DECISION NO. 2012-HPA-180(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: Judith Berg, Panel Chair

DATE: Conducted by way of written submissions concluding on November 20, 2012

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: William S. Clark, Counsel

I DECISION

[1] The application pursuant to s.50.61(4) of the Act to extend the time for filing an Application for Review is refused and the Application for Review is denied.

II INTRODUCTION

[2] The Act requires a Complainant to file with the Review Board an Application for Review of a College Disposition within 30 days of the date the Complainant received the Disposition from the College, s.50.6(2) of the Act.

[3] If a Complainant misses the deadline, as happened in this case, the Act provides that the Review Board has the discretion to extend the time for filing an Application for Review if the Review Board “is satisfied that special circumstances exist”.

III BACKGROUND

[4] The Complainant filed a complaint with the College on September 9, 2009 concerning his complaint with the medical treatment he received from the Registrant in 2004. His complaint centered on allegations of involuntary commitment under the Mental Health Act, confidentiality, the Registrant’s lack of communication with his family
and that the Registrant provided false medical reports and have harmed the Complainant both personally and professionally.

[5] The Complainant was a Captain of a foreign container ship stationed in Vancouver and the complaint centers on a two week period in November 2004 when his employer relieved him of his duties due to inappropriate behaviour and health and safety concerns for the crew. He was assessed by the Registrant, a physician, at the request of the shipping company for fitness to return to work.

[6] The Registrant assessed the Complainant and determined that he required an immediate psychiatric assessment on an urgent basis. A psychiatrist assessed the Complainant the next day and confirmed the psychiatric diagnosis. The Complainant’s symptoms escalated over the next five days and the Registrant concluded that the Complainant showed signs of a “significant psychiatric disorder” and he was committed on an involuntary basis to a Vancouver hospital under the Mental Health Act.

[7] The Registrant released the Complainant’s medical information to the Complainant’s employer based on the knowledge that the Complainant consented and that he understood the Registrant had an obligation to report back to the employer. The Registrant recommended to the employer that the Complainant’s wife travel to Canada to assist her husband during this difficult psychiatric crisis in a foreign country.

[8] Psychiatric assessments of the Complainant were conducted in 2004 by the Registrant, a consulting psychiatrist, a hospital psychiatrist and hospital nurses, and their findings were supported by hospital medical records and nurse’s notes.

[9] The College investigated all documentation submitted by the Complainant, the Registrant’s response, his medical notes, the urgent psychiatric assessment and the physicians and nurse’s notes during hospitalization. The College found the Registrant was competent and dismissed the complaint under s.32(3)(c) of the Act in a letter dated June 7, 2012.

[10] The College concluded in their Disposition letter the following:

A careful review of the medical records supplied by the hospital, by yourself and by the Registrant shows that there was ample evidence that you were demonstrating manic behaviour during the period leading up to and during your committal. There is also evidence that you had no insight into that behaviour.

[11] The College’s Disposition letter to the Complainant of June 7, 2012 contained information that there was a 30 day time limit to be met for filing an Application for Review. The June 7, 2012 letter included information on the Review Board’s role, contact information for a toll free telephone number and the website for the Review Board. The Disposition letter provided the following information:

You may, within 30 days from the date you receive this letter, apply to the HPRB to have the adequacy of our investigation and the reasonableness of the decision assessed. The HPRB will not commence a new investigation into the complaint but will receive a complete copy of the file containing the information we have collected. Further information on the HPRB review process may be found on their website (hprb.gov.bc.ca).
If you choose to exercise your right to apply to the HPRB, your application must, within the same 30 day period, be (i) filed with the HPRB, (ii) delivered to the College, and (iii) delivered to the physicians involved in your complaint. Physician contact information is available from the College website (cpsbc.ca).

[12] The Complainant’s Application for Review was dated July 28, 2012 and received by the Review Board on August 8, 2012. The Complainant apologized in his Application “for the delay in writing this appeal, as the letter concerning the decision of the College of physicians arrived in our mailbox only in [sic] July 6, 2012.”


IV SUBMISSIONS

[14] The Review Board requested submissions from the parties on the issue of whether special circumstances existed to grant an extension of time for the Application for Review.

[15] The Complainant submitted his response to the Review Board and to both parties explaining his reasons for filing a late Application for Review. His Application for an Extension included the following:

(a) Not clear that it was a “must” to send a copy of the application to the College;
(b) “Special circumstances” exist - I lost my job … and since October 6th, 2004, I am “jobless”;
(c) The Outpatient Psychiatric Report of March 7, 2005 included false information that led to “my very bad condition”; and
(d) I am taking full responsibility by missing all your requests, 30 day timeframe and copy to the College, hopefully you will find a way to ballance [sic] the request of JUSTICE in this case. [Complainant’s emphasis]

[16] The College responded that the Complainant did not demonstrate special circumstances that warrant an exception to the 30 day time period and took the position that the Application for an Extension should be denied.

[17] Counsel for the Registrant responded that the Complainant did not demonstrate special circumstances, the Application for Review has no prospect of success and that the long-standing protracted complaint dating to 2004 should not be further prolonged.

V ISSUE

[18] The issue to be determined is whether special circumstances exist to allow for an extension of time for filing an Application for Review.

VI DISCUSSION AND ANALYSIS

[19] The Review Board has the discretion to extend the time for filing an Application for Review if it “is satisfied that special circumstances exist” under s. 50.61(4) of the Act which states:
(4) On application, the review board may extend the time for filing an application for review under this Part, even if the time for filing an application has expired, if the review board is satisfied that special circumstances exist.

[20] I have applied the test of s. 50.61(4) to this application.

[21] What constitutes special circumstances has been considered in numerous Review Board Decisions and has provided guidance with respect to extension of time applications. In Decision No. 2009-HPA-0001(a) – 0004(a) the clarification for special circumstances can be summarized as follows:

(a) whether there was an intention to file a request for review within the time required;
(b) whether the other parties were informed of the intention to request a review;
(c) whether the other parties would be unduly prejudiced by an extension of the time to file the application;
(d) whether there is merit in the request for review; and
(e) whether it is in the interest of justice that an extension be granted which is the most important one as it encompasses the other four.

[22] The above five criteria for assessing special circumstances for an extension of time were clearly articulated to the Complainant by the Review Board in a letter dated September 11, 2012 and in an email dated October 22, 2012.

[23] My examination of the Complainant’s Application for an Extension to the Review Board identifies the following:

(a) a misunderstanding concerning the thirty day deadline;
(b) the rationale that he is “jobless”;
(c) that a March 7, 2005 “OUT PATIENT PSYCHIATRIC REPORT” from a hospital outpatient department was FALSE and resulted in the Complainant’s “very bad condition” [Complainant’s emphasis].

[24] The Complainant concluded in his Extension Application that he takes “full responsibility for missing the 30 day time period and for not informing the College and Registrant of his Application for Review with the Review Board”.

[25] In considering the Application for an Extension based on special circumstances, I find the following:

(a) The Complainant failed to comply with the time frame for an Application for Review, then failed to act quickly with his Application for an Extension. Today, with fax machines and couriers it is not an unreasonable burden to comply with a thirty day deadline to submit an Application for Review.

(b) The Complainant failed to inform the College and the Registrant of his July 28, 2012 Application for Review with the Review Board.
(c) The Registrant did not write and he was not responsible for the March 7, 2005 Outpatient Psychiatric Report.

(d) The Registrant would be unduly prejudiced by granting an extension of time with this prolonged complaint from 2004.

[26] I find the Complainant’s application for an extension of time did not meet any of the criteria of special circumstances listed as (a), (b) and (c) in paragraph [21] above.

[27] I will now turn to examining the other two factors that constitute special circumstances listed in paragraph [21] (d) and (e) above. The test for determining merit is whether the Application for Review is bound to fail and whether it is in the interest of justice to have it proceed to a full hearing. The test as to what constitutes merit was articulated in Review Board Decision No. 2010–HPA-0055(a) paragraph [29] as follows:

What is the test?

[29] The test for determining whether there is merit to an application for review is whether it is “bound to fail”. To make a finding that the Application is bound to fail, I must be able to conclude that the review, if conducted, is bound to result in a confirmation of the original decision. I must base that conclusion on the submissions to date and I must be confident that a confirmation would be the necessary result regardless of:

- what evidence the parties would have produced as part of the record;
- what evidence might have been heard and admitted under section 50.6(7) of the Act, and
- the arguments the parties would have made to the Review Board regarding the evidence.

[28] The College reviewed the submissions of the Complainant, the Registrant and obtained the hospital medical file in making their decision. The College had before it the evidence of a psychiatric diagnosis by the consulting psychiatrist which confirmed the original diagnosis by the Registrant. In addition, the College had access to hospital medical notes by nurses and physicians, again confirming the original diagnosis and necessity for hospitalization. Lastly, they reviewed the confidentiality consent forms signed by the Complainant and Registrant.

[29] I have determined that the College took diligent steps to conduct a thorough and adequate investigation with this complaint and their disposition was reasonable. The Registrant is not responsible for the Complainant’s “jobless” situation of the past six years.

[30] The Complainant did not succeed in establishing that he could provide persuasive evidence, or any evidence, to support the assertion that the investigation by the College was inadequate and that the Disposition was unreasonable, and therefore I find the Application for Review is bound to fail.

[31] In finding that the Application for Review has no prospect of success and is bound to fail, I have also determined that it would be an injustice to the Registrant to
prolong this matter by permitting it to proceed to a full hearing on a complaint that dates back to 2004.

VII CONCLUSION

[32] 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.

[33] For all the reasons set out above, I find the Complainant’s application for an extension of time did not provide sufficient evidence to satisfy any of the five factors necessary to determine the existence of special circumstances. An extension of time will not be granted and the Application for Review is refused.

“Judith Berg”

Judith Berg, Panel Chair
Health Professions Review Board

February 14, 2013