DECISION NO.  2013-HPA-053(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 of BC

AND: A Physician

BEFORE: J. Thomas English, Q.C., Chair

COMPLAINANT

COLLEGE

REGISTRANT

REVIEW BOARD

DATE: Conducted by way of written submission concluding on October 20, 2013

APPEARING: For the Complainant: Self-represented

For the College: Sarah Hellmann, Counsel

For the Registrant: Lindsay R. Johnston, Counsel

I DECISION

[1] For the reasons outlined below, 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.

II BACKGROUND

[2] The Registrant has been the family physician to the Complainant for 20 years except for a four year period.

[3] The Complainant is of the view that the Registrant over the years failed to respond appropriately to various symptoms presented by him to the Registrant including but not limited to:
(a) prescribing in 2004 thyroid medication which caused in 2011 the pulse of the Complainant to go from 40-48 to 120-140 overnight as a result of which he now suffers from heart fibrillation;

(b) failing to explore why his heart beat was so slow and then failing to educate him as what to do when there was a rapid increase in his pulse;

(c) ignoring his complaints when he was taking the prescription medication Avandia;

(d) failing to refer him to a specialist in respect to his response to diabetic drugs; and

(e) suggesting to him his problems were “emotional”

III APPLICABLE PRINCIPLES

[4] The relevant provisions of the Act are s. 50.6(5) to (8) which read as follows:

(5) On a 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.

... 

A. Adequacy of the Investigation

[5] The Review Board has determined in prior decisions that not all complaints will require a College to pursue every possible avenue of investigation, but a Complaint is entitled to an adequate investigation.

[6] The standard I have adopted for assessing the adequacy of investigation in this matter is whether this complaint was investigated diligently, considering its seriousness, complexity and the availability of the evidence. The law applying to the adequacy of an investigation was properly determined in the Review Board Decision No. 2009-HPA-0001(a)-000(4)(a) at paras. [97] and [98]:

[97] A complaint 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 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 all the circumstances.

[7] The role of the Review Board in assessing the adequacy of an investigation is to determine whether the Inquiry Committee’s investigation provided it with sufficient information to assess the particular complaints made against the Registrant. It is not the role of the Review Board to reinvestigate the complaint or to substitute its decision for that of the Inquiry Committee.

B. Reasonableness of the Disposition

[8] The role of the Review Board in assessing the reasonableness of the Inquiry Committee’s disposition of a complaint is to determine whether it falls within a range of defensible outcomes based on the evidence the Inquiry Committee had before it.

[9] The evidentiary standard for assessing reasonableness of a disposition is based on a review of what was before the Inquiry Committee (the “Record”), along with any additional evidence put before the Review Board that the Review Board considers, upon examination, to be reasonably required for a full and fair disclosure of all matters related to issues under review: s. 50.6(7) of the Act.

[10] The substantive test for assessing reasonableness is set out in the Dr. Q. v. College of Physicians and Surgeons of British Columbia, [2003] S.C.J. No. 18 (SCC) at para. [39], where the Supreme Court of Canada held, paraphrased as follows:

The reasonableness standard which ought to be applied to the College’s disposition requires deference to the decision of the Inquiry Committee. It is not open to the Review Board to ask itself whether it would have arrived at the same decision as the Inquiry Committee. Rather the test is whether the Inquiry Committee’s decision was reasonably supported by the information that was before it, and whether it can withstand “a somewhat probing examination.”

[11] In the Review Board Decision No. 2009-HPA-0001(a)-0004(a), paras. [90] to [94] the Review Board set out a comprehensive description of the applicable law regarding the “reasonableness of the disposition” which I adopt. In regard to the reasonableness of the disposition, the Review Board stated in the above noted decision at para. [92]:

While the Review Board’s application of the test will necessarily reflect its expertise as a specialized administrative tribunal rather than a Court, the Review Board’s focus is nonetheless not to step into the shoes of the Inquiry Committee, but rather to determine whether the Inquiry Committee’s disposition falls within 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.

[12] The Review Board is not to decide whether the Inquiry Committee’s decision was right or wrong, and administrative law does not require that the disposition be one that the Review Board would have made. Rather, it must be a disposition that is supported by
the evidence from the investigation, and once that fits within the range of acceptable and rational outcomes.

IV  ANALYSIS

A.  Adequate Investigation

[13] The investigation of the College consisted of forwarding the complaint of the Complainant to the Registrant for a response, forwarding the response to the Complainant and asking if the Complainant wished to respond and/or had any new information for the College to consider. The College also asked for and received the records of the Registrant relating to the Complainant including others from various specialists who saw the Complainant.

[14] In my view, there was an adequate investigation by the College.

B.  Reasonable Disposition

[15] In its disposition the Inquiry Committee considered each of the Complainant’s concerns which could be summarized as being that the Registrant failed to take appropriate action or to conduct an adequate investigation when prescribing various drugs and then failed to act appropriately when there were negative side effects.

[16] The determination of the appropriate way to deal with the prescription of drugs and their side effects was expressed as follows by the Inquiry Committee:

All drugs have risks and benefits. All drugs have potential side effects. There is often a delicate balance between the drugs used to treat a disease and the unwelcome side effects they produce. The physician and patient need to work together to understand the risk/benefit ratio, which is different for every clinical situation. Only the patient can know whether a side effect is tolerable to them.

You report side effects from many of the medications prescribed to you by [the Registrant]. [The Registrant] also acknowledges that you experienced side effects from many of the medications he prescribed to you. A patient can chose to make a recommended therapy, and a patient can also decline a recommended therapy. We note that your chart shows you exercised your right to decline recommended therapy, and you had every right to do so.

[17] The Inquiry Committee was not critical of the Registrant and concluded the care he provided was within the standard expected for a family physician.

[18] Accordingly, in determining whether the above conclusion was a reasonable disposition I have to determine if it was supported by the evidence from the investigation, and if so, was it within the range of acceptable and rational outcomes.

[19] I find it was a reasonable disposition as it was within the range of acceptable and rational outcomes.
CONCLUSION

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

[21] For the reasons given above, I have found that there was an adequate investigation by the Inquiry Committee and that its disposition was reasonable. Accordingly, I confirm the disposition of the Inquiry Committee.

“J. Thomas English”

J. Thomas English, Q.C., Chair
Health Professions Review Board

December 10, 2013