DECISION NO. 2012-HPA-212(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 Dental Surgeons of BC  COLLEGE

AND: A Certified Dental Assistant  REGISTRANT

BEFORE: Lori McDowell, Panel Chair  REVIEW BOARD

DATE: Conducted by way of written submissions concluding on July 26, 2013

APPEARING: For the Complainant: Self-represented

For the College: Greg Cavouras, Counsel

For the Registrant: Lou Demerais, Agent

I INTRODUCTION

[1] This matter arose after the Complainant attended several times at a volunteer-staffed Dental Clinic that had been established to treat a specific at-risk urban population. The Complainant alleged that the Registrant, a certified dental assistant and the paid Co-ordinator of the Clinic, discriminated against her. She performed an unauthorized dental procedure on her, lied to and effectively denied her treatment. The Registrant countered that she had treated the Complainant appropriately given the mandate of the Clinic.

[2] The Complainant applied to the College for a review of her treatment by the Registrant. The College investigated the complaint and determined that no further action was required regarding the Registrant. The Complainant has now applied to the Review Board to review the disposition and find that the Registrant acted in a discriminatory manner, was unprofessional and dishonest.

II BACKGROUND

[3] The Complainant states that she visited the Clinic approximately ten times for dental treatment from November 2010 to December 2011. She says she had to wait for
long periods of time before being seen and on occasion was sent home at the end of the day without having been seen at all. The Complainant said she understood that the Clinic had a limited mandate to serve a specific segment of the population but felt that she qualified. She stated:

Something about me first, I am not working and I am a single parent. Living in (suburban city) makes my journey to the clinic 3 hours two-way at least. I am going to school next year and I can’t afford expensive dental treatment. I browsed the website and fully understand the purpose of the clinic. However my understanding is I am a low-income person, I am in pain, I should fit the category of being the patient. (Record, letter of Nov 22/11)

[4] The Complainant also alleged that as a Chinese patient she was discriminated against on the basis of her race. She stated that the Registrant told her that the Chinese patients “were not generous in donation.” She alleged, “I did see all the white patients entering the room whose facial pain score were only 4-5; I did see Asian patients were all waiting…”

[5] The Complainant also stated that the Registrant had once placed a temporary filling on her tooth after the Complainant had waited all day and had not been seen by a dentist. When the Complainant came back the next day she alleges that the Registrant stayed with her while she saw a dentist to ensure that the Complainant did not tell the dentist that it was the Registrant who had placed the filling on the tooth.

[6] Finally, the Complainant stated that the Registrant telephoned her to state that she could no longer come to the clinic because she was such a demanding patient.

[7] The Complainant signed a waiver when she attended at the Clinic. The waiver stated the following:

I understand the Clinic exists to provide Emergency Dental Services for the poor.

I agree that it is the Clinic coordinator’s responsibility to prioritize patients so that generally the sickest patients are seen first and that prioritization is at the absolute discretion of the Clinic.

I understand that this Clinic is dedicated to one treatment at a time.

I will not take up too much of the dentist’s time as I understand other patients like myself are also waiting to be seen and the dentist’s time is limited.

I do not expect to be and I understand I may not be provided with complete comprehensive care.

I understand that the Clinic dentists are volunteers and are unable to delegate future work to other dentists.

[8] The Registrant denied that she acted inappropriately with the Complainant. The Registrant submitted that she followed the triage criteria established at the hospital with which the Clinic is affiliated. Patients with the most urgent cases are seen first. The Registrant produced the Complainant’s records that showed that the Complainant had not received emergency treatments but rather, more standard dental care. The
Registrant also produced records that showed a typical workload for the Clinic on two of the days the Complainant attended at the Clinic. On one date there were three volunteer dentists who saw 42 patients, extracted 22 teeth and filled nine cavities and on another half-day session another three dentists saw 30 patients, extracting 16 teeth and filling four cavities.

[9] The Registrant also submitted that her role as Clinic Co-ordinator required her to balance the potential patients’ needs with staffing concerns. The dental personnel are all volunteers at the Clinic. A volunteer dentist cannot be required to see a patient who does not fit within the mandate of the Clinic. She stated that the last dentist who saw the Complainant did not return for a lengthy period because the Complainant asked for an excessive amount of anesthetic, was ungrateful for the treatment that was provided and asked for more work to be done.

[10] The dental assistant who attended at this same appointment submitted a statement regarding the Complainant’s actions. The assistant stated that the Complainant had come to the Clinic on November 4, 2011 because she had a filling done by another dentist and was in some discomfort. The dentist examined her, took an x-ray and adjusted the bite on the filling. She explained that the new filling might just need additional time to settle. On November 21, 2011 the Complainant returned and was seen by the assistant and the same dentist who was once again volunteering at the Clinic. The dentist and the assistant tried to explain that they could remove the filling and replace it but there was a chance they could come into contact with the nerve and the Complainant could need a root canal as a result. The Complainant would have to go to another office to have this procedure performed as the Clinic could not undertake root canals. The Complainant became “very aggressive” and insisted the dentist complete a root canal if necessary. The dentist again explained that the Clinic could not perform that procedure but would be able to prepare and protect the site to enable the Complainant to attend at another office to have the work completed. The Complainant ultimately agreed. The Complainant requested additional anesthetic against the advice of the dentist and the procedure proved to be challenging however the filling was successfully replaced without exposing the nerve. The assistant stated that upon its completion the Complainant simply left the room without expressing any gratitude for the work.

[11] Afterward the assistant told the Registrant that the Complainant was “a very forceful, difficult and aggressive patient”. He was uncomfortable treating her and believed the dentist felt similarly.

[12] The Registrant submits that because the Complainant misunderstood the nature of the services provided by the Clinic, was not part of the targeted demographic of the Clinic, and was a difficult patient who could alienate the volunteers, she felt compelled to contact her and inform her she could no longer return for further treatments. The Registrant denied ever placing any kind of filling in the Complainant’s mouth or discriminating against her. She submitted that her actions were always professional and appropriate given the goals of the Clinic.
III ISSUES

[13] 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

[14] On receipt of the complaint the College wrote to the Registrant and asked for her response to the allegations. The Registrant responded and addressed each issue. The College also requested and reviewed the Clinic dental records for the Complainant. The Registrant forwarded the records that were available for the Complainant. The records were not complete. The College gave the Complainant the opportunity to address the Registrant’s response as well as the statement of a dental assistant who was present during two of her dental treatments. The College and the Registrant addressed those further comments as well.

[15] An earlier Review Board Decision has commented on the standard of investigation required by a college. In Decision No. 2009-HPA-0001(a) to 0004(a) at paragraphs [97] and [98] 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.

[16] In other words, the Review Board will examine whether the College took reasonable steps to find the information necessary to address the complaint given its seriousness, complexity and their ability to access evidence. It is important to understand the Review Board does not re-hear or re-examine the issues. Our role under the law in British Columbia is to perform an independent review function focusing on the investigation and the disposition of the College.

[17] 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 dental records and another dental assistant’s statement. The College noted that the records were not complete and the Registrant acknowledged that record-keeping deficiencies were a problem with the volunteer dentists and dental assistants. The Complainant alleged that the missing chart notations were indicative of an inadequate investigation.
In this case I disagree. Chart notations regarding the two appointments that formed the basis of the complaint were available as was the claim ledger for nine of the Complainant’s prior visits. The ledger outlined the treatments performed and the dates and costs to the Clinic. The missing chart notations would have provided a fuller picture but were not critical to prove the nature of the work undertaken. I note that the College has contacted the Executive Director to ensure that the volunteers complete the College on-line course to ensure appropriate record-keeping in the future.

[18] The Complainant had also asked that the College contact the dentists she had visited earlier at the Clinic as well as the patients who were at the Clinic at the same time. The College did not do so. Given the requirements outlined above this degree of diligence is unnecessary and would be overly burdensome given the volunteer nature of the staff at the Clinic. The Complainant could not show how the additional dentists would support her case. The documents contradicted her evidence by showing that the dentists saw many patients and performed primarily emergency dental care including multiple extractions during their volunteer shifts. The Clinic was never intended to provide basic preventative or corrective dental care. The Clinic was not a substitute for regular dental treatments. This was demonstrated by the website, the waiver and the actual Clinic treatment records.

[19] In this case, the Registrant addressed the issues that formed the complaint. She referenced the Complainant’s concerns regarding the delay in receiving treatment, explaining that the triage protocol required that the most urgent cases would be seen first. She denied discriminating against or lying to the Complainant or withholding treatment reiterating that the order in which patients are seen depends on the level of the emergency. She produced records to support her position. She also denied performing work on the Complainant. The College reviewed the statement of the dental assistant. The College also spoke with the Executive Director of the Clinic.

[20] The Complainant was given an opportunity to make further submissions regarding the Registrant’s statements and the Registrant responded to those as well. The College did not interview the dentists involved in the Complainant’s care nor did it speak to the other patients who attended the Clinic. This was unnecessary for the College to meet its burden in this case. The Inquiry Committee availed itself of sufficient information to make a defensible decision regarding the substance of the issues under review. The investigation was not perfect, but it was adequate.

V REASONABLENESS OF THE DISPOSITION

[21] 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. Can the disposition be rationally supported by the evidence? Does it appropriately address the major issues of the complaint?

[22] Again, 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?
[23] In this case it appears obvious that the Complainant misunderstood the function of the Clinic. Although she stated that she had read the website and felt that she qualified as an unemployed single mother, the objectives of the Clinic were far more specific. The Clinic exists to assist those individuals who typically live in poverty nearby and who cannot avail themselves of other, regular dental treatment. If members of the target group could not receive dental treatment at the Clinic it is unlikely that they would have other options for treatment. The individual dentists are all volunteers. The work they can perform at the Clinic is limited by their own availability, the minimal resources of the Clinic and safety concerns. These parameters are specified in the waiver the Complainant signed. Yet the Complainant continued to visit the Clinic to correct another dentist’s work and to try to receive other non-emergency treatment. At the end of the day, this was not the work the Clinic was engaged in and the Registrant correctly advised her they could no longer help her. This would have been the case even if the Complainant did qualify for assistance at the Clinic. The Clinic’s clientele were determined by chronic poverty levels, geographic boundaries and the type of dental treatment it could provide. Regardless, given its mandate, the Clinic had the right to deny further non-emergency treatment to her.

[24] In other cases the Review Board has also 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. (Review Board Decision No. 2011-HPA-151(a) at paragraph [37])

[25] In this case, the decision of the Inquiry Committee was within the range of defensible outcomes based on the evidence obtained from the investigation. The Inquiry Committee 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

[26] For the reasons outlined in this decision it is my decision that the disposition of the Inquiry Committee is confirmed.

[27] Accordingly, I dismiss the application of the Complainant.

[28] 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

September 10, 2013