DECISION NO. 2012-HPA-088(a); 2012-HPA-089(a)  
(Grouped File: 2012-HPA-G13)

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 and Surgeon  
AND: A Physician and Surgeon  
BEFORE: Herbert S. Silber, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT 1

REGISTRANT 2

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on April 2, 2013

APPEARING: For the Complainant: Self-represented  
For the College: Sarah Hellmann, Counsel  
For both Registrants: Lindsay Johnston, Counsel

I DECISION

[1] Upon considering the application made by the Complainant under section 50.6 of  
the Act, it is my decision that the disposition of the Registrar which, pursuant to s.32(5)  
is considered to be a disposition of the Inquiry Committee of the College, is confirmed.

II INTRODUCTION

[2] The Complainant was referred to Registrant 1 for an assessment of a significant  
cataract in his right eye and a lens replacement. Registrant 1 performed the surgery on  
September 28, 2010 ("First Surgery") on the Complainant.

[3] Registrant 1’s surgery resulted in a complication, which necessitated further laser  
surgery for the Complainant performed by Registrant 1.
An additional assessment was then performed by Registrant 2, which resulted in further surgery on May 10, 2011 (“Second Surgery”) by Registrant 2 on the Complainant’s right eye, apparently to prevent retinal degeneration in that eye.

The Complainant complains that after the First Surgery there was an opaque object blocking his vision in his right eye, which continued after the surgery by Registrant 2. He also says that following the Second Surgery there was an onset of sensitivity in that eye to light, as well as pain and pressure.

Thereafter, on September 19, 2011, the Complainant filed a complaint with the College (“Complaint”).

On March 29, 2012 the College Registrar sent a letter to the Complainant (Letter of Disposition) outlining the nature of the complaints, the responses from Registrants 1 and 2, and the disposition (“Disposition”).

III ISSUES

The issues I must address in this matter as prescribed by s. 50.6(5) of the Act are two: was the investigation conducted by the College adequate and the disposition reasonable?

IV FACTS

In the Complaint, after reviewing the various interactions with Registrants 1 and 2, the Complainant left 10 questions for the Registrants and the College to respond to. These 10 questions were as follows:

(a) Did my original condition require cataract surgery?
(b) Was the implanted lens the right choice or fit?
(c) Were the medications prescribed appropriate?
(d) What caused the film to develop over the right eye?
(e) How effective was the first laser surgery, and why couldn’t the film be removed completely?
(f) The purposes of the OCT and Fluorescein AngioGram tests.
(g) Did the second laser surgery have the correct usage of equipment and procedures?
(h) What were the reasons for the pain and discomfort in the eye during the second laser surgery?
(i) Why was the stated reason for the second laser surgery changed after the procedure, from fixing a problem with floaters to fixing an issue with the retina?

The College forwarded a copy of the Complaint to both Registrants 1 and 2 requesting a response, which response was to summarize “your interactions with [the Complainant] and address the identified concerns.” A request was also made for
medical records, notes, operative reports as applicable, X-ray studies and “…any other relevant material in your patient record.”

[11] Both of the Registrants sent the College detailed letters in response, as requested, and included their medical records, notes and other documentation as sought by the College.

[12] The Complainant was then given the opportunity to respond to the letters sent by the Registrants to the College.

[13] The Complainant took that opportunity and sent a letter to the College on January 4, 2012 (“Reply Letter”). In this letter the Complainant raised new concerns that Registrant 1 was overly busy with the number of patients he sees and that his attendances were brief and rushed. As for Registrant 2, he expressed a concern that his assistant had performed some of the examinations.

[14] The Complainant in his Complaint concluded by asking the College for a professional review and whether he could still be cured.

[15] The Letter of Disposition goes through the 10 questions asked by the Complainant and provides the responses to each of the questions by Registrants 1 and 2, as appropriate.

[16] From Registrant 1, the Letter of Disposition sets out the following:

[Registrant 1] notes that he had answered your five questions. He notes that the diagnosis of cataract was correct and your myopia was confirmed by your near sightedness rapidly progressing from 6D to 8D. After the cataract surgery, your visual acuity had improved to 20/30. He confirms that the lens chosen was correct based on the measurements that were done. He also notes that the medications prescribed were typical for patients requiring this treatment, and were routinely provided by most ophthalmologists. These included a combination of antibiotics to minimize infection, along with anti-inflammatory and steroid medications to minimize swelling and inflammation both during day and night.

[Registrant 1] notes that the subsequent development of a posterior lens capsule opacity (POC) is a common development. He explains that the posterior capsule has to be left in place in order to secure the position of the newly implanted lens. If such opacity occurs, the capsule is removed with the YAG laser. He notes that the YAG laser will remove the central aspect of the capsule behind the lens, however, the outside rim cannot be removed because it will cause instability of the intraocular lens.

The records provided by [Registrant 1] are consistent with his response.

[17] With respect to Registrant 2, the Letter of Disposition states:

With respect to your specific question, [Registrant 2] has answered questions 6 and 8 and confirms that the equipment used for the second laser surgery was appropriate both in terms of usage and purpose. With respect to your last question, [Registrant 2] again confirms that the laser treatment was not for floaters but was a preventive treatment to minimize the chance of you developing a retinal detachment.
The Letter of Disposition concluded as follows:

After conducting a careful review of the documentation available, we are satisfied that the care provided to you by [Registrant 1] and [Registrant 2] was appropriate and met current ophthalmological standards. Specifically, the initial assessment, investigation, diagnosis and surgical recommendations were thorough and logical. Both the cataract and argon laser surgeries were performed competently and, when you developed a posterior capsule opacity, the correct treatment was implemented. Both physicians made appropriate prescribing decisions and our review found nothing controversial or untoward about the management of your eye care.

...

... It is a reality of medical practice at present that the demand for eye surgery and the limited number of ophthalmologists means that some inevitably operate high volume practices. [Registrant 1] has both a professional and a legal obligation to set aside the time required to ensure that consent for surgery is fully informed. These discussions take place in the privacy of clinical settings. It is not possible for the College to definitely adjudicate this aspect of your complaint. We do remind [Registrant 1] of his obligations in this regard and of our expectation that all physicians and surgeons will treat patients with kindness and respect. This review found that acceptable indications for surgery were documented; the right operation was performed competently; and other aspects of the care you received were standard. We therefore found no basis for regulatory criticism of [Registrant 1] in this regard.

This correspondence will be retained in [Registrant’s 1] permanent file at the College, potentially available for further consideration if concerns of a similar nature are brought to our intention in the future.

The complications that you have experienced are, unfortunately, relatively common. There is no indication either [Registrant 2] or [Registrant 1] provided you with substandard care, were negligent, or demonstrated a gap in their clinical training. As we are unable to substantiate your complaints, we conclude that formal criticism of the physicians is not warranted in this instance.

...

On a final note, we would note that, as a regulatory body, it is not the College’s role to evaluate your current health concerns. Any further assessment is properly left to those physicians who have direct contact with you as a patient. It is not clear to us whether you have sought medical assistance after your last visit to [Registrant 2] in Summer 2011, but our general advice would be that if you continue to have concerns, you should seek the opinion of a specialist, who can assess your current status and advise if any measures can be taken to alleviate your discomfort. This can, of course, be arranged through your family physician.

V DISCUSSION AND ANALYSIS

A. Adequacy of the Investigation

[19] Before I proceed to examine the issues raised by this Application, I want to address the matter of the Registrar’s authority to render the decision to dispose of the complaints.
[20] As stated in the first paragraph of the Letter of Disposition, the complaints were disposed under s.32(3) of the Act.

[21] From my review of the Letter of Disposition, I am satisfied that the Registrar of the College made the decision to dispose of the complaints under “Stream 2” as identified in the Review Board Decision No. 2011-HPA-0018(a). I am also satisfied that the Registrar had the jurisdiction to make the disposition he did – see Review Board Decision No. 2011-HPA-0118(a) and Review Board Decision No. 2009-HPA-0047(a).

[22] The interpretation as to what constitutes an “adequate investigation” for Review Board purposes was set out in Decision No 2009-HPA-0001(a) to 0004(a) (at paras. [97] and [98]) and has since been followed by a number of Review Board decisions:

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 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.

[23] The College investigated this matter by reviewing the Complaint, obtaining specific responses from the Registrants to the 10 questions asked by the Complainant, seeking and receiving a detailed interaction between the Registrants and the Complainant as well as relevant documents such as medical records, notes, x-rays, reports and treatment history. Further, the College gave the Complainant a further opportunity to reply, which he did in the Reply Letter.

[24] It is to be observed that in his Application for Review the Complainant does not raise any issue with respect to the adequacy of the investigation conducted by the College. The Complainant was given an opportunity to file a Statement of Points for the Review Board, but declined to do so. On the basis of the steps taken by the College described in the previous paragraph, I find that the investigation was adequate.

B. Reasonableness of the Disposition

VI CONCLUSION

[25] The test of what constitutes “a reasonable disposition” is guided by the standard of judicial reviews set out by the Supreme Court of Canada in Dunsmuir v. New Brunswick, 2008 SCC 9. In Review Board Decision No. 2009-HPA-0001(a) to 0004(a), the panel quoted from paragraph 47 of the Dunsmuir decision and stated the following, which I adopt as the correct approach which should be taken in considering the reasonableness of a disposition; in particular the following extract:

A court conducting a review of reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to
outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[26] I am satisfied based upon the Record before me that the Disposition is defensible both on the facts and the law. It is a justifiable, transparent and intelligible Disposition, and falls within a range of acceptable outcomes.

VII CONCLUSION

[27] Pursuant to s.50.6 (8)(a) of the Act, I confirm the disposition of the Registrar which, pursuant to s.32(5) is deemed to be a disposition of the inquiry committee.

[28] In making this decision I have considered all of the evidence and submissions before me, whether or not specifically re-iterated in these reasons.

“Herbert S. Silber”

Herbert S. Silber, Panel Chair
Health Professions Review Board

June 11, 2013