DECISION NO. 2011-HPA-116(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 COMPLAINANT

AND: The College of Physicians and Surgeons of B.C. COLLEGE

AND: A Physician REGISTRANT

BEFORE: Michael J. Morris, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on August 3, 2012

APPEARING: For the Complainant: Self-Represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

I DECISION

[1] Upon considering the application made by the Complainant and pursuant to section 50.6 of the Act, it is my decision that the disposition of the Registrar which pursuant to s.32(5) is considered to be a disposition of the Inquiry Committee, is confirmed.

II INTRODUCTION

[2] The Complainant in this matter is a resident of the United States who moved his mother between various long term health care facilities in Alberta and British Columbia because he was not satisfied with the quality of healthcare his mother was receiving.

[3] The Complainant was not satisfied with the physician assigned to his mother’s care at this second BC facility and contacted the Registrant requesting that she become the primary care giver for his mother. The Registrant agreed, however, within days the Complainant was unhappy with the Registrant and shortly thereafter removed his mother from that facility to an undisclosed location. The Complainant registered a complaint against the Registrant resulting from his interaction with the Registrant at this facility.
III BACKGROUND

[4] On July 20, 2010 the Complainant moved his mother into this particular long term care facility after removing her from a long term care facility in a neighboring community. The Complainant himself resides in the state of Nevada, USA. The Complainant’s 84 year old mother suffers from early dementia as well as other serious medical problems.

[5] A local physician was assigned to be the primary care giver for the Complainant’s mother and assessed the Complainant’s mother on July 26, 2010. The Complainant’s mother apparently wanted a female practitioner and the Complainant contacted the Registrant to make an appointment to bring his mother in to see her. The Registrant agreed, not knowing a physician had already been assigned.

[6] Nursing staff at the long term care facility became concerned over a sudden rash that the Complainant’s mother had developed, and contacted the Registrant to attend the facility and examine the Complainant’s mother. The Registrant attended on July 29, 2010 to meet and assess her. It was at this time that the Registrant became aware that another physician had already been assigned to, and had assessed, this patient. When the Registrant attended, the Complainant and a personal care aide who had been hired by the Complainant were also present in the room.

[7] The Registrant examined the Complainant’s mother and provided those present with her evaluation of the rash. The Registrant then asked to meet with the Complainant and the two of them went to speak in a corner of the hallway. The Registrant asked the Complainant why he had involved her in the care of his mother when a physician had already accepted her as a patient. The Complainant’s sole reason appeared to be that his mother preferred a female physician. The Registrant then explained to the Complainant that she felt she could not charge the Medical Services Plan (“MSP”) for her visit as the assigned physician would have already charged MSP for conducting an assessment. She also advised the Complainant that the assigned physician may have been able to address his mother’s needs with a phone call or a fax without having to charge a call out to the MSP. The Registrant then advised the Complainant that she would be billing him for her visit and assessment as she felt it was unreasonable to bill MSP for a duplicate assessment. The Registrant also advised that she would assume care of the Complainant’s mother and inform the other physician of the change.

[8] The Registrant and Complainant then discussed the Complainant’s mother’s medical issues and her time spent in the other long term care facilities. It was during this conversation that the Complainant also advised the Registrant that he was “acting Power of Attorney” for his mother and was responsible for his mother’s health decisions.

[9] Since the Registrant could not locate any documentation to indicate the Complainant did have Power of Attorney for his mother, she contacted the Complainant on August 10, 2010 asking him to provide copies of the necessary documentation. The Registrant also asked the local Public Health Unit, Social Work department, to follow up on the appropriate documentation and expressed concern that the Complainant’s mother could be a victim of abuse by the Complainant. The Registrant was concerned over the multiple moves from one long term care facility to another between Alberta and
British Columbia. A social worker subsequently saw the Complainant’s mother and requested the Office of the Public Guardian become involved. The Office of the Public Guardian requested the Registrant to complete a physical evaluation to determine whether the Complainant’s mother was mentally capable of managing her financial and legal affairs.

[10] The Registrant visited the Complainant’s mother twice during the first two weeks of August 2010 as the Complainant’s mother had fallen down in her room on three separate occasions. The Registrant found the Complainant’s mother could not remember the events, nor did she know who the Registrant was.

[11] The Registrant was called away for the last two weeks of August 2010 due to the untimely death of a family member. When she returned she found the Complainant had removed his mother from the long term care facility. The Complainant also notified the Registrant by way of a letter dated September 6, 2010 that his mother had asked him to tell the Registrant that her services would no longer be required. The Complainant did not divulge the location to where he had taken his mother. The removal of the Complainant’s mother by the Complainant was reported to the local RCMP detachment by the long term care facility.

[12] On September 13, 2010 the Complainant submitted a letter to the College containing multiple complaints concerning the Registrant. The complaints ranged from the Registrant losing her temper, insulting the Complainant, providing unsolicited opinions, ordering medical tests and procedures without the permission of the Complainant and failing to provide the results of his mother’s urine test to the Complainant. The Complainant also complained that the Registrant denied his mother the rights to choose her own physician and terminate her physician.

[13] On May 27, 2011 the College provided their disposition to the Complainant stating in part:

In conclusion, the College considers that [the Registrant] was appropriately concerned at your involvement in your mother’s care (especially related to moving her from facility to facility) without having provided [the facility] or herself with a copy of the legal authorization to assume this role. Without that legal authorization, [the Registrant] was not obliged to accede to your wishes and her first obligation was to her patient, your mother. The College does not therefore consider it inappropriate for her to contact the Public Health Unit to follow up with regard to the appropriate documentation of Power of Attorney. It appears that it was the social worker from the Public Health Unit who subsequently contacted the Office of the Public Guardian and Trustee.

The College does not agree that [the Registrant] denied your mother the right to choose her own physician as she did accept [the Complainant’s mother] into her care, after explaining to you that [another physician] had already been assigned to her. [The Registrant] then accepted the responsibility of informing [the other physician] that she would continue with [the Complainant’s mother’s] care and continued to treat her during the period before you took your mother away from [the facility].

The College does not accept that [the Registrant] denied your mother the right to terminate her physician. In the case of [the other physician], [the Registrant] agreed to accept [the Complainant’s mother’s] care from him. In [the Registrant’s] case, you
arbitrarily decided to terminate [the Registrant’s] care and remove your mother from BC to an unknown location. You have indicated that your mother has the right to choose which facility she resides in and to choose her own physician. The College does not consider that [the Registrant] has interfered with any of [the Complainant’s mother’s] rights but rather attempted to protect them.

[14] The Complainant filed his application for review on July 15, 2011, disputing the findings of the College, and claiming that the College ignored his evidence and weighed in favour of the Registrant who, he claims, perjured herself on several points. The Complainant also wanted an opportunity to “refute the Registrant’s false testimony”.

IV DISCUSSION AND ANALYSIS

[15] The Review Board’s function with respect to review applications is described under s. 50.6(5) of the Act, where we must conduct a review of the College disposition and consider the adequacy of the investigation and/or the reasonableness of the disposition. While the review is on the record itself there are provisions for the Review Board to hear other evidence as reasonably required for a full and fair disclosure of all matters related to the issues under review. The mandate of the Review Board was discussed with the Complainant during a pre-hearing conference held on April 12, 2012.

[16] In support of his application for review, the Complainant provided his written submission on May 14, 2012. His submission included numerous pages written by himself, numerous pages written by a personal care aide under his employment, and several copies of photographs purported to be of his mother. Much of the Complainant’s submission reflects his personal philosophical opinion and criticisms of British Columbian politics and BC medical services and is irrelevant to this review.

[17] I also find a significant portion of the Complainant’s written submission is without merit, being based on assumed gratuitous and unsubstantiated personal opinions of the Registrant. The focus of my review is on the adequacy of the registrar’s investigation and the reasonableness of the disposition surrounding the interaction between the Complainant and the Registrant during the six week period of time the Complainant’s mother was a patient at the long term care facility prior to the Complainant submitting his complaint to the College. Because of this, I will not consider the pictures submitted by the Complainant as they were taken after he had removed his mother from the long term care facility and are not relevant to the matter at hand.

[18] The Registrant claims that she had received a call from the Complainant requesting her to be his mother’s physician, and the appointment was set up in order for her to do an “intake assessment” of the Complainant’s mother. The Complainant argues that he had only made an appointment with the Registrant to interview her and determine her suitability as a physician to look after his mother as opposed to actually accepting her as his mother’s physician. There is nothing in the record to support the Complainant’s argument in this respect. He did not raise this issue with the Registrant during their initial meeting or at any time afterwards until his letter of September 6, 2010 where he advised the Registrant that her services were no longer required.

[19] The Complainant argues that the Registrant’s attendance in his mother’s room on July 29, 2010 was unsolicited, and that he never invited the Registrant into his
mother’s room. The record indicates that staff at the long term care facility had called the Registrant to examine the Complainant’s mother as they were concerned over the sudden onset of a rash. It is not unreasonable, nor should it be unexpected, for a physician to enter a room at a medical facility to examine a patient. Furthermore, the permission of a patient’s relative to conduct an examination of the patient in such circumstances is not required.

[20] During the initial meeting between the Registrant and the Complainant, the Complainant informed the Registrant that he was the “acting Power of Attorney” for his mother. The Registrant followed up on this important issue by inquiring with the long term care facility and found there was nothing on file. The record indicates that the Registrant contacted the Complainant requesting a copy of his Power of Attorney, a necessary authority required when persons intervene on behalf of a patient. The Complainant did not comply with this request. The Complainant acknowledges the request for this document in his written submission where he states;

[The Registrant’s] arrogance shows up again when her attorney states, I did not ‘comply’ with her request for a Power of Attorney. One more instance of arrogance. I do not report to or owe [the Registrant] any compliance. Any reasonable person would have accepted that I have such…[sic]

[21] The Complainant further supports his argument that he had Power of Attorney by stating that the personal care attendant that he had hired observed the Complainant handing a copy of the Power of Attorney to the facility’s care coordinator. The Complainant also suggests that perhaps the care coordinator purposefully withheld the document from the Registrant.

[22] On November 25, 2011, at the request of the Review Board, the Complainant faxed a copy of the documents appointing him as attorney on behalf of his mother. The Power of Attorney was executed in the same community as the long term care facility is located by a local law firm and is dated October 7, 2010. This contradicts the Complainant’s submission that he held legal power of attorney for his mother during the period of time she was a patient in the BC long term care facilities, as the document he faxed the Review Board is dated several weeks after the Complainant removed his mother from the long term care facility where the Registrant cared for her.

[23] The College argues that because the submissions of the Complainant lack evidentiary value and constitute a personal attack on the Registrant, in its view the application for review is without merit. The College also argues that an adequate investigation did take place and that the disposition is reasonable under the circumstances. The College presents several previous Review Board and other courts’ decisions to support their argument.

[24] The Registrant argues that the Complainant did not specify any grounds for review, complaining instead that his letter to the College was ignored along with the testimony of his witness. The Registrant argues that the College’s disposition ought to be confirmed because the investigation was adequate and the disposition reasonable. The Registrant also provided various legal precedents to support her argument.
[25] Although the Complainant’s mother was a patient at this facility for approximately six weeks, the matter before me appears to have originated from the initial meeting between the Complainant and the Registrant. The Registrant confirms that during this initial meeting she was firm with the Complainant, but not aggressive. The Complainant states otherwise, claiming the Registrant was rude, lost her temper and was insulting. To corroborate his argument, the Complainant provided the College with a short witness statement from the care aide under his employment who described the Registrant as being enraged when the Registrant first entered the room. This witness also described the Registrant as going into a “tirade” and said she “tore into [the Complainant] without any provocation.”

[26] There were no other apparent witnesses to the circumstances surrounding this initial meeting. In their investigation, the College interviewed the Patient Care Manager for the long term care facility who stated that [the Registrant] was “one of the kindest and most considerate physicians” attending this facility, and “could not recall any particular instance where [the Registrant] behaved inappropriately.”

[27] The record is perfectly clear in demonstrating that a meeting did take place between the Registrant and the Complainant, and that the Registrant questioned the legal authority of the Complainant’s involvement in his mother’s health care. The record also clearly demonstrates the reasons why the Registrant was concerned. It is also clear from the submissions of the Complainant that he took umbrage at the position taken by the Registrant. In addition to being untruthful with respect to the existence of a valid Power of Attorney, the Complainant’s submissions are for the most part, conjecture and personal opinion containing no evidentiary value.

[28] The degree of thoroughness required for investigations to be “adequate” depends on the circumstances. The law applying to the adequacy of an investigation was properly determined in Review Board Decision No. 2009-HPA-0001(a) – 0004(a), at paras. [97] and [98]:

[97] 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.

[98] 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 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.

[29] With respect to the reasonableness of the decision of the Inquiry Committee, the Review Board often looks to Dunsmuir v. New Brunswick, [2008] 1 S.C.R. 190 at para.47 for guidance in respect to the issue of reasonableness:

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.

[30] The record put before me in this matter demonstrates that reasonable steps were taken by the College to obtain all available information, and its disposition is defensible in respect of the facts and the law.

V CONCLUSION

[31] For all of the reasons set out above, and applying the standards of section 50.6(5) to the Record and the additional written submissions provided by the Complainant, the College and the Registrant, I find the Registrar’s investigation was adequate and the disposition of the investigation reasonable. I confirm the disposition of the College.

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

“Michael J. Morris”

Michael J. Morris, Panel Chair
Health Professions Review Board

January 23, 2013