DECISION NO. 2012-HPA-024(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: John H. O’Fee, Panel Chair

DATE: Conducted by way of written submissions concluding on August 13, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay R. Johnston, Counsel

I  DECISION

[1] Upon reviewing the decision of the Registrar of the College, I find that the investigation into this matter was not adequate and I direct the College to obtain a response from the Registrant indicating his reasons for changing the prescription for pain medication prescribed to the Complainant. Upon review of the response from the Registrant, the College will then make a disposition of this matter.

II  INTRODUCTION AND BACKGROUND


[3] The Registrant provides emergency medical care to inmates in the BC correctional services on an on-call basis. The Complainant at the relevant times was an inmate in a correctional centre and asserts that the Registrant acted inappropriately with respect to prescribing pain medication.
Specifically, the Complainant was originally prescribed to receive both antibiotics and morphine and/or Percocet (a combination of acetaminophen and oxycodone) by the attending emergency room physician who treated the Complainant’s hand abscesses. On review, but without physically examining the Complainant, the Registrant confirmed the prescription for the antibiotics but changed the prescription for pain medication to Motrin (ibuprofen).

The Complainant asserts that this change in the pain relief medication in the absence of any physical examination of the Complainant by the Registrant caused him additional pain and suffering which amounts to misconduct on the part of the Registrant.

The College dismissed the complaint and the Registrant was not asked to respond or provide any reason for his decision.

In its initial response, the College summarized the complaint as follows. “The essence of your complaint is that [the Registrant] has declined to prescribe for you as the Emergency Physician directed and as you would wish him to.” However, in the same letter the College indicates it has no authority to direct the prescribing decisions practitioners in these controversial areas of practice.

The Complainant subsequently did receive a stronger pain medication as prescribed by a different physician. The College takes the position that neither this new physician nor the Registrant were wrong in their choice of medication for the Complainant.

The Complainant has requested that the Health Professions Review Board:

(a) Order the College to investigate “the practice of doctor shopping by Corrections BC to facilitate the mistreatment of prisoners!”

(b) Order the College to initiate a full investigation on the registrant related to his decision to modify the pain medication prescription.

(c) Order the College to provide the Board with photographs of the Complainant’s wounds that were apparently taken at a medical facility.

(d) Establish a policy with the College to ensure that when a patient is in custody, the treating physician’s prescriptions are not modified by the institution’s physician.

III JURISDICTIONAL ISSUES

Review Boards are limited by law in these circumstances to exploring two fundamental issues:

(1) Was the investigation of the complaint adequate?; and,

(2) Is the disposition of the complaint reasonable?
[11] As such, the Review Board can make one of three decisions:

(1) It can confirm the disposition of the inquiry committee;

(2) It can direct the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or

(3) It can send the matter back to the inquiry committee for reconsideration with directions.

[12] The Complainant should understand that the Review Board is not a forum to revisit the complaints initially raised or a legislative body that can change medical standards of practice. As such, I accept the submissions of Counsel for the College and the Registrant that much of the relief sought by the Complainant is not within the jurisdiction of the Review Board. Only the second of his four requested remedies falls even partially within the jurisdiction of this Review Board and this decision will be limited to the adequacy of the investigation conducted by the College and the reasonableness of its disposition of the complaint related to the modification of the Complainant's pain relief prescription by the Registrant.

IV THE ADEQUACY OF THE INVESTIGATION

[13] Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraphs [97] and [98] is often cited as the test for the adequacy of the investigation respecting a complaint.

[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.

[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 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.

[14] The specialized jurisdiction of the Review Board in reviewing Inquiry Committee dispositions is limited to matters of process. In Decision No. 2010-HPA-G02(b) at paragraph [44] and [45] the Review Board reaches a similar conclusion and notes “The Review Board cannot provide treatment advice to physicians”.

[15] In its response the College states it will not intervene in pain medication prescription decisions provided they fall within an acceptable range for a given condition. The College appears to accept that this is an evolving area of medical practice where physicians will be required to make subjective pain medication decisions in the best interest of patients, within the fairly broad standards set out by their professional body.
[16] I am left to speculate as to the Registrant’s reasons for modifying the pain relief prescription and why this modification was made without the benefit of a physical examination of the Complainant. There may well have been very rational and patient focussed reasons for making this medication change. I believe the investigation of the College would be better served were an explanation provided by the Registrant in this instance.

[17] The College and not the Review Board is the appropriate body for setting the standard for acceptable medical care. College may choose not to intervene in the physician’s decision as to the sort of pain medication to be prescribed, provided such prescription is within an acceptable albeit broad range of remedies. However, the assertion by the Complainant had two components. First, the Complainant felt the arbitrary change in medication was unwarranted and second, the change in medication was made without the benefit of a physical examination.

[18] At the same time, I am guided by Review Board Decision No. 2010-HPA-063(a); 2010-HPA-076(a) in terms of a standard to be set by a College in making enquiries of a Registrant. In that case Panel Chair Silversides directed the College to make specific enquiries of the Registrant concerning issues raised by a Complainant that were not adequately addressed by the Registrant in his response. In paragraph [100] he states:

> What the enquiry committee failed to consider, however, is what basis, if any, the Second Registrant had for reaching his conclusion that Gabapentin should not be prescribed to a patient with congestive heart failure, particularly since the First Registrant, a cardiologist, had no problem with its prescription.

[19] From the perspective of the Complainant, this inconsistency may merit at least an explanation from the College that is backed by an enquiry to the Registrant. In addition, the response of the College is focussed on the medication change decision and does not, in my view, address the lack of a physical examination prior to making that change. These actions are the essence of the complaint against the Registrant and the absence of any response by him, in my view, fails to meet the threshold of an adequate investigation.

V THE REASONABLENESS OF THE DISPOSITION

[20] If a finding is made that the investigation is inadequate, it follows that the reasonableness of the disposition cannot yet be determined. The Registrant’s response would assist the College in determining whether or not he met an acceptable standard of care and would also assist the Complainant in understanding the rationale for the change in his prescription medication.

VI DECISION

[21] My review of the record causes me to conclude that the criteria of the Act have not been met. I find that there was not an adequate investigation of the facts concerning the complaint and as a consequence I am not able to determine whether the disposition of the complaint was reasonable. Pursuant to section 50.6 (8)(c) of the Act I am
referring this matter back to the College directing the College to seek a response from the Registrant outlining his reasons for changing the Complainant’s prescription and to consider this as part of its investigation. The findings of the College, with the benefit of this additional information, should then be communicated to the Complainant.

[22] 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”

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

April 9, 2013