DECISION NO. 2012-HPA-082(b)

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 Registered Nurses of BC COLLEGE

AND: A Registered Nurse REGISTRANT

BEFORE: J. Thomas English, Q.C., Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on July 15, 2013

APPEARING: For the Complainant: Self-represented

For the College: Jason Herbert, Counsel

For the Registrant: Gary Fraser, Counsel

I DECISION

[1] Upon considering the Application for review of a decision made by the Inquiry Committee, I order that the disposition be confirmed.

II INTRODUCTION AND BACKGROUND

[2] The initial complaint of the Complainant to the College regarding the Registrant resulted in a decision by the College dated September 6, 2011 to investigate the complaint further. The allegations made by the Complainant were that the Registrant breached nursing standards when she shared confidential medical information with his employer and other non-medical staff, falsified documentation, participated in malicious conduct, practiced outside her scope of practice and failed to deliver adequate care.

[3] After further investigation the College on March 26, 2012 determined that “no further action be taken as the conduct to which the matter relates is satisfactory.”

[4] In his Application to the Review Board the Complainant has filed several hundred pages of documents including:

(a) letters of the College dated September 6, 2011 and March 26, 2013;
(b) his 27 page complaint to the BC Human Rights Tribunal;
(c) a three page report from the X Health Authority Y Mental Health Centre;
(d) a 15 page psychiatrist report in respect of the Complainant, addressed to the Registrant;
(e) a two page independent medical assessment report from Dr. A addressed to the Registrant;
(f) a four page mid treatment progress report from a clinical and consulting psychologist addressed to the Registrant;
(g) a five page final progress report from a clinical and consulting psychologist addressed to the Registrant;
(h) a 16 page narrative of his allegations supporting the Complaint against the Registrant addressed to the Intake and Administration Officer of the Review Board;
(i) an eight page affidavit of the Complaint respecting whistle blowing regarding workplace harassment and improper report procedures;
(j) a three page transcript of a meeting between the Complainant and Registrant;
(k) a nine page comprehensive medical assessment by a physician addressed to the Registrant;
(l) several emails from a union representative;
(m) a five page disposition from the College of Physicians and Surgeons regarding a complaint by the Complainant against a physician; and
(n) miscellaneous correspondence and emails from numerous other parties.

[5] The Act provides in s.50.6(7) that the Review Board may hear evidence that is not part of the Record as is reasonably required for a full and fair disclosure of all matters related to the issues under review.

[6] Relying on this provision the Complainant has filed seven separate what he calls dispositions numbering in aggregate in excess of 500 pages some of which are repeats of documents filed in his Application as set forth paragraph [4] above.

[7] I will attempt to summarize the relevant facts but before I do that it is important that all the parties are aware of the limited jurisdiction of the Review Board in matters similar to this.

III APPLICABLE PRINCIPLES

[8] The relevant provisions of the Act are s. 50.6(5) to (8) which read as follows:

(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.
(7) The review board may hear evidence that is not part of the record and is reasonably required by the review board for a full and fair disclosure of all matters related to the issues under review.

(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.

(emphasis mine)

A. Adequacy of the Investigation

[9] The Review Board has determined in prior decisions that not all complaints will require a College to pursue every possible avenue of investigation, but a Complainant is entitled to an adequate investigation.

[10] The standard I have adopted for assessing the adequacy of investigation in this matter is whether this complaint was investigated diligently, considering its seriousness, complexity and the availability of evidence. The law applying to the adequacy of an investigation was properly determined in Review Board Decision No. 2009-HPA-0001(a)-0004(a) at paras. [97] and [98]:

[97] 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 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.

[11] 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 complaints made against the Registrant. It is not the role of the Review Board to reinvestigate the complaint or to substitute its decision for that of the Inquiry Committee.

B. Reasonableness of the Disposition

[12] The role of the Review Board in assessing the reasonableness of the Inquiry Committee’s disposition of a complaint is to determine whether it falls within a range of defensible outcomes based on the evidence the Inquiry Committee had before it.
The evidentiary standard for assessing the reasonableness of a disposition is based on a review of what was before the Inquiry Committee (the “Record”), along with any additional evidence put before the Review Board that the Review Board considers, upon examination, to be reasonably required for a full and fair disclosure of all matters related to issues under review: s.50.6(7) of the Act.

The substantive test for assessing reasonableness is set out in the Dr. Q.v. College of Physicians and Surgeons of British Columbia, [2003] S.C.J. No. 18 (SCC) at para. 39, where the Supreme Court of Canada held, paraphrased as follows: the reasonableness standard which ought to be applied to the College’s disposition requires deference to the decision of the Inquiry Committee. It is not open to the Review Board to ask itself whether it would have arrived at the same decision as the inquiry Committee. Rather the test is whether the Inquiry Committee’s decision was reasonably supported by the information that was before it, and whether it can withstand “a somewhat probing examination.”

In the Review Board Decision No. 2009-HPA-0001(a)-0004(a), paras. [90] to [94] the Review Board set out a comprehensive description of the applicable law regarding the “reasonableness of the disposition” which I adopt. In regard to the reasonableness of the disposition, the Review Board stated in the above noted decision at para. [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.

The Review Board is not to decide whether the Inquiry Committee’s decision was right or wrong, and administrative law does not require that the disposition be one that the Review Board would have made. Rather, it must be a disposition that is supported by the evidence from the investigation, and one that fits within the range of acceptable and rational outcomes.

IV BACKGROUND FACTS

The Registrant is an Occupational Health Nurse employed with the Occupational Health and Rehabilitation Program (“OHRP”) of the British Columbia Public Service Agency. This program provides advice and services regarding workplace disability issues to employees and managers across the BC public service.

The Complainant was a Correctional Officer employed with the BC Corrections Branch, Ministry of Justice. His complaint related to his referral to the OHRP in August 2010, after he had been sent home from work due to “slurred speech and lethargic demeanor” and after his family doctor assessed him as “suffering from significant anxiety and stress due to his interactions at work”.

According to the Complainant at the time of his referral to the OHRP, he was pursuing a complaint with his employer concerning allegations of harassment and bullying within the workplace. The harassment and bullying complaint apparently concerned matters within the workplace unrelated to the Registrant. In the
circumstances, his family doctor had advised him to stay off work until the harassment and bullying investigation had been completed.

[20] The Complainant’s file was referred to the Registrant in her capacity as an Occupational Health Nurse employed by the OHRP. As an Occupational Health Nurse, it was her role to “coordinate any necessary clinical evaluation or services” and “arrange for recovery supports where indicated” to facilitate the Complainant’s return to work. According to the Registrant, her involvement with the Complainant’s file ended after necessary return to work assessments were completed, a solution had been found to address the Complainant’s disagreement with a recommended follow up, and responsibility for the Complainant’s file was shifted to a Disability Case Manager.

[21] On July 26, 2011, the Registrant initially provided the College with a two-page response to the Complainant, denying his allegations against her. She also provided:

(a) a detailed chronology of events pertaining to the Complainant’s complaint;
(b) a letter from the Medical Director of the BC Public Service Agency’s Workplace Health and Safety Branch, providing information about the OHRP and the role of Occupational Health Nurses within it; and
(c) a performance evaluation from her employer.

[22] Following receipt of the Registrant’s initial response to the complaint, a CRNBC Professional Conduct Review Consultant attended at the BC Public Service Agency on September 23, 2011 and met with the Medical Director and two other management representatives of OHRP for three hours to interview them regarding the Complainant’s complaint and the Registrant’s response, and to obtain additional information relevant to the complaint. Detailed notes from that interview are recorded in the Investigation Report subsequently prepared by the Consultant.

[23] The Investigation Report was also updated to reflect additional information provided in the follow-up to the interview, including information obtained from the Registrant’s manager.

[24] The Consultant also obtained additional documentation, including OHRP job descriptions for the Occupational Health Nurse position, various OHRP policies and forms, and various clinical record materials, including an individual encounter record regarding the Complainant’s interactions with OHRP staff, and copies of consent forms signed by the Complainant authorizing the exchange of medical information for the purposes of the OHRP.

[25] On October 28, 2011, the Consultant and another CRNBC Professional Conduct Review Consultant proceeded to meet with the Complainant for the purpose of discussing his concerns, clarifying and organizing the documentation he had been providing, and attempting to identify a possible resolution to his complaint. Detailed notes of the matters discussed at that meeting were recorded. The notes also recorded the CRNBC Consultant’s observation that, when information came up during the meeting that was contradictory to the Complainant’s view, the Complainant “leafed through his pages and would redirect the conversation”.

The Consultant subsequently met on March 12, 2012 with the Registrant, her legal counsel and a Dr. A to discuss the Complainant’s complaint and to obtain additional information relevant to the complaint. Detailed notes of that meeting were recorded in the Consultant’s Investigation Report.

At the March 12, 2012 meeting, the Registrant and her legal counsel also provided a 13 page written submission responding, point-by-point, to each of the principal allegations in the Complainant’s complaint. They also provided copies of additional supporting documents referenced in that written submission.

The Registrant’s March 12, 2012 submission included a detailed outline of the circumstances of the Complainant’s referral to the OHRP in August 2010, and the support provided by the OHRP to the Complainant from August 2010 to March 2011 vis-à-vis his return to work on February 28, 2011. The submission also responded in detail to each of the principal allegations in the Complainant’s complaint.

The Registrant also provided a copy of her resume and Dr. A provided a letter of recommendation for the Registrant.

V  PRELIMINARY RULINGS

Faced with two applications of the Complainant requesting the admission of additional evidence and a summary dismissal application of the College, on June 18, 2013 I ruled pursuant to Rule 32(6) of the Rules of Practice and Procedure for Reviews under the Act that I would defer a decision on the summary dismissal application and on the admission of the additional evidence until the final decision in this matter. By a letter dated June 26, 2013, I established the submission dates for the College and the Registrant to respond to the Complainant’s hearing submission and a date for the Complainant to reply to those responses.

VI  SUMMARY DISMISSAL APPLICATION

I dismiss the College’s application for summary dismissal. Such applications are best made when the Complainant’s application for review is clearly, to quote the essence of the test, “bound to fail.” While the content and organization of the Record strongly suggests that the College has met the tests of adequacy and reasonableness (see Part III above), that alone is not sufficient for me to conclude at a preliminary stage that this application for review is bound to fail.

The substance of the Complainant’s application is, on its face, not so implausible that it would cause a reasonable person to conclude, without further information, that the complaint must be a mere fabrication. He has also provided sufficient detail in his application – in addition to extensive evidence supplementary to the Record – that to attempt to reach a decision on a summary dismissal application would in substance be no different from examining the application on its merits. For that reason the course of action fairest to all parties, in my view, is to dismiss the summary dismissal application and proceed to a full examination of the Record, any additional evidence admitted, and the submissions of the parties.
VII ADMISSION OF ADDITIONAL EVIDENCE

[33] The process usually followed by the Review Board is to consider each separate piece of evidence entered as additional evidence which is not part of the record and to make a ruling as to whether it should be admitted because it is reasonably required for a full and fair disclosure of all matters related to the issues under review.

[34] Given the number of documents submitted, see paragraph [6] above, and their ostensible connection to the matters under review I have decided to admit all of them. After a detailed review of such documents I will give them an appropriate weight based on their relevance and probative value to the issues I have to decide.

VIII ANALYSIS

[35] As mentioned in paragraphs [8] to [16] above, I have to determine, applying the principles set forth in the above paragraphs, whether there was an adequate investigation by the College in relation to the complaint and whether its disposition was reasonable.

C. Adequate Investigation

[36] The College appointed a Consultant to investigate the Complaint.

[37] The actions taken by the Consultant as set forth in paragraphs [22] to [26] above included meeting separately with the Complainant and with the Registrant. The Consultant filed with the Inquiry Committee a 21-page investigation report together with 28 appendices relative to the investigation totalling some 358 pages all of which form part of the Record.

[38] As a result of the Consultant’s investigative efforts, the Inquiry Committee had before it reliable information more than adequate to enable the Committee to assess the complaint against the Registrant. Clearly, the College conducted an adequate investigation in accordance with the principles I have previously referenced.

D. Reasonable Disposition

[39] The Complainant summarized his complaint into five distinct allegations which will be considered separately to determine if the disposition by the College was reasonable in accordance with the principles I have previously referenced.

(i) Shared Confidential Medical Information

[40] The allegation of the Complainant was that the Registrant breached Nursing Standards when she shared confidential medical information with the employer of the Complainant and other non-medical staff.

[41] The Inquiry Committee determined that:

(a) the documentation and interviews indicate that the Registrant provided appropriate information conforming to BC Public Service Agency policies and CRNBC Standards of Practice;
(b) the Complainant had signed the standard consent that permits disclosure of selected information;

(c) the disability case manager received only the appropriate information consistent with the consent and organizational policies as a formal member of the team and is the only “non-medical” staff involved in the case;

(d) the information provided to the employer by the Registrant was consistent with the consent of the Complainant, organizational policies and Standards of Practice of the College;

(e) that information provided was limited to that authorized by the consent of the Complainant and in all respects consistent with Standards of Practice and organizational policies; and

(f) the information provided was consistent as necessary to manage the case and in keeping with the practice of occupational health nursing.

[42] Although the Complainant submits otherwise, my review of the Record and the other evidence before me supports the conclusions of the Inquiry Committee. Accordingly, in relation to this allegation, there was a reasonable disposition.

(ii) Falsified Documentation

[43] The allegation of the Complainant was that the Registrant falsified documentation.

[44] The Inquiry Committee determined that:

(a) the information provided in the referral forms and documentation have primary sources identified and those sources are not the Registrant; and

(b) the evidence establishes that the Registrant did not falsify any information as alleged.

[45] Although the Complainant submits otherwise, my review of the Record and the other evidence before me supports the conclusions of the Inquiry Committee. Accordingly, in relation to this allegation, there was a reasonable disposition.

(iii) Malicious Conduct, Practice Beyond Scope and Inadequate Care

[46] The allegations of the Complainant were:

(a) that the Registrant participated in malicious conduct, practiced outside her scope of practice and failed to deliver adequate care; and

(b) the Complainant alleges that the Registrant neglected to refer him to the Occupational Health Program (OHP) Medical Physician for any medical evaluation and acted on her own providing a medical opinion, diagnosis and assessment.

[47] The Inquiry Committee determined that:

(a) there is evidence that the Registrant referred the Complainant to the appropriate health care providers for assessment, diagnosis and support;
(b) the Complainant was referred to the occupational health physician and the Complainant indicated he was unable to attend the appointment as scheduled;

(c) the Registrant arranged for alternate services for a timely assessment and supportive care when the Complainant reported that he was unable to attend the scheduled appointment with the occupational health physician;

(d) it is not a required protocol that everyone referred to Occupational Health Program be first seen and assessed by an occupational health physician;

(e) the Registrant consulted with the medical director of the Occupational Health Program and then, with the Complainant’s consent, the Registrant referred the Complainant to a contracted medical provider;

(f) the medical director for Occupational Health provided administrative case management strategies and authorization for examination costs by a contracted provider;

(g) the evidence established that the Registrant practiced within her scope of practice, provided adequate care in accordance with the Standards of Practice and in accordance with the requirements of her employer as an occupational health nurse; and

(h) the Registrant advocated for the Complainant while effectively managing a potentially significant safety concern for the Complainant and his workplace in keeping with Professional Standard 4: Ethics and the dual nature of occupational health nursing that engages the client and employer.

[48] The Inquiry Committee then concluded that the Registrant practiced within the scope of her practice, consistent with the Standards of Practice, and there was no evidence of malicious conduct.

[49] Although the Complainant submits otherwise, my review of the Record and the other evidence before me supports the conclusions of the Inquiry Committee. Accordingly, in relation to this allegation, there was a reasonable disposition.

(iv) False Remarks to Complainant’s Employer

[50] The Complainant alleges that the Registrant advised his employer that he had threatened her. The Complainant stated that these false remarks are malicious, intimidating and threatening and were intended to discredit him and blame him for his injury.

[51] The Inquiry Committee determined that:

(a) there is documented evidence that the Complainant did threaten to sue the Registrant;

(b) the evidence establishes that the medical director of the occupational health directed the Registrant to cease verbal communication with the Complainant and to utilize the services of the disability case manager to confirm the Complainant’s case management including appointments;
(c) the Registrant did notify the Complainant’s manager about his statement related to suing her to explain why she was no longer in verbal communication with the Complainant;

(d) it is standard practice to notify a client’s manager when there are barriers to proceeding with the referral to Occupational Health;

(e) the consent does include the release of pertinent non-diagnostic information to assist with rehabilitation and return to work planning;

(f) the information provided was factually correct, appropriate, and in keeping with the occupational health assessment and referral process; and

(g) the Registrant’s employer has provided a letter of recommendation supporting the Registrant.

[52] The Inquiry Committee then concluded that the Registrant was meeting her Professional Standards.

[53] Although the Complainant submits otherwise, my review of the Record and the other evidence before me supports the conclusions of the Inquiry Committee. Accordingly, in relation to this allegation, there was a reasonable disposition.

IX CONCLUSION

[54] In making this decision I have considered all of the information and submissions before me whether or not I have specifically referenced them. In reviewing the additional evidence submitted by the Complainant I found that it had marginal relevance to the specific matters I had to decide, and for that reason also had limited probative value relative to the Complainant’s allegations. I therefore accorded it little weight.

[55] I found that the evidence amassed by the Consultant in the course of the investigation was, in contrast, focused on the issues created by the Complainant’s allegations, was for the most part documentary in nature, and where the evidence was based on interview statements, the statements given were cogent and detailed. For that reason I concluded that the Complainant had not persuasively established that the College’s investigation was inadequate, or its disposition unreasonable.

[56] For the reasons given above, I have found that there was an adequate investigation by the College and that its disposition was reasonable. Accordingly, I confirm the disposition of the Inquiry Committee.

“J. Thomas English”

J. Thomas English, Q.C., Chair
Health Professions Review Board

August 28, 2013