DECISION NO. 2012-HPA-169(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: John H. O’Fee, Panel Chair

DATE: Conducted by way of written submissions concluding on May 24, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Nevin Fishman, Counsel

I INTRODUCTION AND BACKGROUND

[1] The Complainant applied under Section 50.6 of the Act to review a July 20, 2012 disposition of the College concluded under Section 32(3)(c) of the Act, communicated to her by way of a letter signed by the Registrar of the College on behalf of the Inquiry Committee.

[2] The Complainant asserts that the Registrant acted inappropriately with respect to his conduct toward her during a visit to a hospital emergency room. There are significant differences between the Complainant’s version of events and those described by the Registrant but the record and the accounts of both parties share some common facts.

[3] The record shows the Complainant presented herself at the Emergency Department of a hospital at 9:09 pm on Saturday, September 24th, 2011. The Complainant states that she drove herself to the hospital, parked her car and was able to walk into the Emergency Department unassisted. Her reasons for seeking medical attention were that she was experiencing a headache, a left arm swelling with pain, and numbness and swelling in her left leg.
[4] The Complainant was triaged by the hospital staff and eventually placed on a bed where blood work and an Electro Cardiogram ("ECG") were conducted. The Complainant states that she was not asked questions as to medications she was taking. While the record does not indicate specific questions being asked, the Registrant indicates that he reviewed the Complainant’s PharmaNet profile but did not directly question the Complainant on her medications.

[5] The Registrant states that he reviewed the Complainant’s medical file, the ECG and lab results prior to meeting with the Complainant. After a short medical examination, the Registrant made an assessment that the Complainant was not facing an emergent medical issue and discharged her, advising her to follow up with her regular physician. This diagnosis was correct in that the Complainant was not in a medical situation requiring emergency care. The Complainant does not point to any reason why she should not have been sent home and, notwithstanding her being upset at how she asserts she was treated, there were no medical consequences to her being discharged.

[6] The Complainant presents a version of events where the Registrant and an Emergency Room nurse are abrupt and abusive. The Complainant states that she felt berated by the Registrants’ statements which she felt implied that she was only in the Emergency Room of the hospital for the purposes of getting more drugs.

[7] The Complainant stated the Registrant refused to answer her questions regarding the cause of her symptoms by stating that she would have to speak with her own doctor about the drugs she was taking.

[8] Prior to leaving the Emergency Room, the Complainant states that her request to review a printout of medications prescribed to her was initially declined but provided briefly to her upon her insistence.

[9] When she persisted in her enquiries, the Complainant states that she was first ignored and then rudely advised that she was discharged.

[10] The Complainant summarizes her feelings about her treatment in the emergency department as follows: she was not taken seriously, not given a proper diagnosis and discriminated against because of the anti-depression medications she had taken in the past. She states that the Registrant had already made up his mind about her prior to meeting with her and treated her poorly as a result. A different physician who regularly treats the Complainant provided an anecdotal letter to the College in which she essentially asserts the Complainant’s version of events and states that she has heard of numerous other similar incidents involving the Registrant.

[11] In a letter to the Complainant dated July 20, 2012 the Deputy Registrar of the College disposed of the complaint. The letter reasonably outlined the factual narrative presented by both the Complainant and the Registrant as well as the Complainant’s rebuttal to the Registrant’s initial response. In further support of her position, the Complainant had submitted a printout from a web page named “RateMDs.com” as support for her position that her version of the Registrant’s conduct was consistent with what she had observed.

[12] The College did not find any justification to challenge the Registrant’s diagnosis of the Complainant. The College advised the Complainant that “the emergency
department’s function is to care for patients in an urgent condition and not deal with chronic problems”. As there was no reason to conclude that the Complainant was in urgent distress, it was medically appropriate to discharge her.

[13] As for the conflicting versions of the personal conduct of the parties, the College was unable to determine which version of events was more accurate. The response from the College does state that it would “be unusual for a physician to be angry even before he met a patient and to become accusatory and shouting throughout the entire encounter”. The College also noted that women and mental health patients are frequently seen in an emergency room setting and the Complainant’s assertion that the Registrant was prejudiced against these sorts of patients would be inconsistent with his work as an emergency room physician.

[14] Finally, the College noted that the letter from her physician and excerpts from a web page purporting to rate physicians did not constitute evidence to which the College could give any weight.

[15] In her application for review, the Complainant asserts that the College did not address the issues she raised regarding what she asserts were the Registrant’s unprofessional behavior towards her. In her own words she asserts that the College is showing extreme bias towards the Registrant “despite the fact that he obviously has a history of angry, judgmental, misogynistic, abusive, and bullying behavior towards certain patients”.

[16] In terms of relief sought the Complainant seeks:

Maybe he should Retire, or be committed for a mental assessment and/or substance abuse counseling. At the very least he should be reprimanded, a note put in his file and go for anger management classes as his behavior is extremely threatening and disturbing.

II ANALYSIS

[17] Applications brought pursuant to Section 50.6(1) of the Act require the Review Board to review the disposition of a matter by a college. Upon receipt of an application for review the review board is bound by section 50.6(5) and is to consider two core issues. First, I should consider whether or not the College conducted an adequate investigation and second, whether or not the College made a reasonable disposition of the complaint.

[18] In considering the adequacy of the investigation regarding the Complainant’s medical care I am satisfied with the College’s finding that there was no medical reason to keep the Complainant at the hospital once she was seen by the Registrant on the evening of September 24/25, 2011. The Complainant has advanced nothing and the medical record does not show any basis for her to be admitted as a patient. While the patient’s initial symptoms appear to be cause for concern, the subsequent lab work and medical diagnosis indicated that the Complainant was not in need of urgent care.

[19] To determine the perspective of the Registrant regarding the complaint, the College asked for and received a reply from the Registrant. The College attached no weight to the web site printout or the letter from the Complainant’s physician.
In an internet age, we are all encouraged to express our opinion on the places we stay, the movies we see and even the professionals we use. From veterinarians to professors each group has a web site where anonymous comments can be published without proof or consequence. As one might expect, ratings range from accolades to outrage often for the very same person. When dealing with the career and reputation of a medical professional, it stands to reason that a college would look at something more reliable than what is used to determine a selection from the local multiplex. These rating websites have no place in any serious consideration by a professional body and are quite rightly considered to have no weight in adjudicating an issue related to a member.

Review Board Decision No. 2009-HPA-0001(a) to 0004 (a) at paragraphs [97] and [98] outlines the test for the adequacy of the investigation respecting a complaint:

[97] A complainant is not entitled to a perfect investigation, but he or she is entitled to 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.

[98] 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 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.

In regard to the conduct of the Registrant towards the Complainant, I accept the submissions of Counsel for both the College and the Registrants that in these circumstances the investigation of the College was adequate. The Registrant was required to furnish a report and provided his version of events. This version was reasonably consistent with the medical record and the notes on the file that were prepared by nursing staff at the time. The record and the response of the College indicate to me that the College conducted a review of relevant materials and carried out an adequate investigation.

In considering the reasonableness of the disposition of this matter by the College, I am again guided by Decision No. 2009-HPA-0001(a) to 0004 (a) where at paragraph [92] it outlines a clear test for reasonableness:

While the Review Board’s application of the test will necessarily reflect its expertise as a specialized administrative tribunal rather than a Court, the Review Board’s focus is nonetheless not to step into the shoes of the Inquiry Committee, but rather to determine whether the Inquiry Committee’s disposition falls within 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.

As has been stated, there is nothing advanced by the Complainant or in the medical record showing that she was in need of urgent care after being seen by the Registrant. I accept the assertion of the College that the role of an Emergency Room physician is different than that of a family doctor or specialist. This is particularly true in a busy urban hospital on a weekend night. Patients not requiring urgent care may still have medical issues requiring attention. However, these non-urgent issues are best dealt with in consultation with their family doctor.
The Complainant asserts that the Registrant was rude and wrongfully jumped to conclusions about her without any basis in fact. Yet, at the same time in her application for review, the Complainant asserts that the Registrant “be committed for mental assessment and/or substance abuse counseling”. These unsubstantiated statements do not assist me in determining the adequacy of an investigation or reasonableness of a decision and amount to the same sort of assumptions that the Complainant asserts the Registrant made about her.

I accept that the Complainant’s perspective on this process was that she was being pushed out the door with little explanation of what was wrong with her or why she was experiencing her symptoms. She had a very sound basis for presenting herself to the Emergency Room on September 24th and was following well considered medical advice in doing so. Clearly, she had an expectation that somebody would take the time to review her medications with her and attempt to determine why she was feeling the way she was. When this expectation was not met and she was told she had to leave, her view of matters was that she was being stigmatized, singled out and treated rudely.

At the same time I accept that Emergency Rooms in busy urban hospitals have to set priorities and deal with patient flows in the best way possible. This will not always permit a level of care that will meet patient expectations. The priority has to be focused on patients needing urgent care. Once it has been determined that a patient is not in need of urgent care it is time for them to leave the hospital and pursue any required follow up in a doctor’s office or clinic. The record is clear that suitable resources and care were provided to the Complainant to determine that her situation was not urgent and therefore she should be discharged. This approach might strike some as brusque or even rude, but it is reasonable on the evidence before it that the College found that the Registrant met an adequate standard of conduct in the circumstances. It falls within the range of acceptable outcomes that are defensible in respect of the facts and the law.

III DECISION

My review of the record causes me to conclude that the requirements of the Act have been met. I find that there was an adequate investigation of the facts concerning the complaint and that the disposition of the complaint was reasonable. Pursuant to Section 50.6 (8)(a) of the Act I confirm the disposition of the College which, pursuant to Section 32(3) of the Act, is considered to be the disposition of the Inquiry Committee of the College.

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

“John H. O’Fee”

John H. O’Fee, Panel Chair
Health Professions Review Board

September 6, 2013