DECISION NO. 2012-HPA-036(a);2012-HPA-037(a);2012-HPA-038(a) (Grouped File: 2012-HPA-G08)

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 Pharmacists of BC COLLEGE
AND: A Pharmacist REGISTRANT 1
AND: A Pharmacist REGISTRANT 2
AND: A Pharmacist REGISTRANT 3
BEFORE: John O’Fee, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on January 2, 2013

APPEARING: For the Complainant: Self-represented
For the College: Scott Fleming, Counsel
For Registrant 1: Self-represented
For Registrant 2: Self-represented
For Registrant 3: Self-represented

I INTRODUCTION

[1] The Complainant applied under s.50.6 of Act to review a February 8, 2012 disposition of the Inquiry Committee of the College.

[2] The Complainant asserts that all three Registrants failed to provide adequate patient counselling regarding the risks of medications he was prescribed by physicians including the risk of prolonged use of certain medications. As a result, the Complainant
further asserts a degree of pain and suffering associated with what he views as this failure to properly advise him.

II BACKGROUND

[3] The Complainant underwent rectal surgery in February 2006. Following this surgery the Complainant endured a long and painful period of recovery spanning a period of years. This recovery process required multiple prescriptions for a variety of ointments, creams and other medications to assist the Complainant in dealing with the prolonged discomfort his recovery entailed.

[4] The record is clear that the Complainant became actively involved in his treatment regime often soliciting advice from all three Registrants as well as many other pharmacists in his community. The un-contradicted evidence is that the Complainant would consult the Registrants regarding his prescriptions and would often do so multiple times over the course of a day.

[5] My review of the record indicates that in the 34 months following his surgery, the Complainant had dealings with approximately 35 different pharmacists at six different pharmacies for dispensing and advice on the medications he was prescribed.

[6] What is also clear from the record is that the Complainant was suffering badly from his maladies and was obviously not getting the recovery he had hoped for. The Registrants all indicated sympathy for the Complainant and it is clear that coping with his health situation was difficult for the Complainant as it would be for anyone in his condition.

[7] In response to his complaint the College convened a four member Inquiry Committee on January 12, 2012. At that meeting the Inquiry Committee reviewed the complaint, the medical records, the responses from all three Registrants as well as records from telephone interviews and other supporting documentation. The Inquiry Committee identified four areas in the initial complaint that they considered potentially to implicate the pharmaceutical care provided by the Registrants and required that each registrant address all four of the following:

   (a) Was there anything that the Registrants noted from the prescriptions being provided by the Complainant’s physician to the Complainant which gave rise to concerns about the course of treatment being prescribed for him?

   (b) Did the Registrants recall any discussions with the Complaint’s physician about medication options and/or the drug choices being prescribed? If so, the pharmacists were asked to detail their recollection of these discussions;

   (c) What patient information and/or counseling was provided to the Complainant for each dispense? The Registrants were asked to describe the standard practice for counseling as it was provided at that time as well as details of any discussions which they had during their dealings with the Complainant, with particular emphasis on counseling and questions or concerns raised by him at the time; and
Was there ever any relevant medication information that the Registrants withheld from discussing with the Complainant on their own initiative or at the request of the Complainant’s physician?

Each of the Registrants provided a detailed written response to each of these questions and the Inquiry Committee considered these in the context of the medical record. In its report the Inquiry Committee focused on three central issues:

(a) Whether the patient counselling as required by Section 12 of the HPA Bylaws, Schedule F-Part 1: Community Pharmacy Standards of Practice were adequately conducted by each of the pharmacists during their dispensing of medications;

(b) Whether there was any evidence to support the allegation that the pharmacists deliberately withheld relevant drug information in an “unethical or illegal” manner; and

(c) Whether any of the three pharmacists failed to meet the standard expected of a pharmacist by failing to intervene in the medical course of treatment being provided by the physician, having regard to your dispensing history.

In considering the three central issues the Inquiry Committee concluded as follows:

(a) The level of patient counseling the Complainant received exceeded the extent of patient counseling expected of a competent pharmacist in the circumstances of this case;

(b) There was no evidence to support the allegation that Registrant 1 or Registrant 2 deliberately withheld any relevant information from the Complainant regarding the medications they dispensed. The Inquiry Committee found that there was a single incident where Registrant 3 had withheld a drug information sheet from the Complainant at the request of the Complainant’s doctor. Registrant 3 disclosed this in his report to the Inquiry Committee. However, the Committee concluded that this single incident did not support the Complainant’s more general allegation against all three registrants and noted that the Complainant picked up the withheld drug information sheet the same day from a different pharmacy. As such, the Inquiry Committee concluded that there was no therapeutic or professional significance to the failure of Registrant 3 to provide this printed information to the Complainant on this single occasion; and

(c) There was no evidence of a failure on the part of the Registrants to appropriately intervene in the medical care being provided by the Complainant’s physician.

The findings of the Inquiry Committee were communicated to the Complainant in a detailed letter dated February 8, 2012 which is acknowledged as received by the Complainant on February 13, 2012. On February 23, 2012 the Complainant completed a request for review of the College’s determination of his complaint.

With respect to Registrant 1, the Complainant repeats his contention that Registrant 1 withheld information on various medications and failed to consult the
attending physician regarding concerns Registrant 1 had about a medication. The Complainant wants Registrant 1 to be held accountable for failing to act on the concerns he should have had as a responsible pharmacist.

[12] With respect to Registrant 2, the Complainant repeats his allegation that that Registrant 2 also failed to provide proper advice on various medications and takes similar issue with findings of fact by the Inquiry Committee. The Complainant also takes issue with an assertion by Registrant 2 that the Complainant had been disruptive during a visit to the pharmacy and had used profanity towards her. The Complainant wants her held accountable for failing to properly inform the Complainant concerning risks of use associated with various prescription medications.

[13] With respect to Registrant 3, the Complainant again repeats his initial position while disagreeing with the findings of the Inquiry Committee. He takes issue with a statement attributed to him by Registrant 3 regarding the Complainant’s physician and physicians generally. Finally, he asserts that Registrant 3 should have been in contact with his physician regarding the prolonged use of two medications.

III JURISDICTIONAL ISSUES

[14] This application is brought pursuant to s.50.6(1) of the Act which provides for the Review Board to review the disposition of a matter by an Inquiry Committee. Upon receipt of such an application for review the Review Board is to apply s.50.6(5) which reads as follows:

50.6 (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.

[15] In other words, the Review Board does not perform the function of re-hearing the initial complaint. Rather, Review Board assesses whether or not the Inquiry Committee applied appropriate resources and effort in investigating a complaint, and whether or not the decision of the Inquiry Committee was within the range of reasonable outcomes available to the Inquiry Committee in the circumstances.

IV THE ADEQUACY OF THE INVESTIGATION

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

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 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.

[17] Clearly, the Complainant considers this a serious matter and asserts that he has suffered serious harm as a result of the Registrants not meeting an accepted standard of care. I have no doubt that the Complainant has suffered for a long time in his recovery from his surgery and feels that a better job could have been done by all medical professionals with whom he dealt with in terms of his recovery.

[18] It is also clear that the College took this complaint seriously. The record is detailed as are the responses from the Registrants. As is outlined in paragraphs [7] to [10], the mechanics of this investigation were thorough and detailed. A four member Inquiry Committee was convened to review the record and assess the issues raised by the Complainant before making their findings as to the disposition of the complaint. Those findings were in turn communicated to the Complainant in a fully considered letter outlining the findings of the Inquiry Committee and their reasons for deciding as they did regarding this complaint.

[19] There is nothing in the Complainant’s Application for Review that indicates any inadequacy regarding the investigation by the College. While the Complainant disagrees with their findings of fact and the statements of fact provided by the Registrants, this only goes to the reasonableness of the disposition of this matter by the College.

[20] Accordingly, given the nature of the complaint and my review of what is an extensive record, I find that the College sought out sufficient information for it to carry out its mandate and on a reasonableness standard its inquiries were adequate.

V THE REASONABLENESS OF THE DISPOSITION

[21] Again, Decision No. 2009-HPA-0001(a) to 0004(a) at paragraph [92] outlines a clear test for reasonableness:

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.

[22] I accept the submission of counsel for the College that the issues brought before the Inquiry Committee by the Complainant were clearly identified, thoroughly analyzed and well considered. More importantly, the disposition of the Inquiry Committee was supported by the evidence before it.

[23] It is not the role of the Review Board to second guess treatment decisions made by medical professionals and substitute its own decisions in their stead. Decision No. 2010-HPA-G02(b) at paragraph [44] and [45] reaches a similar conclusion and notes “The Review Board cannot provide treatment advice to physicians”. A Complainant may assert an improper course of medical care and it is the role of the Inquiry Committee to consider that assertion in its proper context and make a disposition that reflects an appropriate level of investigation.
[24] In his application for review the Complainant seeks to revisit findings of fact and
denies making statements or conducting himself in the manner described by the
Registrants. However, the Complainant does not point to any failure of the Inquiry
Committee to consider his complaint carefully or to make a disposition that is
reasonable based upon the findings of fact made by the Inquiry Committee.

[25] The comments and actions attributed to the Complainant may be upsetting to
him and he clearly has a different version of events. I do not find the statements alleged
by two of the Registrants to have been made by the Complainant to be relevant to the
disposition of his complaint. As such, it is not necessary for me to determine credibility
with respect to either the Registrants or the Complainant regarding any disruptive
conduct or disparaging statements attributed to the Complainant.

[26] While the Complainant has my sympathy for what has undoubtedly been a
difficult path to recovery, I can see nothing in the record to indicate that the disposition
of this complaint by the Inquiry Committee was anything but reasonable in the
circumstances. I find that the disposition of this complaint by the Inquiry Committee falls
within a range of acceptable and rational outcomes.

VI DECISION

[27] My review of the record causes me to conclude that the criteria of the Act have
been met. I find that there was an adequate investigation of the facts concerning the
complaint and that the disposition of the complaint was reasonable. Pursuant to Section
50.6(8)(a) of the Act I confirm the disposition by the Inquiry Committee of the College.

[28] 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 30, 2013