DECISION NO. 2012-HPA-062(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: Lorianna Bennett, Panel Chair

DATE: Conducted by way of written submissions concluding on December 20, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay R. Johnston, Counsel

I INTRODUCTION

[1] The Registrant is a psychiatrist at a regional hospital and health centre where the Complainant received treatment between April 22, 2010 and January 5, 2011. This matter relates to a complaint filed by the Complainant regarding the interactions she had with the Registrant during that time.

II ISSUES

[2] The issues I must decide are:

(a) Did the College adequately investigate the complaint against the Registrant?

(b) Was the College’s decision to dismiss the complaint reasonable?

III BACKGROUND FACTS

[3] There is no dispute that the Complainant has a 30 year history of mental health problems which include depression, bi-polar disorder, anxiety, schizo-affective disorder, obsessive-compulsive disorder, delusions, and psychosis.
There is also no dispute that the Registrant provided psychiatric care to the Complainant between April 22, 2010 and January 5, 2011.

The Complainant’s complaint is set out in her letter to the College dated January 27, 2011. In that letter, the Complainant raises a number of concerns regarding the Registrant’s conduct and in particular alleges:

(a) that the Registrant prescribed her a three month dosage for five medications all at once, notwithstanding her known history of overdosing when given the opportunity;
(b) that the Registrant acted unprofessionally when he told her it was “not his problem” if she overdosed and in telling her that she could not contact him before the expiry of her prescriptions;
(c) that the Registrant continued to treat the Complainant notwithstanding her decision to stop seeing him because of his attitude; and
(d) that the Registrant encouraged the police to arrest her when she was brought to the hospital by the police.

The Complainant closes her complaint letter by asking the College, “In your opinion, were [the Registrant’s] words and actions toward me appropriate and professional?”

The College’s Inquiry Committee investigated and reviewed the complaint pursuant to section 32(2) of the Act and was not critical of the care or conduct provided by the Registrant.

The Complainant was dissatisfied with the College disposition and applies to this Review Board for a review.

In her application for review, dated February 27, 2012 and received by the Review Board on March 2, 2012, the Complainant states that she believes the Inquiry Committee’s disposition should be changed because the Inquiry Committee did not adequately investigate the matter. More specifically, she alleges:

(a) the College did not consider all of the information that she provided;
(b) in situations where her accounts disagreed with the Registrant’s accounts, the College took what the Registrant said as the final word;
(c) the College did not consult her for her responses to the Registrant’s allegations against her, even though the Registrant’s responses to her reports were considered;
(d) the College did not consult other sources for verification of the accounts of both herself and the Registrant;
(e) the College presented “presumptions” (their own words) as facts without verification;
(f) the College falsely reported that she was transferred to the hospital on January 5, 2011, without consulting that hospital’s records;
(g) the College refused to review the file and refused to explain portions of their letter to her; and
(h) the College did not consult her hospital records.

[10] In her written submissions and reply, the Complainant sets out in further detail the events surrounding her hospital stay and her resulting interactions with the Registrant. In explaining her dissatisfaction with the College disposition, she says that the College based its conclusions on incomplete evidence.

[11] The Complainant notes, for example, that the College did not interview her despite their suggestion that they sometimes interview Complainants. She says that she thought the College dealt with facts and not with their own presumptions, and that the College did not try to verify their information.

[12] Regarding the Inquiry Committee’s conclusions, the Complainant says,

In light of the facts that I have presented to you, I do not believe that the Committee conducted a thorough investigation nor do I believe that their conclusions were the result of careful, objective consideration of all of the facts.

IV THE REVIEW BOARD’S ROLE ON APPLICATIONS FOR REVIEW

[13] The Review Board’s powers on a review are set out in s. 50.6(8) of the Act which states that the Review Board may do one of the following on completion of a review of an Inquiry Committee disposition:

(a) confirm the Inquiry Committee’s disposition;
(b) direct the Inquiry Committee to make a disposition that could have been made by the inquiry Committee in the matter; or
(c) send the matter back to the Inquiry Committee to reconsider the matter with specific directions.

[14] In order for the Review Board to either direct the Inquiry Committee to make a different disposition or send the matter back to the Inquiry Committee to reconsider the matter, the Review Board must first make a finding that the Inquiry Committee’s investigation was inadequate and/or the disposition unreasonable. These limits to the Review Board’s jurisdiction are set out in s. 50.6(5) of the Act which reads:

(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; and
(b) the reasonableness of the disposition.

V ISSUE 1: ADEQUACY OF THE INVESTIGATION

[15] The role of the Review Board in assessing the adequacy of an investigation is to determine whether the Inquiry Committee’s investigation provided it with sufficient information to assess the particular complaint. It is not the role of the Review Board to reinvestigate the complaint or to substitute its decision for that of the Inquiry Committee.

[16] The standard which the Review Board must apply when considering what is “reasonable” or “adequate” has been previously addressed in Review Board Decision 2009-
The Legislature’s choice of the words “reasonable” and “adequate” make clear that the Legislature has not tasked the Review Board with the role of determining whether the Inquiry Committee has made the “ideal” disposition or conducted the “perfect” investigation. A disposition will only be unreasonable and an investigation will only be inadequate if it falls below the appropriate standard of review.

Then at paragraphs [97] and [98] the Review Board added:

A complainant is not entitled to a perfect investigation, but he or she is entitled to an 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 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.

Applying the Review Board’s role to the facts of this case, what I must consider is whether the College took reasonable steps to investigate and obtain key information from relevant sources. In other words, I will consider:

(a) Has the College conducted an investigation with a degree of due diligence whereby the College has considered and attempted to obtain evidence from the Registrant who is the subject of the complaint?

(b) Has the College considered and attempted to obtain evidence from relevant collateral sources, and in particular evidence that is directly relevant to the subject Registrant and the particular complaint?

In her application for review, the Complainant alleges that the College’s investigation was inadequate as a result of various discrepancies, omissions, presumptions and false information. Specifically, the Complainant alleges that the College, the Registrant, and some of the witnesses have made false allegations for which they have provided no evidence, and that the College left several major points unaddressed.

In their written submissions, both the College and the Registrant address the issue of adequacy of the investigation, and both suggest that the College conducted a thorough investigation, and that the College took reasonable steps to obtain key information relevant to the assessment of the complaint.

In considering the issue of adequacy of the investigation, I note the following steps were taken by the College in the course of their investigation:

(a) The College forwarded the Complainant’s letter of complaint dated January 27, 2011 to the Registrant for his response;
(b) On March 14, 2011 the College received and reviewed a written response from
the Registrant which provided a detailed summary of his interactions with the
Complainant;

(c) The College obtained a copy of the Complainant’s medical records which were in
the care of the Registrant;

(d) The College requested additional medical records from the two hospitals where
the Complainant was treated between April 2010 and January 2011;

(e) The College contacted and sought supplemental information from the
Complainant’s previous psychiatrist, including medical records specific to the
Complainant’s care;

(f) The College considered a further letter dated July 16, 2011 from the
Complainant;

(g) The College considered the enclosure with the July 16, 2011 letter from the
Complainant. The enclosure was a March 21, 2011 letter from the Complainant’s
lawyer;

(h) The College forwarded the Complainant’s July 16, 2011 letter with enclosure to
the Registrant for response;

(i) The College received and reviewed the Registrant’s response dated August 17,
2011;

(j) Throughout the investigation process, the College copied the Complainant with
the Registrant’s responses for her review and comment; and

(k) On November 21, 2011, the College forwarded the complaint and all of the above
noted material (totaling approximately 948 pages) to the Inquiry Committee for
review and discussion.

[22] Considering the steps taken by the College, I am satisfied that the College did
nothing short of a full, thorough investigation from all relevant sources.

[23] In reaching this conclusion, I note that the College took the liberty of contacting a
second psychiatrist for supplemental information, and that the second psychiatrist
happened to be the one who the Complainant says “knows me best” and “whom I saw
weekly for about one year.”

[24] As such, I find the investigation was adequate and within the standard of review.

VI ISSUE 2: REASONABLENESS OF DISPOSITION

[25] In her application for review, the Complainant indicates her disagreement with the
College’s disposition and says she seeks the following relief:

…I am open to beginning with a mediation process. However, if all parties cannot agree to a
settlement, then I will take the next step (hearing). Then I might pursue legal action against
[Registrant], depending upon the results of the mediation/hearing process. I am seeking
complete honesty from the College and [Registrant’s] admissions of
mistakes/mistreatment/unprofessional with both written and oral apologies; a fair, impartial
process that allows me to voice all of my concerns, and receive answers to all of my
questions, and a list of concrete actions to be taken (within a specified time frame); possible
disciplinary actions, citations, reprimands, or other orders to [Registrant], as deemed
appropriate, necessary, and remedial by the Review Board; future supervision of 
[Registrant’s] activities to ensure his compliance to these actions/orders; possible 
anonymous interviews of [the Registrant’s] present and former patients, to see if any other 
investigations or actions should be taken; update of CPSBC website to include his 
disciplinary actions, if any.

I am considering suing [the Registrant] for slander and libel, and seeking compensation for 
mental and emotional pain and suffering, as well as unlawful confinement.

I am seeking addendums/corrections to be made in writing and added to my medical records 
at [hospital], [mental health facility], and any other records that might exist regarding myself, 
including information that is available to physicians through [health authority] of 
internet/computer records.

On a personal note, I am seeking resolutions that satisfy me, and allow me to move on and 
possibly make some kind of recovery from my mental illnesses, emotional problems and 
traumas experienced.

I am seeking an objective, complete psychiatric assessment from someone whose opinions 
have not been coloured by their knowledge of the false allegations against me, or by 
previous psychiatric evaluations. I desire access to all of the treatments that are available to 
other mentally/emotionally ill people, that have been denied to me by the current, local 
Mental Health community. (All psychiatrists contacted, who claim to be accepting new 
patients, refused to see me).

Mostly I desire that no ill person go through the traumas that all of this have put me through, 
and that they receive the care and treatment that they need.

I am also seeking that the College Review Guidelines be updated to ensure that they “Serve 
the public through excellence and professionalism in medical practice”, and otherwise 
completely fulfill their mandates.

I desire that character witnesses who know me well, and over a long period of time, be 
interviewed to establish my true character, morals and behaviours.

I am willing to undergo any process to prove the honesty of everything I say, including but 
not limited to polygraph, hypnotism, and truth serum (though not torture. I’ve had enough of 
that).

I challenge anyone who disagrees with what I say to undergo the same processes. Failure 
to comply will be taken as a sign of deception.

[26] Given the powers available to this Board as set out in s.50.6(8) of the Act, most if not 
all of the relief sought by the Complainant is outside of the jurisdiction of the Review Board.

[27] It is not the Review Board’s role to decide whether the College’s decision was right 
or wrong. Nor is it the Review Board’s role to make a finding of misconduct or to discipline 
a member of any college (Review Board Decision No. 2009-HPA-0034(a) at para. [45].)

[28] Rather, the Review Board’s focus, after considering the issue of the adequacy of the 
investigation, is to consider whether the College or Inquiry Committee’s disposition was 
reasonable. In considering the reasonableness of the disposition, the Review Board must 
determine whether the disposition falls within the range of defensible outcomes based on 
the evidence it had before it.
In considering the relevant materials during its investigation, and after considering each of the four main complaints in issue, the Committee was not critical of the Registrant, either with respect to his conduct or of the care he provided to the Complainant.

The Committee noted, following its review of the record, that the Complainant has a long history of aggression and dissatisfaction towards psychiatrists who have attempted to care for her. The record indicates that the Complainant has expressed similar dissatisfaction with her legal counsel as well.

The Committee noted as well that the Complainant has a long history of suicidal thoughts and attempts. For this reason in particular, the Committee was not critical of the Registrant for his decision to dispense daily medications to the Complainant. The Committee felt this was the safest choice for a patient who has for some time indicated an intention to harm herself.

In response to that aspect of the complaint dealing with ongoing treatment by the Registrant despite the Complainant’s requests that he not treat her, the Inquiry Committee confirmed that the Registrant had no choice but to treat the Complainant. The Registrant was the only on call psychiatrist available at the time and as such he was obliged to treat the Complainant. The Inquiry Committee could not be critical of his decision to provide ongoing treatment in the circumstances.

In my view, the explanations of the Inquiry Committee and its dispositions are all reasonable, defensible outcomes particularly after having considered the significant volume of medical records and consultation reports, and in particular those from the various psychiatrists who have had direct treatment experience with the Complainant.

VII ORDER

For the reasons given above, and given my finding that the College investigation was adequate and the disposition reasonable, I confirm the College’s disposition regarding this Registrant.

In making this decision, I have considered all of the evidence and submissions before me, whether or not specifically reiterated herein.

“Lorianna Bennett”

Lorianna Bennett, Panel Chair
Health Professions Review Board

March 15, 2013