DECISION NO.  2013-HPA-013(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: Sandra McCallum, Panel Chair  
REVIEW BOARD

DATE: Conducted by way of written submission concluding on September 9, 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 under s. 50.6 of the Act, it is my decision that the disposition of the Inquiry Committee of the College is confirmed.

II INTRODUCTION

[2] The Complainant applies for a review of a decision of the Registrar of the College pursuant to s. 32(3)(c) of the Act, which under s. 32(5) of the Act, is considered to be a decision of the inquiry committee, dismissing his complaint against the Registrant.
III BACKGROUND

[3] In February 2011 the Complainant was referred to the Registrant by his family doctor. The Complainant’s family had a history of colon cancer. The Complainant was seen by the Registrant in April 2011. It was determined that a colonoscopy should be performed; that was done on February 16, 2012. The Complainant also reported that he was suffering from chronic diarrhea. During the procedure the Registrant found that the Complainant had moderate colon diverticulosis and removed two polyps.

[4] After the Complainant’s discharge he was advised to see the Registrant in 12 weeks. This occurred on May 7, 2012.

[5] In a letter dated May 28, 2012 to the College the Complainant expressed his concerns regarding the care provided by the Registrant.

[6] The Complainant expressed four concerns:

   (a) that the Registrant gave him less than 2 minutes at the follow up consultation;
   (b) that the Registrant did not discuss the cause of the Complainant’s diarrhea;
   (c) that the Registrant did not explain what diverticulosis was; and
   (d) that the Registrant did not inform the Complainant whether the polyps he found were removed and sent to pathology.

[7] The Registrant disputed these assertions.

IV JURISDICTION OF THE REVIEW BOARD

[8] 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 (in this case, to dismiss the complaint) reasonable?

[9] 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

[10] 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:
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.

[11] 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.

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 a somewhat probing examination”?

[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 inquiries 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.

[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 No. 2009-HPA-0001(a);0002(a);0003(a) and 0004(a), para. [92])

VI ANALYSIS AND DISCUSSION

[16] To determine whether the investigation was adequate as explained in the case law I looked at the process utilized. The College sought and obtained medical records from the hospital and a written response and any relevant medical records from the Registrant.
By letter dated August 1, 2012 the College provided the Complainant with a copy of the Registrant’s response.

On August 13, 2012 the College received a letter from the Complainant in reply to the Registrant’s response. The Registrant sent a further response to the Complainant’s assertions on September 18, 2012.

The College requested, received and examined all the relevant material so in my view the investigation was adequate.

In determining whether the disposition was reasonable 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.

The Registrant had the nurse on duty report results to the Complainant. It is my understanding that it is the usual practice to have the registered nurses at the hospital meet with the patient and explain the results of a medical procedure such as a colonoscopy.

The Registrant also reported his findings to the Complainant’s family physician. The College determined that this is an acceptable practice.

At the follow up appointment the records show that the Registrant reviewed the findings with the Complainant and showed him images of his colon. The College found that it was not possible to do this in less than 2 minutes as the Complainant had alleged.

On the basis of the documented evidence it is my conclusion that the disposition was reasonable.

VII CONCLUSION

In summary, for all the reasons set out above, and after considering the written submissions provided by all parties, I find the Inquiry Committee’s investigation was adequate and its disposition reasonable.

“Sandra McCallum”

Sandra McCallum, Panel Chair
Health Professions Review Board

December 10, 2013