DECISION NO.  2011-HPA-148(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 BC COLLEGE

AND: A Physician REGISTRANT

BEFORE: David A. Hobbs, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on June 29, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Michael Toulch, Counsel

I INTRODUCTION

[1] The Complainant seeks review of a disposition of the Inquiry Committee dismissing his complaints against the Registrant. The Registrant had been the couple’s family physician for the complainant and his spouse until the complainant retired from the Lower Mainland to a more rural area. The complaints concerned the failure of the Registrant to make appropriate referrals and to deliver historical medical records.

II BACKGROUND

[2] Acting on the Complainant’s behalf, the Complainant’s spouse wrote a letter of complaint dated February 27, 2011 to the College expressing concerns relating to difficulties experienced in finding a replacement family physician and specialist for the Complainant’s diabetes following her and the Complainant’s retirement move to Creston, B.C. in or about 2005.

The complaints made against the Registrant involved failure to provide requested blood work records and the lack of assistance in securing a referral to a specialist. Ultimately, the Registrant did achieve a referral to a specialist in Abbotsford although the Complainant preferred a referral to a specialist in Nelson or Cranbrook. The Complainant could not make the date of the appointment in Abbotsford. Consequently the referral expired and another referral was required.

In the February 27, 2011 letter the Complainant sought the College’s assistance to get “access to this system”, referring to the taxpayer funded universal health care system.

The Deputy Registrar of the College began the College’s investigation by writing to the Registrant on March 30, 2011, seeking a response to the complainant’s concerns. The Registrant replied on April 11, 2011 explaining that he and his staff did the best they could to help the Complainant. The Complainant’s records were copied promptly but the Complainant’s spouse delayed in picking them up. The Complainant’s spouse demanded a referral to a nephrologist but the Registrant felt the Complainant’s test results from his latest blood work did not warrant such a referral.

On April 21, 2011 a College staff person interviewed the Registrant’s medical office assistant to gather further information. Relevant medical records regarding the Complainant were obtained by the College.

The Inquiry Committee considered the Registrar’s report and authorized the Registrar to dismiss the complaint under s. 32 (3) of the Act which occurred by written disposition dated August 2, 2011.

The Complainant filed an application for review of the disposition with the Review Board which was received August 31, 2011.

What the Complainant seeks in his application for review is for the most part peripheral to issues the Review Board has jurisdiction to consider under s.50(6)(5) of the Act – namely, the adequacy of the investigation and the reasonableness of the disposition. The application for review is more in the nature of an expanded complaint against the Registrant that he should have done more regarding the Complainant’s diabetes (such as more frequent physical exams and blood work given the Complainant’s family history of diabetes) over the 26 years of their patient/physician relationship. This latter complaint was not the subject matter of the complaint investigated and disposed of by the College in response to the Complainant’s spouse’s letter to the College dated February 27, 2011. Unfortunately, the Registrant made negative remarks about the Complainant’s spouse in his response to the Registrar regarding the complaints; his response was attached to the College’s disposition letter. I say unfortunate as these remarks likely annoyed the Complainant, and may have prompted the expanded allegations in the application for review.

The Complainant’s spouse, acting on his behalf, acknowledges in the application for review that he “provided only minimal information” to the College in the original complaint.
III DISCUSSION AND ANALYSIS

[12] Section 50 (6) (5) of the Act provides as follows:

(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.

[13] The Review Board’s previous decisions make clear that the Complainant is not entitled to a perfect investigation but an investigation that is adequate in view of the circumstances and nature of the complaint. The Review Board’s body of decisions also affirm, consistent with Supreme Court of Canada guidance, that the disposition, to be reasonable, must fall within the range of rationale acceptable outcomes taking into account the relevant facts and law.

[14] The questions of the adequacy of the investigation and reasonableness of the disposition may only be looked at by the Review Board in the context of the complaint the College received by letter dated February 27, 2011. The College has not received and the Registrant has not had an opportunity to respond to different or expanded complaints made in the application for review. The review undertaken is on the record and the content of the application for review is not part of the College’s record. The record consists of the information and materials that were before the Registrar of the College and the Inquiry Committee. When the disposition was made the Inquiry Committee was not aware of the expanded complaints that would later be made in the application for review. The only exception to my conclusion in this regard would be if the expanded complaints raise issues that the Inquiry Committee should be directed to consider under s. 33(4)(c) or (d) of the Act; in my view this exception does not apply here.

[15] For these reasons the Review Board has no jurisdiction to review the College’s response to any complaint or assertion not contained in the complainant’s original complaint to the College. It should be remembered that the elements of the complaint that were contained in the February 27, 2011 letter will still be subject to the limits of the College’s jurisdiction. If under the Act the College has no jurisdiction to investigate, neither will the Review Board have jurisdiction to review the College’s alleged failure to investigate.

[16] I find the complaints made in the Record as set forth in the letter dated February 27, 2011 were adequately investigated and the disposition by way of dismissal fell within the range of rational, reasonable outcomes taking into account the facts and law. The complaint of delay in providing medical records was adequately investigated and reasonably explained in all the circumstances.

[17] The College does not manage the availability or lack thereof of family physicians or specialists in smaller towns as part of its scope or mandate, and does not possess the jurisdiction under the Act to investigate complaints relating to such concerns. For that reason, as noted above, the Review Board does not possess jurisdiction to
investigate complaints relating to allegations that the College has failed to take appropriate action in this area, which by its nature is a matter of government policy and allocation of public resources.

IV CONCLUSION

[18] I confirm the disposition of the Inquiry Committee dismissing the complaint.

[19] I have reviewed the record and all submissions of the parties though not specifically referred to herein in their entirety.

“David A. Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board

February 26, 2013