DECISION NO.  2012-HPA-108(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 and Surgeon

BEFORE: Marilyn Clark, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on February 28, 2013

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] The Complainant was 77 years of age at the time of the incident that triggered the complaint. He has been profoundly deaf since birth and although he is reported to have attended school for 10 years, he has the equivalent of a grade 3 or 4 education.

[3] Over the years, the Complainant has been assisted with his financial affairs by members of his family; initially by his mother and since 1997 by a younger sister who had Power of Attorney.

[4] In 2010, he started to be suspicious of how his sister was managing his financial affairs. He lost his driver’s license, his sister took his car away and transferred it into her own name. He had apparently asserted that he “would drive anyway”.
[5] About this time, he met a woman who he subsequently married. He began to investigate and took steps to revoke his sister’s Power of Attorney.

[6] The Registrant, a Psychiatrist, met with the Complainant on two occasions: first at the request of the local mental health unit; later at the request of a lawyer representing his sister who asked the Registrant to conduct a review of whether or not the Complainant was competent to handle his own financial affairs.

[7] Following two interviews, the Registrant wrote as follows:

It is my belief that [the Complainant] does not have the capacity to understand and manage his financial affairs. I think this is largely secondary to his on-going and chronic mental handicap but is also exacerbated by age related illness as well. The prognosis here is only for further deterioration. I do not see this improving and I do not see [the Complainant] returning to his previous level of capacity, nor do I see him improving to a level where he would be competent and capable of managing his financial situation.

The Registrant added “I would suggest that [the Complainant] is highly susceptible to the influence from those who may have inimical intent.”

[8] The Complainant claims that the Registrant acted unprofessionally and that the Registrant’s assessment includes falsehoods.

III ISSUES

[9] The issues before me are:

(a) Was the investigation conducted by the Inquiry Committee adequate?
(b) Was the disposition of the Inquiry Committee reasonable?

IV BACKGROUND

[10] The Registrant first made contact with the Complainant on February 23, 2010, at the urging of the local mental health unit. The Registrant has a special interest in geriatric psychiatry. Concern had been expressed with regard to the possibility of financial abuse of the Complainant. The Complainant’s eldest brother was present for part of that interview and was able to provide some background information.

[11] Following that meeting, the Registrant recorded the reason for the assessment:

There have been some concerns about an evolution in [the Complainant’s] life. He has developed a liaison with a woman who is a waitress who goes by the name of [name] at one of the local restaurants. There is some concern that [the Complainant] will be targeted for financial abuse from this woman. There are some concerns about what her motives are. [The Complainant] has been cared for by his family over the years. Apparently there have been some attempts to change the Power of Attorney in favor of her. I have been asked to review the situation with regards to [the Complainant].

[12] The Registrant’s summation with respect to the Complainant’s ability to manage his own finances was as follows:
I am not certain that this man is capable in terms of his finances. He has a very loose appreciation. He has a very simplistic attitude towards his financial situation. I certainly think that he could be easily taken advantage of. He would certainly be a vulnerable adult to say the least.

[13] And further on in the assessment:

I am inclined to fill out the Public Guardian & Trustee form for them to review the situation. I am quite concerned that if Power of Attorney is changed in terms of this other individual that is poorly known to the situation, that he could easily be taken advantage of and his funds dispersed inappropriately.

[14] At about this point in the chronology of events, the Complainant’s sister who possessed the existing Power of Attorney, on the advice of the Public Guardian & Trustee, made application to be awarded Committee.

[15] On March 5, 2010, a locum for a local family physician stated in writing that he found the Complainant “both physically and mentally healthy . . . mentally competent to manage his own affairs.”

[16] Another medical practitioner in the local area examined the Complainant on May 20 and June 17, 2010, on each occasion for over 30 minutes, and reported as follows in response to a request from the Complainant’s lawyer to determine whether the Complainant was capable of managing his own affairs:

My feeling is that [the Complainant] is capable of understanding his finances and managing them with some occasional assistance. My feeling is that [the Complainant] does have some degree of cognitive deficit and some difficulty with interactions and communication with others and may be at risk of being taken advantage of. I hope that as his lawyer you will be able to come to some solution with [the Complainant] that will be acceptable to him while still giving him some degree of protection from financial abuse.

[17] On May 4, 2010, the Registrant once again made contact with the Complainant, this time in response to the request from the lawyer representing the Complainant’s sister. It was the report following this consultation that triggered the complaint to the College. Part of the complaint also revolved around the location of the interview. According to the Registrant, the Complainant refused to have the meeting at his home or at the office. There finally was an agreement to meet at the A&W Restaurant. The Complainant states that the interview took place in a public place and many personal questions were asked. He further complains that because he is deaf an interpreter should have been provided. According to the Registrant, an interpreter was never requested. The Registrant wrote out the questions; the Complainant responded after reading the questions.

[18] The Registrant, in response to the questions posed by the lawyer, stated as quoted in paragraph [7] above and repeated here for convenience:

It is my belief that [the Complainant] does not have the capacity to understand and manage his financial affairs. I think this is largely secondary to his on-going and chronic mental handicap but is also exacerbated by age related illness as well. The prognosis here is only for further deterioration. I do not see this improving and I do not see [the
Complainant] returning to his previous level of capacity, nor do I see him improving to a
level where he would be competent and capable of managing his financial situation.

[19] Another psychiatric consultation occurred on July 22, 2010, while the
Complainant was hospitalized for an unrelated issue. We are not privy to who made the
request for the consultation, although the family physician is copied on the report. This
psychiatrist was asked to determine the Complainant’s capacity to manage his estate
and summarized his opinion as follows:

I will say that this man lacks the capacity to consent to manage his estate and my
recommendation is that a substitute decision maker should be employed to make these
decisions for him. . . Because of his age, the nature of his mental retardation and
because of his previous behavior with finances in the past, I must advise that it will be
better that the public trustee guardian should take over managing his estate or at least
his next-of-kin as one may not know what outsiders will do to his finances.

[20] To add to the chronology of events, on August 31, 2010, the Complainant

[21] Certificate of Incapability was issued by the Health Authority on November 25,
2010, which established the Public Guardian and Trustee as the manager of the
Complainant’s financial and legal affairs.

[22] To summarize, this gentleman, of limited education, who has been deaf since
birth, has had his financial and legal affairs placed in the hands of the Public Trustee
and Guardian. He has recently married. He has some wealth as a result of the sale of a
farm some years ago. The local mental health unit, his sister and family and the
Registrant and another psychiatrist do not believe he has the capacity to manage his
own financial and legal affairs. There is concern among all of the parties of the
possibility of him being taken advantage of. He, meanwhile, wants to have control over
his finances so that he can provide for his new wife and the family he married into. His
complaint, filed against the Registrant, relates to the outcome of the Registrant’s
assessment and the circumstances of the interview that led to the decision.

V ROLE AND JURISDICTION OF THE REVIEW BOARD

[23] 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.
[24] The options available to the Review Board are outlined in s. 50.6 (8) of the Act:

(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.

[25] Frequently when a Complainant is not satisfied with the results of an investigation by the Inquiry Committee, often because the Inquiry Committee did not establish that a Registrant was wrong and the Complainant was right, an application for review is made to the Review Board.

[26] Just as frequently, the Complainant does not understand the legislative limitations provided by the Act. The Review Board cannot replace the decision of the Inquiry Committee with one that would be preferable to the Complainant. The Review Board cannot recommend discipline. The Review Board can only determine whether or not the investigation conducted by the Inquiry Committee was adequate and whether the disposition is reasonable. If not, the file can be returned with directions. However, if it is found that the investigation was, indeed, adequate and the disposition reasonable, then the Review Board is bound to uphold the decision of the College.

[27] Despite how much empathy a reviewer might have for the circumstances in which a Complainant finds himself, the only tests available to the Review Board are the adequacy of the investigation and the reasonableness of the disposition by the College.

VI ADEQUACY OF THE INVESTIGATION

[28] The College requested and received responses from the Registrant and two other physicians, along with their records. In addition, the response from one of those physicians included a report written by a psychiatrist who examined the Complainant while in the hospital.

[29] In addition to the initial complaint, the College had numerous submissions from the Complainant that helped to frame the issues.

[30] In Review Board decision 2009-HPA-0001(a); 2009-HPA-0002(a); 2009-HPA-0003(a); 2009-HPA-0004(a) at paragraph [97] articulates the extent to which a College must investigate a complaint:

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.

[31] I do not know what further information could have been available that the College did not have. Further investigation, whatever that might have been, would not have
provided the outcome the Complainant was seeking. In my opinion, the investigation was adequate.

VII REASONABLENESS OF THE DISPOSITION

[32] The conclusion of the College Registrar, supported by the Inquiry Committee, is to not be critical of the Registrant:

[The Registrant] was asked to assess your competency under the Adult Guardianship Act and at the request of the lawyer. On both occasions when he saw you, he spent time, and asked you appropriate questions. Although the second interview was done in a restaurant, it appears that this was at your insistence. No interpreter was present but there is no information to suggest that you have ever had an interpreter with you or that you had requested one during your medical visits. All questions posed to you by [the Registrant] were put to you in a written form. There is evidence in the file that [the Registrant] formed his opinion carefully and with adequate judgment. . . We therefore consider there to be no reason for regulatory criticism of his conduct in this matter.

[33] Based on the Record, I find this disposition to be reasonable.

VIII CONCLUSION

[34] I find the College’s investigation adequate and the disposition of the investigation reasonable. Accordingly, the disposition of the Inquiry Committee is confirmed.

[35] In making these decisions I have considered all of the information and submissions whether or not specifically reiterated herein.

“Marilyn Clark”

Marilyn Clark, Panel Chair
Health Professions Review Board

May 1, 2013