DECISION NO. 2010-HPA-0077(b)

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 Physicians and Surgeons of BC

AND: A Physician

BEFORE: J.Thomas English, Q.C., Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on July 6, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Michael Toulch, Counsel

I DECISION

[1] For the reasons outlined in this decision, the Inquiry Committee is required to make the direction outlined in paragraph [45].

II INTRODUCTION

[2] This Application concerns a complaint by the Complainants (a husband and wife), principally about the behaviour of the Registrant, their family doctor, involving incidents in his office which, if admitted or proven, would constitute unprofessional conduct.

[3] The College Deputy Registrar, acting under s.32(3)(c) of the Act, issued a disposition that considered the complaints together, and described them as being “partially valid”.

[4] Based on that assessment, and taking into account the Registrant’s “previous interactions with the College because of a complainants of a similar nature, including a discussion with [a member of College staff] six years ago”, the Deputy Registrar required the Registrant to attend at the College to meet with the members of the College’s Registrar staff to discuss issues of conduct and professionalism.
[5] The Complainants are not represented, and their first language is not English. However, it is clear from their complaints that they are dissatisfied with the College’s disposition. Their application for review states in part:

We want [the Registrant to] receive from you a **big blame** for **negligence** and for **unacceptable behavior**. … He needs to understand that what he did to us is not acceptable… Sincerely I don’t think so our complaint is partially valid, our complaint is entirely valid…. [*bold in original*]

[6] It is apparent from the Complainants’ correspondence and submissions that they do not fully appreciate that the Review Board cannot reinvestigate complaints, and that the Review Board’s mandate is instead focused on examining whether the College’s investigation was adequate and/or whether its disposition was reasonable. That said, I am satisfied that the Complainants’ objection to the College’s assessment of the complaint as being “partially valid” necessarily requires the Review Board to consider whether the disposition was in fact reasonable, and whether it was made following an adequate investigation.

### III FACTS AND BACKGROUND

[7] As noted, English is not the first language of the Complainants as becomes clear when I quote portions from the original complaint submitted to the College:

I gone to see [the Registrant]. When I came in the office I was hear him howl again a pharmacist, is so vulgar, he said about pharmacist, **his fucked pharmacist, his an asshole** and on and on and on.

I go to is office, I ask for a requisition for a test of PCA because I had a prostate cancer in 2005 and I must to make a follow up. **He said to me in howling** when is the last time, about 5 months I said, I need to do 2 times by years and my Urologist ask to me to go and he said ask to your family doctor for the requisition. **He gave to me to throwing to me on the floor**. Always in **continuing to howl** to me he said, I have a meeting at 5:00 pm at the hospital, and 4 anesthetists are going to lose their job.

I said to him, in the same times, I need you renew my prescription for my pills for my high pressure, and he said now is over, **just one thinks by appointment, take an order appointment**, I said why I’m here, **and still to howl** he said if you want your prescription, here with me, you need to do like in Europe, and to bow and scrape to me again and again, I asking to myself what happen? And I said to him, I was polite, where is the problem? **And to howl to me he said the problem is all of you, the patients**, he don’t want to give to me, and I insist and **he gave to me also to throw the prescription on the floor**, **he howl to me you talk to me like a criminal, and you have a criminal behavior**, sincerely I don’t understand I want to talk of something I’m worried to him, **but is mission impossible, he puts me out and said go, go, go, just go**.

About two months ago is doing the same thing with my wife, his so rude with her for no reason.

I think so someone must to say to [the Registrant] to take a break and maybe to think to change his carrier, I don’t think so, he’s fit for it.
I want absolutely someone stop him, his behaviour is just not acceptable. I would like you put a reprimand, and I would like to be there during this meeting. I have any reason to accept that, so if he need care give to him.

Also I want you excuse me; I’m sure my English is not perfect, but I’m French from France.

[emphasis by Complainants]

The Registrant had a different version of the event. I quote in part from the response of the Registrant to the College:

With regard to the episode in his letter of complaint, it was Thursday, September 16, 2009, when [the Complainant] presented alone, and was my last patient of the day. While he was waiting in a close examination room, I had a conversation with my medical office assistant, regarding a mishandled prescription by a pharmacist and an emergency hospital staff meeting that evening.

Upon entering the examination room, I greeted [the Complainant] and asked what I could do for him today. [The Complainant] wanted his medications renewed and was curious as to the outcome of his colonoscopy done on June 18, 2009. I went over his negative colonoscopy and biopsy result and noticed he did not appear relieved by this good news, and so I asked how things were going in his life. He said he was frustrated and angry over being inconvenienced by his car having been recently stolen. I expressed my sympathies as to his latest hardship, handed over his prescriptions and assuming the visit was over, I wished him better luck and began to leave the examining room.

He then insisted he needed his PSA level rechecked, so I sat back down and mentioned that it had been done four months prior and being undetectable it was in keeping with a successful TUPR procedure. Sensitive to his fear and anxiety about his prior battle with prostate cancer, I reassured him that I would give him his requisition and that he could be more polite in his approach. He then added that he also needed a referral to a dermatologist. When I asked about his dermatologic concern, he said he would rather discuss it with a specialist. I told him I was confident with my dermatologic competence and that it was my job to examine him, especially when the procedure of referral necessitated documenting the particulars (ie. size, shape, color, location, borders, friability etc.) as reason behind the index of concern. He angrily insisted he was entitled to any medical request on demand. I responded by explaining that entitlement was not the issue and that I was merely following medical protocol. I said I would happily make such a referral as long as we followed protocol.

Sensing that it was now time to end the visit, I suggested we should reschedule and meet again at a better time. I extended the PSA requisition form to [the Complainant] as I got up to leave. Thinking he was about take the form, it fell on the floor under the chair by his feet. Unfortunately this action was misinterpreted by [the Complainant] as anger on my part. Upon seeing his expression of outrage at the perceived slight, I immediately apologized and added I thought he was taking it from my hand. He loudly protested that we had more to discuss. Realizing the situation was escalating, I left the room and headed to the back of my office.

[The Complainant] then pursued me into the hallway, without any indication of a willingness to leave. I stopped and told him over his raised voice that he had crossed a line and that it was time to go. His emotional protest continued as he retreated toward
the reception area, resistant to leave and reschedule. Ultimately he left, but not before vocally expressing his dissatisfaction this visit to my [medical office assistant].

**In conclusion:**

In his letter of complaint, [the Complainant] cites:

- Vulgar howling toward a pharmacist.
- My unwillingness to provide a PSA requisition.
- Throwing forms on the floor.
- Calling him “criminal” and other derogatory comments.

Although I am a French speaker, [the Complainant] is a native from France. As our exchange was a combination of French and English, some things may have been lost in translation. Combined with an unrealistic expectation of the health care system and its protocols, [Mr. and Mrs. Complainant] have often presented to my office over the past four years with impatience and frustration – to which my [medical office assistant] can attest.

Whenever they have mentioned any medical concern, my office has always addressed their needs with appropriate, albeit occasionally excessive medical work-up. Despite his attestation to the contrary, I have never mistreated, or yelled at either Complainant.

It is regrettable that [the Complainant] left my office with bad feelings, but I bear him and his wife no ill will. I hope this experience is behind us and they are both always welcome as patients of mine.

I hope this information has been helpful to you. If you have any further questions, please contact me at your convenience.

Respectfully yours,

[the Registrant]

[9] The College forwarded the response of the Registrant to the Complainants. Mrs. Complainant then replied with the following:

I want to know and it’s me Mrs. Complainant talk here, 2 months before my husband go seeing [the Registrant], I go there and when I going out I’m crying and that not the first time. Since 2 years I have bronchia and pneumonia, all the time I lost my voice and that not me; I ask to [the Registrant] to have and appointment with a specialist he howl to me:<Stop to found a illness, you have nothing> and I said to him, in my family, we have asthmatic and a lot of allergies> his answer is, and that still howl to me:< do you understand what I said to you few minutes ago? Stop to found an illness, your problem is between your two ears.> So, I don’t insist and said to him, the last product your prescriptive to me for my cough is not appropriate, I have a pace maker and the answer still to howl:<So take nothing>. So because my problem is not okay my husband said to me, we are going to the clinic with no appointment, in the Shopping Center, where the doctor said to me you have an important bronchia and you right lung is affected, he gave to me a good prescription, he look my file and said:<I don’t understand your family doctor permit to you with you pace maker to take Flexeril (Cyclobenzaprine) is very dangerous and totally inappropriate, please stop that, you could be died!!!>
All the years I need to battle with him for have my appointment with a wife doctor for my Bap Test. I have no received the Bap test during practically 3 years because he doesn’t want give to me the appointment I ask for. Another time my husband came with me and I ask the same think and he start to yelling and I said: <Please listen to me, If that request come from a Muslim woman I’m sure she have an appointment so I need to change the religion for have something’s completely understanding>. He answer is: <Now you doing politic>. I said: <know, I just want you understand my request, I’m feel more comfortable for that exam with another woman and I have received that kind of care any place where I leave before> and his answer is: <but here is with me, you have this exam> and I receive an appointment, but I’m sure is not normal, is not the pattern in BC to have an appointment like that and stay 3 years with no exam...

Some time I’m going there for renews the prescriptions, and he’s so nervous like a bomb and I want the answer for my Bap test and in yelling: <Just one thinks by appointment. Take another appointment>; that cost a lot of money to BC Medic Care and kind like he is, I swear to you, you very not feel to come again. So you have not your answer, and it’s like that for all and all.

In the past I’m make a cholesterol, I ask for a requisition for blood test: The answer is no, I said I think so, I need to know what’s going on there, never he give to me the requisition for the blood test and it’s all the time like that.

My husband and I would like to be there when you talk about this case. We want to meet you; we very appreciate that.

[10] In response to Mrs. Complainant’s letter, the Registrant responded in detail, a summary of which is as follows:

(a) Mrs. Complainant was not referred to specialist regarding her concern with losing her voice because her presentation did not warrant a specialist’s assessment;

(b) He did not howl at her nor did she leave his office in tears;

(c) Given other drugs she was taking the Registrant did not regard her use of Flexeril dangerous as such;

(d) the delay in referring Mrs. Complainant to a female gynaecologist was caused because the physician to whom she was referred had had a locum who declined to see her as a result of which he ordered a repeat pelvic ultrasound which revealed an expected fibroid uterus with no other abnormality;

(e) a female gynaecologist eventually saw Mrs. Complainant; and

(f) with reference to being treated differently if she was a Muslim woman the Registrant responded by saying “she was allowing what appears to be a benign health situation to become a political stance.”

[11] The Deputy Registrar issued a five page disposition letter to the Complainants (copied to the Registrant), stated to have been written “on behalf of the Inquiry Committee”. The letter carefully reviewed the allegations of each of the parties regarding the other and concluded as follows:

The College is presented with serious allegations from both of you concerning [the Registrant’s] behavior and professional conduct. Although we are unable to be certain about what actually occurred ... we do hold physicians to a much higher standard than
that of the general public in avoiding confrontation with patients or in creating the perception of disrespect for a patient’s dignity.

We have therefore determined that both your complaints are partially valid as they relate to [the Registrant’s] behavior. However, the College has no concerns about the quality of medical care provided to each of you...

By copy of this letter, [the Registrant] will be reminded that the maintenance of professional composure in all circumstances is what is expected of all physicians. The College will require [the Registrant] to attend at our College offices for an interview with members of the College’s Registrar staff. A copy of both your complaints will remain permanently in [the Registrant's] member file. [emphasis added]

[12] Concurrently with the disposition letter just referenced, the Deputy Registrar sent a separate and shorter letter to the Registrant (not copied to the Complainants) which stated as follows:

Although your and their descriptions of the sequence of events differ significantly, the College is concerned that you allowed these exchanges to occur and escalate. [The Complainants], at least on the dates in question, appear to have been difficult and demanding patients who may have had unrealistic expectations. How you responded to those difficult situations remains unclear. Mr. [Complainant’s] perception was that it was heated and challenged the concept of professionalism. Mrs. [Complainant] presented similar concerns.....

As you are aware, you have had previous interactions with the College because of complaints of a similar nature, including a discussion with [a member of College staff] at this office six years ago. While the current complaints may be based on other underlying issues and cannot be considered as fully sustained, they have been judged to be partially valid as outlined in the College’s response letters to Mr. and Mrs. Complainant.

Therefore, the College requires your attendance at our offices to meet with members of College’s Registrar Staff, to again discuss issues of conduct and professionalism.... [emphasis added]

IV ISSUES

[13] There are three issues to be decided:

(a) As this was a decision by the Registrar pursuant to s. 32(3)(c) of the Act, were the allegations if admitted or proven a “serious” matter such that the jurisdiction to make a disposition resided with the Inquiry Committee and not the Registrar?

(b) Was there an adequate investigation?

(c) Was there a reasonable disposal?

V DISCUSSION AND ANALYSIS

A. Jurisdiction of the Registrar to issue the disposition

[14] The issue of the jurisdiction of a registrar of a college to issue a disposition is a deceptively complex one and has been comprehensively considered in previous Review Board Decisions (see for example No. 2011-HPA-0018(a) and No. 2010-HPA-0198(a)). I will not repeat that analysis in this decision.
While stated on its face to have been written “on behalf of the Inquiry Committee”, the fact that this was a disposition by the Registrar under s. 32(3)(c) was confirmed in the Statement of Points of the College. Paragraph 9 states: “Accordingly, the complaint was resolved under section 32(5) of the Act.” Paragraph 37 states: “The College wishes to reiterate that this complaint was disposed of pursuant to sections 32(3)(c) and 32(5) of the HPA…”

Section 32(3) provides as follows:

32  (3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint, or request that the registrant act as described in section 36 (1), without reference to the inquiry committee if the registrar determines that the complaint

...  

(a) is trivial, frivolous, vexatious, or made in bad faith;

(b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33 (4), or

(c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33(4).

Section 32(3)(c) may be applicable because the complaints of the Complainants allege a situation specified in s. 33(4) which could be applicable, namely:

(c) professional misconduct or unprofessional conduct.

Section 32(3)(c) is applicable only if the allegations are “other than a serious matter.” A serious matter is defined in s.26 as conduct which would ordinarily result, as provided in s. 39(2)(b) to (e), in any of the following happening:

39  (2) (b) the imposition of limits or conditions on the Registrant's practice;

(c) suspension of the Registrant;

(d) limitations or conditions on the practice of the Registrant if a suspension is imposed;

(e) cancellation of the Registrant's registration.

In Decision No. 2011-HPA-0018(a) the Review Board stated as follows:

How is a Registrar to determine whether the complaint, if admitted or proven, would ordinarily result in one of the remedies listed in ss. 39(2)(b) – (e)? This is admittedly not the most helpful jurisdictional test. What is evident, however, is that the Registrar’s assessment is not intended to be a sophisticated penalty determination, where for example mitigating factors and the registrant’s personal circumstances are considered. The allegations must be taken as proven or admitted, and they must be objectively assessed by the Registrar. The more objectively serious is the misconduct alleged and the greater the impact on the public interest in the College context, the more likely it will meet the specialized legal test for being a “serious matter”. While the line between 39(2)(a) and (f) on the one hand, and the remedies in ss.39(2)(b)-(e) on the other, will
pose problems in some cases, a complaint will be a “serious matter” where, if the allegations were admitted or proven, the significant measures reflected in ss.39(2)(b) – (e) would be required to protect the public interest, as the Panel found to be obvious in Decision No. 2009-HPA-0045(a), where the complaint was that due to improper care and professional neglect over an extended period of time, a registrant caused a patient’s death.

[20] Upon a careful review of the allegations contained in the complaint and allowing for the Registrar’s obligation to investigate and objectively make an assessment thereof, I find that the Registrar had jurisdiction to act pursuant to s.32(3)(c) if he determined that the complaint should be dismissed or that a request should made to the Registrant under s.36(1).

[21] As will be noted below, a separate legal question arose in this case concerning the Registrar’s authority to require a Registrant to attend for an interview with members of the College staff. That issue is best addressed in the context of my assessment of the reasonableness of the disposition.

B. Adequate Investigation s. 50.6(5)(a)

[22] Before turning to the reasonableness of the disposition, I consider the adequacy of the investigation. The Record in this Application consists of the exchange of letters between the Complainant and the Registrant set out above, as well as medical records.

[23] While the Complainants identified quality of medical care issues in their complaint correspondence with the College (for example, an allegation that the Registrant improperly continued a prescription of Flexeril to Mrs. Complainant in circumstances where she had a pacemaker, resisted referring her to a specialist for bronchitis and pneumonia or to a female physician for a PAP test, and an allegation that the Registrant was reluctant order a follow up PSA test for Mr. Complainant), it is clear that their overarching concern was with the Registrant’s conduct, attitude and behavior toward them.

[24] I find that the College conducted an adequate investigation. With regard to the quality of care issues, the College obtained the medical records and statements from both parties. I do not think they needed to go further than that in the circumstances of this case and I do not see any other investigative avenues that would have been essential for them to adequately investigate those aspects of the complaints.

[25] With regard to the conduct and behavior aspects of the complaints, the circumstances of this investigation did not in my view call for the College to go further than the exchange of letters undertaken in this case, particularly since the investigations they did undertake allowed to them to arrive at a provisional assessment of the evidence (discussed further below). While there was a conflict in the evidence, there was no other obvious evidence or critical issue the Registrar was required to investigate in the particular circumstances of this case before arriving at the resolution he did. In particular, I do not think following up with the receptionist would have offered critical evidence given that the key interactions took place solely between the Registrant and the Complainants.
C. Reasonable Disposition s. 50.6(5)(b)

[26] This is the key issue in this case.

[27] The College concluded that the complaints were “partially valid” and as a result the Registrant was to “required” to attend at the offices of the College for an interview with members of the College’s Registry staff. For convenient reference, I will repeat the key paragraphs from the Registrar’s disposition letter to the Complainants:

The College is presented with serious allegations from both of you concerning [the Registrant’s] behavior and professional conduct. Although we are unable to be certain about what actually occurred on both September 19, 2009 and July 10, 2009, we do hold physicians to a much higher standard than that of the general public in avoiding confrontation with patients or in creating the perception of disrespect for a patient’s dignity.

We have therefore determined that your complaints are partially valid as they relate to [the Registrant’s] behavior. However, the College has no concerns about the quality of medical care provided to each of you…

By copy of this letter [the Registrant] will be reminded that the maintenance of professional composure in all circumstances is what is expected of all physicians. The College will require [the Registrant] to attend at our College offices for an interview with members of the College’s Registrar staff. A copy of both your complaints will remain permanently in [the Registrant’s] College member file.

[28] The concurrent letter addressed only to the registrant stated: “Therefore, the College requires your attendance at our offices to meet with members of the College’s Registrar Staff, to again discuss issues of conduct and professionalism…”

[29] The panel wrote to the parties while this matter was under reserve, asking for submissions about the legal basis on which the Deputy Registrar issued this disposition in view of the fact that his options under s. 32(3) appear be limited to dismissing a complaint or requesting that the registrant act as described in section 36(1). Reference was made in my letter to College By-law 4-13.

[30] The College submitted that the Deputy Registrar was acting under section 36(1):

36 (1) In relation to a matter investigated under section 33, the inquiry committee may request in writing that the registrant do one or more of the following:

(a) undertake not to repeat the conduct to which the matter relates;

(b) undertake to take educational courses specified by the inquiry committee;

(c) consent to a reprimand;

(d) undertake or consent to any other action specified by the inquiry committee. [emphasis added]

[31] As I understand the College’s submission, the Deputy Registrar was acting under s.36(1)(d) – the College states that the “action specified” was for the Registrant to meet
with the Registrar’s staff, but that while stated as a “requirement”, the action was, in truth, a request. The College submitted:

A Deputy Registrar acting on the authority of section 32(3)(c) can request that a registrant attend for an interview at the College with registrar staff pursuant to section 36(1). When a registrant does not consent, the matter may be referred to an inquiry committee for further direction, including the possible issuance of a citation.…

[32] I am prepared to accept that the Deputy Registrar was acting under s. 36(1)(d) and that despite the use of the term “require”, it was actually a request (albeit a request the Registrant would decline to his potential detriment). The question then arises: was this disposition reasonable in all the circumstances? The College submitted:

From the Deputy Registrar’s assessment of the complaint, he did not consider it to be appropriate to dismiss the complaints without any further action. Accordingly, the Deputy Registrar requested that the registrant act as described in section 36(1), namely, to consent to attend for an interview at the College with Registrar staff to discuss the allegation that he lost his professional composure on two occasions.

[33] In the paragraph just quoted, the College’s reference to the Deputy Registrar’s “assessment” of the complaint warrants some explanation.

[34] The Registrar and Inquiry Committee are not allowed to “find fault” in the same sense as the Discipline Committee, which has the power to make final findings of fault and impose formal discipline after a citation has been issued. However, that does not mean the Registrar and the Inquiry Committee do not have a meaningful role to play in assessing conduct. This point was discussed extensively in Decision No. 2011-HPA-0036(b), whose reasons I adopt here. As noted at paragraph [72] of that decision: “the power shared by the Inquiry Committee and Registrar to (a) recommend a consent or undertaking under s. 36(1), or (b) dismiss or take no action in respect of a complaint if the Inquiry Committee is of the view that the “conduct or competence is satisfactory”, necessarily involves some evaluation of the evidence”. As was previously noted in Decision 2011-HPA-0018(a), “it is impossible to make any of these decisions [Registrar’s decision to dismiss a complaint, act under s. 36(1) or make a referral to the Inquiry Committee] in any meaningful way without investigating the complaint and forming some assessment as to its merits”: see paras. [68]-[70].

[35] I note that one of the specific points made in Decision 2011-HPA-0036(b) concerned the power of the Inquiry Committee and Registrar to make one of the written requests set out in s. 36(1) of the Act, which the College relies on here:

It is obvious that the Inquiry Committee cannot intelligently make any of the requests set out in s. 36(1) unless it has undertaken a meaningful evaluation of the evidence. While the Inquiry Committee is not required to finally adjudicate anything to exercise these powers, it must surely be prepared to make its own provisional assessment of conflicting evidence before determining whether to make a request under s. 36(1). [emphasis added]

[36] In this case, the Deputy Registrar did make a provisional assessment of the conflicting evidence. He stated in the disposition that while he was not “certain as to what actually occurred”, he was sufficiently comfortable in identifying that there had been some sort of “confrontation” which had created a “perception of disrespect for the
patient’s dignity” as to warrant a request for a meeting “to again discuss issues of conduct and professionalism”.

[37] The type of informal peer discussion – which one would expect to be quite candid - could for some registrants be a very valuable educational and remedial measure. At the end of such a meeting, the College may be quite satisfied that the meeting has served its purpose. On the other hand, such a meeting might disclose to the College that the Registrant is “not getting it” and that other action is appropriate.

[38] Was it unreasonable for the Deputy Registrar to require this meeting in this case or, as necessarily implicit in the Complainants’ dissatisfaction with the disposition, should he have taken more assertive action, such as exercising one of the other options in s.36(1) or referring the matter to the Inquiry Committee to enable that body to decide whether a different outcome was appropriate under s. 33(6). In assessing this question, the Review Board’s role is not to decide whether the Review Board would have made the same decision as the Registrar, but to decide whether the Registrar’s decision is an outcome that is reasonable.

[39] I asked the parties to address whether, if a meeting like this is requested, a reasonable disposition also requires the college to notify the complainants that they will in due course be notified that the meeting took place and whether or not the college was satisfied that the meeting achieved the college’s purpose. Only the College and the Complainants responded. The College, stating that it interpreted the question on this point as being general rather than specific to this case, submitted as follows:

It is the College’s position that if a complaint is disposed of with a direction to interview the registrant, notice of the direction will be given to the complainant. The degree and extent of additional information will vary and will be determined on a case by case basis. At the core of any decision about how much detail is provided to the complainants, is the College’s duty to protect the public and discharge its responsibilities in the public interest.

The College respectfully submits that fostering a co-operative and forthcoming dynamic with its registrants is consistent with these obligations. There are cases in which transparency and accountability weigh in favour of providing complainants with information about the meeting whether or not it satisfied the College’s intended remedial purpose.

However, the College does not consider this to be a hallmark of a reasonable disposition. In the College’s view, there are circumstances which warrant limiting disclosure to notification of the direction to meet and an overview of the purpose of the meeting. The College submits that in such instances, providing some assurance of confidentiality encourages greater cooperation from registrants, which is ultimately, in the public interest.

[40] I have no hesitation in concluding that in the circumstances of this case, it was not merely wrong but unreasonable for the Deputy Registrar to have requested a meeting with the Registrant without making it part of the disposition that he would notify the Complainants regarding whether the meeting took place, and whether the Deputy Registrar was satisfied that the meeting achieved its purposes (and if not, what other course of action followed). Without such notifications, the disposition was unreasonable.
[41] Because such meetings must be allowed to take place informally and with
candor, reasonableness does not in my view require a college to provide complainants
with anything akin to “minutes” or summary notes disclosing the discussions in such a
meeting. At the same time, it is my view unreasonable to create a disposition that will
leave the complainants in the dark about whether the meeting even took place, let alone
about whether the college was satisfied with the outcome or whether it decided to take
some other course of action because it was not satisfied with the outcome.

[42] In my view, notification of the complainants as set out above is not a peripheral
matter with regard to this type of disposition. It is central to the credibility of the
disposition, and therefore to the public interest in fair and accountable professional
regulation. Where, as here, complainants have made bona fide complaints, where
those complaints have been provisionally assessed as having merit, and where the
college has decided that a request for a meeting is appropriate instead of referring the
matter to the inquiry committee or taking one of the more concrete steps contemplated
by ss.36(1)(a), (b) or (c), reasonableness requires the college to make it a term of the
disposition that the complainants will be notified whether the meeting took place and
whether the Deputy Registrar was satisfied that the meeting achieved its purposes (and
if not, what other course of action followed). Only then can a complainant know the
true outcome of his or her complaint to the college, and only then can the interests of
transparency and accountability be achieved. Where, as here, such notification is not
onerous and does not impinge on the privacy of the meeting, it is unreasonable to fail to
provide such notifications. In all the circumstances of this case, to have merely
communicated to the complainants that the Registrant would be required (in fact,
requested), to attend a meeting, without more, was unreasonable.

VI ORDER

[43] Section 50.6(8) of the Act states as follows:

50.6 (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.

[44] Had I concluded that the “private meeting” remedy was unreasonable regardless
of what terms and conditions were attached to it, the appropriate remedy would have
been to send the matter back to the college, with directions that the inquiry committee
consider the other potential actions available under s.33 or 36. As I have not reached
that conclusion, I am not making that order.

[45] However, given my conclusion that the disposition was unreasonable to the
extent that it did not contain the appropriate notifications, I have decided that the
appropriate remedy is to direct, under s.50.6(8)(b), that the Inquiry Committee issue the
following disposition which could have been made by the Inquiry Committee in this
matter (new language underlined below):
By copy of this letter [the Registrant] will be reminded that the maintenance of professional composure in all circumstances is what is expected of all physicians. The College will request [the Registrant] to attend at our College offices for an interview with members of the College’s Registrar staff, following which the College will notify the Complainants in writing regarding whether the meeting took place, and whether the Deputy Registrar was satisfied that the meeting achieved its purpose, or if not so satisfied, what other measure the College has taken or intends to take. A copy of both your complaints will remain permanently in [the Registrant’s] College member file.

[46] The Review Board has not been advised as to whether the meeting in question ever took place. If it has, I assume that the College will, in accordance with this direction, be in a position to promptly provide the Complainants with the written notifications set out in the above disposition in light of the purpose of the meeting. If the meeting has not take place, I expect the College will promptly take all necessary steps to determine whether the Registrant will agree to attend, and depending on that response, govern itself accordingly.

[47] I wish to make it clear that compliance by the College with the direction is not a new decision that will give rise to a new application for review.

VII CLOSING COMMENTS

[48] I want to conclude these reasons by acknowledging the Complainant’s frustration with the time this case has taken, and with what has been its unavoidably legal flavor.

[49] Complainants appearing before the Review Board do not always fully appreciate that the Review Board is not allowed to decide their complaints over again as if it were stepping into the shoes of the Inquiry Committee. The Review Board is allowed only to assess the adequacy of the college’s investigation and the reasonableness of the resulting disposition. Sometimes, as in this case, that role involves the Review Board having to decide important preliminary issues (as arose in this case regarding confidentiality) as well as other difficult legal issues dealing with the powers and actions of the College. In doing this, the Review Board has to give each of the parties a chance to respond in order to carry out its duty of being fair and impartial to all.

[50] In making the decision, I have considered all of the information and submissions before me, whether or not they are specifically referred to in these reasons.

“J. Thomas English”

J. Thomas English, Q.C., Chair
Health Professions Review Board

February 5, 2013