DECISION NO. 2012-HPA-126(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: Lori McDowell, Panel Chair

COMPLAINANT

COLLEGE

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on May 21, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

I INTRODUCTION

[1] This matter arose when the Complainant attended at the Registrant’s office for a medical appointment. The Complainant speaks little English and her husband accompanied her to act as her liaison with the Registrant. The Complainant has alleged that the Registrant was rude, disrespectful and acted in a discriminatory manner toward her.

[2] The Registrant disputes the Complainant’s characterization of their appointment. She contends that she treated the Complainant courteously and appropriately.

[3] The Complainant’s complaint to the College was partially sustained in its disposition. The Complainant has now applied to the Review Board for a review of that disposition.

II BACKGROUND

[4] The Complainant was involved in a motor vehicle accident in July, 2011. She had seen several physicians during her recovery. In her submissions she noted that her husband had regularly accompanied her to these various appointments and had routinely acted as her liaison, translating between herself and the health care providers.
She stated that they had never encountered any difficulties before and her interactions with those physicians had been positive.

[5] On November 3, 2011, the Complainant and her husband attended at the Registrant’s office because she was continuing to experience pain as a result of the accident. As this was the Complainant’s first appointment there were forms to complete including a document that would show where she was experiencing pain.

[6] When the Registrant entered the examination room the couple was reviewing the form while the husband held it. The Registrant asked who was the patient. On learning that the Complainant was the patient she indicated that the Complainant must answer the form.

[7] The Complainant stated:

(The Registrant) started questioning me in a very disrespectful manner. Obviously, I did not understand and could not respond to most of her questions because of the language barrier. When my husband tried to help by translating what she was asking and then translating my responses back to her, (the Registrant) became even more upset. She put her face closely to my face and sneeringly ordered: You answer! It’s your pain not your husband’s pain!

Although I could understand some of (the Registrant’s) simple questions, it took me time to answer her in English as I had to process my responses from Chinese to English in my mind. Because of that translating process, it may have appeared like I was hesitating in answering her questions. Whenever that happened, (the Registrant) would put her face closely to my face again and pressed me with “Answer! Answer!” as if I was being interrogated for a crime that I committed. Her extremely disrespectful and offensive manner made me extremely nervous and further unable to answer her questions. Then she abrasively complained at me saying that I did not cooperate, and threatened that she would not complete the questioning.

[8] The Complainant alleged further examples of her ill treatment including:

I was unable to understand when (the Registrant) asked what kind of pain I was experiencing, until my husband translated it to me. After getting permission from her, my husband answered for me that I didn’t know the “categories” of pain. (The Registrant) further asked what nature of the pain – ache, pain or hurt. My husband translated her questions to me and then I tried to describe the sensations. Even then, my husband found that he could not tell the differences between ache, pain and hurt in English. My husband apologized to her by explaining that we could not tell the differences amongst those three words in English. She immediately became extremely angered and harshly said, “I cannot help!”

... During the physical exam, because I did not understand her instructions in English, I could not follow her instructions to move my body as she directed. She was angry and threatened to stop the exam. For no reason, she left me standing in my bare feet on the cold floor for at least ten minutes without attention as if I was being subjected to some form of punishment.

[9] The Complainant submitted that her treatment was a form of racial discrimination, that she felt disrespected and offended.
The Registrant prepared a report to the Complainant’s general physician to explain her findings. In the conclusion of her report the Registrant stated the following:

I wonder about culture and its impact given the sustained pain symptoms and lack of progress over time...and the need for her to save face?

The Complainant complained to the College about the treatment she had received during her appointment. The College contacted the Registrant to receive information regarding the allegations. The Registrant reviewed the circumstances of the appointment and acknowledged that given the language barrier the examination had been challenging. She maintained however that she had treated the Complainant in a professional and courteous manner at all times.

Acting on behalf of the Inquiry Committee, the Registrar reviewed the complaint and noted that there were no other complaints on the Registrant’s record. The Registrar concluded that this made it unlikely that the Registrant had acted in a discriminatory manner.

... (we) are certain that if the (the Registrar) behaved in the extreme way you have described, there would have been other complaints.

The Registrar suggested that perhaps the Complainant’s characterization of the Registrant’s manner might have been inaccurate due to the language barrier.

The Registrar determined that the substance of the complaint was not a serious matter as defined by the legislation, but partially upheld the complaint due to the written comments the Registrant had made regarding the Complainant’s culture and its impact including the possible need to save face. The Registrar stated:

... we consider that the statement quoted above was insensitive and did suggest disrespect to her and her ethnic origin.

The Registrar asked the Registrant to provide a written apology for the comments.

The Complainant questioned the conclusion drawn by the Registrar that simply because the Registrant’s record did not indicate any previous complaints it was unlikely that the Registrant had acted in such a manner. She argued that the Registrar should not ignore her complaint “because we happen to be the first victims to stand up”. She concluded that having no other recorded complaints is certainly no indication that the Registrant could not have behaved badly to them. She noted that “everything has a beginning”.

III ISSUES

The issues I must decide are twofold. First, was the complaint adequately investigated? And second, given the results of the investigation was the Registrar’s decision to partially uphold the complaint reasonable?
IV ADEQUACY OF THE INVESTIGATION

[18] On receipt of the complaint the College wrote to the Registrant and asked for her response to the allegations. The Registrant provided a thorough accounting of her actions during the appointment. The College also reviewed the Registrant’s record to determine whether any similar complaints had ever been made against her before. Finally, the College examined the Complainant’s relevant medical records.

[19] Review Board Decision No. 2009-HPA-0001(a) to 0004(a) at paragraph [98] is often cited as the test for the adequacy of the investigation respecting a complaint. In that case the Review Board stated:

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.

[20] In other words, the Review Board does not perform the function of re-hearing or re-examining the complaint. Rather, the Review Board looks to ensure that the College took reasonable steps to secure the necessary information to address the complaint given its seriousness, complexity and their ability to access evidence.

[21] In this case, the College obtained information from the Registrant regarding the allegations made by the Complainant and examined the Registrant’s response to see if it addressed the complaint. The College also reviewed the Complainant’s medical records and the Registrant’s record to determine if there was any evidence of similar behaviour. The College satisfied itself that the Registrant did respond to the specifics of the complaint and that she had not acted in the manner alleged in any previous recorded instance.

[22] In light of the fact that this was a single appointment with no further witnesses other than the Complainant and her husband, it is difficult to see what more the College could do in the circumstances.

[23] The Inquiry Committee availed itself of sufficient information to make a decision regarding the substance of the issues under review. The investigation was adequate.

V REASONABLENESS OF THE DISPOSITION

[24] The role of the Review Board in assessing the reasonableness of the Inquiry Committee’s disposition is to examine whether it appropriately addressed the major issues of the complaint. Our job is to ask whether the disposition falls within the range of defensible outcomes based on the evidence the Inquiry Committee had before it.
British Columbia law has further refined our role so that our review is not to decide whether the disposition of the Inquiry Committee was right or wrong, or even if we might have decided the matter differently, but only if the disposition can be rationally supported by the evidence.

In this case, the decision of the Registrar to partially sustain the complaint and to request the Registrant to provide a written apology fell within the range of defensible outcomes based on the evidence. I note that the Complainant had asked for an apology from the Registrant in her request for relief. This part of her request was fulfilled by the disposition. The Complainant did receive a written apology.

I further note that the College has stated that it will retain a copy of the Registrant’s written apology and the disposition on her permanent record. This is important because of the reliance the Registrar placed on the absence of other similar complaints on the Registrant’s record when it conducted the review. If any future complaints are made against this Registrant this past history will be available.

I am troubled by the fact that the Registrar found that there was no evidence of discriminatory behaviour by the Registrant while requesting an apology for written statements that the Registrar stated were insensitive and suggested disrespect to the Complainant and her ethnic origin. It would seem that these very written comments were themselves evidence of discriminatory behaviour and perhaps indicated that there was some substance to the alleged verbal comments of the Registrant. However, the end result was that a written apology that included an acknowledgement of the inappropriateness of the comments was requested and given. The fact that the Registrar did not characterize these comments as discriminatory and only partially upheld the complaint is not sufficient to remove the disposition from the realm of defensible outcomes given the evidence. Clearly, if the Registrar had dismissed the complaint outright the disposition would not have been sustainable.

**VI DECISION**

For the reasons outlined in this decision, it is my decision that the disposition by the Registrar pursuant to s.32(3)(c) of the Act, which under s. 32(5) of the Act is considered to be a disposition by the Inquiry Committee, is confirmed.

Accordingly, I dismiss the application of the Complainant.

In making this decision I have considered all of the information and submissions before me whether or not I have specifically referenced them.

“Lori McDowell”
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Lori McDowell, Panel Chair
Health Professions Review Board

July 24, 2013