DECISION NO. 2011-HPA-219(a); 2011-HPA-220(a); 2011-HPA-221(a); 2011-HPA-222(a) 
(Grouped File: 2012-HPA-G03)

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
A Physician
A Physician
A Physician

AND: REGISTRANT 1
REGISTRANT 2
REGISTRANT 3
REGISTRANT 4

COLLECTIVELY THE “REGISTRANTS”

BEFORE: John H. O’Fee, Panel Chair

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on September 7, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrants: Michael C. Toulch, Counsel

I INTRODUCTION AND BACKGROUND

[1] The Complainant applied under s. 50.6 of the Act to review a November 3, 2011 disposition of the Inquiry Committee (the “Committee”) of the College. The Committee concluded its deliberations under s. 32 of the Act and communicated to her a disposition letter signed by the deputy registrar of the College on behalf of the Committee. The
Committee also reviewed the conduct of a fifth physician who is not included in the Complainant’s application for review.

[2] The Complainant is the daughter and one of the legal representatives of a patient (the “Patient”) who passed away on November 9, 2010 after a lengthy period of illness. The Patient suffered a stroke in 2005 followed by increasingly severe vascular dementia which progressively limited her functional capacity until her passing.

[3] The Complainant asserts that her mother’s care did not meet appropriate standards in terms of care facilities, medication choices and dosage, treatment regimes and communication with family members.

[4] In response to her Complaint, the College sought and received responses from the Registrants. In addition, in follow up to the responses of Registrant 1 and Registrant 2, the College sought information and records from three other physicians who are not part of this application and four separate medical facilities that provided care to the Patient. The Complainant also provided supplemental material with respect to the further enquiries of the College. All of this material was then reviewed by the Committee. With respect to the registrants the Committee determined as follows:

(a) Registrant 1: The Committee was critical of a dosage error on the part of this Registrant and Registrant 1 admitted this mistake. However, the Committee had no criticism of the overall care provided to the Patient. In addition, while the Committee found that Registrant 1 otherwise prescribed appropriate medication for the Patient, they found that there was some lack of consultation with the family of the Patient regarding her medication. Specifically, while Registrant 1 had a consent to treatment when the Patient was admitted, the significance of prescribing a psychoactive medication meant that it would have been prudent to discuss this decision with the Patient’s family. The Committee was satisfied that Registrant 1 felt he had implied consent for what was termed “minor” forms of treatment such as the administration of painkillers or anti-diarrhea medications.

In addition, the Committee found nothing to support the Complainant’s assertion that Registrant 1 had been unduly influenced by the staff at the Patient’s care facility and the decision to transfer her to a different care facility had been made for appropriate medical reasons.

(b) Registrant 2: The Committee had no criticism of the care provided by this Registrant. They found his admission and treatment decisions regarding the Patient to be based on sound medical practice and assisted by the opinions of a third party psychiatrist and neurologist. The Committee also found that Registrant 2 engaged in appropriate communication with the Patient’s family in the circumstances.

(c) Registrant 3: Registrant 3 had limited involvement with the Patient. He provided only one prescription to the Patient on November 25, 2009 in the absence of another physician who was responsible for the Patient. Registrant 3, in
consultation with a family member of the Patient, agreed to decrease the dosage of a medication to see if it would assist in the care of the Patient. The Committee had no criticism of the care he provided.

(d) Registrant 4: Registrant 4 also had limited involvement with the Patient related to a single assessment on February 25, 2009. As the psychiatrist on call, he was consulted by an emergency room physician who felt the Patient might require an involuntary admission to the hospital. While the Committee noted that the Patient’s family disagreed with her involuntary admission, they considered that Registrant 4 provided appropriate advice and treatment in the circumstances.

[5] The Complainant takes issue with the finding of the Committee and asserts numerous factual errors in the disposition letter she received from the College. She further asserts that the Committee failed to adequately conduct an investigation and that the Committee’s conclusions are unsupportable. She provided materials in support of her application including an annotated copy of the disposition letter she received from the Committee on which she outlined these alleged errors and offered her opinion on some of the other shortcomings respecting the Committee’s findings. In terms of relief, the Complainant requests:

That those who have broken the rules and regulations and laws be held accountable for their actions. Doctors are not above the law. Abuse of the elderly must stop and the rights of the elderly must be upheld.

II JURISDICTIONAL ISSUES

[6] This application is brought pursuant to s. 50.6(1) of the Act which provides for the review of college dispositions pursuant to the provisions of s. 50.6(5) of the Act. As Panel Chair I must determine if:

(a) the College conducted an adequate investigation of the complaint;

(b) the disposition of the complaint by the College is reasonable.

[7] After considering these issues I can:

(a) confirm the disposition of the Committee;

(b) direct the Committee to make a disposition that could have been made in this matter; or,

(c) send this matter back to the Committee for reconsideration with directions.

[8] As is pointed out by counsel for the College and as stated in Decision No. 2010-HPA-G06, I do not have the mandate or legal authority to make findings of negligence, award damages, or discipline a registrant.
The Complainant is blunt in expressing her concerns over how the College has handled this matter. However, the Complainant should understand that this is not a new hearing or a forum for a re-hearing of the original complaint. My role is to review the process used by the College and determine if it met its statutory mandate.

### III THE ADEQUACY OF THE INVESTIGATION

Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) is a common starting point for outlining the test for the adequacy of an investigation at paragraph [98] it outlines factors for me to consider including:

- (a) the seriousness of the harm alleged in a complaint;
- (b) the complexity of the investigation that was conducted;
- (c) the evidence that was reasonably available; and
- (d) the resources available to the College in investigating this complaint.

The Complainant asserts that the harm alleged to the Patient falls nothing short of elder abuse. She asserts that the Patient was systematically overmedicated or inappropriately medicated, her involuntary committal to medical facilities was unjustified, her care facility arrangements were inappropriate and communication with her family was substandard. These are serious allegations requiring a serious response.

Counsel for the College outlines the steps taken by the College in response to this complaint including:

- (a) providing a copy of the complaint to and requiring a response from each of the Registrants;
- (b) providing a copy of the complaint to and requiring a response along with relevant medical records from physicians whose conduct is not part of the complaint;
- (c) obtaining relevant medical records from healthcare facilities providing treatment to the Patient;
- (d) providing copies of all the responses to the Complainant;
- (e) requiring further responses from the Registrants and other physicians in response to new information submitted by the Complainant;
- (f) obtaining and compiling a medical record (the “Record”) of over 1500 pages of correspondence and records related to the care of the Patient; and,
- (g) convening a seven member Committee comprised of general practitioners, specialists and members of the public to conduct a comprehensive review of the Record to make a determination regarding the conduct of the Registrants.
There is clear evidence in the medical records and in the disposition letter that the Committee reviewed the Record and the role of each registrant in the care of the Patient. There may well be some factual errors in such a large record. However, an error or even a series of errors is not in and of itself evidence of an inadequate investigation. The Complainant wrote to the College at the culmination of a years long process involving the care of the Patient over the final period of her life. The broader question is whether or not the Record shows that the College took appropriate steps to investigate the complaint.

Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraph [97] sets out this standard:

[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.

Decision No. 2010-HPA-0115(a) states that the degree of due diligence is met when a college “considers and attempts to obtain evidence from those Registrants that are the subject of the complaint as well as from relevant collateral sources”. It is clear that the Committee canvassed responses and opinions from its own experts, the Registrant and other medical professionals providing the Patient with care.

The Complainant asserts that an adequate investigation would include audio recordings that were made between herself and Registrant 2. She also asserts that there were intentional redactions from the medical record reviewed by the Committee.

There appears to be no dispute that the involuntary admission of the Patient to a care facility based on the assessment of Registrant 2 was not supported by her family. As such, there is no need to establish that fact through a separate recording.

The College maintained that the redactions in the Record initially sent to the Complainant at the Review Board stage were unintentional oversights resulting from highlighting that when copied appeared to be redactions (the Complainant subsequently received the full unredacted Record). The Record ultimately reviewed by the Committee was complete and exhaustive. I accept that a full Record was reviewed by the Committee prior to making its disposition and therefore this error does not affect the adequacy of the investigation.

The medical record and the responses of the Respondents and the other physicians responsible for the Patient’s care are thorough. The size and composition of the Committee also indicates to me that the College treated this matter seriously and devoted considerable resources towards a reasonably careful review of relevant materials. I am satisfied that the investigation was adequate.
IV THE REASONABLENESS OF THE DISPOSITION

[20] In considering this issue, I need to determine, based on an adequate investigation, whether or not the Committee’s disposition of this matter is within a range of rational solutions that are justified in regard to the facts and the applicable law. (Decision No. 2009-HPA-0001(a) to 0004 (a) paragraph [92])

[21] The Complainant was clearly an advocate for the Patient during her lifetime and continues her advocacy today. She makes it clear that she was researching medication choices and sought the advice of at least one other medical professional regarding the Patient’s medications and her general treatment regime.

[22] The Patient faced a difficult prognosis of increasing levels of dementia requiring ever growing levels of care. Upon becoming unable to make decisions on her own behalf, her family generally and the Complainant specifically played an increasing role in medical care decisions.

[23] It’s clear that there was disagreement between the Complainant and Registrant 1 regarding medications received by the Patient and over time the relationship between them became strained. In addition, the Complainant expresses frustration with the larger healthcare regime including the care facilities used by the Patient during her final years. As is stated by the Committee, they do not have the mandate to assess the entire healthcare team beyond the physicians treating the Patient.

[24] Decision No. 2010-HPA-G02(b) at paragraph [44] and [45], outlines that review boards “cannot provide treatment advice to physicians”. Case law also supports the contention that review boards such as this should pay suitable deference to the expertise of the independent experts making these determinations.

[25] The Complainant asserts that Registrant 1 failed to properly treat the Patient because of friction between the Patient’s family and her healthcare facility. This in turn, according to the Complainant, led to the Patient’s overmedication, unnecessary suffering and untimely death. However, the Complainant does not point to evidence in the Record to support her assertion. Her allegations are based more upon belief than they are on evidence.

[26] In contrast, the medical record and the responses of a wide range of professionals dealing with the Patient in her final years provides clear evidence supporting the care decisions of the Registrants. The Record may not be factually precise, but it is factually accurate. A standard of accuracy is a reasonable standard for the purposes of my decision.

[27] Review Boards, while independent of the colleges, must consider, on a reasonableness standard, whether the disposition of an inquiry committee falls within the range of acceptable outcomes that are defensible in respect of the facts obtained through
an adequate investigation and the applicable law. I find that the disposition of the Committee in this matter is reasonable.

V DECISION

[28] 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 s. 50.6 (8)(a) of the Act I confirm the disposition of the Committee of the College.

[29] 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”

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

December 13, 2013