DECISION NO. 2012-HPA-114(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: Victoria Kuhl, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on March 6, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

I DECISION

[1] Upon reviewing the application of the Complainant under section 50.6 of the Act and the decision of the Registrar of the College considered to be a disposition of the Inquiry Committee, s.32(5) I confirm the disposition of the Inquiry Committee.

II INTRODUCTION

[2] The Complainant applied for a review of the disposition (decision) that she received in a letter of April 3, 2012 from the Registrar. The Complainant does not believe that the Registrar addressed the primary concerns in her complaint and did not provide a rationale for the College’s conclusions.

III BACKGROUND

[3] The Complaint arose following a breakdown over time in the professional relationship between the Complainant and a Registrant. The Complainant first saw the Registrant in October 2007 for fibromyalgia, depression and a hypothyroid condition. For the first two years of medical treatment the Complainant’s symptoms improved
somewhat. In the following year her symptoms of fatigue returned. In that year their professional relationship began to deteriorate.

[4] In the third year during the Complainant’s final visit to the Registrant, the Registrant stated that he was unable to continue to provide her with good medical care since he no longer believed they had a mutually respectful and trusting relationship. He confirmed his position to the Complainant in a letter she received April 8th 2011.

[5] On the same day she received his dismissal letter she responded by writing the Registrant a lengthy detailed letter that was disparaging of his care and advice and his personal role in their professional relationship.

[6] On the same day she received the dismissal letter from the Registrant she also submitted a complaint to the College asking that the Registrant receive professional treatment for personal psychological problems. She included a copy of the letter she had written to the Registrant and a copy of the Canadian Medical Association (“CMA”) Code of Ethics.

[7] The Registrant in his response letter to the College disputes many of the criticisms found in her letter to him in particular he disputes that he did not give good medical advice and care.

[8] The Inquiry Committee outlined the investigation conducted by the Registrar of the College and confirmed the disposition that affirms the Registrant did not violate the Code of Ethics and met the patient standards of care of the College.

IV ROLE OF THE REVIEW BOARD

[9] My mandate in this written hearing is to proceed in accordance with the statutory requirements of the Act. I am to base my decision on the evidence in the Record and other admissible evidence. After considering the evidence and the submissions of the parties I am to determine if there was an adequate investigation and whether the disposition of the complaint (the “Decision”) is reasonable.

V ISSUES

[10] As mentioned, the main issues on this application are to determine whether the investigation of the Registrar was adequate and whether the disposition was reasonable. In this instance the Registrar made the disposition based on his investigation and the Inquiry Committee is considered to have confirmed his decision.

VI DISCUSSION AND ANALYSIS

A. Adequacy of Investigation

[11] In investigating the Complaint the Registrar obtained and completed a full review of the responses and records received from all the relevant parties including the following which formed part of the official record (Record):

(a) The complaint form to the College;
(b) Registrant’s letter to Complainant with notice he is ending his care of her;
(c) Complainant’s letter of response to the Registrant;
(d) Registrant’s letter of response to the College;
(e) Medical records of the Registrant;
(f) Letter from the College with the disposition of the complaint; and
(g) Inquiry Committee-Registrar disposition reports.

[12] The remedy the Complainant seeks is for the Review Board to send the matter back to the College for reconsideration with the direction that the College investigate whether the Registrant violated the Code of Ethics by dismissing a patient with fibromyalgia. She further requests that the decision letter should be revised to delete the portion of the letter that discusses fibromyalgia as a condition that is incurable and difficult to treat.

[13] The Complainant’s letter of response to the Registrant that was copied to the College accused the Registrant of a lack of action in addressing her complaints of debilitating fatigue and inability to work due to fibromyalgia. The accusation was expanded in her complaint letter to the Review Board and in her submissions to this Hearing.

[14] In these letters she refers to the Code of Ethics of the CMA. She identifies 13 points of the Code she believes the Registrant violated as well as a specific point that relates to initiating and terminating patient relationships. In her written submission of December 21, 2012 she did not include evidence to support each of the alleged violations. The College indicated they did review the evidence in light of her allegations of Code violations but found none.

[15] The Complainant states that the Registrant did not pursue reasonable options to treat her fibromyalgia and discriminated against her by terminating their professional relationship because she had fibromyalgia.

[16] It is apparent that the Registrant did provide treatment and medical advice for her symptoms but that they did not result in the outcome she had hoped for. On its face this does not constitute a lack of action or a violation of the CMA Code.

[17] The Record states that the treatment did provide some relief over a period of the first two years of a three year period. The Complainant came to Registrant’s office approximately every three months for a review of her symptoms and for the Registrant to adjust and renew her prescriptions which he did. During the three year period she visited his office 22 times.

[18] The Registrant further stated in his letter that he felt his “role as your primary care giver has been minimized and you have been distrusting of the medical advice I have given for the treatment of your condition.”

[19] The Complainant’s initial letter to the Registrant stated “I am challenged to think what medical advice you gave me that I did not accept.” One of her complaints was “the main reason for looking elsewhere for medical information is that you didn’t give me any advice at all on how to deal with fibromyalgia.”
[20] The disintegration of a professional relationship between patient and doctor that results in lack of trust and respect is reason enough for either the patient or the doctor to terminate the relationship. That the doctor did so is his right if he has given valid reasons. This is not a violation of the Code of Ethics.

[21] The complaint letter reiterated her unhappiness with the doctor-patient relationship as evidenced by her unmet request for explanation of tests, his initial unwillingness for referral to specialists and her dissatisfaction at the manner in which he managed the drug therapy treatment the Registrant prescribed at her office visits.

[22] The examples given in the letter articulate the Complainant’s frustration of not being understood and her unmet expectations of the kind of dialogue and care she sought from the Registrant. The Complainant’s statement that the Registrant did not show her a sufficient level of concern or personal interest in her or her previous medical history and was not willing to discuss her ideas for treatment are offered as evidence of her experience.

[23] It is evident that the Complainant expected a different and more personal and collaborative kind of professional relationship than the Registrant offered. It does not violate the standards of practice or the Code of Ethics if a patient and doctor are unable to develop or maintain a mutually agreeable professional relationship. The personal component of trust and respect between a professional and a patient is an intangible and cannot be ordered.

[24] The Complainant stated the Registrant was more interested in protecting his ego than caring for her. The Complainant diagnosed the Registrant with several psychological problems in her letter to the College and asked that he receive treatment. There is no evidence that the Complainant has any medical training and therefore her diagnosis of the Registrant as having a variety of symptoms of psychological illnesses is difficult to accept.

[25] The Complainant conducted her own research and had found possible causes for her fatigue and alternate treatments for her symptoms of fibromyalgia. She requested referrals. On at least two occasions the Registrant refused to refer her as in his clinical judgment he believed they would be of little value. Upon her insistence however he did make the referrals to other medical specialists.

[26] One of the referrals the Complainant requested was to an endocrinologist for treatment of fatigue due to hypothyroidism. The Record shows the medication treatment program was successful and her symptoms of fatigue were somewhat improved. This is one of the instances when the Complainant is critical that the Registrant failed in his duty to accept her advice regarding the need for a referral to an endocrinologist whose specialties included treatment for thyroid problems.

[27] The College states that it is within acceptable standards of practice for the Registrant to exercise his judgment as to when his patient should be referred. In this case the thyroid level tests were in the normal range and subsequently the Registrant acceded to the Complainants wishes and referred her to the endocrinologist and a sleep apnea specialist.
The Complainant continued to seek medical care from the Registrant but in the final year the professional relationship was no longer satisfactory for either party. It is apparent that this Registrant and this patient had very different expectations of each other. Over time the professional relationship proved no longer effective due to erosion of respect for each other.

In her response letter to the Registrant, which became the complaint letter, she stated that “You are absolutely right I have completely lost confidence and trust in you”. She agreed there were problems in their interpersonal relationship and she should seek another physician. The record provides support for the College’s conclusion that the Registrant did not dismiss her because she had fibromyalgia, and that the College’s disposition letter did not endorse discrimination against patients with fibromyalgia as the Complainant had stated. Additionally, it would be unreasonable to conclude from the evidence that in the course of three years of prescribing treatment for her symptoms the Registrant discriminated against the Complainant because she had fibromyalgia.

The Complainant’s position in her submission is that the College “did not adequately address her concerns and did not provide sufficient rationale for their decision” and therefore the College’s “investigation of the complaint was inadequate and the disposition was unreasonable”.

The Complainant’s specific complaint is that the College did not focus on five issues during the investigation. In some instances these allegations were not part of the original complaint but were raised in the submissions. While I am not bound to consider allegations that were not part of the original complaint (and therefore investigated by the College, or at least placed before the College), as a courtesy to the Complainant I will, to the extent I am able, comment on the allegations:

(a) Did not focus on the issue of her complaint:

In her submission the Complainant alleges that the Registrant violated 13 points in the CMA Code of Ethics. However she fails to give specific instances for each point. This is a new allegation and not part of the Record. In my view these allegations are not based on fact.

(b) The failure of the Registrant to recognize his primary duty:

The Registrant did recognize his primary duty by giving advance warning to his patient that he was unwilling to continue her medical care. He suggested she find another physician and gave her several weeks to do so. He indicated in his letter he would attend to her in the case of an emergency. Although it is the physician’s duty to serve the public interest he or she also has the right to take action to dismiss a
patient if there have valid reasons and he believes he can no longer provide safe and effective care. This is such a case and in the view of the College the Registrant recognized and met his primary duty.

(c) Was too limited in scope:

It is the Complainant’s view that the Registrar chose to support the facts found in her medical record and the words of the Registrant rather than the evidence she presented in her complaint letter. The Registrar must consider all evidence but rely on what he considers the facts when determining if a physician has or has not adhered to the required standard of care and duties.

(d) The failure to consider the information provided:

It seems clear that all information before the Registrar was reviewed and considered.

(e) The failure to provide the correct criteria:

The Complainant believed the Registrar should have applied the Code rather than the standard of conduct or competence to her complaint. The Registrar rightly considered both the Standard and the Code in his investigation and disposition. The Complainant states she was unable to locate a “range of clinically accepted options” of the applicable standard. There is no list. The choice of treatment of symptoms and illnesses varies with each patient and the “range” is based on accepted medical practice at the time. It is my understanding that experienced and knowledgeable members of the College review the standards and update them regularly.

[33] As a cautionary note to the College, the following quote from Review Board Decision No. 2010-HPA-0090(a) may be useful in the context of this discussion:

[38] ...The Complainant raised six issues critical to the complaint. In establishing the design and parameters of its investigation, the College is not bound to adhere precisely to the issues as articulated by the complainant. However, if it chooses not to address the complainant’s issues directly, it should at the very least explain why it has chosen a different course, and provide a defensible rationale for the different course based on its professional assessment of what it sees as the critical issues arising from the substance of the complaint. ...

B. Reasonableness of the Decision

[34] The Complainant’s submission is that the Registrar’s decision was unreasonable because the reasons given were “mere euphemisms”. They failed to fairly consider the information provided related to possible violations of the Code of Ethics and failed to apply correct criteria.

[35] I have already addressed the issue of possible violations of the Code and the failure to apply correct criteria and do not support her view. That the Complainant believes the College did not provide reasons but only euphemisms reflects her personal thinking on the issue. It is true that the medical profession like many others uses language that is uniquely its own and it is also true that the Complainant interpreted the terms and phrases used in the disposition letter to be vague and not meaningful. Both the College and the Complainant recognized this disconnect in communication. It is a language bridge the College can work to improve.
[36] Both the College and the Registrant’s position is that the Registrar took investigative steps to obtain the information required to make an assessment of the complaint and decided that the care and conduct of the Registrant was satisfactory. The evidence as set out in the Record supports this assertion.

[37] In the result I find the disposition of the College to be reasonable; it falls within the range of acceptable outcomes and is sufficiently justified and transparent.

VII CONCLUSION

[38] Applying the relevant standards of the Act to the Record and to the additional written submissions provided by the parties I find the Inquiry Committee’s investigation was adequate and the disposition of the investigation was reasonable.

[39] In making these decisions I have considered all of the information and submissions whether or not specifically identified in this decision.

“Victoria Kuhl”

Victoria Kuhl, Panel Chair
Health Professions Review Board

July 10, 2013