DECISION NO. 2011-HPA-092(a)

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 Dental Hygienists of BC

AND: A Dental Hygienist

BEFORE: Lori McDowell, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on January 11, 2013

APPEARING: For the Complainant: Self-represented

For the College: Angela Westmacott, Counsel

For the Registrant: Self-represented

I INTRODUCTION

[1] This matter arises out of a dental hygiene treatment. The Complainant believes that the treatment was overly aggressive and resulted in permanent numbness to her lip. After an initial review the Inquiry Committee dismissed her complaint. The Complainant applied to the Review Board for a review of that disposition.

[2] The Inquiry Committee subsequently undertook another review of the matter and again dismissed her complaint. The Complainant asked the Review Board to review the final disposition. This decision is based on this latter disposition.
II  ISSUES

[3] The issues I must decide are:

(a) Did the Inquiry Committee adequately investigate the complaint against the Registrant?

(b) Was the Inquiry Committee’s decision to dispose of the complaint without taking further action reasonable?

III  BACKGROUND FACTS

[4] The Complainant underwent a dental hygiene treatment at her regular dentist’s office in October, 2009. Shortly afterward she went on a month long vacation and realized she had some residual numbness in her lip. On her return she attended at her doctor’s office. Once her doctor ruled out a stroke as the cause of her numbness the doctor asked the Complainant if she had recently had any dental work done. At this point the Complainant recalled the hygiene treatment and disclosed this to her doctor who stated that the sensation to her lip should return within a few months.

[5] At her next dental appointment in the spring the Complainant spoke with the dentist about the numbness in her lip and was told that it would wear off soon. The Complainant returned for another dental examination in December, 2010 and still did not have full sensation in her lip. She asked for the name of the Registrant and filed a complaint with the College in January, 2011.

[6] The Inquiry Committee conducted an initial review and concluded that there was no breach of the standard of practice. The Inquiry Committee dismissed the complaint.

[7] In her complaint to the Review Board the Complainant alleged that the Registrant breached her professional standards during the treatment and the result was a permanently numb lip.

[8] The Complainant asked for the Review Board to direct the Inquiry Committee to take appropriate action to resolve the matter and for the complaint to be sent back to the Inquiry Committee for reconsideration.

[9] The College requested some time to review the matter further and meet with the Complainant. The College appointed an independent inspector and asked the Complainant to see a neurologist to rule out any other possible causes of the numbness. Once the Inquiry Committee had an opportunity to complete this further review it concluded that no further action was necessary regarding the complaint.

IV  ISSUE 1: ADEQUACY OF THE INVESTIGATION

[10] It is not the role of the Review Board to reinvestigate complaints or to substitute its findings for that of the Inquiry Committee.

[11] The Review Board is required to determine whether the Inquiry Committee investigated the complaint adequately, not perfectly. Did the investigation result in sufficient information to assess the complaint?
Here the Inquiry Committee conducted its own initial investigation. Later, it also retained an inspector who conducted a review of the matter. The inspector:

(a) interviewed the Registrant and the dentist who employed her;
(b) reviewed the dental records;
(c) reviewed the Complainant’s medical record;
(d) contacted the Complainant to discuss her complaint;
(e) contacted the Registrant and requested further information;
(f) obtained the report of a neurosurgeon;
(g) discussed the matter with the Complainant’s rheumatologist;
(h) prepared an 11 page report;
(i) reported her findings to the Inquiry Committee.

The Inquiry Committee also spoke with the neurosurgeon to obtain further information. The Inquiry Committee also gave both the Complainant and the Registrant the opportunity to respond to the inspector’s report.

The Inquiry Committee conducted an appropriate investigation. They acquired sufficient information to address the issues raised by the Complainant. Their investigation satisfies the legal test for adequacy.

ISSUE 2: REASONABLENESS OF THE DISPOSITION

The role of the Review Board in determining the reasonableness of a disposition is to assess whether it falls within the range of defensible outcomes based on the evidence the Inquiry Committee had before it. An Inquiry Committee disposition will be reasonable if it appropriately addresses the issues underlying the complaint.

In other words, it is not appropriate for the Review Board to second guess the Inquiry Committee or decide whether it is right or wrong. Rather, the Review Board must focus on whether the disposition falls within the range of acceptable and rational solutions and can be supported by the evidence in the investigative record.

Here, the disposition addressed the concerns of the Complainant. It found that although the Complainant continued to suffer from numbness no direct connection could be made with the dental hygiene treatment based on the Inquiry Committee’s expertise, the review of the dental and medical records, responses of the parties and the report of the neurosurgeon and the inspector.

The conclusion of the Inquiry Committee to take no further action on the complaint was well within the range of acceptable and rational decisions. Based on the investigation it can be justified, and is both transparent and intelligible.

The disposition can be sustained.
VI DECISION

[20] I find that the investigation into this complaint was adequate and the disposition was reasonable. The Complainant’s application is dismissed and the disposition of the Inquiry Committee is confirmed.

[21] In making this decision I have considered all of the information and submissions before me whether or not I have specifically referenced them.

“Lori McDowell”

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Lori McDowell, Panel Chair
Health Professions Review Board

March 21, 2013