

Health Professions Review Board
Suite 900, 747 Fort Street, Victoria, BC V8W 3E9

Complainant v. College of Physicians and Surgeons of British Columbia

DECISION NO. 2016-HPA-211(b)

July 18, 2018

In the matter of an application (the “Application”) under section 50.6 of the *Health Professions Act*, R.S.B.C. 1996, c. 183, (the “Act”) for review of a complaint disposition made by, or considered to be a disposition by, an inquiry committee

BETWEEN:	The Complainant	COMPLAINANT
AND:	College of Physicians and Surgeons of British Columbia	COLLEGE
AND:	A Physician	REGISTRANT
BEFORE:	Brenda L Edwards, Panel Chair	REVIEW BOARD
DATE:	Conducted by way of written submissions closing on June 14, 2018.	
APPEARING:	For the Complainant: Self-represented	
	For the College: Michelle Stimac, Counsel	
	For the Registrant: Lara Zee, Counsel	

DECISION

I INTRODUCTION AND PROCEDURAL BACKGROUND

[1] The Complainant is a registered nurse who was the subject of a Comprehensive Independent Medical Assessment (also known as an independent medical examination or “IME”) by the Registrant. The Complainant was dissatisfied with the care and the conduct of the Registrant and complained to the College.

[2] The College investigated the complaint and a Medical Reviewer, Complaint and Practice Investigations department of the College (the “Medical Reviewer”) investigated the complaint and prepared a summary report of the results of the investigation and recommendations for the Inquiry Committee. After considering the report, the Inquiry Committee dismissed the complaint without criticism of the Registrant. The Medical Reviewer wrote the Complainant on behalf of the Inquiry Committee on September 26, 2016, and advised him of the disposition.

[3] The Complainant filed an Application for Review with the Review Board on November 6, 2016, in which he alleged that the College's investigation of his complaints was inadequate, and its disposition was unreasonable.

[4] The College provided the record of its investigation of the complaint on February 21, 2017 (the "Record"). On April 6, 2017, the College forwarded several pages which had been missing from the Record.

[5] After the Parties attempted to resolve the matter on their own and after the Complainant sought and was provided an extension of time in which to file his Statement of Points, on March 26, 2018, this matter was assigned to me by the Chair of the Review Board for a "Stage 1 hearing." At a Stage 1 hearing I may decide to:

- (a) confirm the Inquiry Committee disposition under s.50.6(8)(a) of the Act if the application for review can be fairly, properly and finally adjudicated on the merits without the need for submissions from the College and Registrant; or
- (b) determine that the application requires adjudication in a Stage 2 hearing, in which case no decision will be made until after requesting submissions from the College and Registrant, and further reply submissions from the Complainant.

[6] On April 4, 2018, I wrote the Parties advising that I was directing the matter to a Stage 2 hearing into the adequacy of the investigation and the reasonableness of the decision. I set a schedule for the Parties to provide me with their written submissions and I invited the College and the Registrant to address certain issues, including whether I ought to admit certain documents which the Complainant had applied to have added to the Record. In addition, I offered the Complainant an optional final reply, on any new issues raised by the other parties in their submissions.

II BACKGROUND

[7] The background to this matter is relatively straightforward. The Complainant is an atheist. He is also a registered nurse who was working as a Community Mental Health Nurse in 2013 when he was hospitalized, involuntarily. While in hospital, he was diagnosed with a substance use disorder. The Complainant applied to the College of Registered Nurses of British Columbia's ("CRNBC") Licensing, Education Advocacy and Practice (LEAP) program for financial assistance for treatment and to access programming offered through his union and his employer. He signed consent forms for each program and agreed to participate fully with a case management plan. The CRNBC changed his registration status to "non-practising" and referred him to the Registrant for an IME.

[8] The Registrant has been in private practice for more than 30 years, devoted primarily to addiction medicine and occupational addiction medicine. He performs independent medical examinations of health professionals, law enforcement officers, lawyers, government employees and patients referred by family physicians and psychiatrists. The CRNBC referred the Complainant to the Registrant for an IME and comment on addiction. The Complainant attended the Registrant's office on November

27, 2013, for the initial IME assessment and on May 14, 2014, for a re-assessment. The Registrant prepared a final IME report on May 21, 2014 (the “IME Report”).

[9] In the IME Report, the Registrant recommended that, before for the Complainant returned to nursing work, he ought to:

- complete a residential addictions treatment program for substance-dependent health professionals at a treatment centre in Ontario;
- participate in outpatient counselling;
- sign a medical monitoring agreement and undergo ongoing medical monitoring by urinalysis for three years – testing would demonstrate whether he has completely abstained from alcohol, cannabis and other mood-altering drugs (the Registrant offered to serve as the monitoring physician but also offered up the names of two other medical monitoring services);
- after the residential treatment program, he would be eligible for and was encouraged to attend twice monthly Caduceus meetings for health professionals;
- attend Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) meetings daily until his return to work and three times per week after, obtain a sponsor through AA and complete the 12-step program; and
- be re-assessed two to four weeks after completing residential treatment to determine the timing and conditions for his safe return to work.

[10] The Complainant reviewed the IME Report and complained to the College about several aspects of the Registrant’s recommended approach to treating the Complainant’s addiction. The Complainant expanded on his complaint over the course of several months in successive letters to the College.

[11] The Complainant began to follow the treatment recommendations in the IME Report but, when he ceased complying with the Registrant’s treatment recommendations, his employment with a Health Authority was terminated.

III MATERIALS CONSIDERED IN THIS REVIEW

[12] In reaching my decision, I considered all the materials before me, whether specifically referenced in this decision, or not, including:

- the Complainant’s Application for Review and submissions;
- the 592-page Record provided by the College;
- the College’s submissions; and
- the Registrant’s submissions.

Additional Documents

[13] With his Statement of Points, the Complainant filed a Form 11 seeking to add 34 documents to the Record for my consideration in this review (the “Additional Documents”). The Complainant submits that these documents allow for a more fulsome disclosure of the issues before the Review Board and are necessary for a full and informed decision.

[14] I do not propose to identify each document that the Complainant sought to add to the Record, but I will describe the documents, generally, as follows:

- An affidavit and a report prepared by a physician purportedly offered as an “expert report” prepared at the Complainant’s request, after the Inquiry Committee disposed of the complaint and during the review process;
- Email correspondence from the Complainant’s union, employer and the CRNBC regarding the Complainant’s employment status and his participation in programming;
- The AA prayer and articles about AA;
- General information from the College’s website;
- Educational materials for lawyers on workplace substance use policies;
- Documents regarding other adjudication proceedings (Human Rights tribunals, College of Registered Nurses of Ontario complaint);
- Media articles regarding supervised injection sites mentioning the Registrant; and
- Correspondence from government representatives.

[15] Counsel for the College objects to the admission of any of the Additional Documents asserting that they are irrelevant to the matter under review and therefore will not render the Record more complete. Further, the Additional Documents were not provided to the Inquiry Committee prior to its review despite the Complainant’s numerous submissions during the investigation and it would be unfair to the College for the Review Board to consider them, now.

[16] Counsel for the Registrant submits that the Additional Documents are inappropriate for consideration by the Review Board as this is not a *trial de novo* (a new hearing on the merits). Counsel implies that admitting the documents would allow the Complainant to reargue his original complaint when the purpose of this review is to review the record of the investigation that was before the Inquiry Committee rather than to adduce fresh evidence in an attempt to have the Review Board reach a different factual conclusion than the Inquiry Committee.

[17] I have reviewed the Additional Documents and I am not persuaded that any are reasonably required for a full and fair disclosure of all matters related to the issues

under review, specifically whether the investigation carried out by the College was adequate and the Inquiry Committee's disposition of the complaint based on the results of that investigation, was reasonable. The Additional Documents are not admitted in this review and will not be added to the Record.

IV APPLICABLE LEGISLATION

[18] The Act governs the College's oversight of applications for registration and its governance of registrants. Among the College's duties is the receipt and investigation of complaints regarding the conduct or competence of registrants.

[19] The Review Board is a specialized tribunal, independent of the College and its members are not members of any of the health professions. Its purpose is to provide a neutral, arm's length review of the College's disposition of applications for registration and complaints.

[20] Section 32 of the Act describes the Registrar's role in the complaint process:

- (1) A person who wishes to make a complaint against a registrant must deliver the complaint in writing to the registrar.
- (2) As soon as practicable after receiving a complaint, the registrar¹ must deliver to the inquiry committee a copy of the complaint, an assessment of the complaint and any recommendations of the registrar for the disposition of the complaint.

[21] Section 33 of the Act provides for investigations by the Inquiry Committee of the College (an independent body consisting of both members of the profession and representatives of the public):

- 33** (1) If a complaint is delivered to the inquiry committee by the registrar under section 32(2), the inquiry committee must investigate the matter raised by the complainant as soon as possible.

...

- (5) The inquiry committee must request the registrant who is the subject of an investigation under this section to provide it with any information regarding the matter that the registrant believes should be considered by the inquiry committee.
- (6) After considering any information provided by the registrant, the inquiry committee may
 - (a) take no further action if the inquiry committee is of the view that the matter is trivial, frivolous, vexatious or made in bad faith or that the conduct or competence to which the matter relates is satisfactory,

¹ The Registrar who assesses the complaint and provides recommendations to the Inquiry Committee is referred to as the Medical Reviewer.

- (b) in the case of an investigation respecting a complaint, take any action it considers appropriate to resolve the matter between the complainant and the registrant,
- (c) act under section 36, or
- (d) direct the registrar to issue a citation under section 37.

[22] In this instance, after considering the complaint and the results of the investigation carried out on its behalf, the Inquiry Committee disposed of the complaint without taking any further action as provided for in s.33(6)(a) of the Act.

[23] Under s.50.6(1) of the Act, a person may apply to the Review Board for a review of the disposition of the Inquiry Committee. The Complainant applied for such a review.

[24] Section 50.6(5) sets out the responsibility of the Review Board when conducting a review:

50.6 (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.

[25] Section 50.6(8) sets out the powers of the Review Board after completing the review:

50.6 (8) On completion of its review under this section, the review board may make an order

- (a) confirming the disposition of the inquiry committee,
- (b) directing the inquiry committee to make a disposition that could have been made by the inquiry committee in the matter, or
- (c) sending the matter back to the inquiry committee for reconsideration with directions.

[26] My task, on behalf of the Review Board, as described in s.50.6 (5) of the Act, is to review the College's disposition of the complaint and to consider the adequacy of the investigation, the reasonableness of the disposition, or both. In this case, the Applicant has requested that I consider both.

V THE ADEQUACY OF THE INVESTIGATION

[27] As a member of the Review Board, I am aware that professional colleges have limited resources with which to investigate complaints and must allocate those resources wisely. Further, I am aware that the function of the Medical Reviewer and the

Inquiry Committee is not a formal adjudicative function but is a screening function. However, the importance of the screening function cannot be minimized in relation to the College's duty to protect the public. That said, an investigation need not be perfect in order to be adequate.

[28] As noted by the College, referencing Review Board Decision No. 2009-HPA-0001(a) to 0004(a), what is adequate will depend on the nature of the complaint, the seriousness of the harm alleged, the complexity of the investigation and the evidence and resources available to the College.

Steps in the investigation

[29] The Record establishes that the College took the following steps to investigate the complaint:

- acknowledged the complaint and advised the Complainant that the investigation of the complaint was being placed in abeyance because the Registrant had non-practising status and the College could not obtain his response to the complaint;
- wrote the Registrant on his return to practicing status, advising him of the complaint and seeking his response;
- received further correspondence from the Complainant expanding on his complaint in nine letters and an email;
- received a response from the Registrant (through counsel), attaching relevant clinical records for the Complainant;
- sought a response from the Registrant to the Complainant's further submissions;
- received a response from counsel for the Registrant indicating that the Registrant's first response was comprehensive and noting that he had also responded to a complaint received by the Office of the Information and Privacy Commissioner ("OIPC"), and
- sought and obtained from the Registrant a copy of his response to the Information and Privacy Commissioner and attached the OIPC's letter to the Complainant's copy of the disposition dismissing the complaint.

[30] At the end of the investigation, the College's Medical Reviewer prepared a report for the Inquiry Committee summarizing the investigation and making recommendations.

[31] In his Application for Review, the Complainant stated that his reason for requesting the review was that the Inquiry Committee had not investigated his allegation that the Registrant had discriminated against him based on his religious beliefs. In his Statement of Points, however, the Complainant expanded on his reasons for believing the College's investigation of the complaint was inadequate. He now asserts that every aspect of his complaint was inadequately investigated. I note that the Complainant has also referenced the Inquiry Committee's failure to reference standards in his concerns

regarding the adequacy of the investigation. I will consider those submissions under my discussion of the reasonableness of the disposition as the standards may need considering but they did not need to be “investigated”.

[32] I will address the Complainant’s areas of concern with the investigation, next.

Informed Consent

[33] The Complainant submits that the College’s investigation of his complaint was inadequate because the College failed to consider any of his allegations that he had been provided with health care under coercive circumstances that rendered his consent involuntary. He notes that the College did not request documents related to the programs offered by the Complainant’s profession’s regulatory College, his union and his employer which, he says, provide evidence that he would be fired if he did not comply with the Registrant’s treatment recommendations.

Religious Discrimination

[34] The Complainant submits that the College failed to adequately investigate his complaint regarding religious discrimination because the College did not undertake a literature review into the religious nature of 12-step programs.

Conflict of Interest

[35] The Complainant submits that the College’s investigation of his complaint alleging that the Registrant was in a conflict of interest with respect to his treatment recommendations was inadequate because the College failed to ask the Registrant if he had a financial interest or other conflict of interest with the residential treatment facility, “or with any other medical companies, counselling services, support groups or other businesses where he refers patients.”

Inadequate Treatment or Care of a Medical Condition

[36] The Complainant submits that the College inadequately investigated this aspect of his complaint because it failed to retain an expert in addiction medicine and failed to undertake a literature review of appropriate treatment for addiction.

Use of Medical language

[37] Again, the Complainant submits that the College’s investigation of this aspect of his complaint was inadequate because the College failed to retain an expert and did not have an expert on medical documentation on their Panel.

Privacy of Health Information

[38] The Complainant submits that his consent was coerced, and that the College inadequately investigated this and whether the Registrant disclosed more personal information than was requested or necessary.

Communicating with the Public

[39] The Complainant submits that the College's investigation was lacking in that it failed to conduct a literature review to test comments made by the Registrant in an article regarding supervised injection sites.

Giving Treatment Advice

[40] The Complainant asserts that the College did not investigate this aspect of his complaint.

College's submissions

[41] The College submits that the complaint has changed over time. Initially, the Complainant raised concerns regarding disagreement with the Registrant's treatment recommendation that he attend abstinence-based programs and the language in the IME Report. Subsequently, he added concerns regarding breach of privacy and failure to obtain informed consent. The Inquiry Committee was provided with the original complaint and the additional submissions from the Complainant.

[42] The College further submits that the Review Board has recognized that the Inquiry Committee has the right to adopt its own "investigative procedure" and it ought not to be required to second guess what the Complainant intends by the complaint, provided a reasonable interpretation of the complaint is applied by the Inquiry Committee: Review Board Decision No. 2015-HPA-024(a)-025(a).

[43] The College submits that the main aspects of the Complainant's complaint were consent, the language of the IME Reports and the treatment recommendations and the Inquiry Committee had the information it required to assess each of those elements, and the issues raised throughout the investigation.

The Registrant's submissions

[44] The Registrant submits that the complaint disposition process is not akin to the trial process which affords the full spectrum of natural justice. Rather the complaint disposition process (in contrast to the discipline process) permits the disposition of minor complaints in the absence of a comprehensive investigation and hearing that tests the credibility of the evidence and the parties' assertions. That is why the Review Board is tasked with assessing only the "adequacy" of the investigation.

[45] The Registrant further submits that the Review Board has previously stated that the Board assumes that the Inquiry Committee considers the relevant standards of care, practice and ethics whenever it renders a disposition: Review Board Decision No. 2015-HPA-214(a).

[46] The Registrant submits that, in this case, the College took reasonable steps to obtain the key information that allowed it to properly assess the complaint.

Conclusion re Adequacy of the Investigation

[47] The College was under no obligation to take the steps or ask the questions that the Complainant might have wished to investigate his complaint. It was not the Inquiry Committee's task to investigate the terms and conditions of the Complainant's registration status with another College. Nor was it the College's task to investigate whether it was fair or appropriate for the Complainant's union and his employer to require that he comply with the Registrant's recommendations if the Complainant wished to have his treatment subsidized and if he wished to return to maintain his employment. Neither was it the Inquiry Committee's task to conduct independent research into various treatment options and support resources for addiction.

[48] I am satisfied that the Inquiry Committee had the expertise and medical knowledge that it needed to review the results of the investigation and to consider the complaint. Nothing in the complaint or the submissions persuades me that the College needed to carry out a literature review or retain an expert to understand the complaint, the response to it or the applicable standards.

[49] In my view, by taking the steps which I have identified, the College and the Medical Reviewer adequately investigated the complaint and ensured that the Inquiry Committee had the key information that it required to carry out its mandated task, i.e. to understand and assess the complaint in the context of the care provided by the Registrant and in the context of the standards of practice expected of a registrant who was acting as an independent medical examiner.

[50] In short, I am satisfied that the College's investigation was adequate, in the circumstances.

VI REASONABLNESS OF THE DISPOSITION

[51] The scope of my authority under the Act is clear; it is not for me to substitute my decision for that of the Inquiry Committee simply because I might have reached a different conclusion, nor am I to parse the language of the disposition. Neither is it my role to conduct a new or further investigation of the complaint. Rather, my mandate is limited to determining whether the College adequately investigated the complaint and, if so, whether the subsequent disposition of the complaint that the Inquiry Committee arrived at was "reasonable" in the circumstances. If it was, I am to confirm that disposition.

[52] I accept that when assessing the "reasonableness" of a disposition, I must consider both the process followed by the Inquiry Committee and the outcome of that process: *Harrison Hydro Project Inc. et al. v. Environmental Appeal Board; Deputy Comptroller of Water Rights for the Province of British Columbia* 2018 BCCA 44 at para. [36].

[53] In my view, the reasonableness of the disposition must also be considered in the context of the complaint.

The Complaint:

[54] The Inquiry Committee Minutes of September 26, 2016, summarize the complaint as involving concerns regarding breach of privacy, appropriateness of treatment recommendations and appropriateness of statements made in the IME Report by the Registrant. In its 11-page Final Disposition Report, the Inquiry Committee dedicated four pages to identifying what it saw as the key aspects of the complaint.

[55] I will be brief. As I understand it, the complaint to the College as it evolved over time and, in essence, concerned the Complainant's beliefs that:

- (1) Statements in the IME Report were irrelevant to the assessment and were subjective, demeaning personal attacks on the Complainant.
- (2) The treatment approach recommended by the Registrant lacked scientific validation. Further, both the recommended residential treatment program and AA promote religion and that is offensive to the Registrant as an atheist.
- (3) The Registrant provided inaccurate information to the Complainant and to the public through a media article.
- (4) The Registrant's insistence that the Complainant attend a certain residential treatment program and a privately-owned monitoring program left the Complainant with an impression that the Registrant may have a personal interest in the programs and, therefore, might be in a conflict of interest.
- (5) The Registrant over-disclosed the Complainant's personal information, regardless of the consent forms signed, consents which were coerced from him.
- (6) It was a violation of the Complainant's human rights for the Registrant to recommend that the Complainant "be abstinent from all mood-altering drugs 100% of the time and not just at work" and that he attend a religious-based treatment program.
- (7) The Registrant is guilty of medical malpractice: he knew that the Complainant would lose his ability to work as a nurse should he refuse the treatment recommendations and yet he would not recommend alternative treatment.

The Parties submissions as to the reasonableness of the disposition:

Complainant's submissions

[56] The Complainant submits that the Inquiry Committee's disposition is unreasonable in that it either failed to address or inadequately addressed his assertion that the Registrant violated College standards, the Canadian Medical Association's ("CMA") Code of Ethics or the *Health Care (Consent) and Care Facility (Admissions) Act* regarding each of the following issues which I will discuss in more detail, below:

- informed consent (College)
- conflict of interest and religious discrimination (CMA)
- inadequate treatment or care of a medical condition (College)
- medical language (College)
- privacy of health information (College)
- communicating with the public (College), and
- giving treatment advice (College)

Informed Consent

[57] The Complainant submits that the Inquiry Committee's disposition of his complaint, as it pertains to the issue of consent, was unreasonable as the disposition "seem(s) to suggest that physicians who perform IMEs are not accountable to the College's Standards and Guidelines, the Canadian Medical Association's Code of Ethics and the *Health Care (Consent) and Care Facility (Admissions) Act*." He believes the Inquiry Committee erred in coming to that conclusion.

Conflict of Interest

[58] The Complainant submits that the Inquiry Committee failed to explain or justify its decision regarding the allegation that the Registrant breached the College's standards and the CMA Code of Ethics and the *Health Care (Consent) and Care Facility (Admissions) Act* in terms of religious discrimination. As such, he submits that the Inquiry Committee's disposition has no factual or legal foundation.

[59] He submits that the Registrant breached these provisions when he denied the Complainant the choice of his own treatment type and when he "coerced (him) into attending religious treatment." The Registrant further breached the College's Conflict of Interest Standard when he offered to act as the medical monitor for the Complainant and when he noted that other agencies, one staffed by two other registrants known to the Registrant, could also provide the recommended monitoring following the Complainant's completion of residential treatment.

Inadequate Treatment

[60] The Complainant submits that the Inquiry Committee's disposition was unreasonable in that it found that the Registrant's treatment recommendations were consistent with the "community standard" when it is unclear how that standard is defined. The Inquiry Committee seems to suggest that the standard means that other physicians are recommending patients diagnosed with addiction and who are in safety-sensitive occupations attend 12-step treatment centres and 12-step peer support meetings. The Complainant submits that he provided research to the Inquiry Committee (and has added further research and an affidavit of a medical researcher) that dispute

the effectiveness of 12-step programs. The Complainant submits that the Registrant ought to have offered pharmaceutical treatment. The Inquiry Committee failed to make clear or to justify how the health care provided by the Registrant was consistent with employing a “rigorous medical approach” and could be considered adequate treatment or care of the Complainant’s condition.

Medical Language in the IME Report

[61] The Complainant submits that the Inquiry Committee’s disposition was unreasonable in that it failed to apply the College’s standard “Medical Certificates and other Third-Party Reports” to the language used by the Registrant in his IME Report or that it improperly applied the standard. In his view, the only reasonable conclusion that the Inquiry Committee could have reached was that the IME contains speculation, conjecture and unfounded opinion.

Privacy of Health Information

[62] The Complainant submits that the Registrant breached the College’s standard on “Medical Certificates and other Third-Party Reports” when he provided personal health information to his employer. The Inquiry Committee failed to address the Complainant’s allegation that the consent forms he signed were coerced and, in any event, the Registrant provided more information than was requested.

Communicating with the Public

[63] The Complainant submits that the Inquiry Committee’s disposition of this aspect of his complaint was unreasonable in that it was not supported by the facts or the College’s standard on “Advertising and Communicating with the Public.”

Giving Treatment Advice

[64] Finally, the Complainant submits that the Inquiry Committee failed to address his allegation that the Registrant provided treatment advice contrary to the College’s guideline, “Independent Medical Examinations” and, therefore, the disposition is unreasonable.

Systemic Discrimination

[65] The Complainant went to considerable effort to research and document his concerns regarding what he sees as systemic discrimination toward individuals dealing with substance dependency. He references a complaint that he has before the BC Human Rights Tribunal involving his employer, his union and his governing body, the CRNBC. He submits that the College ought to be collaborating with health authorities and research organizations to better understand and treat patients with occupational health addiction issues and to more appropriately assess the treatment offered by registrants.

The College's submissions

[66] The College submits that the Inquiry Committee's disposition was reasonable, transparent and justified because:

- the role of the Inquiry Committee in adjudicating complaints regarding IMEs was established;
- the standard expected of the Registrant was made clear;
- the Registrant's conduct was adjudicated in relation to the expected standard, using the information gathered in the investigation and applying the Inquiry Committee's expertise;
- the key aspects of the complaint were assessed;
- the analysis employed in assessing the Registrant's conduct was transparent and logical; and
- the outcome is supported by the evidence.

[67] The College adds that, given the specific nature of the relationship between physician and patient in situations like this one where the only contact between the parties is for the purpose of an IME as directed by a third party and consented to by the Complainant, it is reasonable for the Inquiry Committee to tailor the scope of its review of the Registrant's conduct.

[68] The College submits that the Review Board has previously found that it was not the role of the Inquiry Committee to agree or disagree with the Registrant's medical-legal assessments.

[69] The College submits that the Inquiry Committee acknowledged the key aspects of the complaint including: consent, conflict of interest, the treatment recommendations and the scientific evidence of certain approaches. As to the issue of consent, the Inquiry Committee was satisfied that the Complainant had signed two consent forms which it found to be "adequate." Those consent forms authorized the Comprehensive Assessment performed by the Registrant and the provision of information to other agents after each assessment.

[70] Regarding the Registrant's treatment recommendations, the College submits that the Inquiry Committee determined that the current community treatment standard is consistent with the recommendation of the Registrant. The College submits that the Inquiry Committee's deliberations on this issue are summarized in the Minutes of the Inquiry Committee meeting which note that abstinence is the standard approach, particularly for workers in safety-sensitive occupations. The College adds that the Inquiry Committee is considered to have neither the wisdom nor the authority to substitute its opinion for that of a duly qualified expert who can demonstrate following an established protocol and formulating an opinion that falls within the range of accepted opinions. Further, where the clinical issues before the Inquiry Committee are considered

to be matters of legitimate, unresolved scientific uncertainty, the Inquiry Committee has no mandate to make definitive determinations.

[71] The College draws the Review Board's attention to the fact that IMEs are not binding, rather they are documents used to assist decision-makers, such as employers and regulatory bodies. The Inquiry Committee decided that the Registrant's opinion was similar to that generally offered by recognized addiction experts in the community – it did not decide that other opinions would not also be acceptable. The Inquiry Committee used its expertise to determine that the care and conduct of the Registrant fell within the range of acceptable practice as demonstrated by the information gathered in the investigation.

[72] The College made no submissions on the aspects of the complaint and the review dealing with allegations of conflict of interest. I note, however, that the Inquiry Committee's Disposition Report addresses this aspect of the complaint. The Disposition Report reflects that the Complainant alleged that he had an "impression of a conflict of interest" in the Registrant's choice of treatment centre and with the Registrant "advocating" monitoring through a private company. The disposition, then, sets out the Registrant's reasons offered for recommending the residential treatment facility and for referring the Complainant to the monitoring agency. The analysis section of the disposition then indicates that the Inquiry Committee could not conclude that the Registrant's recommendations for monitoring were influenced by any fiduciary relationship with the private agency.

[73] The College submits that the Review Board ought to afford deference to the Inquiry Committee's decision as it was founded on the Inquiry Committee's medical knowledge.

[74] The Inquiry Committee submits that much of the Complainant's concerns, as expressed in the complaint, subsequent submissions and his Statement of Points in this review, relate to his human rights claim and to his concerns regarding societal issues relating to the treatment of substance dependency. The College's complaint process is not the appropriate forum to address either the Complainant's systemic, employment or regulatory concerns.

[75] The College submits that the investigation in this matter was adequate and it yielded a reasonable outcome that was clearly articulated, transparent and intelligible.

The Registrant's submissions

[76] The Registrant submits that the Review Board has previously acknowledged that it is not to step into the shoes of the College but is to determine whether the disposition falls into the range of acceptable solutions and, viewed in the context of the entire record, is sufficiently justified, transparent and intelligible to be sustained.

[77] Further, the Registrant submits that the Supreme Court of Canada has emphasized that the reasons for the decision do not need to include a comment regarding every issue raised by the parties for the decision to be considered reasonable: *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65 at para. [3].

[78] The Inquiry Committee's disposition summarized the Complainant's complaints. Merely because the discussion portion of the disposition does not lay out a conclusion for each complaint does not make the conclusion inadequate or unreasonable.

[79] Counsel for the Registrant submits that the Complainant misunderstands and misapplies some of the Standards and Guidelines. She points to the comments attributed to the Registrant in a newspaper article which are neither expert statements nor do they represent inaccurate or untruthful communication within the meaning of the standard. The Complainant has misunderstood the prohibition from offering treatment advice in the College's Standard on IMEs; the standard prohibits physician-patient interaction not providing a treatment plan to the entity who sought the report.

[80] The Registrant submits that the Complainant's dissatisfaction with the outcome of the disposition does not render the disposition unreasonable.

VII ASSESSMENT OF THE REASONABLENESS OF THE DISPOSITION

[81] I acknowledge that the Medical Reviewer, who prepared a summary of the investigation and identified points for the Inquiry Committee's consideration, is a medical doctor. I also acknowledge that the Inquiry Committee's Panel "C" that considered the matter, consisted of four physicians and three members of the public. To the extent that the Inquiry Committee's disposition of the complaint calls for an exercise of medical judgement, I have afforded the Inquiry Committee considerable deference as I am not a physician, nor do I have the medical expertise of the Medical Reviewer or the Inquiry Committee. Deference, however, does not mean complete submission and I have considered whether the Inquiry Committee's exercise of its medical judgment was justified on the facts and the applicable standards.

The Inquiry Committee's Final Disposition Report

[82] In the Final Disposition Report of the Inquiry Committee, dated September 26, 2016, the Inquiry Committee fairly summarized the initial complaint and the supplemental correspondence from the Complainant. The Inquiry Committee also fairly summarized the Registrant's response to the complaint and the supplemental information he provided regarding the investigation by the OIPC. Then, under the heading "Committee Discussion," the Inquiry Committee identified its task in assessing the complaint and the results of the investigation:

The mandate of the Committee in adjudicating the complaint of (the Complainant) was to determine whether the medical practise of (the Registrant) was consistent with the standard expected of a physician in the context of an independent medical examination (IME).

[83] The Inquiry Committee noted that the nature of the IME is such that there is no traditional physician-patient relationship and that the role of the Registrant as the physician performing the IME:

Was limited to performing a comprehensive assessment, and providing a medical opinion regarding the diagnosis and treatment plan. There is no ongoing relationship between the physician and the patient in this context.

[84] The Inquiry Committee stated that, as a result, its role is also limited:

The role of the Committee was to adjudicate whether the assessment of (the Registrant) was adequate and whether his conclusions were reasonable based on the information gathered during the assessment.

[85] As to the IME Report, authored by the Registrant:

The Committee considered it was consistent with the appropriate medical language, and reflective of an appropriately thorough assessment, with the diagnoses and recommendations supported by the information gathered in the assessment.

[86] The Inquiry Committee acknowledged that the Complainant was dissatisfied with many aspects of the Registrant's IME Report and the treatment recommendations it contained and briefly addressed the key concerns. The Inquiry Committee noted that it was satisfied that the Complainant signed adequate consent forms. It was unable to conclude that the Registrant's recommendations for monitoring were influenced by any fiduciary relationship with the monitoring company. As to the Complainant's concern that the Registrant's treatment recommendations were inconsistent with scientific evidence, the Inquiry Committee noted that it was unable to comment on, or resolve, areas of scientific controversy. That said, the College noted its expectation that physicians practise consistent with the "community standard." The "community standard" is well-established for the treatment of patients diagnosed with addiction and who are in safety-sensitive occupational roles and that standard is consistent with the Registrant's recommendations.

[87] The Inquiry Committee concluded that the Registrant's IME and report were consistent with standard medical practice and it found no basis to criticize the Registrant.

[88] The Medical Reviewer wrote the Complainant on October 3, 2016, advising him of the Inquiry Committee's disposition of his complaint and enclosing the Inquiry Committee's Final Disposition Report.

[89] In my review of the Inquiry Committee's disposition of the complaint, I have kept in mind that the Inquiry Committee is not an adjudicative body tasked with making findings of fact or rulings on points of law, then meting out consequences. Rather, as I noted earlier, its role is a screening one. Its task is to investigate complaints and determine whether the matter is sufficiently serious that it ought to be referred to the Disciplinary Committee for hearing. For those matters which are deemed not to be serious enough to merit possible disciplinary consequences, the Inquiry Committee may deal with the complaint by deciding to take no further action or take action that it considers appropriate to resolve the matter. The Inquiry Committee's remedial authority is limited to requesting that the Registrant consent to undertake not to repeat certain conduct, be reprimanded, take certain education or agree to other action.

[90] In a situation such as this where there is a lengthy complaint followed by numerous letters expanding on and adding to the initial complaint, the Inquiry Committee's task in describing the complaint is not a simple one. In my view, it will be sufficient if the Inquiry Committee addresses the key issues that it understands form the basis for the complaint. It need not comment on every allegation raised by the Complainant. Here, the Inquiry Committee's 11-page disposition letter acknowledged the lengthy complaint and dedicated four pages to summarizing the complaint. In my view, the Inquiry Committee fairly summarized the complaint and the response to the complaint, and then analyzed the care provided by the Registrant.

[91] It would have been helpful had the Inquiry Committee expanded its analysis of the complaint in its reasons for its disposition. For example, it would have been helpful had the Inquiry Committee discussed why it found the language of the IME Report to be "appropriate," why it found that the Registrant's recommendations did not place him in a conflict of interest, or what it meant by the term "community standard" and how it concluded that standard is "well-established." The disposition could also have been clearer regarding which of the Registrant's treatment recommendations it referenced when the Inquiry Committee noted that there are areas of "scientific controversy" on which it could not comment.

[92] That said, it is not my role to parse the language of the disposition where there is evidence in the record that justifies the outcome. There is evidence in the Record that supports the Inquiry Committee's disposition of the key aspects of the complaint. The Record demonstrates that the Complainant consented to the IME and to the Registrant sharing information with third parties. There is no evidence that any information was shared with parties beyond the parameters of the consents. The Record also demonstrates that the Registrant explained his use of language in the IME Report and why he felt it appropriate to include the comments that he did. He explained why he recommended the residential treatment facility and the monitors that he did. In the absence of any evidence of a real or apparent conflict of interest, the Inquiry Committee was entitled to accept the Registrant's explanations and it is not for me to substitute my view for theirs simply because I may have reached a different conclusion. As to the treatment approach that the Registrant recommended, the Record establishes why the Registrant recommended abstinence, monitoring and participation in the 12-step program and he explained his rationale for doing so. The Minutes indicate that the Inquiry Committee considered that "abstinence" is the standard approach. It would have been clearer had the Inquiry Committee indicated in its disposition that the standard approach to treating issues of addiction for patients, such as nurses who are in safety-sensitive occupations, is to require abstinence and that it was, therefore a reasonable treatment option for the Registrant to recommend abstinence and monitoring to ensure that abstinence was ongoing. If the Inquiry Committee wished to recognize that there was scientific debate on the effectiveness of mandating attendance at AA or NA, and that it was not the role of the Inquiry Committee to engage in that debate, it could have more clearly said so. The Record also demonstrates that the comments attributed to the Registrant in the media reflect do not involve the Complainant and there is no evidence that those comments were untruthful or misleading; there was no need for the Inquiry Committee to address this aspect of the complaint.

[93] The Inquiry Committee's disposition need not identify every College standard or guideline and demonstrate how the Registrant's practice or conduct complied with that standard or guideline to be reasonable. The Inquiry Committee noted that, in this instance, its focus was on whether the Registrant's medical practise was consistent with the standard expected of a physician in the context of an independent medical examination. I do not take that observation as indicating that the Inquiry Committee concluded that the Registrant was not bound by the standards and guidelines applicable to other physicians. Indeed, the Inquiry Committee concluded that the Registrant's IME and report were consistent with standard medical practise.

[94] I am satisfied that the disposition of the complaint regarding the Registrant's IME and Report fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law recognizing that the Review Board is not to adjudicate the level of satisfaction in respect of a Registrant's care, but rather whether the registrant has met the appropriate standards of practice: Review Board Decision No. 2011-HPA-151(a).

[95] Where, as here, the disposition is rationally supported by the evidence, addresses the major issues in the complaint and is transparent, I am satisfied that it is "reasonable."

VIII CONCLUSION

[96] For all the above reasons, I order that the Inquiry Committee's disposition of the complaint is confirmed under s.50.6(8)(a) of the Act.

"Brenda L. Edwards"

Brenda L. Edwards, Panel Chair
Health Professions Review Board