DECISION NO. 2013-HPA-025(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

AND: A Physician

BEFORE: David A. Hobbs, Panel Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submissions concluding on Sept 20, 2013

APPEARING: For the Complainant: In person

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay Johnston, Counsel

DECISION ON REVIEW OF INQUIRY COMMITTEE DECISION

I INTRODUCTION

[1] The Complainant, via her husband with power of attorney, applies for review of the Inquiry Committee’s decision to take no further action on her complaint against the Registrant regarding an alleged delay in diagnosis of cancer.

II BACKGROUND


[3] Shortly thereafter it was determined the cancer had spread to her lungs and lymph nodes.

[4] The Complainant filed a complaint with the College on May 4, 2012, the thrust of which was that based on bowel problems she said she had been reporting to the Registrant prior to February, 2011 the cancer should have been diagnosed as early as 2007.

[6] In May, 2012, the College wrote to the Registrant and other physicians involved with treating the Complainant requesting their responses and records.

[7] The College requested from two hospitals their relevant health care records for the Complainant’s admissions during February to September, 2011.

[8] The Complainant provided the College with her MSP History Printout dating back to February 1, 2005.

[9] The Registrant responded to the College by letter received June 6, 2012, citing only two relevant notations in her clinical notes during the period from June 17, 2002 to April 6, 2010, and one occasion where the Complainant presented to the emergency department in 2008. The first notation relating to abdominal discomfort noted on March 7, 2003, spontaneously improved by April 16, 2003; the second notation on May 11, 2005 leading to removal of an ovarian cyst; and the emergency incident on January 11, 2008 relating to renal colic with special investigations at that time.

[10] The Registrant provided the College her clinical notes, complex care plan, specialist consultations, special investigations and laboratory results.

[11] The other treating physicians contacted provided the College with their response letters consult reports and notes.

[12] The Complainant wrote the College by letter received November 29, 2012 asking what stage the College’s investigation was at. The College responded that it would have its decision completed by January 14, 2013. The College was unable to meet the January 14, 2013 deadline but was able to issue the Registrar’s decision on February 14, 2013 (the “Decision”).

[13] In the Decision the College identified the factual conflict between the allegations of ignored multiple gastrointestinal complaints allegedly made by the Complainant to the Registrant compared to the absence of mention of such complaints in the Registrant’s chart. The College concluded that given the Registrant’s thorough recording of many other concerns expressed it was less likely the Registrant omitted to record gastrointestinal complaints over several years. The College found no basis for regulatory criticism of the care provided by the Registrant to the Complainant. The matter was concluded under s. 32(3)(c) of the Act with no further action to be taken.

[14] The Complainant filed an application for review with the Review Board on February 27, 2013 stating the prime reason for the application was “to avoid other patients from experiencing similar problems. It has been stated time and time again that the best way to beat cancer is early diagnosis.”

[15] The Complainant argues that the College has wrongly chosen to believe the doctor regarding the issue of the number of complaints of symptoms she made that might have lead to an earlier diagnosis of cancer. The record does not contain any precise
allegation of what was reported by the Complainant on each alleged occasion or when each alleged report occurred.

[16] The Complainant submits in her Statement of Points received by the Review Board on June 20, 2013 that she cannot add any new documentation or persons of interest to contact. The Complainant takes no issue with the adequacy of the investigation but does take issue with the reasonableness of the disposition. The Complainant’s main argument is the College was wrong in concluding she did not tell the Registrant about her symptoms since 2007 on several occasions.

[17] In its Statement of Points dated August 1, 2013, the College submits that an application such as this does not amount to a trial de novo (new trial) with a rehearing of evidence to come to factual conclusions which may differ from those reached by the Inquiry Committee. The College cites the Review Board’s Decision No. 2011-HPA-0032(a) in this regard.

[18] In her Statement of Points dated September 20, 2013 the Registrant submits the investigation was adequate and the disposition reasonable. The Registrant also points to the Review Board’s lack of authority to rehear evidence and form different factual conclusions from those reached by the Inquiry Committee.

III DISCUSSION AND ANALYSIS

[19] The role of the Review Board in an application such as this is to consider the adequacy of the investigation and the reasonableness of the disposition.

[20] The College’s investigation included gathering all relevant records and conducting written interviews of the persons knowledgeable as to material facts. The Complainant does not question the adequacy of the investigation and I see no reason to fault the investigative steps taken.

[21] The factual conclusion of the College that there is insufficient evidence to satisfy the College that the Complainant reported gastrointestinal symptoms to the Registrant over several years, which the Registrant ignored, resulting in a delayed diagnosis, is not a conclusion the Review Board has any power to retry or alter. The Decision explains why the Inquiry Committee came to this conclusion given the absence of clear evidence to prove the point and the presence of evidence to support the conclusion reached. This is not a finding one way or the other on the narrow factual question, it is simply a finding that there is insufficient evidence to warrant further regulatory action against the Registrant.

[22] Given there was no finding the Registrant’s care did not meet the expected standard, the College’s Decision to take no further action on the Complaint was reasonable in the sense it falls within the range of acceptable outcomes taking into account the relevant facts and law.
IV CONCLUSION

[23] I confirm the Decision of the Inquiry Committee.

[24] I have considered the entire record and submissions of the parties though not referred to in their entirety herein.

“David A. Hobbs”

David A. Hobbs, Panel Chair
Health Professions Review Board

December 3, 2013