provide the basis upon which she made the statements about the Complainant and her husband contained in the Assessment Report described above in paragraph 3;

(b) comment on the observation that while an informed reader might potentially infer from the Registrant’s report that all of her statements regarding the Complainant were based on information she obtained from her interview of Mr. A, the Assessment Report lacks a clear statement regarding the basis upon which the Registrant prepared a report, including making such statements;

(c) respond to the Complainant’s allegation that the statements complained of are factually incorrect and have caused her and her family a considerable lack of harmony and deep upset; and,

(d) comment on her conduct in relation to standards 3.12, 3.13, 11.1 and 11.32 of the Code of Conduct.

The Registrant delivered to the College copies of all of her records relating to the psychological services she provided to Mr. A. These included a full copy of the Assessment Report, her handwritten notes, the assessments she conducted of Mr. A and other documents which consisted of 56 pages in total.

In addition to receiving and reviewing the entire practice record of the Registrant for Mr. A, the Inquiry Committee received and reviewed the 22 page Standards Of Care For Gender Identity Disorders, Sixth Version, published by The Harry Benjamin International Gender Dysphoria Association. As well, they received and reviewed the Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the USA published by The World Professional Association for Transgender Health Inc., an international association devoted to the understanding and treatment of individuals with gender identity disorder. This document clarified that Association’s Standards Of Care For Gender Identity Disorders first issued in 1979 articulating the professional consensus about the psychiatric, psychological, medical and surgical management of Gender Identity Disorders. The Inquiry Committee also received and
considered a written letter of response dated October 7, 2009 sent by the Registrant to the College (the “Registrant's Response”).

[27] In the Registrant’s Response, she stated that the statements about Mr. A’s background contained in the Assessment Report which were the subject of the complaint were based on information conveyed to her by Mr. A during interviews.

[28] The Registrant took the position that at the top of the Assessment Report it indicates it was based on her interviews with Mr. A. She was referring to the following portion of the heading of the Assessment Report:

Assessment Techniques:  Clinical Interviews
                       Psychological Assessment Inventory (PAI)
                       Gender Identity Questionnaire

[29] The heading at the top of the Assessment Report did not state that Mr. A was the only source of the information the Registrant relied upon. In the Registrant’s Response she admitted that she should have made it more explicit that her only knowledge of Mr. A’s family history was from what he told her in the interview.

[30] The Registrant also stated in the Registrant’s Response that the opinion she provided regarding treatment for Mr. A was not based on information Mr. A provided her about his family and that, although the family history provided to the Registrant may have not been completely accurate, it did not have any bearing on her opinion.

[31] In the Registrant’s Response the Registrant explained she did not feel the need to acknowledge the limits in the information contained in the Assessment Report because she believed it was implicit in the report that the only source of information available to her was Mr. A’s self report. She did acknowledge that it would be prudent to state this explicitly and she stated she would include such a statement in any future reports.

[32] The Inquiry Committee declined to make any findings of fact as to whether the information about the Complainant contained in the Assessment Report was correct. They were of the view, however, that the Assessment Report did not contain sufficient citations regarding the sources of information contained in the Assessment Report and that the failure of the Registrant to specifically state that the source of the information about the Complainant was her client, Mr. A, may have led to confusion for some readers of the report.

[33] The Inquiry Committee concluded that the circumstances and the public interest warranted action being taken to resolve the matter between the Complainant and the Registrant. The Inquiry Committee therefore requested that the Registrant sign a resolution agreement (the “Resolution Agreement”) which contained the following agreements:
(a) I confirm that I will henceforth ensure that my psychological assessment reports contain an explicit statement regarding the sources of information used by me in preparing my report.

(b) I confirm that I will ensure that all psychological assessment reports prepared by me contain statement(s) of limitations as appropriate.

(c) I acknowledge this Resolution Agreement constitutes express notice of the practice issues and duties as set out herein, and that my continuing to practice without addressing said issues and duties may involve unprofessional conduct, professional misconduct or incompetence.

[34] The Registrant signed and delivered the Resolution Agreement to the College.

VI DISCUSSION AND ANALYSIS

A. Adequacy of the investigation

[35] As has been stated in many Review Board decisions, the Complainant is not entitled to a perfect investigation. An investigation is only required to be adequate and what is adequate will depend upon the facts of each case.

[36] In this case, the only issue the Complainant takes with the adequacy of the investigation is that she believes the Inquiry Committee did not read her letters of complaint. As mentioned earlier in this decision, I have found that the Complainant’s letters of complaint to the College were received and considered by the Inquiry Committee.

[37] I am satisfied that it was appropriate in this case for the Inquiry Committee’s investigation to be limited to complaints made by the Complainant to the Registrant’s Response, the complete Record relating to the psychological services the Registrant provided to Mr. A and the professional literature on the issue of Gender Identity Disorder which they reviewed and considered.

[38] I therefore find that the investigation by the Inquiry Committee was adequate.

B. Reasonableness of the disposition of the complaint

[39] In considering whether the disposition of the complaint by the Inquiry Committee was reasonable, I am guided by the standard for judicial reviews set out by the Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9. In Review Board Decision No. 2009-HPA0001(a)-0004(a), the panel quoted from paragraph [47] of the Dunsmuir decision and stated the following, which I adopt as the correct approach which should be taken in considering the reasonableness of a disposition:
Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appropriation within the range of acceptable and rational solutions. A court conducting a review of reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law...

[40] It was clear from both the written and oral submissions made by the Complainant that she was unhappy and strongly disagreed with her son’s decision to change his physical gender. She was also not pleased that the Registrant and other medical professionals whom her son consulted allowed, or in her view, encouraged Mr. A’s gender reassignment.

[41] Mr. A was a competent adult and he was entitled to make his own choices regarding his treatment. There is no evidence in the Record that the Registrant acted improperly or incompetently in providing professional services with respect to Mr. A. The professional services performed for, or with respect to, Mr. A by the Registrant were not the subject of the complaint in this matter and were not subject to review by the Inquiry Committee and they cannot be considered in this review.

[42] It is not the role of the Review Board to decide whether the Inquiry Committee made a correct decision or to substitute its own view of a preferable outcome.

[43] The Inquiry Committee accepted the validity of the complaint. It is implicit in the Decision Report that they also concluded that, so long as a psychological assessment report makes it clear that unsupported statements made by the person being assessed are the basis for reporting what that person believes about a third party, that person’s beliefs may be included in an assessment report if they are relevant. Expressed another way, the Inquiry Committee decided that what beliefs a person being assessed has about a third party, including that party’s actions and background, may be properly included in a psychological assessment report if the report either states that they are merely what the assessed person believes or the report sets out what evidence exists to support the accuracy of that belief.

[44] Members of the Inquiry Committee are presumed to have a considerable degree of expertise in, and experience with, the profession of psychology, including the preparation of psychological assessment reports and what should or should not be included in such reports. Unless there is a good reason to do otherwise, I must give deference to decisions made by the Inquiry Committee with respect to matters in which they have expertise and experience.
[45] In considering whether the Inquiry Committee's disposition was reasonable, I must
determine whether their decision falls within a range of acceptable decisions which could
have been made and whether their decision is defensible based on the information
available to the Inquiry Committee and the applicable law. In my view, the decision
made by the Inquiry Committee meets this test.

[46] I therefore find that the disposition of the complaint by the Inquiry Committee was
reasonable.

VII  CONCLUSION

[47] In making these decisions, I have considered all of the information and
submissions before me, whether or not specifically reiterated herein.

[48] For all of the reasons set out above, I confirm the disposition of the complaint by
the Inquiry Committee.

“Donald A. Silversides”

Donald A. Silversides, Q.C., Panel Chair
Health Professions Review Board

December 11, 2013