DECISION NO. 2011-HPA-131(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 Physicians and Surgeons of BC

AND: A Physician

BEFORE: John H. O’Fee, Panel Chair

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on July 9, 2012

APPEARING: For the Complainant: Self-Represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Michael C. Toulch, Counsel

I INTRODUCTION

[1] The Complainant applied under s. 50.6 of the Act to review a July 5, 2011 disposition of the College concluded under Section 32(3) of the Act and communicated to him in a letter signed by the Registrar of the College on behalf of the Inquiry Committee of the College of Physicians and Surgeons of BC.

[2] The Complainant asserts that the Registrant acted inappropriately with respect to an examination of the Complainant for pain in her knees. Specifically, she states that she was asked to remove her pants despite her stating to the Registrant that she preferred to roll up her pant leg, she was not offered a gown to cover up the rest of her lower body after removing her pants and that the Registrant conducted himself unprofessionally during the examination. In addition, the Complainant asserts that the findings of the College were based upon inaccurate medical records that were tampered with by the Registrant.

II BACKGROUND

[3] The complaint stems from an incident of an uncertain date. The Complainant asserts that she underwent a knee examination in March or April 2009, some 18 months prior to her advancing her complaint.
The Registrant stated in his response dated October 15, 2010 that his records do not indicate examining the Complainant for knee pain at that time. He did go on to describe his usual examination protocol for medical issues of this nature. The Registrant indicates that his standard practice when requiring a patient to remove their pants is to always provide a knee length gown and an opportunity to undress in private. The Registrant would likely see another patient in a different examining room while this is happening and return after some period of time. The patient would then be allowed to dress in private after the Registrant has left the room.

In a letter dated January 13, 2011, the Complainant forwarded an X-ray report dated May 29, 2007 to refute the Registrant’s assertion that he did not examine the Complainant for knee pain.

In a subsequent letter dated January 28, 2011, the Registrant advised that his records indicated that he examined the Complainant’s knees during a different visit on April 2, 2007 or approximately two years prior to the date cited by the Complainant and over three and one half years prior to the date of her complaint. Given the period of time that had expired, the Registrant stated that he could not recall the exact details of this visit other than that the Complainant indicated she had creaking and pain in her knees. He repeated his standard office protocol of providing a gown and privacy to undress and dress. He also indicated that the patient would keep their upper body clothing and undergarments on during such an examination. The second letter from the Registrant is consistent with his medical record and the report of the independent radiologist dated May 29, 2007 indicating a preliminary diagnosis of osteoarthritis in both knees.

The Complainant asserts that the Registrant has tampered with the medical records of the Complainant but does not specifically assert what in her record has been altered. It is unclear whether or not the Complainant asserts that there was in fact a second knee examination in March or April 2009 but it is clear from the medical record and the subsequent X-ray report that at least one examination of her knees took place some time prior to May 29, 2007.

Regardless of the date of the last knee examination, the Complainant’s assertion of inappropriate conduct appears to be the core basis of her complaint. She states that the removal of her pants was unnecessary, that she was required to wait 20 to 30 minutes with her pants off in an examining room before the Registrant returned, that she was not provided with a gown to cover up her pelvic region and that the Registrant “passed on silly and uncomfortable jokes” in a manner that caused her to conclude that he was not behaving pleasantly with her.

In addressing the complaint the College noted that examination of patient’s legs through their pants is inappropriate and substandard. The College noted further that rolling the patient’s pants legs to the knees or above has the potential of interfering with the patient’s circulation or otherwise distorting the anatomy. As such, the College found that the request of the Registrant that the Complainant remove her pants was a medically appropriate one.

The response from the College further repeated the Registrant’s protocol regarding the provision of a knee length gown and providing the patient with an opportunity to dress and undress in private. The Complainant’s version of the facts differs only in the provision of a gown. The wait time between undressing and being examined by the registrant is not addressed by the College in their disposition of the
complaint but it would appear to be consistent with the Registrant’s letter indicating he
gives patients an opportunity to remove their pants in private while the Registrant
attended to another patient.

[11] Neither the College nor the Registrant appear to address the Registrant’s
behaviour during the examination and this is not raised as a point in the Complainant’s
request for review. There are no particular details advanced by the Complainant as to
the Registrant’s behaviour beyond it being generally unpleasant. There is no evidence
advanced suggesting that the Registrant acted in a manner generally considered
inappropriate. His demeanor may have offended the Complainant’s personal
sensibilities but this aspect of the complaint is lacking in any detail.

[12] Counsel for the College and the Registrant assert that the College’s
investigation was adequate and its disposition of this matter was reasonable in the
circumstances. They also assert that the allegations in the complaint, if proven, would
not constitute the basis of a reprimand for the Registrant and that this complaint should
not be considered a serious matter. Finally, they submit that the assertions of tampering
with the medical records is unsupported by any evidence.

III JURISDICTIONAL ISSUES

[13] This application is brought pursuant to Section 50.6(1) of the Act which provides
for the Review Board to review the disposition of a matter by a college. Upon receipt of
such application for review of this disposition the review board is bound by section
50.6(5) which reads as follows:

50.6 (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.

IV THE ADEQUACY OF THE INVESTIGATION

[14] The core basis of the matter being advanced by the Complainant is that the
Registrant required her to remove her pants in order to perform an examination of her
knees and did not provide her with a medical gown to cover up her pelvic region. It is
clear that the Registrant did in fact require the Complainant to remove her pants but not
her undergarments to conduct a proper examination of her knees. The only remaining
issue is whether or not the Complainant was provided with an opportunity to put on a
gown. The provision of a gown would not be part of the medical record. Accordingly,
assertions by the Complainant of tampering with her medical records are not relevant to
her complaint.

[15] In any event, there is no evidence to indicate that the medical records of the
Registrant were altered in any way. The Complainant advances nothing to indicate what
in her medical record was altered. If the Registrant examined her knees a second time
in the spring of 2009 but made no record of it, the basis of the complaint remains the
same.
[16] In reviewing the record it is apparent to me that the College was provided with all pertinent medical records including those prepared by third party medical professionals. I am satisfied that the College had the materials necessary to conduct a proper review and that the registrar did in fact review these materials in making their disposition.

[17] The only significant conflict between the factual narrative presented by the Registrant and the Complainant relates to the date of the knee examination and provision of a gown to cover the Complainant’s pelvic region although she was wearing undergarments.

[18] Personal modesty standards vary between individuals and are influenced by a variety of social, cultural and religious factors. What is clear is that the College investigated this aspect of the complaint and confirmed with the Registrant’s medical office assistant that it is the Registrant’s standard practice to offer a gown to patients in circumstances where they are asked to remove their pants.

[19] Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraphs [97] and [98] is often cited as the test for the adequacy of the investigation respecting a complaint.

[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 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.

[20] I accept the submissions of Counsel for both the College and the Registrant that in this case, the seriousness of the harm alleged does not merit extensive investigation by the College. The Complainant’s assertion that she should have been called or spoken to prior to the disposition by the College cannot be supported by the facts even if her version of events is taken at face value.

[21] Given the nature of the complaint and the review of the record, the College sought out sufficient information for it to carry out its mandate and on a reasonableness standard its inquiries were adequate.

V THE REASONABLENESS OF THE DISPOSITION

[22] Again, Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraph [92] outlines a clear test for reasonableness:

While the Review Board’s application of the test will necessarily reflect its expertise as a specialized administrative tribunal rather than a Court, the Review Board’s focus is nonetheless not to step into the shoes of the Inquiry Committee, but rather to determine whether the Inquiry Committee’s disposition falls within the range of acceptable and rational solutions, and is, viewed in the context of the whole record, sufficiently justified, transparent and intelligible to be sustained.
The College found that requiring the Complainant to remove her pants prior to having her knees examined was medically appropriate and that the Registrant was correct in requiring this step in conducting a proper examination. My role is not to second guess well established medical examination procedures and I accept that this is an appropriate disposition of this aspect of the complaint.

Whether or not the Complainant was offered a gown in this particular examination is difficult to establish. It was reasonable for the College to conclude that the Registrant’s standard practice is to offer a gown to patients and there were reasonable grounds to conclude that this practice was observed in this particular instance. There is no dispute that the other elements of the Registrant’s protocol such as allowing the patient to undress and dress in private were followed. Many patients would be comfortable having their knees examined by their doctor while wearing only undergarments while others would be less comfortable. Even if the Complainant were not offered a gown in this particular instance, it would not constitute a serious matter. Accordingly, the College’s disposition of this aspect of the complaint is also reasonable.

While there is no specific mention of the Registrant’s demeanor while conducting his examination of the Complainant, this “not behaving pleasantly with me” lacks any element of a substantive complaint and is not central to the issues raised by the Complainant in requesting a review.

Finally, the Complainant’s assertion of tampering with her medical record is not credible. The complaint does not turn on the specifics of a medical record in any event and in the circumstances the disposition of this aspect of the Complainant’s complaint is reasonable.

VI DECISION

My review of the record causes me to conclude that the requirements of the Act have been met. I find that there was an adequate investigation of the facts concerning the complaint and that the disposition of the complaint was reasonable. Pursuant to Section 50.6 (8)(a) of the Act I confirm the disposition of the College which, pursuant to s. 32(3) of the Act, is considered to be the disposition of the Inquiry Committee of the College.

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

“John H. O’Fee”

John H. O’Fee, Panel Chair
Health Professions Review Board

January 23, 2013