DECISION NO.  2012-HPA-132(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 July 12, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Kim J. Yee, Counsel

I DECISION

[1] Upon considering the application made by the Complainant under s.50.6 of the Act, it is my decision that the disposition of the Registrar and affirmed by the Inquiry Committee of the College is confirmed.

II INTRODUCTION

[2] The Complainant by letter received by the College on June 4, 2012 made an application for a review of the treatment he had received the Registrant. He alleged that the Registrant was dismissive and non-communicative in his care and that he performed a cycstoscopy in an unsatisfactory manner.

III JURISDICTION OF THE REVIEW BOARD

[3] On a review application the Review Board has limited jurisdiction. It is not the function of the College to adjudicate a Complainant’s degree of satisfaction with a particular Registrant but to determine whether College members have met appropriate
standards of practice. The Review Board cannot revisit the substance of a 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?

[4] 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

[5] The Review Board has held in Decision No. 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.

[6] In this case the College collected and reviewed the Complainant’s letter of complaint, emails from the Complainant setting out additional information, copies of the Complainant’s medical records, and letters from three other physicians involved with the Complainant and a response to the Complainant’s allegations from the Registrant. The Complainant was afforded an opportunity to make a final reply. He did not avail himself of this opportunity.

[7] This information gave the College an adequate basis on which to determine whether the Registrant’s actions were appropriate.

[8] As the College reviewed all the relevant information the investigation was adequate.

B. Reasonableness of the Disposition

[9] 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.
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”?

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.

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) and0004 (a), para. [92])

The College assessed all the relevant evidence and concluded that the Registrant acted in a professional manner. On the basis of the evidence this is a reasonable conclusion.

It is not for the Review Board to consider whether it agrees with the College’s disposition but whether that disposition falls within the range of possible acceptable outcomes. It is my conclusion that it does.

**V CONCLUSION**

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.

“Sandra K. McCallum”

Sandra K. McCallum, Panel Chair
Health Professions Review Board

November 20, 2013