DECISION NO. 2011-HPA-226(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: Rex D. Blane, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on October 9, 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 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 has an extensive and complicated medical history. In December of 2010 he complained to the College regarding care provided by his family physician. In the course of investigation of this complaint he subsequently complained about his treatment in June 2008 by the Registrant while undergoing a multidisciplinary assessment at a hospital in the Lower Mainland (the “Hospital”).

[3] The Registrar’s decision with respect to the Registrant was confirmed by the Inquiry Committee and communicated to the Complainant by letter of November 10, 2011. (“Disposition”). The Complainant was dissatisfied with this decision.
III BACKGROUND


[5] From 2006 onwards the Complainant’s health care was provided by his family physician [“Dr. A.”]. Prior and subsequent to the care of Dr. A he had suffered from a number of pain issues. These included chronic pelvic and rectal pain. In 2007 he was diagnosed with a rectal ulcer and later that year underwent the nephrectomy necessitated by a renal cell carcinoma. Later in 2007 he underwent a fissurectomy for a partially healed chronic anal fissure. On occasion treating physicians noted that the degree of apparent symptomology the Complainant was experiencing was not compatible with actual pathology.

[6] The Complainant who was suffering from incapacitating anxiety and depression in 2007 and 2008, became extremely anxious and concerned regarding continuing pain and discomfort in his perianal area.

[7] He attended a number of specialists who examined him but no specific diagnosis was determined. Over a period of several years Dr. A had prescribed a considerable number of medications, including various creams and ointments, in an attempt to alleviate the Complainant’s symptoms. These included the use of steroid creams and enemas over a prolonged period, apparently with questionable benefit.

[8] In May 2008, the Complainant was assessed as an out-patient at the Hospital by Dr. X, head of dermatology, for perianal erythema, “in the context of debilitating chronic rectal pain”.

[9] At the Complainant’s request he was, on June 16, 2008, admitted to the Hospital which was deemed appropriate due to his complex medical and psychiatric history. There his problems were assessed using a multidisciplinary approach which included the dermatology team headed by Dr. X.

[10] The Registrant was a Resident working under the supervision of Dr. X. Following examination and a long discussion the Complainant agreed to a series of biopsies in the perianal area which provided a diagnosis of psoriasis.

[11] The “Hospital Interdisciplinary Progress Notes” record the Complainant’s severe state of anxiety at this time and his doubt that any treatment would be beneficial. His mental health could best be described as a state of despair.

[12] Following the biopsy results the Registrant met with the Complainant on June 25, 2008, and in the course of a lengthy discussion the Registrant communicated three options for future care. The first was for hygiene only, the second was for hygiene together with a two to three week trial of a corticosteroid ointment and the third alternative was for hygiene together with a non-corticosteroid ointment. Following further discussion which included the likely benefits of each, the Complainant elected a trial of the topical steroid hydrocortisone 2.5% ointment. He was discharged from the Hospital on June 28, 2008 in a state of agitation and skepticism. He was to follow up with the Hospital in approximately four weeks but did not do so.
[13] It appears that following his discharge the Complainant continued under the care of Dr. A and continued to be reviewed by various medical specialists in his quest for a cure.

[14] A year or so following discharge the Complainant telephoned Dr. X for medical advice. Dr. X responded that this would require a further referral through his family physician. This did not occur and there was no further consultation with Dr. X.

[15] The Registrant, then a practicing dermatologist, was contacted by the Complainant some two years after his discharge from the Hospital at which time he requested medical advice. The Registrant recalled that during this telephone conversation the Complainant stated that he did not complete the recommended course of treatment with the prescribed ointment. In his response to the College the Registrant stated that the Complainant subsequently contacted his office on multiple other occasions although being advised that no doctor patient relationship existed and that advice would not be provided over the telephone.

IV COMPLAINT TO THE COLLEGE

[16] The Complainant complained to the College on December 14, 2010 and January 10, 2011, regarding his family physician, Dr. A. His concerns centered on medications prescribed by Dr. A during the years 2006, 2007, and 2008. He listed numerous prescriptions which included steroid creams that he had applied to his perianal area over a long period as well as the use of suppositories containing steroids, prior to the Complainant being treated at the Hospital. He stated that Dr. A had not warned him of the harm that could result from such creams in relation to treating his anal area and he was very critical of the extensive treatment by Dr. A. He did not complain about or mention the Registrant though he included a copy of the "Hospital Interdisciplinary Progress Notes" of June 25, 2008. (Paragraph [12] supra)

[17] On February 9, 2011, the Complainant made a further lengthy written submission to the College which, while repetitive of his previous complaints, listed numerous areas in which he was highly critical of the care of Dr. A. In concluding his Complaint he stated the following:

"...I wish I had NOT believed [Dr. A] re. Nerisone & Betedem and [the Registrant] at the [Hospital] in June 2008 about his H.C. 2.5% for 21 days. Before [the Registrant’s] H.C.2.5% I could at least travel and bath but his Steroid made the Bad situation from [Dr. A] much worse.

[18] In a follow-up letter of June 6, 2011, the Complainant stated that he had that day telephoned the Registrant’s office and had been advised that he was not a patient of the Registrant in 2008 at the Hospital because the Registrant was not then a dermatologist. The Complainant alleged that in 2008 the Registrant had told him he was a dermatologist working with the head of dermatology. He blamed the Registrant for not advising him that 2.5% H.C. could cause the skin to thin especially around the anus and that the recommended treatment had made his skin condition worse.

[19] Subsequently he was critical of the Registrant for refusing to provide him with advice over the telephone.
V \hspace{1.0em} \textbf{INVESTIGATION AND DISPOSITION OF COMPLAINT BY THE COLLEGE}

[20] \hspace{1.0em} The Complainant’s initial concerns were with the treatment over a period of several years by his family physician. Subsequently the complainant of the Registrant prescribing hydrocortisone cream which he stated had made a bad situation worse. He complained that the Registrant had not informed him that he was a Resident at the Hospital and he thought him to be a dermatologist. He alleged he was not informed of the risks associated with the steroid cream and complained almost three years later that the Registrant refused to give him medical advice over the telephone.

[21] \hspace{1.0em} The College made an extensive investigation of the complaints against both Dr. A and the Registrant. They sought and obtained two responses from Dr. A and two responses from the Registrant. They obtained a response from Dr. X who had been the Complainant’s dermatologist at the Hospital and sought and obtained responses from four other physicians involved with the Complainant’s medical care. The College obtained extensive medical records from another hospital in addition to those of the Hospital. The records of these physicians and hospitals provided a myriad of medical information including numerous consultation reports and tests by over 20 medical specialists as well as other physicians. Specialist reports included those of urologists, general surgeons, several gastroenterologists, specialists in internal medicine, pain specialists, dermatologists, neurologists, psychiatrists and others. The Record prepared by the College consisted of 1650 pages most of which comprised the medical records of the Complainant. Additionally copies of response letters were provided to the Complainant and his responses to them were included in the Record.

[22] \hspace{1.0em} The Disposition dated November 10, 2011 was made on behalf of the Registrar of the College under s.32(3)(c) of the Act. It confirmed that a report of the Disposition had been delivered to the Inquiry Committee. Upon review I am satisfied that the Registrar had jurisdiction to dispose of the complaint under the above section. In arriving at this conclusion I am guided by Health Professions Review Board (the “Review Board”) Decision No. 2011-HPA-0018(a).

[23] \hspace{1.0em} The nine page Disposition detailed the Complaint and the process followed by the College. It summarized the responses of the Registrant, Dr. A and Dr. X as well as responses from four other physicians involved in the Registrant’s care. Under the heading of “Analysis of care received” is the following:

While there was some delay in achieving a diagnosis, it was eventually determined that you had psoriasis in the anal area. Psoriasis is a recurring condition which cannot be cured. The use of topical steroids for the treatment of psoriasis is appropriate and we would confirm that the use of such agents complies with current medical standards….

….We note [Dr. A’s] acknowledgment that your use of steroid creams and enemas was prolonged and could have been discontinued earlier. We would agree that the use of these medications, without any appreciable improvement in symptoms, should have led to their discontinuance and for alternatives to be explored….

[24] \hspace{1.0em} In conclusion the Disposition states:

Having considered all of the available documentation (and as explained under the “Analysis of Care” above), we consider that the topical steroid prescribed to you by [the
Registrant] (under the direction of [Dr. X]) was the appropriate treatment. However, it is evident that the use of 2.5% hydrocortisone did not help you and may have produced some additional symptoms. While it is common for all medications to carry a relative degree of risk of side effects, there is no way for physicians to anticipate any one individual reaction. However, in this case, there is no clinical information to support concern that the steroid was responsible for all of the side affects you experienced.……

…Generally, we found no basis for regulatory criticism of the care provided to you by [the Registrant]. He performed a thorough examination and following diagnosis administered an appropriate treatment protocol for your condition. [The Registrant] was also correct in advising you that he would not be able to provide you with therapeutic suggestions over the telephone. This is in line with College expectations and, indeed, we would have been very critical of [the Registrant] had he treated you in the absence of a further physical examination.……

…In closing, we wish to state how sorry we are that you continue to suffer from such a debilitating condition and hope that some relief can be found.

[25] While not critical of the care provided by the Registrant the College was critical regarding an area of care provided by [Dr. A] and stated as follows:

Where we would offer criticism is in the extended use of topical steroid suppositories, ointments and creams, which should have been curtailed sooner, and we note that [Dr. A] has accepted this point.

VI SCOPE OF REVIEW BY THE REVIEW BOARD

[26] The scope of review by the Review Board is set out in s. 50.6 of the Act. The following are relevant subsections that relate to this matter.

50.6 (1) A complainant may apply to the review board for a review of a disposition described in section 50.53 (1)(c).

. . .

(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.

(6) A review under this section is a review on the record.

VII APPLICATION TO THE REVIEW BOARD

[27] In his application for review the Complainant takes the position that based on his medical history and clinical presentation the Registrant should not have prescribed hydrocortisone cream 2.5%.

[28] He alleges that he was pressured by the Registrant into its use without being informed of the associated risks. He states that he has, since its use, become so sensitized in his perianal area that it significantly affects his life. He contends that he can no longer travel, bathe, clean himself to maintain his anal hygiene due to the
sensitivity of his skin, and that his skin has been damaged by the Registrant’s recommended treatment.

[29] The Complainant requests that the Registrant be criticized for misleading him regarding the potential side effects of the cream and asks for “revocation” of the Registrant’s licence. He also complained that the Registrant had misrepresented himself as being a specialist at the hospital and further complained that the Registrant refused to give him medical advice when he telephoned him some two to three years after discharge from the hospital.

VIII ISSUES

[30] The issues to be decided in this application are:

(a) Was the investigation adequate.
(b) Was the Disposition by the College reasonable.

A. Adequacy of the Investigation

[31] The Review Board has considered the question of adequacy of the investigation in a number of previous decisions including Decision No. 2009-HPA-0001(a)-0004(a), paragraphs [97] and [98] which state as follows:

[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.

[32] In addition to the extensive medical information in the Record, covering several years prior to hospitalization as well as further medical information subsequent to discharge, as previously noted, the College obtained responses from [Dr. A] and [the Registrant], the head of dermatology at the Hospital, [Dr.X], and four other specialists involved in the Complainant’s care, which included a response from [Dr. B], a dermatologist who treated the Complainant both before and subsequent to the Registrant’s treatment and a Dr. I, a dermatologist who examined and treated the Complainant in August of 2008 being shortly after his discharge.

[33] In my opinion, the investigation by the Registrar of the College was fully adequate and reasonable steps were taken to obtain all necessary key information. The Complainant himself does not suggest that the documentation of his medical history or other steps in the investigative process by the College were deficient.

B. Reasonableness of the Disposition
[34] The Review Board has considered the question of reasonableness of the disposition of a complaint in a number of previous decisions including Decision No. 2009-HPA-0001(a)-0004(a) which reflects the law in determining reasonableness at paragraphs [91] and [92]:

[91] In Dunsmuir v. New Brunswick, 2008 SCC 9 at paras. 47 and 49, the Supreme Court of Canada had earlier stated as follows:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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....

Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference “recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime”: D.J. Mullan, “Establishing the Standard of Review: The Struggle for Complexity?” (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[92] In our view, these passages reflect the approach the Review Board should take in reviewing the reasonableness of an inquiry committee’s disposition. 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.

[emphasis added]

[35] It is clear that the Complainant continues to have a debilitating condition which, unfortunately, significantly affects his life. It is also clear that his condition involves a complexity of health issues of both a physical and psychological nature. His medical history identifies past and ongoing health concerns that are, to say the least, extensive. Dr. A referred him to a plethora of medical specialists and he has been prescribed numerous medications. Dr. A recorded the Complainant’s increasing concerns in 2007 and 2008 regarding his perianal area. During this time corticosteroids were prescribed and used both topically and in the form of enemas. He continued to be troubled by
intense anxiety coupled with long standing depression. He, on the advice of Dr. A, tried various treatments and had the questionable benefit of a multiplicity of specialist referrals.

[36] It is with this background and in a state of intense anxiety that the Complainant came for treatment at the Hospital. Following assessment by Dr. X, biopsies showed findings of psoriasis in the perianal area. The dermatology team, led by Dr. X, included the Registrant. The Hospital’s records show that the team provided the Complainant with three treatment choices. (paragraph 12 supra) He met with the Registrant and after considerable discussion he agreed to treatment with the H.C. 2.5% cream. It is uncertain as to whether he used the cream for the prescribed time period. In any event the treatment was of no benefit. Simply put, the Complainant says that further use of the cream made him worse.

[37] Psoriasis is, apparently, a recurring condition without a specific cure. It is clear that there are alternative treatments. While there is little doubt, and the College so found, that the treatment afforded the Complainant by the dermatology team that included the Registrant was in compliance with current medical standards, the patient history of prior use of steroid creams over an extended period, without apparent benefit, may have suggested that similar treatment was unlikely to result in a different outcome. The family physician, who had extensively treated the Complainant, ultimately acknowledged that the use of steroid creams and enemas over a prolonged period without any appreciable improvement in symptoms should, in his opinion, have led to their discontinuance.

[38] However, it is not the focus of the Review Board to step into the shoes of the Inquiry Committee. My role is neither to agree nor disagree with the treatment protocol but to determine whether the Disposition as a whole falls within a range of rational and acceptable outcomes and is sufficiently justified, transparent and intelligible to be sustained.

[39] In my opinion the Disposition of the College in finding that there was “no basis for regulatory criticism” of the care provided by the Registrant is sustainable and is hereby confirmed.

IX CONCLUSION

[40] In making this decision I have considered all available information documentation and submissions whether or not specifically referred to in confirming the Disposition of the College.

“Rex Blane”

Rex Blane, Panel Chair
Health Professions Review Board

March 8, 2013