DECISION NO. 2011-HPA-233(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 Physical Therapists of BC COLLEGE
AND: A Physiotherapist REGISTRANT
BEFORE: Judith Berg, Panel Chair REVIEW BOARD

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

APPEARING: For the Complainant: Self-represented
For the College: Anthony G.V. Tobin, Counsel
For the Registrant: Seth J. Wheeldon, Counsel

I DECISION

[1] Upon reviewing the Application, I find the decision of the Inquiry Committee is reasonable and the disposition is confirmed.

II INTRODUCTION

[2] This matter arises out of an occupational rehabilitation assessment administered by the Registrant. The Complainant claims he signed the consent form for the assessment under pressure from the Registrant, that the Registrant ignored his concerns about having the assessment, that the Registrant ignored the prior medical treatment on his back and that the Registrant used unnecessary force in the assessment. The Complainant states the assessment examination resulted in him being bedridden for two weeks and exacerbated his injury.

III ISSUES

[3] The two issues I must decide regarding this Application for Review are:

(a) Was the Inquiry Committee’s investigation into the complaint adequate?
(b) If so, was the Inquiry Committee’s decision to dismiss the complaint reasonable?

IV BACKGROUND FACTS

[4] In his complaint to the College, dated May 18, 2011, the Complainant alleges:

(a) he had to undergo the assessment as part of the occupational rehabilitation program (OR2) for WorkSafe BC contrary to his doctors’ opinions that it was too early in his recovery;

(b) he signed the consent form for the examination under duress from the Registrant who advised him that the failure to undergo the assessment could result in income loss;

(c) the Registrant did not listen to him regarding his concerns with having the assessment following a medical prolotherapy treatment that was performed the day before; and

(d) the Registrant ignored the Complainant’s request not to hurt him and the Registrant caused excruciating pain to the affected and marked areas of his back resulting in two weeks of bed rest and causing a re-injury to his back.

[5] In his response to the complaint, dated October 11, 2011, the Registrant states:

(a) he reviewed all of the Complainant’s clinical records on file prior to conducting the assessment. He reviewed and discussed with the Complainant the background of his back problems and found there were no contraindications for not proceeding with the assessment examination;

(b) he read the consent form to the Complainant and explained the assessment procedures, what the assessment would entail, gave him an opportunity to ask questions and told the Complainant that he did not have to proceed with the examination;

(c) he stated that he explained that signing the consent form was in accordance with section 6 of the Health Care (Consent) and Care Facility (Admission) Act. He further explained he was required to notify clients of the consequences of refusing to proceed with assessments under the College’s Practice Standard Number 4 at paragraph 4;

(d) he informed the Complainant that he would inform WorkSafe BC that the assessment did not occur, but did not threaten loss of income if the Complainant did not undergo the assessment that day;

(e) he has knowledge of prolotherapy and customized the assessment, including eliminating some of the functional components, in order to accommodate the recent prolotherapy treatment; and

(f) he provided the procedure of palpation to the Complainant’s back which indicated a non-specific hypersensitivity, that the Complainant did not report any increasing levels of pain and that there were no observable signs of physical limitations during and following the palpation part of the assessment.
[6] The Inquiry Committee investigated the complaint and concluded on November 25, 2011, that “there was no evidence of any breach of the practice standards of the College or incompetence sufficient to justify it proceeding further.”


[8] On June 14, 2012, the College decided to re-open its investigation into the complaint due to the additional information submitted to the Review Board.

[9] The Inquiry Committee investigated the additional information and the College concluded on October 24, 2012 that “no key issues were overlooked” and that the disposition should be upheld.

V ISSUE 1: ADEQUACY OF THE INVESTIGATION

[10] The Review Board has determined in prior decisions that not all complaints will require a College to pursue every possible avenue of investigation, but a Complainant is entitled to an adequate investigation.

[11] The standard I have adopted for assessing the adequacy of this investigation is whether this complaint was investigated diligently considering its seriousness, complexity and the availability of evidence. The law applying to the adequacy of an investigation was properly determined in Review Board Decision No. 2009-HPA-0001(a) - 0004(a) at paras, [98] and [110]:

[98] 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.

...  

[110] 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 harm alleged, the complexity of the investigation, the availability of the evidence and the resources available to the College will all be relevant factors in determining whether an investigation was adequate in the circumstances.

[12] The Inquiry Committee determined the two issues to be investigated were:

(a) whether or not the Complainant consented to be examined in the area of his back where he had received prolotherapy treatment?

(b) whether the Registrant was aware of the contraindications of treatment following prolotherapy?

[13] The Inquiry Committee assigned an Inspector to interview the Complainant concerning the allegations. The Inspector was instructed to investigate the complaint with attention to the following Standards of Practice of the College Bylaws:
s.55(1.4) – Responsibilities to the Client – Physical therapists must give clients the opportunity to consent or decline treatment or alterations to the treatment regime.

s. 55(1.6) – Responsibilities to the Client – Physical therapists are responsible for recognizing their limitations, continuing to develop their own level of competence, and confirming clinical diagnosis and management in those areas of practice in which they have been educated.

s. 56(1)(a)(vi) – Minimal Treatment Standards – Prior to initiating treatment a registrant must attempt to obtain relevant medical information concerning the client by obtaining the client’s consent for treatment.

[14] The Inquiry Committee considered the Complainant’s complaint to the College, the transcribed Inspector’s audio interview with the Complainant, the Registrant’s response to the complaint, the new additional information submitted to the Review Board, and the Registrant’s response to the additional documentations.

[15] In view of the above, I find all relevant sources of evidence were identified and pursued, including the eleven additional documents submitted to the Review Board. I further find the information requested and received was sufficient and relevant. There is no evidence to indicate that the Inquiry Committee did not take reasonable steps to obtain significant information that would have affected their assessment of the complaint.

[16] I am satisfied that the College took the necessary steps to investigate the complaint. There is no evidence on the Record, or in any other information submitted, that the College did not conduct a full and adequate investigation into this complaint.

VI ISSUE 2: REASONABLENESS OF THE DISPOSITION

[17] The evidentiary standard for assessing the reasonableness of a disposition is based on a review of what was before the Inquiry Committee (the Record), along with any additional evidence put before the Review Board that the Review Board considers, upon examination, to be reasonably required for a full and fair disclosure of all matters related to issues under review: s.50.6(7) of the Act.

[18] The substantive test for assessing reasonableness is set out in Dr. Q v. College of Physicians and Surgeons of British Columbia, [2003] S.C.J. No.18 (SCC) at para. 39, where the Supreme Court of Canada held, as paraphrased below:

The reasonableness standard which ought to be applied to the College’s disposition requires deference to the decision of the Inquiry Committee. It is not open to the Review Board to ask itself whether it would have arrived at the same decision as the Inquiry Committee. Rather the test is whether the Inquiry Committee’s decision was reasonably supported by the information that was before it, and whether it can withstand “a somewhat probing examination”.

[19] In Review Board Decision No. 2009-HPA-0001(a)-0004(a), paras. [90] to [94], the Review Board set out a comprehensive description of the applicable law regarding the “reasonableness of the disposition” which I adopt. In regard to the reasonableness of the disposition, the Review Board stated in the above noted decision at para. [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.

[20] Administrative law does not require that the disposition be one that the Review Board would have made. Rather, it must be a disposition that is supported by the evidence from the investigation, and one that fits within the range of acceptable and rational outcomes.

[21] The Inquiry Committee reviewed the Complainant’s allegations regarding the Registrant, the detailed account of the Registrant’s treatment with the Complainant, the physiotherapy treatment record, the transcribed audio interview with the Complainant and the additional evidence submitted following the original disposition of May, 18, 2011.

[22] I find the College took reasonable steps to obtain or attempt to obtain all relevant information and documentation necessary to assess and adjudicate the complaint and the decision was supported by the information before it. Given the steps of the investigation outlined above, the disposition fell within the range of acceptable and rational outcomes and was sufficiently justified, transparent and intelligible to be sustained.

[23] In my view, the disposition is reasonable in that it falls within the context of acceptable and rational solutions, and is sufficiently justified, transparent, and intelligible.

VII CONCLUSION

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

[25] I find the Inquiry Committee’s Investigation was adequate and its disposition was reasonable. I therefore dismiss the Complainant’s application and confirm the Inquiry Committee’s disposition.

“Judith Berg”
Judith Berg, Panel Chair
Health Professions Review Board
March 21, 2013