DECISION NO. 2012-HPA-134(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 COMPLAINANT
AND: The College of Dental Surgeons of BC COLLEGE
AND: A Dentist REGISTRANT
BEFORE: Lorianna Bennett, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on February 18, 2013

APPEARING: For the Complainant: Self-represented
For the College: Greg Cavouras, Counsel
For the Registrant: Self-represented

I INTRODUCTION

[1] This matter arises out of the Complainant’s root canal treatment which took place on January 22, 2010. The Complainant complained to the College that the Registrant provided sub-standard treatment and lacked the appropriate bedside manner in attending to the Complainant’s oral sedation. After investigating, the Inquiry Committee dismissed her complaint. The Complainant applies to the Review Board for a review of that disposition.

II ISSUES

[2] The issues I must decide are:

(a) Did the Inquiry Committee adequately investigate the complaint against the Registrant?

(b) Was the Inquiry Committee’s decision to dismiss the complaint against the Registrant reasonable?
III BACKGROUND FACTS

[3] The Complainant’s regular family dentist started to perform a root canal on the Complainant on January 15, 2010 but was unable to complete it. He referred the Complainant to an endodontist. The Complainant chose to use the Registrant instead.

[4] The Registrant is a registered general dentist who offers oral sedation (free of charge) for root canal treatments. The Complainant chose the Registrant to complete the root canal procedure because the Registrant specializes in sedation dentistry. According to the Complainant, she is “particularly difficult to freeze” and has “had problems in the past with breakthrough pain during procedures.” As such, she chose oral sedation to be the treatment of choice.

[5] The record suggests as well that the Complainant may have chosen the Registrant in place of the referred endodontist due to the limits of her dental insurance coverage and the fact that the oral sedation provided by the Registrant would be included “free of charge”.


[7] The Complainant alleges that, during the procedure, the Registrant demonstrated substandard practice causing her extreme pain. She further alleges that the Registrant had a complete lack of empathy to the pain he caused her to endure during the treatment. Specifically, she claims the Registrant was clumsy during the procedure by knocking adjacent teeth with his tools, that he caused her too much pain, and that he continued to work on her despite her pleas to stop.

[8] In her complaint letter to the College dated January 25, 2010, the Complainant questions what kind of training the Registrant has, and whether he is licensed to practice in British Columbia. She questions the practice where the Registrant is employed and asks why the clinic would hire someone “…with [Registrant’s] lack of skill and empathy, and with his level of cruelty.”

[9] The Registrant denies the Complainant’s allegations. He says he did not knock or even touch her adjacent teeth except that he may have tapped them to make sure they were anesthetized. He also acknowledges that the Complainant was in a great deal of pain during the procedure, that he stopped immediately upon recognizing her pain, and that he took x-rays to ensure that everything was okay.

[10] The Registrant says he found nothing unusual on review of the x-rays and at that point offered the Complainant the choice to come back and complete the procedure another time. He says the Complainant chose to finish the procedure that day stating that her pain had passed and that she wanted to “get it over with.”

[11] The Registrant adds that he is confident that he could not have done anything during the treatment to cause any extra pain throughout or after finishing the procedure, and that he did everything based on proper practice protocols and procedures. The Registrant expressed remorse for the Complainant’s negative experience.

[12] The Inquiry Committee investigated the complaint and concluded that no further action was necessary regarding the Registrant.
The Complainant now applies to the Review Board challenging the adequacy of the investigation and the reasonableness of the disposition.

IV THE REVIEW BOARD’S ROLE

The Review Board may do one of the following on completion of a review of an Inquiry Committee disposition:

(a) confirm the Inquiry Committee’s disposition;
(b) direct the Inquiry Committee to make a disposition that could have been made by the inquiry Committee in the matter; or
(c) send the matter back to the Inquiry Committee to reconsider the matter with specific directions.

In order for the Review Board to either direct the Inquiry Committee to make a different disposition or send the matter back to the Inquiry Committee to reconsider the matter, the Review Board must first make a finding that the Inquiry Committee’s investigation was inadequate and/or the disposition unreasonable.

These legislated limitations together with the limited remedies available by the Review Board are set out for the parties in the Review Board’s letter dated January 9, 2013.

V ISSUE 1: ADEQUACY OF THE INVESTIGATION

It is not the Review Board’s role to reinvestigate a complaint. Rather, the Review Board’s role is to assess the adequacy of the Inquiry Committee’s investigation and to determine whether the Inquiry Committee’s investigation provided it with sufficient information to assess the particular complaint.

In other words, were reasonable steps taken by the Inquiry Committee to investigate the complaint?

The standard which the Review Board must apply when considering what is “reasonable” or “adequate” has been previously addressed in several Review Board decisions, and more specifically in Review Board Decision No. 2009-HPA-0001(a)-0004(a) para [89]:

The Legislature’s choice of the words “reasonable” and “adequate” make clear that the Legislature has not tasked the Review Board with the role of determining whether the Inquiry Committee has made the “ideal” disposition or conducted the “perfect” investigation. A disposition will only be unreasonable and an investigation will only be inadequate if it falls below the appropriate standard of review.

Applying the Review Board’s role to the facts of this case, what I must consider is whether the College took reasonable steps to investigate and obtain key information from relevant sources. In other words:

(a) Has the College conducted an investigation with a degree of due diligence whereby the College has considered and attempted to obtain evidence from the Registrant that is the subject of the complaint?
(b) Has the College considered and attempted to obtain evidence from relevant collateral sources, and in particular evidence that is directly relevant to the subject Registrant and the particular complaint?

[21] In her application for review “addendum” dated June 15, 2012, the Complainant makes the following comments with respect to the College’s investigation:

I feel the College did not provide an adequate opportunity for me to respond to Registrant’s version of events. I would like to state that his version is not at all what happened and portrays him in a much more positive light. I feel that his care for me was not adequate in that its forcefulness was a violation which caused trauma, and that a normal dentist would have stopped long before Registrant did, and would have seen to my care and comfort.

I feel that Registrant did not provide reasonable care when he disregarded my verbal objections and required me to remove his hand when he was causing me pain. I don’t feel that it is reasonable for the College to give heavier weight to his version of events than mine, there was no opportunity for me to refute his version of events.

I also feel that there is a systematic problem with characterizing someone who has trouble with freezing as being anxious. My problems and difficulty with freezing have nothing to do with anxiety, and I would like to see a change in the attitude of dentists from one of blaming the victim to one of accepting that some people need more intensive pain management, not anxiety regulation.

[22] In reviewing the complaint, the College took the following steps:

(a) The College Complaints Investigator (“Investigator #1) reviewed the complaint;

(b) Investigator #1 sent a copy of the complaint, together with various information sent to the College by the Complainant, to the Registrant for his review and response. The enclosures included:

(i) Statement dated January 15, 2010 from the Complainant’s family dentist;

(ii) Statement dated January 21, 2010 from the Registrant’s office;

(iii) Estimate for Plan A dated January 21, 2010 from the Registrant’s office;

(iv) Statement dated January 22, 2010 from the Registrant’s office;

(v) Extended Health Provider’s Explanation of Benefits dated January 22, 2010; and

(vi) Copy of January 27, 2010 letter to the Complainant;

(c) Investigator #1 received and reviewed the Registrant’s written response dated February 8, 2010, which included x-rays;

(d) Investigator #1 wrote to the Registrant on September 9, 2010 requesting written statements from the Registrant’s two certified dental assistants (“CDAs”) who were present for the Complainant’s root canal consultation and procedure on January 21 and 22, 2010;
(e) On October 26, 2010 the College received and reviewed the written account of events from both CDAs;

(f) On January 12, 2011 Complaint Investigator #1 corresponded with the Complainant to advise that the College was still in the process of gathering and reviewing information. In the College’s letter, it suggested a teleconference between the Complainant and the College to clarify outstanding concerns;

(g) On March 30, 2012, a teleconference took place between a different College Complaint Investigator (“Investigator #2) and the Complainant. Following the teleconference, the College prepared and reviewed a written summary of those discussions;

(h) On April 13, 2012, a teleconference took place between Investigator #2 and the Registrant. Investigator #2 prepared and reviewed a written summary of those discussions; and

(i) On April 13, 2012 Investigator #2 prepared a written memorandum for the Inquiry Committee. The memorandum summarized all of the investigatory steps and the findings. This document was prepared for discussion purposes at the Inquiry Committee’s April 24, 2012 weekly meeting.

[23] I am prepared to infer that there was a delegation from the Registrar to the two Complaint Investigators to investigate and prepare an assessment in fulfillment of the Registrar’s obligations under s.32(2). I am further prepared to infer that in so doing both Investigator #1 and Investigator #2 were under the control and direction of the Registrar.

[24] In consideration of the above, I find that the College took sufficient steps and made reasonable efforts to obtain the necessary information in order to allow it to reasonably assess the complaint. Those steps included obtaining a report and records not only from the Registrant but also from his two CDAs. The two witness statements from the CDAs are noteworthy in that the College recognized that this third party evidence existed and was readily available, and they properly pursued this additional line of investigation at their own instigation. Further, the College suggested and conducted a teleconference with both parties thereby allowing an opportunity for the Complainant to ensure that all of her concerns were noted and considered.

[25] In the circumstances I find that the College’s investigation was adequate.

VI ISSUE 2: READABLENESS OF DISPOSITION

[26] With respect to relief sought, the Complainant says:

I would like the opportunity of speaking directly to [Registrant], in the presence of [owner of the clinic] where [Registrant] worked at the time of the incident. I would like to explain to him about the effect of his actions.

I would like to know what [Registrant] has done in terms of training to help him improve his attitude towards patients who are experiencing pain while under his care.

I would like to see the College of Dental Surgeons offer some disciplinary measure to [Registrant], and other dentists who do violate patients and cause trauma. I have
experienced extreme dental pain before and after, and it is the way it was forced on me that has caused me trauma.

Also, I would like to see an acknowledgement from the College that anxiety is not the cause of patients who experience pain or are difficult to freeze.

[27] The role of the Review Board in assessing the reasonableness of the Inquiry Committee’s disposition of a complaint is to determine whether it falls within the range of defensible outcomes based on the evidence it had before it.

[28] The Review Board will find the disposition to be reasonable if it addresses the major points in issue in relation to the facts before it.

[29] The Review Board’s role is not to decide whether the Inquiry Committee’s decision was right or wrong. Nor is it the Review Board’s role to substitute its decision for that of the Inquiry Committee. Rather, the Review Board is tasked with deciding if the decision can rationally be supported on the evidence (Review Board Decision No. 2009-HPA-0001(a)-0004(a) at para [92]).

[30] With respect to the complaint against the Registrant, the Inquiry Committee’s decision shows that it reviewed and considered the allegations made by the Complainant, the Registrant’s response to the complaint, the written recollective accounts by the two CDAs, the documents tendered by both parties, and the outstanding concerns and responses raised during the teleconference with each of the parties. The College’s decision also shows that it was based on the evidence collected. As such, I find the decision falls within a rational and defensible range of outcomes. Accordingly, I dismiss the Complainant’s application.

VII ORDER

[31] For the reasons given above, I confirm the Inquiry Committee’s disposition regarding this Registrant.

[32] 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.

“Lorianna Bennett”

Lorianna Bennett, Panel Chair
Health Professions Review Board

June 13, 2013