DECISION NO.  2011-HPA-197(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 Occupational Therapists of BC

AND: An Occupational Therapist

BEFORE: Marilyn Clark, Panel Chair

DATE: Conducted by way of written submissions concluding on October 19, 2012

APPEARING: For the Complainant: Self-Represented

For the College: Angel Westmacott, Counsel

For the Registrant: Self-Represented

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, a Registered Nurse, filed a complaint with the Review Board on November 4, 2011, with respect to the actions of the Registrant following receipt of an Inquiry Committee decision of the College dated October 20, 2011, in which the College states that the conduct of the Registrant in the matters complained of was satisfactory.

[3] The Complainant oversaw the provision of health services on behalf of Veteran’s Affairs Canada (“VAC”) to the same community in which the Registrant worked. The Complainant criticizes the Registrant for being negligent in not referring “harmed” veterans to appropriate provincial resources and accuses the Registrant of unethical and unprofessional behaviour.
[4] The Complainant also comments on the Registrant’s role in seeking and subsequently receiving approval from VAC for the reimbursement of a walk-in shower unit in the home of a veteran and the Registrant’s campaign to determine why occupational therapy services for veterans in her community had been reduced over time along with a decline in the provision of equipment to those veterans.

[5] The Complainant alleges the Registrant’s interest, as a fee-for-service therapist, was to garner more business for herself.

[6] With complaints and counter-complaints, it is clear there is considerable animosity between the protagonists.

III BACKGROUND

[7] In March, 2010, the Registrant filed a complaint with the Complainant’s professional regulatory College. That complaint was dismissed.

[8] On March 4, 2011, the Complainant filed her complaint with the Registrant’s professional regulatory College. That complaint was reviewed by the Inquiry Committee which found the Registrant’s conduct satisfactory. On November 4, 2011, the Complainant requested a review by the Review Board.

[9] The Registrant has been a fee-for-service Occupational Therapist (OT) in her community for many years providing OT services to veterans, among others.

[10] Upon seeing her workload decrease and her client base reduce, she began to look into the reasons for this by inquiring of other OT’s in the community as to their workload and with medical equipment suppliers as to their equipment orders. She discovered that the number of referrals were in decline and that the medical equipment suppliers were not being requested to provide equipment. Her conclusion was that VAC was declining veterans equipment, renovation reimbursement, and OT referrals. She further states “In the absence of in-house District Office OT’s, I would hope that the VAC Health Care Team is not trying to determine what equipment best meets a veteran’s functional needs.” She reports that:

…as an Occupational Therapist, it is within my professional scope of practice to assess functional ability, and subsequently determine necessary equipment or therapeutic procedures to ensure safety and optimize achievement of independent function.

[11] Over the course of time, program delivery had changed and the office of VAC had taken on a larger role in health care delivery. This impacted the manner in which fee-for-service providers were utilized. The dismissal of the OT’s that were a part of the VAC complement contributed to a community work environment that became toxic.

[12] Over the years the Registrant communicated regularly with VAC. This included communications to the Federal Minister, expressing her concern for the OT needs of the veterans in her community. To determine whether this was an attempt to increase her business, as is suggested by the Complainant, or was out of compassion and concern for the veterans, would only be speculative.
[13] The Complainant suggests that the Registrant’s conduct “was unprofessional, unethical and retaliatory.” In addition, the Complainant claims that the Registrant’s actions are causing harm to veterans.

[14] The Registrant includes correspondence sent to VAC staff in February 2010 documenting there were no referrals by VAC to herself or health unit occupational or physical therapists during the previous several months. She further states the two equipment suppliers in the community did not provide equipment to any veterans during the same period.

IV ANALYSIS

[15] The Complainant is seeking an “independent investigation” into the Registrant’s conduct. She indicates in her reasons for requesting a review that there are “errors in the ‘particulars of the complaint’” and that the Registrant failed to “refer ‘harmed’ veterans” to community OT’s.

[16] In their decision, the Inquiry Committee states:

You have alleged that the Registrant breached several provisions of the Code of Ethics but have not provided sufficient particulars to identify how she did so. The Inquiry Committee reviewed all of the material but could not identify any evidence that the Registrant infringed the dignity and worth of her clients or former clients, that she failed to practice in a safe, competent and ethical manner, or that she failed to be accountable for her actions. Similarly, the Inquiry Committee could not identify any evidence that the Registrant breached her duty of confidentiality to her clients. Making general inquiries with vendors was not a violation of the Code of Ethics. There was no evidence that the Registrant was not honest or transparent in her communications or that she failed to perform her duties in a professional manner. While the evidence indicates that there is considerable animus between your office and the Registrant, the College complaints process is not the appropriate forum for dealing with such issues.

[17] In summary, the Committee concluded:

...there was no basis for finding that the Registrant engaged in an unprofessional or unethical manner or departed from the acceptable standards of practice in fulfilling her role as an occupational therapist.

[18] The options available to the Review Board after considering the adequacy of the investigation and the reasonableness of the disposition are codified in 50.6(8) of the Act:

50. 61 (8) On completion of its review under this section, the review board may make an order:

(a) confirming the disposition of the inquiry committee,

(b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or
(c) sending the matter back to the inquiry committee for reconsideration with directions.

A. Adequacy of the Investigation

[19] In determining the adequacy of the investigation and the reasonableness of the disposition I turn to the decision of the Review Board articulated in Decision No.2009-HPA-0001(a) to 0004(a) at paragraph [97] and [98] in which the panel identified the extent to which a College must investigate a complaint:

[97] A complainant is not entitled to a perfect investigation, but he or she is entitled to an 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 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] The Inquiry Committee had for review considerable documentation and correspondence from the Complainant and the Registrant. This complaint appears to be a dispute between two health professionals which has been fueled by disrespect and vitriol, changes to service delivery and reassignment of responsibilities. The Committee could have done further investigation but to what avail? Further investigation would still have shown this to have been a dispute between two people that ought not, in fact, to have ended up as it has.

[21] The Review Board is not mandated to provide adjudication of such disputes. As stated earlier, the Review Board is charged with determining whether the investigation was adequate in the circumstances. It does not conduct independent investigations. In my view, the investigation was sufficient to determine that the conduct of the Registrant was satisfactory.

B. Reasonableness of the Disposition

[22] The second part of the Review Board’s mandate is to determine whether the disposition of the complaint on the part of the Inquiry Committee was reasonable.

[23] In the Decision referenced in paragraph [19] above, the Panel stated at paragraph [92]:

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.

[24] The Complainant comments on unprofessionalism on the part of the Registrant and lack of follow-up with respect to the veterans who the Registrant claimed were being “harmed”. It is the Registrant’s view that the veterans were being “harmed” because they were not receiving the occupational therapy that, in her view, they required. It doesn’t take much imagination to determine that the feud between these two professionals could easily lead to harm for the veterans and that the veterans would be the losers in this tug-of-war. There is a long list of irritants shared between the two professionals, however it is not within the purview of the Review Board to become involved and assign blame or otherwise make an adjudication of right or wrong on either the Complainant’s or Registrant’s actions.

[25] The elements of the complaint on which the College founded its investigation and performed its analysis are noted above in paragraph [16]. In my view, the College’s approach in analyzing and commenting on each aspect of the complaint independently (e.g., client communications, confidentiality, competence, and general conduct in the context of standards of practice) allowed it to reach conclusions well within the boundaries of what would rationally be considered a reasonable conclusion.

V CONCLUSION

[26] It is my view that, given the circumstances, the disposition by the College fell within a reasonable range of possible outcomes. I am, therefore, confirming the decision of the Inquiry Committee.

[27] In making the decision, I have considered all of the submissions whether or not they are specifically referred to in these reasons.

“Marilyn Clark”

Marilyn Clark, Panel Chair
Health Professions Review Board
January 4, 2013