DECISION NO. 2012-HPA-131(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: J. Thomas English, Q.C., Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on April 15, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay R. Johnston, Counsel

I DECISION

[1] 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.

II BACKGROUND

[2] This matter involves a loving father, the Complainant, who is trying to do his best for his adult son who has a serious mental health diagnosis. Specifically, the son has a history of chronic refractory schizophrenia which has resulted in him being in and out of hospitals and mental health clinics.

[3] The specific complaint is that the Registrant prescribed a drug, amisulpride marketed as Solian, which the Complainant believed as a result of a conversation with a pharmacist was not legal to be prescribed in Canada and which he further believed was harmful to his son.
The history behind the prescription of Solian is as follows:

(a) For approximately 15 years before the son came under the care of the Registrant he had not responded well to treatment with antipsychotic and anti-schizophrenia drugs including clozapine;

(b) The symptoms displayed by the son included apathy, social withdrawal, low energy, lack of motivation and reduced speech; these symptoms were unresponsive to various psychotropic medications including clozapine.

(c) The Registrant discussed the symptoms at a weekly multidisciplinary team meeting and the conclusion was reached that the son’s form of schizophrenia might respond to a combination of rehabilitation and an atypical antipsychotic drug named Solian;

(d) Solian is unavailable in Canada except through a Special Access Program (“SAP”) run under the auspices of Health Canada; and

(e) The appropriate process was followed and Solian was obtained through the SAP and administered to the son.

Unfortunately there is no consensus as to what happened. The Registrant says the SAP process was explained to the Complainant and the Complainant agreed to the treatment plan. The Complainant says he was never told about the SAP and that he did not consent to it. The effect Solian had on the son also varies depending on who is telling the story.

In any event, the substance of the Complainant’s submission is that his son was prescribed Solian, an illegal drug.

III ISSUES

The issues I have to decide are: was the investigation by the inquiry committee adequate and was its disposition reasonable.

IV ADEQUACY OF THE INVESTIGATION

The steps taken by the Registrar to investigate the complaint were as follows:

(a) A copy of the complaint was given to the Registrant for his response;

(b) In a detailed four page response, the Registrant traced his involvement with the son over the two year period the son was the Registrant’s patient including details of hospitalizations from time to time. In addition, the Registrant outlined the medications the son was receiving and the process that led to the selection of Solian;

(c) The Complainant was given an opportunity to reply, and did reply, to the response of the Registrant; and

(d) The Registrar asked for and received from the “X” Hospital and the “X” Medical Health Clinic 467 pages of the medical records relating to the son.
As is clear from the decision of the Registrar (the “Decision”), the documents set forth in paragraph [8] above were comprehensively reviewed by the Registrar.

The investigative process followed by the Registrar included involvement by all parties who could provide information relevant to the investigation. Appropriate historical records were obtained and reviewed. It is not clear to me what more the Registrar could have done to investigate the complaint and therefore I conclude there was an adequate investigation.

**V REASONABLE DISPOSITION**

The conclusions reached in the Decision were that the Registrant’s management of the son’s care met the expected standard of competence and that Solian was prescribed appropriately.

The Complainant was correct based on the advice he was given that Solian was not available in Canada on a prescription basis. That advice, however, did not take into account the Special Access Program.

Although there were other matters that were frustrating for the Complainant, such as the fact that his written consent was not obtained for the administration of Solian the substance of his complaint was that his son had been prescribed an illegal drug.

It is clear from the Record that Solian when obtained through SAP is a legal drug in Canada.

The complaint was dismissed pursuant to s. 32(3)(c) which reads:

> 32 (3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint or request that the registrant act as described in section 36 (1) without reference to the inquiry committee if the registrar determines that the complaint

(a) is trivial, frivolous, vexatious, or made in bad faith,

(b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33 (4), or

(c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33 (4).

Section 33(4) reads:

> 33 (4) The inquiry committee may, on its own motion, investigate a registrant any of the following matters:

(a) a contravention of this Act, the regulations or the bylaws;

(a.1) a conviction for an indictable offence;

(b) a failure to comply with a standard, limit or condition imposed under this Act;
(c) professional misconduct or unprofessional conduct;

(c.1) [Repealed 2008-29-34.]

(d) competence to practice the designated health profession;

(e) a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practice the designated health profession.

[16] On the face of it, an allegation that a physician prescribed an illegal drug would appear to be a “serious matter” and if so the Registrar has no jurisdiction under s.32(3)(c). However, a preliminary assessment which the Registrar is obligated to do under s.32(2) would indicate that Solian is not an illegal drug if the SAP process is followed, and accordingly the only issue for the Registrar was the competency of the Registrant to practice his profession: s.33(4)(d).

[17] The Registrar concluded that the Registrant met the expected standard of competence. In my view that was a reasonable disposition of the complaint.

VI CONCLUSION

[18] On the issues I have to decide I find there was an adequate investigation and a reasonable disposition and I confirm the Registrar’s disposition.

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

“J. Thomas English”

J. Thomas English, Q.C., Chair
Health Professions Review Board

June 3, 2013