DECISION NO. 2011-HPA-099(c)

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 Surgeons of BC

AND: A Dental Surgeon

BEFORE: Herbert S. Silber, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on October, 22, 2012

APPEARING: For the Complainant: Self-represented

For the College: Jason Herbert, Counsel

For the Registrant: Benjamin Ralston, Counsel

I DECISION

[1] Upon considering the application made by the Complainant under section 50.6 of the Act, it is my decision that the disposition of the Inquiry Committee of the College is confirmed.

II INTRODUCTION

[2] The Complainant and his wife had been patients of the Registrant since the 1980s. The complaint arises from dental treatments (“Treatments”) to the Complainant by the Registrant in 2008. There is no suggestion of any complaints by the Complainant against the Registrant for any prior events. Indeed, in his complaint to the College dated July 22, 2009 (“Complaint”) he describes the Registrant as “an extremely skilled dentist.”

[3] The Complainant had, at the time of his Treatments, an advanced case of Parkinson’s disease, which he states in his Complaint compromises his speech, mobility and memory. It appears to be common ground that on at least one occasion during his Treatments he exhibited severe shaking attributable to his Parkinson’s disease as set
out in both the Complaint and acknowledged by the Registrant in a letter to the Complainant on May 8, 2009 after the Complainant and he were in communication regarding payment of the patient fees portion of the Treatments.

[4] The complaints set out in the Complaint were that the Registrant lacked compassion for the Complainant’s debilitating disease and was indifferent towards the Complainant’s suffering, demonstrated a lack of professionalism in the manner in which the Registrant ran his practice, and failed to adequately inform the Complainant of the Registrant’s billing practices.

[5] In an addendum to his Complaint dated October 27, 2009 (“Addendum”), the Complainant added a further complaint regarding the re-placement of a bridge (“Bridge”) by the Registrant that had been part of the Treatments. The Bridge had been placed in the Complainant’s mouth some years prior to the Treatments and been re-cemented by the Registrant as part of the Treatments. It had apparently become dislodged and was re-cemented by a second dentist (“Second Dentist”) in October 2009.

[6] On March 29, 2011, after reviewing a detailed report (“Report”) prepared by the College Investigator, the inquiry committee of the College (“Inquiry Committee”) disposed of the Complaint by deciding pursuant to s. 33(6) of the Act to take no further action on the Complaint and to have the College’s Registrar close the Complaint file in light of the agreement by the Registrant to take a course in Record Keeping.

[7] On March 30, 2011 the College Investigator sent a letter to the Complainant (Letter of Disposition) outlining the nature of the complaints, the Registrant’s responses and the disposition (“Disposition”) of the Inquiry Committee.

[8] The Letter of Disposition stated in part:

[The Registrant] first denies that he lacked compassion for your condition or in his treatment of you. [The Registrant] confirmed you did contact him following treatment to object to the cost and that his receptionist attempted to explain to you the treatment for which you were being billed. [The Registrant] says that it is his recollection he advised you before treatment that the complete cost would exceed the limits of your wife’s insurance coverage; however, this is not noted in his chart. I had a discussion about this with [the Registrant], at which time he demonstrated he understands what constitutes informed consent and agreed to take the College’s Record Keeping course to ensure his treatment notes reflect those discussions. With respect to the bill itself, [the Registrant] notes that his office made several follow up calls to you, which you did not return. There is also correspondence on file explaining the treatment and the costs. The bill, however, remained outstanding and was eventually referred to a collection agency. While certainly a dispute over the cost of treatment is regrettable, [the Registrant] is entitled to refer the matter to a collection agency if the matter cannot be otherwise resolved between you.

Subsequent to the investigation, your file was referred to the Inquiry Committee for review at its March 20, 2011 meeting. The Committee was provided with a summary of the investigation. After reviewing this information, the committee was satisfied that the investigation was complete and that no further action was necessary and directed that the file be closed.
The Complainant then filed a late Application for Review on June 3, 2011, and on September 19, 2011 was granted leave from the Review Board to do so.

III ISSUES

The issues I must address in this matter as prescribed by s. 50.6 (5) of the Act are two: was the investigation conducted by the College adequate and the disposition reasonable?

IV FACTS

The Complainant was billed $2797.42 for his portion of the fees (Patient Fees) for his Treatments. He did not pay this amount. The Complainant in his complaint asserts that the Patient Fees were exorbitant.

The failure of the Complainant to pay the Patient Fees resulted in an exchange of correspondence in early 2009, culminating in a demand by the Registrant in a letter to the Complainant dated March 31, 2009 that if an acceptable payment plan was not presented to the Registrant he would pass along the account for third party collection.

In response, the Complainant in a letter dated April 8, 2009 (“April 8th letter”), did present a payment plan over time for about 1/3 of the Patient Fees, concluding the letter by stating:

I hope you will consider my offer, failing that; [sic] I will have no other option but to contact the College of Dental Surgeons of BC regarding your billing practice. (Emphasis added)

This appears to be the first time following the Treatments, which last occurred in August of 2008, that a possible complaint to the College relating to the Treatments was raised by the Complainant.

The Registrant rejected the Complainant’s offer in the April 8th letter.

As to the complaint that given the Complainant’s struggles with Parkinson’s disease, the Registrant lacked compassion and treated the Complainant with indifference, the Registrant denies that this was the case. Moreover, given that the Complainant had been a long standing patient of the Registrant during his affliction with Parkinson’s, it is difficult to imagine he would continue as a patient if the Registrant had conducted himself in the manner the Complainant says he did.

The Registrant, in his response on August 28, 2009 to the College regarding this complaint (“Response”), suggests that this issue only surfaced after the Complainant was unable or unwilling to pay the Patient Fees. It is noteworthy, as set out in paragraph [13], that the threat [to lodge a complaint with the College against the Registrant] was related to the Registrant’s billing practices only, notwithstanding that in an earlier part of the April 8th letter the Complainant alludes to lack of compassion by the Registrant in relation to the Complainant’s Parkinson’s disease.

The complaint regarding the Registrant’s unprofessionalism in his dental practice stems from the presence of three overhead television screens broadcasting golf and
stock market information which the Complainant found bothersome and he queried whether the Registrant could concentrate on his work in that environment. He further raised a concern about being addressed as an “old friend” in the conclusion of a letter from the Registrant to the Complainant dated May 8, 2009, part of the dialogue between the parties to try to resolve the fee dispute.

[19] The Registrant responded in his Response that the television screens and programs were for his patients and explained why they were not a distraction. As with the complaint regarding the lack of compassion, this issue was also alluded to in the April 8th letter, but not referenced as a matter which could result in a complaint to the College.

[20] As for his familiarity with the Complainant, the Registrant pointed out in his Response that the Complainant had approached him a few years beforehand for a $2000.00 loan, so he felt at liberty to describe him as a “friend.” No doubt he was also using that term in light of the longstanding relationship between the parties.

[21] As for the failure to adequately inform the Complainant about the Registrant’s billing practices, the essence of this matter is that the Registrant acknowledges in his Response that he only sought “oral consent” of the Complainant for the Treatments. The Complainant states in his Complaint that during a treatment session in August 2008 when the Complainant was having a particularly difficult time with his Parkinson’s symptoms, he has no recollection of giving oral consent. Moreover the Complainant suggests that given his condition the Registrant should have asked the Complainant’s wife whose dental insurance he was utilizing. The Complainant acknowledges in his Complaint that his Parkinson’s disease affects, among other things, his memory.

[22] The Registrant states in his Response that he did not consult the Complainant’s wife because she was unaware of the treatment program.

[23] As noted by the College Investigator in his Report, his investigation failed to establish whether the “oral consent” was given before or after the Complainant had been informed of the costs of the Treatments and, in particular, whether they would exceed the insurance coverage. No written records were found that would assist in this process.

[24] It was because of this sequence of events that the College Investigator recommended to the Registrant that he take a Record Keeping course, presumably to avoid any confusion in the future about consent. The Registrant agreed to pursue this course of action.

V  DISCUSSION AND ANALYSIS

A. Additional Evidence

[25] The Complainant, in his Statement of Points dated August 18, 2012, seeks to introduce new evidence as follows:

(a) a consultation report dated July 27, 2012 (“Consultation Report”) from a Neurologist, the essence of which report is that the Complainant’s
Parkinson’s Disease is exacerbated by stress and there is “...no doubt that the stress related to his complaint (emphasis added) will worsen his Parkinson’s disease.”

(b) a further complaint regarding the Bridge that was replaced in 2012 by a dentist other than the Second Dentist.

[26] The College opposes the introduction of the additional evidence arguing that the Complainant has failed to demonstrate the justification of including this new evidence into the Record, as he is required to do pursuant to s.50.6(6) of the Act. The Registrant makes no submissions on this issue.

[27] Section 50.6(7) of the Act states:

The review board may hear evidence that is not part of the record as reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review.

[28] I am not satisfied that the Consultation Report is relevant. Moreover, on the test set out in Review Board Decision No. 2009-HPA-0001(a) to 0004(a), even if I determined that it was relevant, I would then need to be satisfied as to the degree of relevance, the fairness to all parties to admit the Consultation Report and whether the information in the Consultation Report makes disclosure more full or complete to enable me to render a full, fair and proper decision.

[29] I am not satisfied that at least two of the criteria set out above have been met by the Complainant, i.e. as to the degree of relevance, or the need to have the Consultation Report admitted as part of the Record to render a full, fair and proper decision.

[30] The Consultation Report does nothing more than state that stress exacerbates the Complainant’s Parkinson’s disease. It says nothing about the events that are the subject of the Complaint other than the complaint [process] as a source of stress to the Complainant. No doubt that is true of virtually every complaint, but that does not shed any light on whether the Registrant exhibited an uncaring or indifferent response to the Complainant’s symptoms from Parkinson’s disease during the Treatments.

[31] Therefore, I am not prepared to admit the Consultation Report as part of the Record before me.

[32] As for the replacement of the Bridge, the investigation by the College of the original complaint with the Second Dentist in this regard did not turn up anything remarkable, or evidence of poor quality or lack of competence in the dental work provided by the Registrant.

[33] I am of the view that any evidence regarding a third dentist cementing the Bridge could only be of relevance to the work done by the Second Dentist and would therefore not relate to any issues under review, nor could it therefore be reasonably required for a full and fair disclosure of matters related to any issues under review. Accordingly, I would not admit this evidence either.
B. Adequacy of the Investigation

[34] The interpretation as to what constitutes an “adequate investigation” for Review Board purposes was set out in Decision No 2009-HPA-0001(a) to 0004(a) (at paras. [97] and [98]) and has since been followed by a number of Review Board decisions:

A complainant is not entitled to a perfect investigation, but he or she is entitled to adequate investigation. Whether an investigation is adequate will depend on the facts. An investigation does not need to have been exhaustive in order to be adequate, provided that reasonable steps were taken to obtain the key information that would have affected the Inquiry Committee’s assessment of the complaint.

The degree of diligence expected of the College – what degree of investigation was adequate in the circumstances – may well vary from complaint to complaint. Factors such as the nature of the complaint, the seriousness of the harm alleged, the complexity of the investigation, the availability of evidence and the resources available to the college will all be relevant factors in determining whether an investigation was adequate in the circumstances.

[35] The College investigated this matter by reviewing the Complaint including the Addendum, obtained information from the Registrant and reviewed the Complainant’s treatment history, insurance pre-authorizations, payment history and other dental records, letters between the Complainant and the Registrant over the dispute relating to the Patient Fees, reviewed information from the Second Dentist, had their Investigator meet with the Registrant, and offered the Complainant an opportunity to engage in a telephone conference call, which he declined.

[36] Further, It is noteworthy that neither in his Application for Review nor his Statement of Points did the Complainant raise any issue with respect to the adequacy of the investigation conducted by the College. On the basis of the steps taken by the College described in the previous paragraph, I find that the investigation was adequate.

C. Reasonableness of the Disposition

[37] The test of what constitutes “a reasonable disposition” is guided by the standard of judicial reviews set out by the Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9. In Review Board Decision No. 2009-HPA-0001(a) to 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.
I am satisfied based upon the Record before me that the Disposition is defensible both on the facts and the law. It is a justifiable, transparent and intelligible Disposition, and falls within a range of acceptable outcomes.

VI CONCLUSION

Pursuant to s.50.6(8)(a) of the Act, I confirm the disposition of the Inquiry Committee.

In making this decision I have considered all of the evidence and submissions before me, whether or not specifically re-iterated in these reasons.

“Herbert S. Silber”

Herbert S. Silber, Panel Chair
Health Professions Review Board

May 29, 2013