DECISION NO. 2012-HPA-202(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 Physicians and Surgeons of BC COLLEGE

AND: A Physician REGISTRANT

BEFORE: Lori McDowell, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on May 15, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lara Zee, Counsel

I INTRODUCTION

[1] This matter arose when the Registrant performed hip replacement surgery on the Complainant. The Complainant suffered from serious post-surgery complications and has alleged that the Registrant’s care was not adequate. The Registrant submitted that he treated the Complainant appropriately.

[2] The Complainant applied to the College for a review of his treatment by the Registrant. The Registrar of the College investigated the complaint and determined that no further action was required by the College. This disposition was confirmed by the Inquiry Committee. The Complainant has now applied to the Review Board for a review of that disposition.

II BACKGROUND

[3] The Complainant suffered from osteoarthritis which resulted in the serious deterioration of his right hip. The Registrant examined the Complainant and recommended surgery on a semi-urgent basis due to the severity of his condition. The Registrant performed the surgery on July 24, 2009. Within three weeks the
Complainant’s hip became infected and he was readmitted to the hospital for treatment. On August 20, 2009 the Registrant performed a second surgery to treat the infection. During this surgery the Complainant alleges that a portion of his muscle was removed. The Complainant was treated with a lengthy course of antibiotics to treat the infection. On May 16, 2011, a different orthopedic surgeon performed a subsequent hip replacement surgery to address ongoing issues.

[4] The Complainant complained to the College about the surgery performed by the Registrant which he characterized as inferior, substandard and had left him with a limp and a reduced quality of life. He also complained that an inference had been made that he was “a known IV drug user” and that this was a lie.

[5] The College contacted the Registrant to receive information regarding the allegations. The Registrant responded with a detailed account of his examination, recommendations and treatment. The Registrant stated that his examination showed that the Complainant had end-stage arthritis in his hip. He noted that the “operative procedure, postoperative course and possible complication and risks ... were explained to him” and that the Complainant had signed a surgical release form. The Registrant noted that there were no immediate post-operative concerns.

[6] The Registrant denied removing any muscle from the Complainant’s buttock area. He noted that necrotic fat and tissue was removed but not the muscle. The Registrant clarified that: “The necrotic portion has to be debrided down to the level of healthy fat, otherwise infection can persists.” [sic]

[7] The Registrant concluded that the surgery was performed well. He referenced hundreds of similar surgeries he had successfully completed over the years and indicated that the components he used were state of the art prosthetics. He stated that infection is a small risk in any surgery. He contended that he reviewed the risk with the Complainant before the surgery was performed.

[8] The College reviewed the documents provided by two additional physicians who treated the Complainant post-surgically including the surgeon who performed the second hip replacement. The surgeons noted that the infection was a normal complication and the treatment was appropriate.

[9] The College contacted the Complainant’s general physician and reviewed his response and records. Also, the Registrant responded to the Complainant’s subsequent submissions. He again explained the approach he used to spare the abductor muscle. The Registrant stated definitively, “The muscle is not cut or disturbed at all.” The Registrant also stated that he did not recall making a comment about the drug use of the Complainant but that there was evidence of the Complainant’s past drug use in the files. He stated that this was relevant because it could impact his treatment plan and recovery.

[10] The Registrar concluded that he was not critical of the care provided by the Registrant. The Registrar stated he had found no support for the Complainant’s
suggestion that his post-operative complications were due to substandard or inappropriate care. Acting on behalf of the Inquiry Committee, the Registrar reviewed the complaint and dismissed it.

[11] The Complainant asked the Review Board to review the disposition and find that the Registrant was misleading and dishonest. Also, while the Complainant did not ask for any specific dollar amount, he asked the Review Board to look at “the matter of financial compensation as well as addressing my quality of life”.

III ISSUES

[12] There are two issues in this case based on the jurisdiction granted to the Review Board by British Columbia law:

(a) Was the complaint adequately investigated?

(b) Given the results of the investigation was the Inquiry Committee’s disposition reasonable?

IV ADEQUACY OF THE INVESTIGATION

[13] On receipt of the complaint the College wrote to the Registrant and asked for his response to the allegations. The Registrant responded and addressed each issue. The College also requested and reviewed the responses of three other physicians who had treated the Complainant. Finally, the College examined the Complainant’s relevant medical records, including physiotherapy records, from the two hospitals he visited during his treatments. The College gave the Complainant the opportunity to address the responses of the medical providers and make further submissions. The College and the Registrant responded to those further submissions as well.

[14] Review Board Decision No. 2009-HPA-0001(a) to 0004(a) at paragraphs [97] and [98] is often cited as the test for the adequacy of the investigation respecting a complaint. In that case the Review Board stated:

[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.

[15] In other words, the Review Board looks to ensure that the College took reasonable steps to find the information necessary to address the complaint given its seriousness, complexity and their ability to access evidence. The Review Board does
not perform the function of re-hearing or re-examining the complaint. This is not our role under the law in British Columbia; our role is to perform an independent review function focusing on the college’s investigative and adjudicative processes.

[16] In this case, the College obtained information from the Registrant regarding the allegations made by the Complainant and examined the Registrant’s responses to see that they addressed the complaint. The College also reviewed the Complainant’s medical records and the Registrant’s record to determine if there was any evidence of similar infections arising post-operatively. The College satisfied itself that the Registrant had no other instances of infections occurring after surgery.

[17] Regarding the Complainant’s specific concerns the College noted the following:

A. Muscle Removal

[18] The surgeon who performed the second hip replacement surgery in 2011 stated in a letter to another orthopedic surgeon that “it looks like he has lost a portion of his abductor posteriorly” and again referred to “… loss of the hip abductors from the irrigation and debridement and the repeated surgeries”. The Complainant pointed to this as an example of how the investigation was inadequate.

[19] While this appears to contradict the Registrant’s statements regarding the method he employed to spare the abductor muscles the Registrant does suggest that the muscle could have become diminished if the appropriate rehabilitation was not followed. The other physicians do not state that the Registrant excised the muscle in his surgeries. The only references note a loss of the muscle which could potentially be a natural result of inactivity after surgery. There is no reference to a surgical removal as alleged by the Complainant.

B. Comments Regarding IV Drug Use

[20] The Complainant originally complained that an inference had been made that he was a “well-known IV drug user”. This upset the Complainant as he is adamant that he never used intravenous drugs and had not used any drugs for two years by the time of his first surgery. He had previously used cocaine and methamphetamines but had successfully completed a rehabilitation program. The Registrant submitted that he had no recollection of making such a comment but that there were several references to the Complainant’s drug history in the medical records. In response the Complainant took issue with the Registrant’s inability to recall the alleged statement. The Complainant highlighted comments in five letters from various doctors in which his past drug use was mentioned. The Complainant cited the letters as evidence that the Registrant knew of his past substance abuse. The Complainant notes that he has been “clean and sober for over five years and at the time of this surgery, I was clean and sober for two years”.

[21] I am confused by this argument. Presumably the Complainant’s concern relates to the Registrant’s reference to the intravenous drug use and/or the alleged characterization of his drug related issues as an ongoing concern rather than a past issue. However, the Registrant noted that there was “ample evidence in his hospital
chart that he has a previous problem with substance abuse”. (emphasis added) The Registrant does not mention intravenous drug use. I also noted many references in the Complainant’s health care records by several different health care professionals to past drug use. None of them reference intravenous drug use either. These notations reflected an important fact in the Complainant’s medical history. The Registrant also argued that the Complainant’s past drug use was relevant to the surgical recovery plan as it could affect his medication needs. If the Complainant is referring to an oral comment that he heard the Registrant make, this is unclear. In any case it is not supported by any of the documentation.

C. Limp

[22] The Complainant states that he suffers from a limp as a result of the surgery. The Registrant noted in his records that the Complainant had recovered without a limp and that the post-surgical tests did not reveal a limp. This was confirmed by the hospital records. Two years later the second surgeon did note a limp but at that time a component of the prosthesis had become loose and was replaced. Also, the second surgeon noted that the Complainant needed to adhere to a strict daily rehabilitation physiotherapy exercise regime to build up the muscle to the point that the gait would normalize. It appears from the record that the limp would be temporary once the Complainant could retrain the weakened muscle.

[23] In this case, the Registrant addressed the issues that formed the complaint. He referenced the Complainant’s concerns regarding his muscle loss, drug use comments and recovery. The Complainant was given an opportunity to make further submissions regarding the Registrant’s statements and the Registrant responded to those as well. Finally, the College also requested and reviewed documentation from three other doctors and two hospitals including physiotherapy records. The Inquiry Committee availed itself of sufficient information to make a defensible decision regarding the substance of the issues under review. The investigation was adequate.

V REASONABLENESS OF THE DISPOSITION

[24] The role of the Review Board in assessing the reasonableness of the Inquiry Committee’s disposition is to ask whether the disposition falls within the range of defensible outcomes based on the evidence before the Inquiry Committee. We must ask whether the disposition appropriately addressed the major issues of the complaint. Can the disposition be rationally supported by the evidence?

[25] It is not our role to step into the shoes of the Inquiry Committee and decide the matter anew. British Columbia law states that our review is not to decide whether the disposition of the Inquiry Committee was right or wrong, or even if we might have decided the matter differently, but only if the disposition is transparent, sufficiently justifiable and intelligible. Does the disposition fit within the range of rational outcomes?

[26] Moreover, the Review Board has earlier decided that the College’s function is not to adjudicate a complainant’s level of satisfaction with respect to a health care
professional, but rather to determine whether their members have met appropriate standards of practice. (No. 2011-HPA-151(a) at paragraph [37])

[27] I note that the Complainant had suggested that he was seeking compensation for his suffering. It was not clear if this was a goal in this complaint or another arena but regardless, the Review Board has no jurisdiction to award damages or make a monetary award in a case such as this.

[28] In this case, the decision of the Registrar, confirmed by the Inquiry Committee, was within the range of defensible outcomes based on the evidence. The Registrar accessed sufficient evidence to make a determination on the Complainant's complaint. The disposition was based on that evidence and is transparent, justifiable and intelligible.

VI DECISION

[29] For the reasons outlined in this decision, it is my decision that the disposition by the Registrar pursuant to s.32(3)(c) of the Act, which under s. 32(5) of the Act is considered to be a disposition by the Inquiry Committee, is confirmed.


[31] In making this decision I have considered all of the information and submissions before me whether or not I have specifically referenced them.

“Lori McDowell”

Lori McDowell, Panel Chair
Health Professions Review Board

August 27, 2013