I INTRODUCTION

[1] This matter involves a complaint by one Registrant against another Registrant. In a complaint to the College dated October 4, 2011, the Complainant alleges that the Registrant misrepresents himself as a “medical doctor” in certain marketing material.

[2] In his application for review, the Complainant raises several additional concerns regarding some of the content of the Registrant’s advertising materials which he alleges is contrary to section 85(2) of the College bylaws. These marketing concerns form no part of the Complainant’s original complaint to the College, and any concerns and discussions regarding the subject matter of the marketing material appear to have arisen by the College in the course of its investigation of the Complainant’s initial complaint.

[3] After investigating, the College took no further steps against the Registrant as it had the Registrant’s agreement to submit, prior to publication, any and all marketing materials he is now utilizing or planning to use in the future. Further, the Registrant offered and agreed that any and all future materials regarding the advertisement in
issue will be submitted for approval prior to publication. The Complainant applies to the Review Board for a review of that disposition on the grounds that the disposition is unreasonable.

II THE COMPLAINT

[4] The Complainant’s complaint to the College is via email dated October 2, 2011 and it reads:

Dr. [Registrar], Attached please find a new complaint. This is another chiropractor who misrepresents himself as MD. You are more familiar with the rules than me.

[5] Attached to the Complainant’s brief email is a copy of an advertising brochure wherein the Registrant allegedly misrepresents himself as a medical doctor.

[6] Upon receipt of the complaint, the Inquiry Committee proceeded with an investigation and, in doing, so forwarded the written complaint and related material to the Registrant for response.

[7] The Registrant responded via an email dated October 17, 2011. In his email response, the Registrant directs his response on the rules that were in place at the time he produced his marketing brochures.

[8] The Registrant begins with a forthright acknowledgement that he received a complaint in 2006/2007 whereby a chiropractor in his area had done some advertising with his name in it, and he received disciplinary action from the complaint. The reprimand was to write an undertaking to the College that he would comply with the advertising rules as they were presented in the manual and that his marketing materials would be approved by the board prior to distribution.

[9] In regard to the pamphlet referenced by the Complainant, the Registrant goes on to say that it was approved by the College for distribution at that time. The Registrant notes that some changes and/or amendments to the brochure were requested by the Board before the pamphlet was approved.

[10] The Registrant then went on to concur that the brochure is likely outdated in regards to the current rules. He said he had printed many of the brochures at the time and had not run out and therefore had not recently considered reviewing the material. He adds that he will gladly stop using the brochure to appease the Board and the Complainant. Further, he offers to submit any new brochure material to the Board for approval if he chooses to design a new brochure.

[11] The Registrant mentions as well that the technician who was assisting with the procedure in question had recently quit, and as a consequence he terminated all advertising and marketing programs in order to shut down his treatment system for the time being. He says he is currently only maintaining his website for public information purposes, and he is no longer doing any public marketing or advertising on a regular basis as in the past. As a consequence he says that further advertising is likely to be a
moot point, that he is unlikely to begin again, and if he does he will be contacting the Board for approval of his new marketing material as before.

[12] In closing the Registrant apologizes for having his marketing material outdated, but says it was approved by the Board at the time and he agreed to remove it from further distribution to avoid any further discourse.

[13] Later on October 17, 2011, the Inquiry Committee replied by email to the Registrant with further questions. Specifically, the Inquiry Committee:

(a) explains and identifies the five component ads, brochures and/or pamphlets of concern;
(b) inquires as to whether these documents were approved in 2007 and if so whether the Registrant has any documentation to support that;
(c) asks the Registrant to confirm that none of the documents were created after the undertaking was in place. If not, the Registrant was asked to provide details about when were they created, when were they submitted for approval and who approved them;
(d) asks whether any of the documents had been changed, updated or modified since 2007. If so, the Registrant was asked to provide details about when they were changed, updated or modified, when they were submitted for approval, and by whom they were modified; and
(e) Asks whether the Registrant submitted any marketing material since the undertaking of 2007 and, if so, to whom and when.

[14] On October 19, 2011 the Registrant wrote a lengthy response letter to the Inquiry Committee. In his response, the Registrant addresses the various concerns raised by the Inquiry Committee such as certain subjective language used in the advertising material to describe treatment and the use of the term "medical professional" to refer to the Registrant. In regards to the latter, the Registrant acknowledges that he would likely rephrase the statement to read "health professional" if he chose to produce a new brochure in the future.

[15] In the course of its investigation, the Inquiry Committee acknowledged that although the material had not been submitted under the new rules, it was through no fault, error or omission by anyone. The Committee then dismissed the complaint with the Registrant’s agreement to submit to the Registrar and/or the Quality Assurance committee, prior to publication, any and all marketing material he is now utilizing or plans to use anytime soon for approval. Further, any and all future materials regarding the [specialized treatment] are to be submitted for approval prior to publication.

[17] The Complainant, presumably dissatisfied with the Inquiry Committee disposition, applied to this Review Board for a review. In his application dated December 20, 2011, the Complainant said:

...The materials in question seriously violated [the College] Bylaws. The Registrant misrepresents himself as a medical doctor. The rationale in the disposition letter doesn’t justify for such severe violations. If he has agreed to submit the question materials before publication, then he also violated his undertaking under the revised PVH.

Relief being sought: The nature of the violations is serious. I wish that the Review Board could cross exam the evidence from all parties, hence, a reasonable disposition can be expected.

[18] On July 20, 2012, and in response to the Complainant’s application to the Review Board, the College wrote a letter to the Complainant further justifying its disposition.

[19] In its response, the College noted that it considers none of the concerns relating to the marketing materials to be “serious violations”. Further, the College pointed out that it has never received a complaint about the marketing materials from a member of the public.

[20] The College further pointed out that the Complainant, himself, has been permitted to make extensive claims regarding the benefits of [specialized treatment] as he also offers this service.

[21] In regards to the allegations that the Registrant represents himself as a medical doctor, the College responded that while “medical” is typically associated with the practice of medicine by physicians and surgeons, it can also be more broadly defined to refer to the “science or practice of the diagnosis, treatment, and prevention of disease”, and therefore, can encompass a wide range of health care, including chiropractic.

[22] In addition, the College points out that the marketing materials clearly indicate that the treatment is offered by “Dr. [Registrant] D.C.”. As such, despite the reference to a “medical professional”, the College accepts that the Registrant clearly indicates in the materials that he is a doctor of chiropractic.

[23] While it was the College’s view that there is a potential for misunderstanding arising from the term “medical professional”, the College found that the Registrant was not misrepresenting himself as a medical doctor. Further, and in any event, in his October 19, 2011 response letter, the Registrant volunteered that “health professional” would be a better term to use in future ads.

[24] The Inquiry Committee concluded that in light of:

(a) the nature of the concerns raised in the complaint;
(b) the absence of a complaint concerning the materials from a member of the public;
(c) the Registrant’s evidence that he obtained approval of the materials some years ago, and
(d) the Registrant’s willingness to update his present advertising and submit that to the College for approval;

the Inquiry Committee determined that the complaint could be dismissed without taking any further action against the Registrant.

[25] The Complainant, dissatisfied with the College response, pursued his application for review.

III ISSUES

[26] On a review application, the usual issues to be decided are:

(a) Did the College adequately investigate the complaint against the Registrant?
(b) Was the College’s decision to dismiss the complaint reasonable?

[27] However, in consideration of the nature of the complaint dated October 2, 2011, I find that the first issue I must decide is whether the Complainant’s complaint relates to matters that fall within this Review Board’s jurisdiction. If it does, only then must I decide whether the investigation conducted by the Inquiry Committee was adequate, and whether the disposition of the Inquiry Committee was reasonable.

IV JURISDICTIONAL ISSUE

[28] In dealing with the jurisdictional issue, I will first restate the Complainant’s concerns as summarized in his original complaint to the College dated October 2, 2011:

Dr. [Registrar], Attached please find a new complaint. This is another chiropractor who misrepresents himself as MD. You are more familiar with the rules than me.

[29] In his application for review dated December 20, 2011, the Complainant’s concerns extend (for the first time) to the rules and guidelines that governed the publication of the marketing materials:

The materials in question seriously violated PCH and CCBC Bylaws. The Registrant misrepresents himself as a medical doctor. The rationale in the disposition letter doesn’t justify for such severe violations. If he has agreed to submit the question materials before publication, then he also violated his undertaking under the revised PCH.

[30] Given that nothing in the record indicates that the Complainant had these other concerns at the outset of the complaint process, I can only presume that any of these additional marketing concerns are instigated by the Registrant’s response dated October 17, 2011.
In his written submissions dated December 17, 2012. The Complainant criticized in greater detail the nature and content of the Registrant’s advertising materials. More specifically the Complainant said:

(a) The Registrant’s use of subjective terms on his marketing material is a violation of the Professional Code of Conduct Handbook Section 14.2;
(b) The Registrant’s use of “relatively new” in regards to [specified treatment] is a violation of the Bylaw 85(2) regarding misleading/false advertising;
(c) The Registrant’s use of various statements regarding the availability of [specified treatment] is a violation of Bylaw 85(2) regarding misleading/false advertising;
(d) The Registrant’s use of the term “licensed medical professional” in his advertising brochure implies that he is a medical doctor which is a violation of Bylaw 85(2) regarding misleading/false advertising; and
(e) The Registrant has two advertising undertakings in place from 2007, and there is no evidence that the subject brochure was submitted for review/approval prior to its publication. Therefore, the Complainant alleges that the Registrant has breached his undertakings.

Neither party has made any submissions on the Review Board’s jurisdiction in this case save and except that the College takes the position that the application for review raises new issues not in the original complaint. I concur. Clearly the original complaint to the College deals only with one allegation; that is that the Registrant misrepresents himself as a medical doctor. With respect to the new concerns raised in the application for review that were not included in the Complainant’s original complaint to the College, it appears the Complainant wants to challenge them for his own cause.

In considering the jurisdictional issue, it is worthy to consider the relevant provisions of the Health Professions Act in relation to the Review Board’s jurisdiction. In that regard, section 50.53 reads as follows:

50.53 (1) The review board has the following powers and duties:
    . . .
    (c) on application by a complainant under section 50.6 to review a disposition of a complaint made by the inquiry committee under section 32(3), 33(6)(a) to (c) or 37.1.

The applicable section of the Administrative Tribunals Act (the “ATA”) is s. 31(1)(a):

31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:
    (a) The application is not within the jurisdiction of the tribunal...
Since the Review Board’s inception, other cases involving complaints by one Registrant against another Registrant have come before this Review Board. In Review Board Decision No. 2009-HPA-0057(a), one Registrant filed a complaint against another Registrant who was his former business associate. The complaint was in relation to a financial and business dispute between the Registrants. At paragraph [11], the Review Board stated:

I agree with the College that its regulatory focus (and the purpose of this Review Board) is properly understood in light of the governing statutory direction that the College is to be concerned with the service and protection of the public: Act, s. 16(1)(a). The Complainant does not in this case allege that any patient or member of the public was harmed, directly or indirectly, by any medical treatment, or by the conduct he alleges.

Review Board decision 2010-HPA-0024(a) dealt with another complaint by one Registrant against another Registrant. In that case, the Complainant alleged that he suffered harm by the Registrant’s conduct, and in particular that:

(1) The Registrant improperly solicited MSP funds from him;
(2) The Registrant misused his personal information for the Registrant’s personal gain;
(3) The Registrant issued an intimidation letter directed at the Complainant for making the first two complaints; and
(4) that the Registrant covertly and improperly used MTABC members’ research funds to benefit himself and students of his research course.

At paragraphs [52] and [58], the Review Board said:

Notwithstanding his allegations, the Complainant does not seek redress for any concerns related to the medical service he received as a patient nor are his complaints related in any way to the health care services he received. He raises no allegations regarding any harm that he suffered, directly or indirectly, by any massage therapy treatment he received by the Registrant. To the contrary, his concerns are entirely unrelated to the practice of massage therapy. As such, his complaint falls outside of the jurisdiction of this Review Board.

…. Again, the Complainant has made no complaint with respect to the particular conduct of this Registrant aside from how the Registrant reacted to the Complainant’s initial complaint process. Other than that, the Complainant has made no complaint with respect to any clinical or other professional decision the Registrant has made in connection with the practice of massage therapy or the Complainant’s care.

Similar logic can be applied to this case regardless of whether the Review Board has jurisdiction to consider the additional marketing concerns raised by the Complainant in his application for review, and more notably in his written submissions.

The Complainant was not the recipient of any health care service provided by the Registrant. The Complainant raises no allegations of harm suffered by him, directly or indirectly, by any chiropractic treatment he received from the Registrant. Nor does the
Complainant raise concerns that fall within the general duty of the College to protect the public from registrants who do not meet mandatory standards of professional practice. Rather, his complaints focus solely on the Registrant’s advertising and marketing practices which the Complainant alleges are false and misleading.

[40] Ironically, the very service that is the subject of the marketing materials is the same service which the Complainant himself offers to his patients.

[41] Further, the College acknowledges that it has received no complaints from the public regarding any of the marketing material in question.

[42] The following comments made by the Inquiry Committee in its letter to the Complainant dated July 20, 2012 are noteworthy:

...[Registrant] responded in detail to the concerns with the Materials raised by the Inquiry Committee (emphasis added)...

In the College’s view, it is difficult to describe any of these concerns with the contents of the Materials as “serious violations”. Firstly, I note that the College has never received a complaint about the Materials from a member of the public...since this matter was resolved the College Board has modified the PCH to delete the restriction against use of subjective terms...Since that change, you, yourself, have been permitted to make extensive claims concerning the benefits of [treatment] on the understanding you have and are ready to produce to the College documentation verifying those claims...

Secondly, while [Registrant] consented to an undertaking requiring approval of advertising in August 2007, he has advised that he submitted the Materials to the College’s former Standards of Practice Committee for review further to that undertaking and received that Committee’s approval prior to publication...

...[Registrant] acknowledged that he had not considered the continuing appropriateness of the Materials since their approval. However, he expressed a willingness to modify them as necessary...he offered to withdraw the Materials and replace them with new advertising which he would submit to the College for review and approval, even though he was not then subject to an undertaking requiring that submission...

Finally, as regards [Registrant] misrepresenting himself as a “medical doctor”, the phrase used in the Material was that there would be “a free, comprehensive examination/consultation with a medical professional”. While “medical” is typically associated with the practice of medicine by physicians and surgeons, it can also be more broadly defined to refer to “the science or practice of the diagnosis, treatment, and prevention of disease” and therefore, can encompass a wide range of health care, including chiropractic...In addition...despite the reference to a “medical professional”, [Registrant] clearly indicates in the Materials that he is a doctor or [sic] chiropractic.

[43] It is clear from this letter that the College did not view any of the allegations raised by the Complainant as serious allegations or allegations that would amount to professional misconduct, whether the allegations held truth or not. To the contrary, the College makes it clear that the potential for such misconduct is void in this case.
In this case, the allegations against the Registrant have nothing to do whatsoever with any clinical care, professional decision or service provided by the Registrant. Further, the allegations made, even if true, would not result in allegations of serious misconduct. In the circumstances, the Review Board is not the proper forum to address the Complainant’s dissatisfaction.

For all of these reasons, I find that the complaint falls outside of the jurisdiction of this Review Board.

Given my decision on the jurisdictional issue, it is not necessary to determine whether the College’s investigation was adequate and the disposition reasonable.

V CONCLUSION

Given the facts as they exist in this case, and for all of the reasons which I have summarized above, I find the Complainant’s complaint is not within the jurisdiction of this Board, and accordingly the matter is dismissed pursuant to s.31(1)(a) of the ATA.

In making this decision, I reiterate that I have considered all of the information and submissions before me, whether or not they are referred to in these reasons.

Both the College and the Complainant have asked for the opportunity to file further submissions with respect to costs once the Review Board has rendered a decision. I grant their request and invite their submissions at this time. The Registry will notify the parties of the schedule for submissions in the costs matter.

“Lorianna Bennett”

Lorianna Bennett, Panel Chair
Health Professions Review Board

April 29, 2013