DECISION NO. 2012-HPA-077(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 and Surgeon REGISTRANT

BEFORE: Marilyn Clark, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on November 26, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

I DECISION

[1] Upon considering the application made by the Complainant under section 50.6 of the Act, I confirm the disposition of the College.

II INTRODUCTION

[2] Following a workplace incident, the Complainant was referred by his employer to the Registrant, an Occupational Health Physician, for assessment to determine his fitness to work.

[3] It is the Complainant’s view that the Registrant’s report following their meeting on September 5, 2008, contained false information that included hearsay and inaccurate information.

[4] The Complainant’s request for review states that his complaint was not thoroughly investigated and that he finds the decision of the College “unacceptable and flawed”.

III BACKGROUND

[5] The Complainant is employed as a Corrections Officer.

[6] In January, 2008, he had a workplace accident injuring his back and neck and was still on a gradual return to work schedule at the time he saw the Registrant in September. He had received physiotherapy treatments for the injury and continued to have headaches, earaches, neck pain and insomnia.

[7] Following an incident at work in August, 2008, he was referred to the Occupational Health Service. There was concern at the time about the Complainant’s fitness to remain in the workplace in a safety-sensitive position. The incident involved a confrontation between him and a supervisor which is reported as follows in the Registrant’s response to the College:

He said that he was in the hall talking with a supervisor in the middle of the unit when there was some misunderstanding about where he should be. Some loud and harsh works [sic] were exchanged which led him to being advised that he should go home. He denied saying any words about self-harm or unto others. He was escorted home and he reported that he went to bed.


[9] Her report to the employer includes conflicting information about what occurred following the Complainant’s departure from work on the day of the incident. The Registrant writes that following the Complainant’s escorted trip home:

Work apparently tried to find him and called the RCMP and this is where the stories conflict. [The Complainant] claimed that he was sleeping in bed when the RCMP came and the RCMP apparently knocked on and search [sic] the wrong apartment which was empty and then dispatched a canine search team. They subsequently did knock on the right door and he answered the door after waking from bed.

According to work, however, he was found wandering in the forest and came out dripping wet.

[10] The RCMP provided a copy of their report of September 5, 2008, to the Complainant in a letter dated January 14, 2011, which stated: “[The Complainant] was found at his residence. [The Complainant] did not express or display signs of harm. File concluded as [the Complainant] was located and in good health”.

[11] The primary concern of the Complainant appears to be the suggestion of instability with the statement on file “he was found wandering in the forest and came out dripping wet.” In fact, he states he lost an opportunity for another position which he believes was based on that “inaccurate” statement.

[12] He is critical of the Registrant for including the statement in her records, even though she included both statements and never did suggest that one or the other was accurate. He is also critical of the Registrant for not clarifying the accuracy of statements before recording them and for allowing information to be circulated to others.
IV  ISSUES

[13] The issues to be determined in this application for review are whether the investigation was adequate and the disposition reasonable.

V  DISCUSSION AND ANALYSIS

[14] There is a misunderstanding on the part of the Complainant with respect to the role of the contract Occupational Health Physician which the Registrant apparently explained to the Complainant but he does not recall that explanation. The role of the Registrant was to perform an Independent Medical Examination to determine the Complainant’s fitness for work following the hallway incident. She recorded in her chart note his current level of recovery from his January workplace accident, his current graduated return to work schedule, his medications, his family and social history and following an examination states as follows:

There is no evidence of any muscle wasting or deformity. Musculoskeletal examination revealed a normal looking spine. Range of motion was within normal range except extension had some minor restriction. There was no tenderness. Straight leg raise was normal. Neck examination revealed some tenderness on deep palpation of the left trapezius and sternocleidomastoid muscles. Passive and active of [sic] range of motion was within normal range although some pain was elicited at the extremes of right-sided flexion. He had normal power and sensation in all extremities.

In terms of mental status exam [the Complainant] showed up on time and neatly groomed. He was co-operative and pleasant throughout the interview. Speech was normal. Affect was appropriate and he did not seem depressed or anxious. He sat comfortably throughout the interview. There was no evidence of any thought disorder. Insight and judgement seemed intact.

[15] The Registrant then went on to record her recommendations for the continued graduated return to work which was agreed to by the employer.

[16] In response to the complaints filed by the Complainant in which he states that the Registrant “filed a report in [sic] which has been widely distributed about me, without my knowledge or consent”, the Registrant writes:

[The Complainant] had signed the relevant written consents to attend the occupational assessment and he also verbally agreed after I explained the process at the visit. As a 3rd party occupational physician, my role was to conduct the assessment on behalf of OHP and my chart notes were documented in the filing system at OHP. I did author letters to his employer outlining workplace accommodation recommendations which were within the privy of my role. I also wrote a letter to [the Complainant’s] family physician for information and co-management of care which is also usual practice. The medical records of [the Complainant] are [sic] the possession of OHP and while I had access to them while composing this letter, I do not have any personal records or any authority regarding circulation to other parties.

[17] The Complainant was very concerned about the reference to the employer apparently advising that he had been seen, on the day of the incident with his supervisor, exiting the woods “dripping wet”. In that regard, the Registrant states:
As the RCMP incident did prompt the referral, I did discuss the details with [the Complainant] in length and I noted the inconsistencies between his version and the workplace. I did attempt to get a clarification from his employer and I received reassurance from them that they will look into it. It appears from the chart notes that I never did receive further clarification from his employer regarding the RCMP situation. However, it is important to note that the incident in question, whether it happened according to [the Complainant’s] or the employer’s version, did not affect or alter my recommendations in regards to [the Complainant’s] fitness to work or accommodations.

[18] With regard to the veracity of statements, the Registrant states:

It is not my usual responsibilities [sic] as a physician conducting occupational assessments to do independent investigations to verify the veracity of statements of patients, employers or other parties. In the case of [the Complainant] I did note the discrepancies in the chart and I relayed his concerns to his employer and expressed his concerns to have these allegations investigated. I left it up to the employer and [the Complainant] to work out any issues regarding the specifics of the incident in his employee file.

[19] The College, in its response to the Complainant, wrote:

. . . we are not critical of [the Registrant] for relaying the two divergent versions of what you allegedly did after leaving your workplace following an incident with your supervisor (date not provided). As [the Registrant] has noted, it was not her responsibility as an independent medical examiner to investigate the truthfulness of either of the accounts provided to her. She was, however, obliged to note that there were two versions and she did so. She did not suggest in her report that your version was untruthful. Similarly, it was not necessary for her to identify in her report each of the individuals to whom she had spoken . . .

[20] There is also a misunderstanding on the part of the Complainant with regard to a letter from the Registrant to the College dated January 31, 2012. The Registrant states:

My original response letter of September 19, 2011 is based on the complete set of chart notes and records on [the Complainant] at the OHP office. It contains the background information and case notes dated prior to my initial meeting with [the Complainant]. It also contains documentation of emails, phone calls and all communication between myself, the other OHP health care providers, [the Complainant’s] employer (including specific names) and other relevant parties. I had documented all communication in the chart notes and no further information that I have authored exists outside of that set of notes.

[21] It appears that the Complainant misread that letter for on October 4, 2012, in an email to the Registrant’s counsel, he writes:

I am currently preparing my submissions to the Health Professions Review Board in regards to [the Registrant]. However, I [sic] reading a letter of [the Registrant] sent to me dated January 31, 2012, stating that she has in fact forwarded me all the charts, notes, emails, Health Care Providers as well as the Employer (including specific names). I have never received such documentation.
The letter of January 31, 2012, did not state that she was sending that information to the Complainant. It stated that her original response letter was based on the complete set of records in the OHP office.

Because the Registrant’s contract term ended in January, 2009, the Complainant had difficulty communicating with her after she moved on to another assignment, contributing to yet another complication.

Section 50.6 of the Act outlines the scope of a review by the Review Board. The following are relevant:

50.6  (1) A complainant may apply to the review board for a review of a disposition described in section 50.53(1)(c).

(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.

(6) A review under this section is a review on the record.

The options available to the Review Board after considering the adequacy of the investigation and the reasonableness of the disposition are codified in 50.6(8) of the Act:

50.6  (8) On completion of its review under this section, the review board may make an order

(a) confirming the disposition of the inquiry committee,
(b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or
(c) sending the matter back to the inquiry committee for reconsideration with directions.

A. Adequacy of the Investigation

In determining the adequacy of the investigation and the reasonableness of the disposition, I am guided by previous decisions which serve as precedents for later decisions. I turn to the decision of the Review Board articulated in Decision No. 2009-HPA-0001(a)- 0004(a) at paragraph [97] and [98] in which the panel identified the extent to which a College must investigate a complaint:

[97] 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.
[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 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.

[27] The Record in this instance is small but it does include the correspondence between the Complainant and the College, the Registrant’s responses and the response of the College. As the College stated in its Statement of Points, it took the following steps:

(a) Providing a copy of the complaint to the subject physician and obtaining her response;

(b) Providing a copy of the subject physician’s response to the complainant for review and comment;

(c) Providing a copy of the complainant’s rebuttal to the subject physician for further comment; and

(d) A comprehensive review of the responses and records obtained.

[28] It is my view that the investigation was adequate in the circumstances.

B. Reasonableness of the Disposition

[29] The second part of the Review Board’s mandate is to determine whether the disposition of the complaint on the part of the College is reasonable.

[30] In the Decision referenced in paragraph [26] above, the Panel stated at paragraph [92]:

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.

[31] In Review Board Decision 2011-HPA-170(a);2011-HPA-171(a);2011-HPa-172(a), the Chair states at paragraph [19],

Furthermore, there is nothing in the evidence to indicate that the decision reached was not a reasonable disposition of the matter by the College. Conversely, there is no basis within the complainant’s allegations that would be consistent with or supportive of a conclusion that the College’s disposition was unreasonable.

[32] The Complainant, in his Statement of Points, asks;

That [the Registrant] identify the “Employer” who she broadly describes in her report, and identified as [named supervisor] in an email to the Employer (FOI).
That [the Registrant] amend her reports and issues them to all Doctors who [sic] in possession of them, and assure they amend their copies, and destroy the inaccurate and untrue documents.

That [the Registrant] produce a copy of the amendment copy to the Complainant.

[33] The Review Board’s legislative mandate does not provide the opportunity to satisfy these requests of the Complainant. The Review Board has no jurisdiction to order a College to change its decision having determined that the investigation was adequate and the disposition reasonable.

[34] In fact, I find no basis for the complaint given that the role of an independent Occupational Health Physician is to perform an Independent Medical Examination on behalf of an employer and then to report her findings to that employer. In my view, the Complainant’s issue is with the employer and its Occupational Health Program, not the Registrant.

VI CONCLUSION

[34] I confirm the decision of the College.

[35] In making this decision, I have considered all of the submissions whether or not they are specifically referred to in these reasons.

“Marilyn Clark”

Marilyn Clark, Panel Chair
Health Professions Review Board

February 20, 2013