DECISION NO. 2012-HPA-196(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 K. McCallum, Panel Chair

DATE: Conducted by way of written submissions concluding on May 13, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

I DECISION

[1] Upon considering the application made by the Complainant, it is my decision that the disposition of the Registrar adopted by the Inquiry Committee of the College in dismissing the complaint is confirmed.

II INTRODUCTION

[2] This matter arose when the College received a letter of complaint from the Complainant expressing concern over the medical care received by his father while at a care facility. The Registrant disputes the Complainant’s account.

III BACKGROUND

[3] The Complainant’s father is 79 years old. He has a number of serious medical conditions including dementia. He was admitted to hospital after suffering a stroke. Since arriving in Canada in 2010 and claiming refugee status (which has now been granted) he has been in a hospital or a care facility. The father does not speak English so relies on his son to interpret.
The letter of complaint from the Complainant set out a number of issues. The letter alleged that the Registrant refused to talk to the Complainant about his father’s care, that the Registrant changed the level of intervention for his father’s care without consultation and then refused to treat his father because of an erroneous belief that he did not have medical coverage.

In investigating the complaint the Registrar, on behalf of the College, considered the Complainant’s letters with enclosures and obtained a written response from the Registrant. In addition, the Registrar obtained and considered the response of another physician involved in the care of the Complainant’s father. The College also obtained and considered the medical records of the Complainant’s father.

IV JURISDICTION OF THE REVIEW BOARD

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?

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.

V ISSUES

A. Adequacy of the Investigation

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:

[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 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.

To determine whether the investigation was adequate as explained in the case law I looked at the process utilized.

In this case the Registrar took reasonable steps to obtain the key information to evaluate the complaint. The Registrar asked for and obtained from the hospital the treatment records of the Complainant, the correspondence and the submissions of the
Registrant and another attending physician together with the correspondence of the Complainant. Both the Complainant and the Registrant were given the opportunity to make further submissions. The Complainant availed himself of this opportunity.

[11] In reviewing the process employed by the Registrar I conclude that the Registrar conducted an adequate investigation.

B. Reasonableness of the Disposition

[12] 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.

[13] 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 somewhat probing examination”? (para. 39)

[14] 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. (para. 47)

[15] 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])

[16] The Registrar found that the allegations of the Complainant that his father was refused treatment were contradicted by the treatment records from the hospital. The Complainant’s allegation that treatment was denied because of the mistaken belief that his father did not have medical coverage was contradicted by the hospital medical records.

[17] The other allegation was that the Registrant had not returned his calls. The Registrar found conflicting material on this. There was clearly some trouble in communication, in part, due to language barriers. However, the Registrar concluded that the Registrant made every effort to communicate with the Complainant.
The final complaint was that the Registrant had changed the level of intervention required for the Complainant’s father without consultation with the family. Although the Registrar agreed that there should be consultation with the family the Registrar found that it was not possible in this case as all efforts to facilitate it had failed due to communication difficulties.

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.

VI 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 Registrar’s investigation was adequate and the disposition reasonable.

These reasons should not be construed in any way as minimizing the hurt and frustration suffered by both the complainant and his father in trying to manoeuvre the way through an unfamiliar system in an unfamiliar language.

“Sandra K. McCallum”

Sandra K. McCallum, Panel Chair
Health Professions Review Board

September 5, 2013