DECISION NO. 2012-HPA-056(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 COMPLAINANT
AND: The College of Physicians and Surgeons of BC COLLEGE
AND: A Physician REGISTRANT
BEFORE: John O’Fee, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on January 25, 2013

APPEARING: For the Complainant: Self-represented
For the College: Sarah Hellmann, Counsel
For the Registrant: Lindsay R. Johnston, Counsel

I INTRODUCTION


[2] The Complainant initially asserted that the Registrant failed to provide adequate patient care and diagnosis respecting his condition and did not properly complete the doctor portion of the Complainant’s application for disability benefits. The Complainant asserts that all of this resulted in his application for disability benefits being initially rejected and then unduly delayed. As a result, the Complainant further asserts a degree of financial loss, pain and suffering associated with what he views as this failure to properly treat and support him as a patient.

[3] In his appeal to the Review Board, the Complainant re-asserts many of the same facts raised with his initial complaint to the College and takes issue with the findings of the College in his case. He also raises allegations against the Registrant related to incidents not involving the Registrant and not relevant to these proceedings. He points out his costs in having a lawyer pursue his claim for disability benefits and, inferentially at least, he seeks compensation for these costs. The Complainant seeks for the Review
Board to "...correct this wrong doing in a manner that is acceptable to my wife and myself without me having to fight for what is right and decent."

II BACKGROUND

[4] After about two years without a family physician in his own community, the Complainant travelled to a nearby community and attended at the office of the Registrant in April, 2010. At the time the Complainant was in his late fifties and a lifetime of physical labour was taking a toll on his health generally and his back specifically. There is some dispute as to whether the Registrant agreed to take on the Complainant as a continuing patient. The Complainant asserts that the Registrant agreed to take him as a patient while the Registrant asserts that he advised the Complainant that he was not taking new patients but agreed to see the Complainant for a follow up appointment approximately a week later to discuss the results of tests and x-rays ordered by the Registrant on the Complainant’s behalf.

[5] In the follow up appointment, the medical record indicates a diagnosis of degenerative disc disease. The Complainant denies that the Registrant conducted a proper examination of him or clearly communicated these findings to the Complainant. The Registrant indicates that the Complainant was to return to a clinic in a neighbouring community where the Complainant resided. The Complainant asserts that this is not the case and that his view of the situation was that he was a regular patient of the Registrant.

[6] The Complainant attended at the Registrant’s office on May 10, 2010 for a further examination and to get the Registrant to complete the medical portion of the Complainant’s application for disability benefits. Again, there is some dispute as to the extent of the examination and what was said between the Complainant and the Registrant.

[7] On November 8, 2010 the Complainant attended at the Registrant’s office for his back pain and depression. The Complainant also advised that his application for medical disability through the Canada Pension Plan was denied. The Registrant refilled the Complainant’s prescription and made a referral to a rheumatologist the next day. The soonest available date for seeing the rheumatologist was eleven months later.

[8] On December 14, 2010 the Complainant made his last visit to the Registrant’s office. Again, there is some dispute as to the scope and extent of the examination conducted, but an MRI scan was ordered. Initially the scan was ordered through a private clinic which was something that the Complainant states he could not afford. The Complainant also asserts that the Registrant knew or should have known that a privately provided MRI would not be something that the Complainant could afford. Arrangements were subsequently made with the health authority and the Complainant asserts that the delay in starting towards this public route delayed his subsequent receiving of an MRI scan.

[9] At the same December 14, 2010 appointment, the Complainant provided the Registrant with forms to be completed by the Registrant related to Canada Pension Plan disability benefits. The Registrant completed these forms and sent them to Service Canada on December 20, 2010.
[10] On March 31, 2011, the Complainant contacted the Registrant’s office to enquire about the MRI scan that was ordered. Upon being advised that there was no MRI requisitioned other than with the private clinic, the Complainant became angry towards the Registrant’s medical office assistant. The Complainant does not deny his conduct but asserts that it stemmed from his frustration related to how he felt he was treated by the Registrant.

[11] On April 16, 2011 the Complainant filed a complaint with the College respecting the conduct of the Registrant and also wrote a letter to the Registrant indicating his dissatisfaction with the care he provided.

[12] In his letter to both the College and the Registrant, the Complainant asserts that the examinations done and the x-rays ordered were inadequate to properly diagnose his condition. The Complainant further asserted that he had requested to the Registrant’s medical office assistant that she schedule a MRI with a public facility but that this was never arranged. Finally, the Complainant expressed his upset at the mistakes made in the submission of his application for disability benefits and the Registrant’s general lack of empathy towards the Complainant.

[13] On receipt of the complaint, the College requested a response from the Registrant and there was an exchange of correspondence and medical records between the Complainant, the Registrant and the College between May and September 2011. On January 30, 2012, the College disposed of the complaint and found that the Registrant met the standard of care expected from a physician. The failure to properly book a MRI at a public health facility was considered to be an honest oversight as was the Registrant’s actions in providing medical information directly to third party government agencies in support of the Complainant’s medical disability claim.

[14] The Complainant completed a request for review of the College’s determination of his complaint and largely re-asserts the positions outlined in his initial letter of complaint. He goes on to blame the Registrant for legal costs he incurred in pursuing a successful appeal of his disability claim with the Canada Pension Plan as well as the financial and emotional stress related to that claim being initially denied. The Complainant asserts that had he received proper care in the first instance, his initial application for disability benefits would not have been denied. The Complainant further asserts that the College is more concerned about protecting the Registrant than himself and that his medical records were tampered with by the Registrant.

III JURISDICTIONAL ISSUES

[15] This was and is a difficult time in the Complainant’s life. He had taken on the role of the primary earner in his family and had fulfilled this role for decades through diligence and hard work. Enduring the physical pain of his condition along with the emotional and financial pain of not being able to pursue gainful employment is a continuing problem he faces each day. That stated, the Review Board has clear limitations on what it can or cannot do respecting matters brought before it.

[16] 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 of a
college. Upon receipt of such an application the Review Board is to follow the directive set out in 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.

[17] In other words, the Review Board does not perform the function of re-hearing the initial complaint. The Review Board does not have the jurisdiction to assess damages in the form of incurred legal fees, lost or delayed disability pension payments or mental distress. Rather, the Review Board assesses whether or not the College adequately investigated the complaint and whether or not the outcome of that complaint was in the range of reasonable outcomes available to the College in the circumstances. Accordingly, I will be expressing no opinion on the Complainant’s legal costs or other damages he alleges in regard to the initial denial of his disability claim.

[18] At the same time, the Complainant should take some comfort in the fact that the Review Board is completely independent of the College and the Registrant and not subject to influence by them.

IV THE ADEQUACY OF THE INVESTIGATION

[19] A starting point for considering the adequacy of an investigation is Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraph [98]:

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.

[20] Counsel for the College submits that adequate steps were taken to investigate this particular complaint including:

(a) Providing a copy of the complaint and requiring a response from the Registrant along with a copy of all relevant medical records;
(b) Providing a copy of the Registrant’s response to the Complainant for his review and comment; and,
(c) Conducting a comprehensive review of the records obtained and the correspondence received.
This information, in the College’s submission, shows that reasonable steps were taken to obtain key information that in turn allowed its Inquiry Committee to make an assessment of the complaint and the conduct of the Registrant.

The Complainant raises no specific concerns over the adequacy of the investigation conducted by the College in terms of what it should have done differently. The Complainant states “I am amazed that the College, would call this nonsense an investigation”. He repeats his assertion that he was not a walk in patient and takes issue with other findings of fact made by the College.

While I have no doubt that the Complainant’s back and nerve problems are very real and that he feels the Registrant could have done a better job for him, this alone does not determine the adequacy of an investigation into a complaint. Clearly, the College has made findings of fact that are contrary to the Complainant’s version of events and these findings of fact go to the reasonableness of the disposition of the complaint by the College.

Accordingly, given the nature of the complaint and my review of the record. I accept the submission of the College and the Registrant that the College took reasonable steps to obtain the key information to inform its assessment of the complaint. 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.

THE REASONABLENESS OF THE DISPOSITION

Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraph [92] also serves as a benchmark measure for the test of 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.

It is important to note that an incorrect diagnosis is not necessarily evidence of a failure by a physician to meet acceptable medical practice standards. It is clear that the Complainant has suffered for many years from back and related nerve problems. As these problems progressed the Complainant became less able to perform the hard physical work as he had for all of his adult life. The initial diagnosis of degenerative disc disease made by the Registrant and the physician previously treating the Complainant was considered by the College to be consistent with the evidence reasonably available to the Registrant at the time. The view of the College was that this diagnosis fell within the scope of an appropriate and acceptable clinical opinion. Ultimately, a later diagnosis aided by a CT scan revealed nerve entrapment in the L4-L5 disc space in addition to the degenerative disc disease.

Review Board Decision No. 2010-HPA-G02(b) at paragraph [44] and [45] reviewed a course of treatment pursued by a physician and stated “The Review Board cannot provide treatment advice to physicians”. In other words, 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.

[28] The assertions by the Complainant that he was in fact a permanent patient of the Registrant, had expressed no dissatisfaction with his previous physician, that his medical records have been tampered with and that the Registrant was reluctant to order necessary medical tests have all been rejected by the College. In Decision No. 2010-HPA-0208 (a) at paragraph [24] the Review Board stated:

> It is insufficient to merely disagree with facts or events. If information is deemed to be incorrect it is the responsibility of the party questioning the correctness of the information to provide factual evidence confirming the information is incorrect.

[29] If the College were to have found that the Complainant was in fact a permanent patient of the Registrant and that he had not in fact expressed dissatisfaction with his previous physician or did not see the immediate benefit of more extensive testing, I am not convinced that this would have changed College’s disposition of this matter. For the purposes of this decision it is not necessary for me to consider the credibility of the Complainant or the Registrant on these issues.

[30] The record tampering allegation remains unsubstantiated and is unsupported by the material before me. The statements about the Registrant’s conduct that are unrelated to this matter are neither probative nor helpful to the disposition of this complaint.

[31] The failure to book an MRI in a public facility may have caused some delay for the Complainant. It appears to be an oversight on the part of the Registrant’s staff or former staff, but it is unclear to me how this delay impacted the Complainant or compromised any treatment he might have otherwise sought.

[32] The record clearly supports the Registrant’s assertion that he tried to accommodate the Complainant’s requests for a referral to a rheumatologist, a referral for an MRI and the completion of disability application forms.

[33] Review Board Decision No. 2011-HPA-151(a) at paragraph [37] states: “The College’s function is not to adjudicate the level of satisfaction in respect of their registrant’s service, but rather whether their members have met appropriate standards of practice”. Given this role, the College should consider complaints in a proper context and make a disposition that reflects an appropriate level of investigation. More importantly, the disposition of the complaint has to be supported by the evidence before it. The core issue then, becomes relatively straightforward. Did the Registrant meet the expected standard of care in treating the Complainant?

[34] The College found that the Registrant did in fact meet that threshold standard. I find that the record indicates that the disposition of this complaint by the College was reasonable in the circumstances and that that disposition of this complaint by the Inquiry Committee of the College falls within a range of acceptable and rational outcomes that are defensible in respect of the facts and the law.
VI DECISION

[35] 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 of the Inquiry Committee of the College.

[36] 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”
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John H. O’Fee, Panel Chair
Health Professions Review Board

May 10, 2013