DECISION NO.  2012-HPA-221(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: Marilyn Clark, Panel Chair REVIEW BOARD

DATE: Conducted by way of written submissions concluding on August 14, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Self-represented

DECISION ON COMPLAINT APPLICATION FOR REVIEW

I  DECISION

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

II  INTRODUCTION


[3] Upon introducing himself to the receptionist, he was advised that his appointment was for the next day, February 29. The Complainant is certain that he had the date right and that the receptionist was in error.

[4] The Complainant was ill, frustrated, angry and tired. He felt that he was being poorly treated but confirmed his appointment for the next day and left. Upon arrival
home, he checked his calendar and called the Registrant’s office to confirm that he was right and to indicate his “frustration and anger at the treatment I had received”.

[5] Upon arrival at the Registrant’s office on February 29, he was advised that “because of yesterday’s incident, the Registrant would not accept me as a patient”. He was advised that the practice had a “zero tolerance policy on harassment”. He was not provided with an opportunity to see the Registrant. In the view of the Complainant he was denied medical attention.

[6] The Complainant asks that the Review Board instruct the college to revise its Disposition to:

(a) Acknowledge that it was based only on its acceptance of the MOA’s [Medical Office Assistant’s] accusation of harassment, and as such this was not sufficient proof of actual harassment;

(b) Censure [the Registrant] for failing to investigate the incident to determine whether the patient required medical assistance, and failure to provide such assistance;

(c) Reprimand the MOA for not informing [the Registrant] immediately of my presence in his surgery and for providing misleading testimonial to the College’s Inquiry Committee;

(d) Begin to develop appropriate policies with professional and public input, including definitions of harassment and procedures for dealing with any potential incident or accusation of harassment by staff or patients; and once adopted, make these policies available on its web site and in all correspondence involving any future accusation of harassment, and during and following this process, the College will;

(e) Discontinue its support for the Zero Tolerance policy regarding harassment and educate its members and the public as to why such a policy is inappropriate in a medical situation without prior intervention and diagnosis by a trained physician.

III ANALYSIS

[7] We have on the one hand a Medical Office Assistant (“MOA”) who claims to have been harassed by the Complainant. On the other hand, the Complainant states that he was in no position to harass anyone: he felt dreadful; he was frightfully cold and tired from walking to the appointment in a cold, fierce wind. The MOA called the Complainant’s speech “loud and abusive” but, according to the Complainant, “my ears were frozen from the cold and fierce wind such that I could hardly hear myself talk”.

[8] The complaint was filed against the Registrant insofar as he supported the claims of the MOA and, in the opinion of the Complainant, did not take responsibility for his employee’s actions. The Complainant states he was given the “bum’s rush” and shoved out the door when, in his opinion, he was in urgent need of medical care. He believes that the “surly” behavior of the MOA was to cover her responsibility for the botched appointment scheduling.

[9] The Complainant states he confirmed with the receptionist when he arrived home on February 28th that he had an appointment with the Registrant the next day.
According to a former MOA of the Registrant who worked at the time giving rise to this complaint:

[The Complainant] called the clinic later that day and left the MOA a nasty message about she was a horrible MOA and continued to call her names.

The MOA then advised [the Registrant] of the message she had received and how [the Complainant] had behaved while at the clinic. [The Registrant] advised her that [the Complainant] would not be seen at the clinic due to his abusive nature.

The MOA called [the Complainant] to advise him of [the Registrant’s] decision.

Despite this, [the Complainant] came to the clinic the next day and was demanding to be seen by [the Registrant]. The MOA advised him that he would not be seen, and she asked him to leave.

[10] The MOA claimed the Complainant did not have an appointment on the 28th. The Complainant is certain he did; that is the date he wrote in his calendar. Did he write it on the wrong date? Or did the MOA record it on the wrong date? We will never know. What we do know is that the Complainant was not seen by the Registrant because of the MOA’s report to the Registrant of the Complainant’s behavior.

IV APPLICABLE STATUTORY PROVISIONS

[11] Section 50.6 of the Act outlines the scope of a review by the Review Board.

50.6 (1) A complainant may apply to the review board for a review of a disposition described in section 50.53(1)(c).

(5) On receipt of an application under subsection (1), the review board must conduct a review of the disposition and must consider one or both of the following:

(a) the adequacy of the investigation conducted respecting the complaint;

(b) the reasonableness of the disposition.

(6) A review under this section is a review on the record.

V ISSUE

[12] Under that legislation, it is my duty to focus on:

(a) The adequacy of the College’s investigation, and

(b) The reasonableness of the disposition.

VI ADEQUACY AND REASONABLENESS

A. Adequacy of the Investigation

[13] In a written report to the Inquiry Committee, the Deputy Registrar in accordance with Section 32(3) (c) of the Act made the decision to dismiss this complaint. In his report to the Inquiry Committee, the Deputy Registrar stated that the allegations of
rudeness and poor communication “would normally be concluded with no more than a reprimand” in that they could not be defined as a “serious matter” as defined in the Act.

[14] The Complainant wrote to the College on March 5, 2012, over the Registrant’s refusal to treat him.

[15] The Registrant responded to the College’s request for information on March 13, 2012. In that letter he stated that:

There is little I can say as I have never met or spoken to the patient [the Complainant]. Subsequently, I have no notes or records relating to his complaint.

I heard through the MOA that she had an interaction with a rude and abusive patient. He did not have an appointment to see me. As I would be seeing patients, I had no interaction with him. My only statement on this that if someone is verbally or physically abusive to staff in the clinic they are asked to leave.

[16] The Complainant wrote again to the college on March 30th, 2012, advising that tests performed at a walk-in clinic on February 28th indicated he had Type 2 Adult Onset Diabetes. He claims that according to Diabetes Canada, one consequence of this diagnosis can be irritability, arguing that as a result a policy of “zero tolerance” is inappropriate in a physician’s office.

[17] In a third letter to the College, dated May 5, 2012, the Complainant responds to the March 13 letter to the College from the Registrant in which the Registrant stated the Complainant did not have an appointment (which the Complainant believes he had); complaining that the Registrant at no time attempted to contact him and the Registrant takes no responsibility for the incident.

[18] Included in the file are the day sheets from the Registrant’s office showing scheduled appointments for February 28 and 29 as provided by one of the MOAs present at the time. She states in a covering note that she printed the day sheet early on the morning of the 28th (according to the day sheet, it was printed at 8:45 a.m.) and that the Complainant did not have an appointment that day. She also states that the Complainant’s appointment for the 29th “was deleted from the schedule as due to his temper on the 28th he was banned from the clinic”.

[19] The only other information for the Registrar’s review is a Note to File, completed by a College staff member, following a conversation with the MOA present at the time. She provided a summary of the events of February 28 as follows:

(a) [The Complainant] arrived at the clinic and sat down in the waiting area without checking in. The MOA asked if she could help him, and he provided her with his name.

(b) The MOA then checked for [the Complainant] in the computer and advised him that he was one day early and that his appointment was for the next day.

(c) [The Complainant] responded, “The hell it is.”

(d) The MOA apologized, but again suggested that his appointment was for the next day.
(e) [The Complainant] then came across the room screaming and calling her names. The MOA described [the Complainant] as having a “nasty temper” and that he “would not listen to reason.”

(f) [The Complainant] left the clinic slamming the door on his way out.

(g) [The Complainant] called the clinic later that day and left the MOA a nasty message about she was a horrible MOA and continued to call her names.

(h) The MOA then advised [the Registrant] of the message she had received and how [the Complainant] had behaved while at the clinic. The registrant advised her that [the Complainant] would not be seen at the clinic due to his abusive nature.

(i) The MOA called [the Complainant] to advise him of [the Registrant’s] decision.

(j) Despite this, [the Complainant] came to the clinic the next day and was demanding to be seen by [the Registrant]. The MOA advised him that he would not be seen, and she asked him to leave.

(k) [The Complainant] continued to call the MOA names and demanded to be seen. The MOA then went and confirmed with [the Registrant] that he would not be seen.

[20] The College reviewed all that was available and conducted a telephone interview with one of the MOAs on duty on the two February dates in question. It is my opinion the investigation was adequate.

B. Reasonableness of the disposition

[21] In its response to the Complainant, the College wrote that they . . . acknowledge your belief that it is inappropriate for a doctor’s office or medical facility to have a zero tolerance policy for disruption, abuse or harassment of staff. Although this is your personal opinion, human rights legislation supports the rights of workers in any work environment to be treated with respect and dignity. Again, we cannot determine from your complaint or [the Registrant’s] response to what extent you were loud or aggressive towards his staff. Even if you believe you had justification for exhibiting your anger and frustration, a doctor’s office is a place where waiting patients who are often unwell are entitled to a quiet and stress-free environment. As [the Registrant] has stated, it is usual practice for patients who do become disruptive to be asked to leave. Generally, these individuals are asked to leave and are generally not permitted to return.

From the account of [the Registrant’s] former MOA, we would support [the Registrant’s] enforcement of the office’s zero tolerance policy. Such a policy is appropriate and is permitted in any medical facility, including doctors’ offices, hospitals, clinics and laboratories.

We do not consider that your chronic condition when you presented to [the Registrant’s] office on either February 28 indicated that you were in a life- or limb-threatening condition, noting that you were able to attend a physician’s office on two separate occasions. In an urgent situation, the MOA would have been obliged to interrupt [the Registrant] to assess you. For a chronic condition, it would not have been appropriate for a staff member to interrupt a physician who was seeing another patient in order to settle a dispute about an administrative matter.
We understand your frustration concerning the appointment mix-up and again acknowledge that you are certain that the mistake was not yours. Nevertheless, if a first-time, non-urgent patient is perceived to be disruptive in the office or rude to the staff, a physician does have an obligation to provide a harassment/abuse-free environment for his staff and may decline to see the patient.

[22] The Registrant, upon making the decision that he would not see the Complainant on February 29th, ought to have at least ensured the Complainant was so advised before trudging on a cold winter’s day to the Registrant’s office only to be advised the Registrant would not see him. For this, the Registrant is culpable but not so as to attract regulatory criticism.

[23] In that regard, the College does state in their response to the Complainant:

We are unable to determine if in fact you were contacted prior to you attending again on February 29, 2012 to advise that you would not be seen. When a patient is declined ongoing care, a record should be made and ideally a letter sent by registered mail to the patient advising them that the physician will not see them. Unfortunately, this did not happen in this instance, and you were deleted from the clinic’s electronic system.

[24] The disposition of the College is reasonable.

VIII CONCLUSION

[25] Apparently, from the perspective of the MOA, the Complainant was rude and abusive. From the perspective of the Complainant, the MOA was unsympathetic and hostile. In reality, it is likely that they are both partly right.

[26] In summary, I find the College’s investigation adequate and the disposition of the investigation reasonable. Accordingly, the disposition of the Inquiry Committee is confirmed.

[27] In making this decision, I have considered all of the information and submissions whether or not specifically reiterated herein.

“Marilyn Clark”

Marilyn Clark, Panel Chair
Health Professions Review Board

November 29, 2013