DECISION NO.  2012-HPA-023(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: David A. Hobbs, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submission concluding on March 1, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

DECISION ON REVIEW OF INQUIRY COMMITTEE DISPOSITION

I INTRODUCTION

[1] The Complainant, with the help of family members, applies for review by the Review Board of the Inquiry Committee’s disposition dismissing her complaint regarding the advice given and behavior of the Registrant specialist during an appointment to assess her suitability to enter rehabilitation programming for stroke victims.

II BACKGROUND

[2] By Complaint Form dated December 15, 2010 the Complainant filed a complaint against the Registrant regarding behavior and advice given during an appointment on December 13, 2010.

[3] The Registrar wrote the Registrant for response on March 10, 2011, and also obtained the hospital records.

The Registrant, in his capacity as a physical medicine and rehabilitation specialist, saw the Complainant in a referral from a family physician as the Complainant needed assistance with her recovery from a stroke suffered in August, 2008.

The Registrant concluded the Complainant was not a candidate for two possible stroke recovery programs as she did not meet the guidelines given the amount of time that had passed since the stroke, and the lack of significant further neurological recovery to be expected after six months to one year had passed following the acute event.

The Registrant says one of the two daughters attending with the Complainant on December 13, 2010, was not receptive to the advice given and accused the Registrant of lying and fabricating the admission guidelines.

The Registrant admits he suggested the Complainant try to lose some weight.

The Registrant says that he is not aware of any publicly funded in-patient stroke rehabilitation programs for patients such as the Complainant in B.C. There is a neuro-rehabilitation program in Alberta though the Registrant thought it questionable that the Complainant would be accepted.

The Complaint Form submitted to the College on the Complainant’s behalf by her daughter mentions absence of receipt of a written report from the Registrant following the appointment. The Registrant says it is not his practice to deliver consult reports to patients following appointments such as the one in question.

The Complaint Form implies the Registrant told the Complainant she was “too fat” for the recovery program. The Registrant denies using the words “too fat”. I find that though weight loss was discussed, this was only one of many factors considered by the Registrant in the overall assessment process.

I accept that the daughters of the Complainant are frustrated in their efforts to obtain publicly-funded assistance to improve their mother’s health following a serious stroke and, I also accept the Registrant’s explanation of the many considerations and issues that complicate the question of the Complainant’s suitability for the programs available in B.C. for stroke victims.

The Complainant suffered a severe stroke and the medical advisors have opined that rehabilitation potential is very limited. Understandably, this is a difficult opinion for the Complainant’s family to accept. Weight loss is a simple idea to make movement easier but the Complainant and her supportive family members were evidently looking for something more comprehensive than this suggestion.

I find that in the emotional and frustrating discussion between the Complainant, the Registrant and the Complainant’s daughters the communication broke down somewhat in terms of what was heard, meant and understood in the conversation that took place.

The Registrant stated in his Consultation Report to the referring family physician dated December 13, 2010, “I am sorry that I cannot provide a more positive and encouraging consultation, but I do appreciate having had the opportunity to review her”.

The Registrant also stated “It is not uncommon for patients and family to be very frustrated by the lack of long-term neuro-rehabilitation resources in this clinical scenario”.

[16] The admission criteria for the low tolerance, long duration program at the local hospital in question states that the patient must have been diagnosed with a stroke within the last 12 months. In this sense the Complainant did not meet the guidelines for the program.

[17] The Complaint focuses on the fact that “nowhere does it say that patients are rated for rehab by weight”. Weight is not irrelevant but, from my review of the record, the main reason the complaint was not accepted into the program was the length of time that had passed since her acute event and the conclusion flowing therefrom that her prognosis for further significant neurological recovery was limited.

[18] The College contacted the Complainant by letter dated June 20, 2011 inviting any new information regarding the complaint. The Complainant’s daughter acting, on her mother’s behalf, provided further information which the Registrar considered, along with further information in reply from the Registrant by letter dated July 15, 2011.


[20] The Registrar concluded there was no basis for the complaints regarding the care provided by the Registrant as it met the expected standard of care in the Registrar’s opinion, and therefore, no further action was necessary. The Registrar acknowledged that discussing weight is often a sensitive issue though medically relevant.

[21] The Complainant asserts the Registrant acted in an insensitive and arrogant manner but the Registrant’s Consult Report to the family physician dated December 13, 2010, written soon after the visit on December 10, 2010 and before the complaint was filed, was expressed in an apologetic, respectful and sensitive manner with regard to the frustration experienced by the Complainant and her family members. The Registrar was faced with different versions of the behavior and conversations during the visit on December 10, 2010, which became a “he said, she said” version of events and difficult to resolve. The Registrar stated in the disposition that the College expects the Registrant to give serious reflection to the complaint to encourage that patients are treated with kindness, dignity and respect at all times. The disposition will remain on the Registrant’s file.

III ANALYSIS

[22] The role of the Review Board on an application under s.50.6(5) of the Act is to assess the adequacy of the investigation and reasonableness of the disposition. Section 50.6(5) provides

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.

[23] The Complainant says the Registrar’s investigation was inadequate in respect of checking security cameras, Handy Dart and computer records to confirm arrival time for the appointment. The Complainant disagrees with the Registrant’s conclusions on the events and standards of practice. All of the issues raised by the Complainant of: lateness; obtaining medical records; obtaining physical evidence; and conduct of the Registrant were considered by the Registrar though not disposed of in a manner satisfactory to the Complainant and her family. The issue of time of arrival and lateness for the appointment did not warrant extensive or expensive investigative steps to be taken in the context of the overall complaint.

[24] It is not the role of the Review Board to re-try these factual issues or to substitute its opinion on the questions of fact for those of the Registrar.

[25] This complaint is about a single visit between the Complainant, her two daughters and the Registrant. The Registrar considered all the evidence available and fully understood the differences in the description of what occurred between the Complainant and the Registrant. I find that the Registrar obtained the key information to fulfil his mandate to conduct an adequate investigation.

[26] The Complainant disagrees with the Registrar’s conclusions regarding some of the evidence, for example that the Registrant was late for the appointment, but, based on the evidentiary conclusions made by the Registrar that the Registrant’s conduct met the expected standard of care the disposition was reasonable in my view. The disposition fell within the range of possible, acceptable outcomes defensible with respect to the facts and law. See Review Board Decision No. 2009-HPA-0001(a)-0004(a) at paras [90]-[94].

[27] The Registrar’s disposition summarizes the complaint, response, analysis and sets out a tenable explanation for the conclusion reached which is justified, transparent and intelligible.

IV CONCLUSION

[28] I confirm the disposition of the Inquiry Committee.

[29] I have reviewed the record and all the submissions of the parties whether or not specifically referred to herein.

“David A. Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board

April 11, 2013