DECISION NO. 2012-HPA-181(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

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: Gerald W. Massing, Counsel

I DECISION

[1] Upon considering the application made by the Complainant under s.50.6 of the Act, I confirm the disposition of the Inquiry Committee of the College.

II INTRODUCTION

[2] In her application for review the Complainant requested a review of the disposition of the Inquiry Committee with respect to her complaint about the Registrant. The Complainant filed her complaint as a result of the Registrant’s medical opinion given in the Registrant’s role as a medical advisor with WorkSafeBC. (WSBC). The Registrant had been asked to respond to questions posed to the Registrant by a WSBC Case Manager regarding causation and pre-existing conditions of the Complainant. The Registrant’s responses to the questions were based solely on information contained in the WSBC file of the Complainant.

[3] To commence its investigation, the College wrote to the Registrant asking for her response to the Complainant’s issues.
[4] The Registrant responded and her response was forwarded to the Complainant for comment. The Complainant stated that the Registrant’s response did not address the concerns that she had raised in her initial complaint letter. These concerns were, first, in her opinion the Registrant had incorrectly diagnosed her chart. Second that the Registrant had been asked whether the Complainant should go for follow-up and she had said no.

[5] The Registrant did not reply to the Complainant’s response.

III JURISDICTION OF THE REVIEW BOARD

[6] On a review application the Review Board has limited jurisdiction. It 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?

[7] 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

[8] The Review Board has held in Decision No’s.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.

[9] The above quotation sets forth the criteria I am to take into account in determining whether there has been an adequate investigation.

B. Reasonableness of the Disposition

[10] 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 reasonable 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. That decision posed the question to be answered as follows: 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's. 2009-HPA-0001(a);0002(a); 0003(a) and 0004(a) that the Supreme Court of Canada stated 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 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.” (Decision No's. 2009-HPA-0001(a);0002(a);0003(a) and 0004(a), para. [92])

**V ANALYSIS AND DISCUSSION**

**C. Was the decision adequate?**

To determine whether the investigation was adequate according to the tests set out in the case law I looked at the process utilized by the Inquiry Committee and the material examined by it. The College reviewed the complaint to determine if the Registrant was qualified to provide the opinions asked of her and whether those opinions were reasonable given the standards expected of a medical advisor in her position.

The College provided a copy of the complaint to the Registrant.

The Complainant states that the Registrant’s opinion on anatomical matters is at variance with her own opinion. The onus is on the Complainant to provide information to support her opinion; she has not done so. The College accepted that clinical opinions may vary depending on available information and the questions asked.

The College took steps to obtain all pertinent and relevant information provided by the complainant and the registrant.

The College had requested the name of the specialist who had seen the Complainant and had allegedly offered a medical opinion different from that of the Registrant. (Letter dated March 6 2012).
[19] On March 13, 2012 the Complainant wrote to request the College not contact the surgeon. In that letter the Complainant included a copy of a January 2012 letter from the surgeon outlining her progress. The surgeon’s name was redacted.

[20] The College contacted both the Complainant and the Registrant and reviewed all relevant information. This in my view constitutes an adequate investigation.

VI WAS THE DISPOSITION REASONABLE?

[21] The complainant seeks an order that the Registrant be asked to take remedial training. While this is not something within the Jurisdiction of the Board to order, the Review Board may in appropriate cases remit a matter back to an Inquiry Committee for reconsideration with directions to consider options such as remedial training. This is a factor that I am at liberty to consider if the investigation is found inadequate or the disposition. The Inquiry Committee determined that the competence of the Registrant in this matter was satisfactory.

[22] The Registrant reviewed the file and consulted current medical literature. She noted that the Complainant may benefit from further evaluation but not further treatment.

[23] It is not for the Review Board to consider whether it agrees with the College’s disposition but given the evidence before the Inquiry Committee the issue is whether the disposition falls within the range of possible acceptable outcomes. It is my conclusion that it does.

VII CONCLUSION

[24] In summary, for all the reasons set out above, and applying the standards of review to the written submissions provided by all the parties, I find the Inquiry Committee’s investigation was adequate and its disposition reasonable.

[25] In making this decision, I have considered all the information and submissions before me, whether or not referred to in these reasons.

“Sandra K. McCallum”

Sandra K. McCallum, Panel Chair
Health Professions Review Board

August 21, 2013