DECISION NO. 2012-HPA-017(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 Physicians and Surgeons of BC

AND: A Physician

BEFORE: Lori McDowell, Panel Chair

DATE: Conducted by way of written submissions concluding on August 27, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Self-represented

I INTRODUCTION

[1] This matter arose after the Complainant underwent a colonoscopy performed by the Registrant. The Registrant has since conceded that he did not wait long enough for the anesthetic to take effect before beginning the procedure. The Complainant stated he felt searing pain and went into shock. The Complainant claimed that the Registrant should have known that the Complainant was in distress and that the Registrant breached his professional standards by continuing the colonoscopy. The Complainant states he was assaulted and treated inhumanely.

[2] The Complainant applied to the College for a review of his treatment by the Registrant. The College investigated and the Inquiry Committee partially sustained the complaint. The Inquiry Committee found that the incident was an isolated error in clinical judgment and recommended that the Registrant review the complaint with his team and re-examine his practice regarding the amount of time necessary for sedation to take effect. The Complainant applied to the Review Board to overturn this disposition and to recommend that the Registrant be disciplined, accept personal responsibility for his actions and undertake education to learn empathy and compassion toward his patients. Shortly after this application was made the Registrant again expressed his regret in writing and informed the Complainant
and the Review Board of the specific steps he had taken to fulfill the recommendations of the original disposition.

II BACKGROUND

[3] The Complainant suffered from chronic diarrhea. His general physician referred him to the Registrant who recommended a colonoscopy to investigate the cause of his symptoms. The Complainant stated that the Registrant was forceful and violent during the initial stages of the colonoscopy. The anesthetic had not taken effect and the Complainant endured extreme pain and trauma until he “blacked out”. The Complainant stated that he now suffers significant physical as well as mental side effects due to his treatment.

[4] The Complainant stated that the Registrant did not treat him humanely or with respect. The Complainant claims the Registrant should have stopped the procedure until the anesthetic had taken effect. He felt he had been assaulted, either as a result of the Registrant’s ignorance of or indifference to his suffering or purposefully with the intention to inflict pain. In any event the Complainant believes the Registrant should be disciplined for his actions as they were in breach of his professional standards. The Complainant also stated that the Registrant accepted no personal responsibility for his experience and that he should undertake education to learn empathy and compassion.

[5] The Registrant responded that he felt terrible when he read the complaint because it was clear that the Complainant had experienced a significant degree of discomfort. He claimed that he was not rushed and inserted the scope according to his usual practice. He noted that the records did not indicate that there were any problems during the procedure. He removed a small polyp and took several biopsies throughout the colon. The Registrant submitted that despite their best efforts some patients do endure some discomfort. He stated that the level of pain is used as a guide for the insertion of the scope. Keeping patients awake but sedated helps to reduce the possibility of perforation of the colon. This practice, known as conscious sedation, means that total pain control is not possible.

[6] The Registrant stated:

Obviously patient comfort is a primary goal but so is patient safety. It would be ideal to render a patient completely unconscious so there would be no chance of experiencing any level of discomfort. But there are many risks with this level of deep sedation. This puts the patient at a high risk of respiratory compromise... in a heavily sedated patient the recovery is prolonged with these risks persisting ...

During colonoscopy there are several advantages to having the patient awake and responsive. Often the position of patient (sic) has to be changed at different times and it is extremely helpful and often necessary that the patient be able to cooperate in changing position. The level of pain is used as a guide for insertion pressure on the scope which helps to reduce the risk of perforation of the colon.

There are certain areas in the colon that are more difficult to maneuver the scope through. The sigmoid colon which is near the rectum can often be tortuous. This is why the initial part of the scope can be more painful as the sigmoid is being passed. Once this region is passed the scope can maneuver more easily and there is less discomfort. This presents a challenge for sedation to maintain comfort through the sigmoid but not to have the patient over sedated once the sigmoid is passed. When faced with a difficult section of colon, often it is preferable and safer to accept a reasonable level of discomfort for a brief period of time rather than risk
over sedation and all the potential complications. The challenge is to know what level of discomfort is reasonable.

The sedation that is used in endoscopic procedures is termed “conscious sedation”. At this level of sedation the patient is responsive and awake but drowsy and the risk of serious complications is reduced. Titrating medication to achieve this level of sedation and also to provide good pain control can be difficult. It can depend on several uncontrollable variables such as the patient’s pain tolerance/thresholds, response to medication and difficulty of the procedure.

[7] The Registrant also explained that his practice requires him to focus on the manipulation of the scope while the nurses observe the patient’s level of comfort.

[8] The Registrant stated again that he felt “terrible he had such a bad experience”. Finally he noted that he intended to review the Complainant’s comments with his endoscopy team to improve their practice.

[9] The College spoke with the nurse who assisted the Registrant. Although she did not recall the specific procedure she noted that she was often involved in 16 colonoscopies per day and that patients typically encountered some level of discomfort.

[10] The College also looked at the records from the procedure itself and noted that there were no problems documented. The records indicated the medication administered, various vital signs as well as the size and location of the polyp. The only additional comment was the notation that the patient was to follow up with the Registrant in four weeks.

[11] The Complainant also provided the College with the notes of his psychiatrist who found that the Complainant was suffering from post-traumatic stress disorder as a result of his ordeal.

[12] Finally the College reviewed the Registrant’s records and noted that he had no other complaints on his record.

[13] The Inquiry Committee noted that a “colonoscopy, by its very nature, is an uncomfortable, invasive procedure”. It stated that the typical complications involve bowel perforation or continued bleeding. The Inquiry Committee determined that the physical difficulties the Complainant experienced after the procedure must have been a continuation of his original symptoms as the scope was a one centimeter diameter linear fiber optic instrument that would not cause “mechanical trauma”.

[14] The Inquiry Committee ultimately determined that the trauma experienced by the Complainant “may perhaps have been alleviated had (the Registrant) taken a moment before commencing the procedure”. The Inquiry Committee concluded that this was an isolated error in clinical judgment rather than disregard for the Complainant’s well-being. The Inquiry Committee decided that a remedial resolution was appropriate and advised the Registrant to review the complaint with his endoscopy team and to give greater consideration to the time required for anesthetic to become fully effective. In addition the Inquiry Committee noted that the complaint would become part of the Registrant’s permanent record and would be available for reference if any future complaints arose.
[15] The Complainant was not satisfied with this disposition and applied to the Review Board for a review of the decision. The Complainant asked for the Registrant to be disciplined and required to undertake education to learn compassion and empathy.

[16] The Registrant subsequently wrote to the Complainant to apologize and to outline the specific changes he had made to his practice as a result of the Complainant’s experience. The Registrant stated:

There are several actions that have taken place in the outpatient department at (the hospital) as a result of this incident.

(1) patient pain control and management practice has been placed on the Out Patient Department Agenda as an item to have ongoing discussion and review at OPD meetings.

(2) I have discussed with the endoscopy nurses patient observation, identification and management of discomfort during colonoscopy.

(3) I have done a review of the literature regarding pain management methods in the endoscopy suite.

(4) I have had discussions with several other gastroenterologists from University centers regarding their pain management practices in the endoscopy suite.

(5) I have discussed with many of my own patients their experience with my colonoscopies over the past 12 month time frame. Some had minor discomfort but none had unbearable pain. Most found it very tolerable. Many found it significantly more comfortable than previous procedures done by other endoscopists.

Overall we are doing a very good job in pain management and adhere to the standard of practice for pain control and conscious sedation. However, no system is perfect and your experience has increased our diligence in providing improved pain management care to patients undergoing endoscopy. Through the OPD meetings I hope to come up with a more standardized team approach to pain management with clearer guidelines, observational indicators of pain and measurable outcomes that we can track to have ongoing information of how we are doing and what we need to improve upon.

[17] I pause here to note that I have included most of the Registrant’s written apology and response verbatim because I think it is an excellent indication of his sincere effort to use this unfortunate experience to improve his practice for future patients. The remediation advised by the Inquiry Committee appears to have been seriously considered and implemented. It is not often enough that a complainant or the Review Board is privy to the outcome of the remediation recommended by the Inquiry Committee. We can be left wondering about the result or even the efficacy of this type of disposition. Sometimes the lack of specificity or follow-up has resulted in a finding that the disposition was unreasonable. This may well have been the case here if we had not been provided with this updated information. This letter shows us the steps the Registrant has taken in remediation. The reader is left with the understanding that the Complainant’s traumatic experience will improve the procedure for future patients.

III ISSUES

[18] British Columbia law has given the Review Board two issues to review:

(a) Was the complaint adequately investigated?
(b) Was the Inquiry Committee’s disposition reasonable?

[19] In other words, the Review Board is not charged with rehearing the matter or stepping into the shoes of the original Inquiry Committee. If the complaint was investigated adequately by the College, the only question becomes whether the disposition was within the realm of reasonable outcomes.

IV ADEQUACY OF THE INVESTIGATION

[20] On receipt of the complaint the College wrote to the Registrant and asked for his response to the allegations. The Registrant responded and addressed each issue. The College also requested and reviewed the medical records for the Complainant. The College also spoke with a nurse who was present during the procedure. The College gave the Complainant the opportunity to address the Registrant’s response. The College also noted the comments of the psychiatrist who treated the Complainant after the procedure.

[21] The Complainant had also lodged a complaint with the Hospital regarding his treatment. Ultimately this complaint was addressed by the Patient Care Quality Review Board (the “PCQRB”). The PCQRB found that the endoscopy team did not fully complete the medical charts regarding the Complainant’s procedure. Although the vitals were recorded, significant portions of the charts, including the Complainant’s response to pain were left blank. The PCQRB recommended that the Hospital’s Patient Quality Care Office interview the nurse and inquire about the incomplete documentation. The PQCRB also noted that the Hospital is currently updating the standardization of its medical charting and will be including a scoring box for pain during procedures.

[22] The College did not review the findings of the PCQRB as these were not available until after the Inquiry Committee’s disposition was made. The Complainant argued that the fact that no notations were made regarding his pain makes it difficult for the Inquiry Committee to find that the record did not indicate that any problems occurred during the procedure.

[23] I note that the fact that the PCQRB disposition was not before the Inquiry Committee is not material. Each group had the same documents available to them. The Complainant’s argument that the Inquiry Committee did not address the issue of the lack of appropriate chart notations may well be due to the fact that the Inquiry Committee focused on the conduct of its member, the physician, and had no jurisdiction to review the actions of the nurses present. In addition, the College did have the benefit of interviewing the nurse directly. Regardless, the fact that the Inquiry Committee did not refer to the inadequate charting is not sufficient in this case to warrant a finding that there was an inadequate investigation.

[24] In an earlier case the Review Board established the standard required by a college during an investigation. In Decision No. 2009-HPA-0001(a) to 0004(a) at paragraphs [97] and [98] the Review Board stated:

[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.
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.

This means that the Review Board will examine whether the College took reasonable steps to obtain the information necessary to address the complaint given the seriousness and complexity of the complaint and their ability to access evidence.

In this case, given the seriousness of the harm alleged the College needed to apply a high degree of diligence to its investigation. I believe the College met this burden to investigate adequately. The College obtained information from the Registrant regarding the allegations made by the Complainant and examined the Registrant’s responses to see that they addressed the complaint. The College also reviewed the Complainant’s medical records, the notes from the psychiatrist and spoke with the nurse who assisted the Registrant. The College reviewed the Registrant’s own record and determined that no similar complaints existed.

The College did not have an opportunity to review the findings of the PQCRB as that report was published shortly after the disposition was made. However, the College would have had access to the same materials as the PQCRB and would have reviewed them in their investigation.

In this case, the Registrant addressed the issues that formed the complaint. He referenced the Complainant’s concerns regarding his level of pain and explained his approach regarding conscious sedation. The College reviewed the statements of the nurse and the psychiatrist and the records of both the Registrant and the Complainant.

The Complainant was given an opportunity to make further submissions regarding the Registrant’s statements and the Registrant responded to those as well. The Inquiry Committee availed itself of sufficient information to make a defensible decision regarding the substance of the issues under review. The investigation was adequate.

V REASONABLENESS OF THE DISPOSITION

I reiterate that it is not our mandate to step into the shoes of the Inquiry Committee and re-hear this issue. British Columbia law states that our role is not to draw our own conclusions regarding the matter but to decide whether the disposition is transparent, sufficiently justifiable and intelligible based on the results of the investigation. Our job is to ask whether the disposition fits within a range of rational outcomes. Can the disposition be supported by the evidence? Does it appropriately address the major issues of the complaint?

Here we have the added benefit of the Registrant’s written apology and the outline of the specific steps he has taken to ensure that he learns from this unfortunate experience. While this cannot undo the suffering of the Complainant, I hope he is able to take some comfort from the knowledge that the Registrant has taken his complaint to heart and has acted meaningfully on the recommendation from the Inquiry Committee to re-examine his practice and work with his team to institute positive changes.
The Complainant had initially asked for three outcomes. First, that the Registrant receive education regarding empathy and compassion. I believe the Registrant’s apology and outline of the steps he has taken to improve his practice underscores his empathetic response to this incident. Upon reflection he created an action plan to improve his ability to treat his patients. Second, the Complainant stated that the Registrant did not accept any personal responsibility for his actions. The Registrant has written to formally apologize expressing his regret and concern for the pain the Complainant endured. This is a direct expression of his acceptance of responsibility for the suffering of the Complainant. Finally, the Complainant asked the Review Board to discipline the Registrant for his actions. This is not within the statutory mandate of the Review Board. Nor would it likely be an appropriate remedy in this situation given the remedial actions undertaken by the Registrant.

In this case, the decision of the Inquiry Committee was within the range of defensible outcomes based on the evidence obtained from the investigation. The Inquiry Committee accessed sufficient evidence to make a determination about the complaint. The disposition was based on that evidence and is transparent, justifiable and intelligible. In addition, the relief requested has been granted or is outside of our jurisdiction.

My decision in this case is in no way intended to invalidate the Complainant’s ordeal. Rather it applies the statutory powers of the Review Board. Given the fact that the investigation was adequate and the disposition is one of the possible rational outcomes I am not inclined to interfere with it.

VI DECISION

For the reasons outlined in this decision it is my decision that the disposition of the Inquiry Committee is confirmed.

Accordingly, I dismiss the application of the Complainant.

In making this decision I have considered all of the information and submissions before me whether or not I have specifically referenced them.

“Lori McDowell”

Lori McDowell, Panel Chair
Health Professions Review Board

November 29, 2013