DECISION NO.  2012-HPA-093(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: Sandra McCallum, Panel Chair

DATE: Conducted by way of written submissions concluding on December 11, 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, it is my decision that the disposition of the Inquiry Committee of the College is confirmed.

II INTRODUCTION

[2] In her application for review the Complainant requested a review of the decision of the Inquiry Committee of the College (the “Inquiry Committee”) with respect to the Registrant. The Complainant filed her complaint as a result of the Registrant’s attendance on her at the emergency ward of a hospital in [A] on March 23, 2011.

[3] The Complainant alleges that the Inquiry Committee’s disposition is incorrect and unfair. This allegation stems from the Complainant’s assertions that there are blatant errors in the Inquiry Committee report. She points to a number of mistakes in the letter she received from the College which dismissed her complaint. Her main complaint is that the Registrant treated her badly and refused to administer an injectable narcotic to relieve her severe pain.
[4] There is no doubt that the Complainant has suffered severe stomach pain for a number of years. She had a prescription for oral medication which did not relieve her pain. In the past she had been given injectable narcotics. On this occasion the Registrant declined to accede to the Complainant’s request for injectable narcotics because she had oral narcotics at home, and because of her belief that frequent use of injectable narcotics can lead to dependency.

[5] The Complainant became angry and left the emergency room before the Registrant could examine her. The Complainant then drove with her father from [A] to [B] where she attended the emergency department at a hospital and was given the injectable narcotic which did alleviate her pain.

[6] The Inquiry Committee had to decide whether the failure of the Registrant to administer an injectable narcotic represented conduct which merited criticism from the College. The College determined that it did not.

III JURISDICTION OF THE REVIEW BOARD

[7] On a review application the Review Board has limited jurisdiction. It cannot revisit the substance of complaint; it can only address two questions as set out in s.50.6 of the Act. Those questions are:

   (a) Did the College adequately investigate the complaint against the Registrant?
   (b) Was the College’s decision to dismiss the complaint reasonable?

[8] The Act in s.50.6(6) requires that the review be undertaken as a review of the record, meaning that it is not a retrial of the complaint but a review of the written record of the College’s investigation and the disposition of the complaint.

IV ISSUES

A. Adequacy of the Investigation

[9] In conducting the investigation the Inquiry Committee assembled pertinent information with respect to the complaint. The key issue was the Registrant’s refusal to give the Complainant an injectable narcotic to manage her severe pain. The Inquiry Committee addressed the allegations in the complaint and the subsequent correspondence from the Complainant.

[10] The Inquiry Committee also obtained and reviewed responses from the Registrant and the Complaint’s family physician and the hospital where the injectable narcotic was given.

[11] The Review Board has held in Decision 2009-HPA-0001(a);0002(a);0003(a) and 0004(a) at paras. [97] and [98] that:

   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.

B. Reasonableness of the Disposition

[12] The Act sets out that the College has a mandate to protect the public and regulate the conduct of its registrants. In order to find that a physician’s conduct was not satisfactory clear and convincing evidence is required.

[13] What constitutes reasonableness was considered by the Supreme Court of Canada in Dr. Q v. College of Physicians and Surgeons of British Columbia [2003] S.C.J. No 18(SCC) at para 39. Was the tribunal’s assessment “unreasonable in the sense of not being supported by any reasons that can bear a somewhat probing examination”?

[14] The Review Board has observed in Decision No. 2009-HPA-0001(a);0002(a); 0003(a) and 0004(a) that the Supreme Court of Canada in Dunsmuir v. New Brunswick 2008 SCC9 stated:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and 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.

[15] Again the Review Board has noted that when assessing the reasonableness of a disposition,

…the Review Board’s focus is not to step into the shoes of the Inquiry Committee, but rather to determine whether the Inquiry Committee’s disposition falls in 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.

(Decision Nos. 2009-HPA-0001(a);0002(a);0003(a) and 0004(a), para. [92])

V ANALYSIS AND DISCUSSION

[16] To determine whether the investigation was adequate as explained in the case law I looked at the process utilized by the Inquiry Committee and the material examined by it.

[17] The Inquiry Committee addressed the Complainant’s concerns by obtaining the Complainant’s medical records from the hospital in [A] where the Complainant had attended on December 10, 2010, January 18 2011, March 11, 2011 and was the subject of the complaint on March 23, 2011. The College also obtained the Complainant’s records from the hospital in [B] where the Complainant attended later on March 23, 2011 after leaving the hospital in [A] without receiving the treatment she had requested.
[18] The College in addition had before it the Complainant’s complaint form dated April 29, 2011, a letter from the Complainant dated May 9, 2011 containing additional information, and a third letter from the Complainant dated November 24, 2011. It also reviewed letters from another physician providing information as well as a response to the complaint by the Registrant.

[19] The Complainant points to some errors in the Inquiry Committee’s disposition. The Inquiry Committee referred twice to the Complainant having a gastrostomy tube. She in fact had a J tube. The Inquiry Committee did refer to this correctly in the summary of the complaint. This error does not lead to a conclusion of an inadequate investigation but an inadequate editing process.

[20] There is no doubt that the Complainant was suffering excruciating pain when she was attended by the Registrant. However, the decision as to what constituted an appropriate attendance on the Complainant by the Registrant is a matter at the heart of the Registrant’s authority to decide. The fact that other doctors prescribed the injection does not necessarily mean that the Registrant was wrong in declining to do so.

[21] Given this detailed examination of the relevant information the inquiry was clearly adequate.

[22] The Review Board must also decide whether the Inquiry Committee’s disposition was reasonable. In so doing the task for the Review Board is not to ask whether it agrees with the Inquiry Committee’s disposition but rather whether it falls in the range of possible acceptable outcomes.

[23] Whether the Inquiry Committee’s disposition is reasonable or not depends on whether the Inquiry Committee assessed the possible courses of action open to the Registrant. The Inquiry Committee noted that there are published guidelines to assist practitioners in choosing the appropriate treatment to deal with severe pain. The Inquiry Committee determined that the registrant’s decision not to administer an injectable narcotic was a choice well within the practice guidelines. This being the case the disposition is reasonable.

VI CONCLUSION

[24] In summary, for all the reasons set out above, and applying the standards of review to the written submissions provided by all parties, I find the Inquiry Committee’s investigation was adequate and the disposition reasonable.

[25] In making this decision, I reiterate that I have considered all the information and submissions before me, whether or not referred to in these reasons.

“Sandra K. McCallum”

Sandra K. McCallum, Panel Chair
Health Professions Review Board

May 1, 2013