

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

Complainant v. The College of Registered Nurses of British Columbia

DECISION NO. 2017-HPA-064(a)

November 8, 2017

In the matter of an application (the “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, or considered to be a disposition by, an inquiry committee

BETWEEN:	The Complainant	COMPLAINANT
AND:	The College of Registered Nurses of British Columbia	COLLEGE
AND:	A Registered Nurse	REGISTRANT
BEFORE:	Brenda L Edwards, Panel Chair	REVIEW BOARD
DATE:	Conducted by way of written submissions closing on October 26, 2017.	
APPEARING:	For the Complainant: Self-represented	
	For the Registrant Self-represented	
	For the College Jessica Abells, Counsel	

DECISION

I INTRODUCTION

[1] On September 28, 2015, the Complainant wrote the College complaining of the Registrant’s use of her RN title to market a therapeutic touch business through a local college and on her personal website.

[2] The College investigated the complaint and the Registrar prepared a report suggesting a disposition of the complaint which was accepted by the Inquiry Committee on May 4, 2017, and legal counsel for the College subsequently conveyed the disposition to the Complainant.

[3] The Complainant filed an Application for Review with the Review Board on June 1, 2017, in which he alleged that the College took an unreasonable amount of time to dispose of the complaint and that the disposition was unreasonable.

[4] On September 15, 2017, 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.

[5] After reviewing the record of investigation provided by the College (the "Record") and the Complainant's submissions, I was not satisfied that this matter could be appropriately dealt with at Stage 1 and I directed the matter to Stage 2 and asked the College to address the following in its submissions:

- (a) Whether and how the Registrar's disposition, as endorsed by the Inquiry Committee, accords with:
 - (i) The College's Bylaws (including bylaws regarding marketing and advertising), and
 - (ii) The College's Practice Standards Regarding:
 - 1. The Appropriate Use of Title
 - 2. Knowledge-Based Practice (in particular "Clinical Practice")
- (b) The weight placed by the Registrar and the Inquiry Committee on a College "Fact Sheet" regarding Complementary and Alternative Health Care.

II BACKGROUND

[6] The Complainant is a professor with a Ph.D. in nursing at a university's school of nursing.

[7] The Registrant is a registered nurse who is self-employed and teaches therapeutic touch (sometimes referred to as "TT") at a local college. She also offers her therapeutic touch services to the public through her website.

[8] In a letter of complaint to the College dated September 28, 2015, the Complainant wrote the College that he was concerned that the Registrant was using her RN title to market her therapeutic touch business.

[9] On November 27, 2015, a Regulatory Practice Consultant with the Policy, Practice and Quality Assurance department of the College wrote the Complainant and

advised him that the College considers therapeutic touch to be an accepted nursing intervention.

[10] On September 11, 2016, a Senior Manager of the Professional Conduct Review department of the College wrote the Complainant to confirm whether the November 2015 correspondence from the Regulatory Practice Consultant had effectively addressed his concerns to which the Complainant replied that it had not. As a result, the Registrar investigated the complaint.

[11] Legal counsel for the College wrote the Complainant on May 10, 2017 and conveyed the Registrar and Inquiry Committee's disposition.

III DECISION

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

- the Complainants' Application for Review and submissions;
- the Record provided by the College;
- the College's submissions;
- the Registrant's submissions and supporting documents;
- the Complainant's reply submissions and supporting documents.

IV APPLICABLE LEGISLATION

[13] The *Health Professions Act*, R.S.B.C. 1996, c. 183, (the "Act") governs the College's oversight of applications for registration and its supervision of registrants. It also provides for the investigation of complaints regarding the conduct or competence of registrants. In addition, the Act provides the Review Board with authority to review Inquiry Committee dispositions of complaints. 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.

[14] The Act provides in s.32(1) that a person who wishes to make a complaint against a registrant is to deliver the complaint in writing to the registrar of the College (the "Registrar"). Section 32(2) of the Act requires that the Registrar deliver a copy of the complaint to the Inquiry Committee together with the Registrar's assessment of the complaint and any recommendations that the Registrar has for disposing of the complaint. The Registrar may dismiss a complaint without referring it to the Inquiry Committee in certain situations which is provided for in section 32(3).

- 32** (3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint, or request that the registrant act as described in section 36(1), without reference to the inquiry committee if the registrar determines that the complaint

- (a) is trivial, frivolous, vexatious, or made in bad faith,
- (b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33(4), or
- (c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33(4).

[15] The Act requires that the Registrar deliver a written report to the Inquiry Committee about the circumstances of any disposition made under s.32(3), and if the Inquiry Committee approves of the proposed disposition, that disposition is considered to be a disposition by the Inquiry Committee.

[16] In this instance, the Registrar proposed to dispose of the complaint under ss.32(3)(b) and 32(3)(c) of the Act and the Inquiry Committee accepted that proposal and instructed the Registrar to write the Complainant conveying the disposition.

[17] 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.

[18] 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.

[19] 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.

[20] 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 one or both of the adequacy of the investigation and the reasonableness of the disposition.

[21] The Complainant has asked the Review Board to review both the adequacy of the investigation conducted respecting his complaint and the reasonableness of the Inquiry Committee's disposition of the complaint.

The College's Standards and Guidelines

[22] Section 19(1)(l) of the Act authorizes the College's Board to establish standards of professional ethics for registrants.

[23] The College's Practice Standard, "Appropriate Use of Title" states, in part:

Recognize that just because you are using a nursing title, it does not mean that you are practicing nursing. You may use your nursing title to describe who you are, but you are only practicing nursing if you are practicing according to the definition of nursing set out in the Nurses (Registered) and Nurse Practitioners Regulation.

...

Review CRNBC's Bylaws on marketing (Section 8.04) to understand how registrants can market products and services in an ethical and appropriate way. Understand that you cannot use your title in a job in which you predominantly sell products.

[24] The College's Practice Standard, "Knowledge-based Practice" states, in part:

Clinical Practice

1. Bases practice on current evidence from nursing science and other sciences and humanities.

[25] The College's Bylaws provide for marketing as follows:

Marketing

8.04

(1) In this section: "advertisement" means the use of space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public, or a segment thereof, for the purpose of promoting professional services or products or enhancing the image of the registrant or advertiser if other than the registrant; "marketing" includes

(a) an advertisement,

(b) any publication or communication in any medium with any patient, prospective patient or the public generally in the nature of an advertisement, promotional activity or material, a listing in a directory, a public appearance, or any other means by which professional services are promoted, and

(c) contact with a prospective client initiated by or under the direction of a registrant.

(2) Any marketing undertaken or authorized by a registrant in respect of the registrant's professional services must not be

(a) false or inaccurate,

(b) reasonably expected to mislead the public,

(c) unverifiable,

(d) contrary to the public interest in the practice of the profession, or

(e) in bad taste, offensive, self-laudatory, or otherwise contrary to the honour and dignity of the profession or maintenance of a high standard of professionalism.

(3) Marketing violates subsection (2) if it

(a) is calculated or likely to take advantage of the weakened state, either physical, mental or emotional, of the recipient or intended recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the services the registrant can perform or provide or results which the registrant can achieve,

(c) implies that the registrant can obtain results

(i) not achievable by other registrants,

(ii) by improperly influencing a public body or official or any corporation, agency or person having an interest in the welfare of the recipient or intended recipient, or

(iii) by any other improper means,

(d) compares the quality of services provided by the registrant with those provided by

(i) another registrant,

(ii) a person authorized to provide health care services under another enactment, or

(iii) another health profession,

(e) makes claims of special skills that are not supported by the education and experience of the registrant, or announces or holds out that the registrant has special qualifications that are not possessed by the registrant, or

(f) is for the purpose of marketing products

...

(6) A registrant must verify statements made in any of the marketing by, or on behalf of, or respecting the registrant when asked by the college to do so.

V ADEQUACY OF THE INVESTIGATION

The Complaint:

[26] The Complainant expressed concern to the College about the Registrant using her RN title to market a business and the claims made by her regarding therapeutic touch. Specifically, he alleged that:

- (a) the claims made by the Registrant were misleading, inaccurate, not evidence-based and were for financial gain;
- (b) the use of the RN title was being used to support a business involving marketing, selling and teaching of “magical healthcare” that has no scientific evidence supporting it as an effective healthcare service, and
- (c) the research cited on the Complainant’s website and that of the college offering her training courses was of a low quality and included self-promotional papers and “totally ignore(d) the substantial good-quality scientific evidence that the energies and practices described by TT practitioners do not exist/work or that TT has no better effect than placebo.”

General Principles:

[27] As has been noted in many previous decisions of the Review Board and as I am aware, the College has limited resources and receives many complaints each year that require investigating. The College has the authority to manage those limited resources in a manner that is consistent with its duty to protect the public interest.

[28] The degree of diligence that the Inquiry Committee must exercise to ensure that an investigation is adequate will differ from case to case and will depend, in large part, on the objective seriousness of the issues raised in the complaint and the findings of the investigation as it progresses.

[29] In general terms, what constitutes an "adequate investigation" was discussed in Review Board Decision No. 2009-HPA-0001(a) to 0004(a) at paras. [97-98] and I adopt that reasoning for the purposes of this decision:

[97] 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.

[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 the circumstances.

[30] I am also guided by the decision of the British Columbia Supreme Court in *Moore v. College of Physicians and Surgeons of British Columbia*, 2013 BCSC 2081 (CanLII)

wherein the Court found that the question of whether an investigation is adequate is contextual:

[104] The Act requires the Board to determine whether or not the investigation conducted by the College was adequate and whether the disposition was reasonable.

[105] The adequacy of any investigation must be considered relative to the matter being investigated. What might be inadequate in one case might be adequate in another. By way of a simple example a serious complaint about a physician might result in an admission by the physician of misconduct after very little investigation. Even though the investigation amounted to nothing more than drawing the complaint to the physician's attention and requesting a response, that is all that was required for an adequate investigation in that context. Conversely, an extensive investigation into a complaint might be considered inadequate where one line of inquiry was ignored or not properly pursued. [emphasis added]

[106] Thus, the nature of the complaint will inform the extent of the investigation required. Where the complaint is of a minor or trivial nature it may not be necessary in each case to conduct an extensive investigation.

[31] *Moore*, supra has been considered in several decisions of the Review Board: see for example Review Board Decision No. 2015-HPA-142(a), at paras. [58-81]; Review Board Decision No. 2016-HPA-001(a); 2016-HPA-045 at paras. [69-75]. I agree with the analysis in those cases.

Seriousness of the complaint

[32] As noted above, the nature of the complaint will inform the extent of the investigation required. Generally, the more serious the complaint, the greater degree of investigative diligence that must be shown for the Inquiry Committee to adequately carry out its investigative role. In this case, it is in my view that the complaint in this case was on the less objectively serious end of the continuum: it did not allege harm to a patient but, instead, alleged that the Registrant made claims on her personal website, for financial gain, that were misleading, inaccurate, or supported by low-quality research and that she inappropriately used her RN title in support of a business involving marketing, selling and teaching therapeutic touch.

[33] The Complainant submits that the investigation was inadequate as there was a delay between when the initial complaint was made in September 2015 and when he received the disposition in May 2017. He characterizes that delay as "unprofessional" and "an unsatisfactory standard of communication for a provincial regulatory body." He further submits that the College, as a body that collects \$500 per year from its members for registration, is responsible for gathering independent evidence on complaints when it lacks the expertise to assess them.

[34] The College submits that the Registrar made a preliminary assessment of the complaint and considered the College's policies and professional standards and then concluded that the complaint did not require further investigation by the Inquiry Committee as the subject of the complaint is not a matter subject to investigation by the

Inquiry Committee and the allegations, even if proven or admitted, did not constitute a serious matter as defined in the Act.

[35] The College notes that there is little dispute as to the facts alleged in the complaint, i.e. that the Registrant practices therapeutic touch and conducts that business through a website. There was no allegation of patient harm; the complaint was based entirely on the Registrant's use of her title and the claims she made on her website.

[36] The College submits that the Registrar's investigation provided her with the information she needed to conduct "a meaningful, albeit provisional, assessment of the evidence" as that phrase is used in Review Board Decision No. 2010-HPA-003(a) at paras. [24-25] and dismiss the complaint based on that evidence.

Assessment of the Adequacy of the Investigation

[37] In my view, given the seriousness of the complaint, the investigation did not require the expenditure of significant resources to unearth the relevant information. The subject of the complaint was information contained on a public website and the research cited in support of the claims made on the website was also readily available.

[38] The Complainant received a timely response to his complaint from the College's Regulatory Practice Consultant and while it might have been prudent to confirm that the Complainant was satisfied with the explanation provided him and that nothing further was required to address the complaint, that lack of prudence doesn't make the subsequent investigation undertaken by the Registrar, "inadequate."

[39] In my view, by taking the steps that she did once she was aware that the Complainant was dissatisfied with the response that he received from the College's Regulatory Practice Consultant, the Registrar obtained the key information that she needed to assess the complaint and prepare a report to the Inquiry Committee regarding the Registrar's proposed disposition of the complaint. I note that the 5-page report prepared by the Registrar appended a 7-page brief on the Registrar's authority and included the relevant Practice Standards and Policies. As a result, the Inquiry Committee had all the information it needed to understand the nature of the complaint and the actions of the Registrant in the context described. I am satisfied that nothing further was needed by the Inquiry Committee to adequately investigate the complaint. In other words, the investigation was adequate.

VI THE REASONABLENESS OF THE DISPOSITION

[40] 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. Neither is it within my power to conduct a new investigation of the complaint, rather, my mandate is limited to determining whether the disposition that the Inquiry Committee arrived at was "reasonable" in the circumstances and, if it was, I am to confirm that disposition. That said, as a member of a specialized administrative tribunal, I am entitled to determine the degree of deference that it is appropriate for me

to afford the Inquiry Committee's disposition in the circumstances, bringing to bear my own expertise as an administrative decision-maker.

[41] In this case, I have afforded the disposition a degree of deference to the extent that it deals with interpreting the College's Practice Standards in the context of complementary alternative health care and acceptable nursing interventions but not the higher degree of deference that is owed when an Inquiry Committee is dealing with the application of standards to clinical care.

[42] I accept that when assessing the "reasonableness" of a disposition, I must ask myself whether the decision falls within the range of acceptable outcomes that are defensible having regard to the facts and the law: *Dunsmuir v. New Brunswick* 2008 SCC 9 at para. [47].

[43] The Supreme Court of Canada in *Dunsmuir* provided further guidance to reviewing courts (and bodies such as the Review Board) when it held that:

(R)asonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process: at para. [47]

[44] The Review Board in Decision No. 2015-HPA-088(a) at para. [12], noted some of the key factors that should be present in a "reasonable" disposition:

A reasonable disposition should be transparent (clear as to how the Inquiry Committee arrived at its conclusion), intelligible (clearly expressed, easy to understand) and justified (the reader should be able to understand the factual and legal foundation for the Inquiry Committee's conclusion).

[45] The Registrar who reviewed the complaint in the context of the information before her has a master's degree in science. The Inquiry Committee that approved of the Registrar's proposed disposition consisted of a panel including two registered nurses and a public representative. In my view, both the Registrar and the Inquiry Committee were well qualified to assess whether the Registrant's actions contravened the College's practice standards and bylaws.

[46] The Review Board has previously determined that, to be considered "reasonable," an Inquiry Committee disposition must reflect an appropriate level of investigation and be supported by the evidence before it: Review Board Decision No. 2016-HPA-143(a). I agree.

[47] I have already confirmed that the level of investigation of this complaint was adequate. The evidence that the preliminary investigation confirmed that the Registrant was using her title to identify herself as a registered nurse on her website which marketed her therapeutic touch business and that she made certain claims regarding the benefits of therapeutic touch.

[48] As noted earlier in this decision, the Registrar's decision to dismiss the complaint was endorsed by the Inquiry Committee and then conveyed to the Complainant by letter from the College's counsel on May 10, 2017. For ease of reference, I will refer to that letter as the Inquiry Committee's disposition. The Inquiry Committee's disposition fairly

summarized the initial complaint and then identified, in point form, the reasons identified by the Registrar for disposing of the complaint under each of ss.32(3)(b) (a matter that is not subject to investigation by the Inquiry Committee) and 32(3)(c) (conduct that does not rise to the level of a “serious matter”).

The College’s submissions

[49] The College submits that the Review Board ought not to interfere with the Inquiry Committee’s disposition as it is “within the range of reasonable” which I take to be a reference to the guidance provided by the Supreme Court of Canada in *Dunsmuir*, supra, i.e. that a reviewing body ought not to interfere if the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[50] The College submits that while the Complainant may have a legitimate policy perspective regarding the College’s approach to complementary and alternative health care services and a nurse’s ability to provide those services, at present, the College’s interpretation of the applicable practice standards is that therapeutic touch is an accepted nursing intervention and the College supports its use, whether in public or private practice.

[51] Further, it is not the role of those involved in the College’s conduct review process, i.e. the Registrar and the Inquiry Committee to prevent registrants from providing therapeutic touch where those registrants are compliant with professional standards. The College suggests (but does not explicitly state) that the Inquiry Committee properly disposed of the matter under s. 32(3)(b) as it concerned a matter that was not subject to investigation by the Inquiry Committee.

Section 32(3)(c) – Conduct that does not rise to the level of a “Serious Matter”

[52] The College submits that it fell within the range of possible, acceptable outcomes for the Inquiry Committee to conclude that the conduct alleged by the Registrant in the complaint, even if admitted or proven, would not ordinarily attract regulatory repercussions more than a reprimand or fine or other non-practice related consequences, and therefore, could properly be dismissed under s.32(3)(c) of the Act.

[53] The College notes that the only relief sought by the Complainant is that the Registrant be informed that she is not to use her RN title in the promotion of personal business activities related to therapeutic touch, or alternatively that the Registrant be required to provide information to her clients that “there is no scientific evidence that therapeutic touch works.”

[54] The College submits that it considers therapeutic touch to be a recognized nursing intervention.

[55] The College submits that the Registrar and the Inquiry Committee must apply the College’s practice standards as currently interpreted and applied by the College.

[56] For all these reasons, the College submits that the Registrar and the Inquiry Committee found the Registrant's behavior satisfactory and determined that no regulatory intervention was deemed necessary.

Other submissions by the College in response to Review Board Direction

[57] The College further submits that the Appropriate Use of Titles standard requires registrants to use their title in ways that comply with the College's bylaws, including the bylaws governing marketing and advertising. The standard does not specifically address whether registered nurses can use their title for a private therapeutic touch practice or other complementary health care practice. However, the standard indicates that if registrants are unsure that they are working within the scope of practice, they can consult the College Practice Support about using the title. If a registered nurse contacts the College Practice Support she would be told that a) registered nurses are able to own and operate a private business and can use their professional designation of RN to advertise and market their private business, if it is primarily the practice of nursing (including complementary and alternative health care); and b) registered nurses are able to provide education in complementary health care. This is in accordance with the College's published "Fact Sheet" on Complementary and Alternative Health Care.

[58] The College submits that the assessment of the complaint would be different if there was evidence that the Registrant was practicing recklessly, with disregard for patients or the public, or in clear violation of the bylaws or practice standards. In this case, there was no evidence that the Registrant was promoting therapeutic touch as a cure for any disease, or as a replacement for mainstream medicine.

[59] As to the Knowledge Based Practice standard, the College submits that registered nurses must base their practice on current evidence from nursing science and other sciences and humanities. The College does not solely define evidence-based or knowledge-based practice on the quality or breadth of scientific research available in support of a medical intervention. Rather, knowledge-based practice is a means of ensuring patients receive competent nursing care, in reference to information available from a variety of sources, including the client's own perspectives.

[60] The College submits that an evaluation of whether a nurse is engaged in a knowledge-based practice depends on the impact of their practice on public health and safety; unless the College identifies that a registrant is practicing recklessly or in a way that is likely to endanger health or safety, the registrant will be found to be in accordance with the knowledge-based practice standard.

[61] As to the marketing bylaw, the College submits that there was no evidence in the complaint that the Registrant was being irresponsible or misleading in violation of the marketing bylaw. She is practicing a recognized nursing intervention, appears to be well-informed on therapeutic touch and for each claim she makes on her website she cites an academic source, including research papers published in peer-reviewed journals. The College does not make any claims regarding the strength of the scientific evidence cited by the Registrant on her website. That said, the Registrant's research page is acceptable to the College because it cites existing research and she has adequately circumscribed her claims by indicating that "Therapeutic Touch is not

intended to replace appropriate medical care; it is not a cure, but is intended to promote healing.” The College submits that it does not have a standard or policy on the quality or type of research that registrants must use or refrain from using to support a claim or opinion regarding a particular therapeutic intervention.

The Registrant’s submissions

[62] The Registrant submits that she has a bachelor’s of science in nursing and is a registered nurse with the College and that she practices and teaches therapeutic touch; she is not trained in magic or hypnotherapy.

[63] The Registrant notes that much of the evidence that the Complainant has put forward regarding therapeutic touch does not pertain specifically to her, rather it relates to the BC Therapeutic Touch Society. That said, she provides extensive submissions regarding scientific studies that have been undertaken with respect to the use of therapeutic touch. She submits that the Complainant makes sweeping statements that are false in his attempts to discredit therapeutic touch.

[64] The Registrant submits that she is clear to note on her website that “(t)herapeutic touch is not intended to replace appropriate medical care; it is not a cure but is intended to promote healing.”

[65] The Registrant further submits that therapeutic touch is often referred to as a part of complementary and alternative health care services in informational materials published by the Mayo Clinic, BC Cancer Agency and the National Pancreas Foundation.

[66] Finally, the Registrant submits that she has always complied with the College’s Professional Standards for Registered Nurses and that she follows the policy guidance for the practice of Complementary and Alternative Health Care and Appropriate Use of Title. She believes that she is perfectly qualified to practice and teach therapeutic touch, that she has clearly represented herself and is practicing within the scope of nursing practice and is entitled to use her RN title to do so.

Complainant’s submissions

[67] In both his Statement of Points and his reply submissions, the Complainant reiterates and expands on his complaint regarding therapeutic touch and whether there is scientific evidence to support the claims made by the Registrant on her website. He also reiterates his concern about her use of title on her website marketing therapeutic touch. In his view, “therapeutic touch represents a magical and faith-based practice rather than an evidence-based one.”

[68] In his reply submission, the Complainant submits that the Inquiry Committee’s disposition of the complaint under s.32(3)(b) was “incorrect.” He submits that the College is trivializing his concerns and that the issues raised in his complaint were “serious enough” that the College’s Regulatory Practice Consultant contacted the local college where the Registrant taught therapeutic touch to correct misinformation on its

website. Further, the Complainant submits that the Inquiry Committee's disposition fails to consider the issue of financial exploitation or psychological harm to patients.

[69] He submits that the Inquiry Committee disposition puts the public at risk by categorizing the activities of the Registrant as "harmless."

[70] The Complainant further submits that the Registrant continues to make misleading statements which he says are based on belief rather than fact. He points to information on her website that describes how therapeutic touch works and who will benefit from its use and submits that there is currently no scientific evidence that supports her claims. He submits that the Registrant has breached the College's bylaw governing marketing and advertising and, as a result, should not be permitted to use her title to market a commercial business that is not evidence-based and is misleading to the public.

Conclusions re Reasonableness of the Disposition

[71] In reviewing this matter, it is clear to me that the parties are not on the same page. The Complainant has approached this matter as an academic and from a scientific perspective. His submissions are researched and written from the perspective of a teacher who has a hypothesis and is marshalling arguments and research in support of that hypothesis; the hypothesis being that therapeutic touch is a "magical" or "faith based" exercise that has not been scientifically proven to be beneficial to anyone and ought not to be practiced and taught by someone who holds herself out as a "RN" or registered nurse. He believes that the College is failing in its duty to protect the public from harm (financial or psychological) if it permits this activity to continue.

[72] The College's approach to the complaint is that of a regulator. It has a governing board which creates bylaws and sets policy and practice standards with which registrants are to comply. It determines the scope of nursing practice and it determines whether a particular nursing intervention, such as therapeutic touch, is within that scope. The Inquiry Committee of the College is a distinct arm of the College comprised of both registrants and representatives of the public members whose task it is to screen complaints regarding the conduct and competence of registrants. In doing so, it must measure the conduct complained of against the College's current standards and bylaws. It is not the role of the Inquiry Committee (or the Registrar) to enter in an academic debate as to the strengths or weaknesses of a particular nursing intervention.

[73] The Registrant's approach to the complaint is multi-faceted; she argues as a nurse defending her behavior in the context of the regulatory environment within which she operates, as a scientist defending her hypotheses that therapeutic touch is an evidence-based mode of treatment and as a business owner defending the claims she has made in support of her business.

[74] The Review Board is not a scientific body, an academic organization nor a consumer complaint agency. It is an administrative law tribunal with a legislative mandate to review certain actions by colleges of health professionals. In this case, the task of the Review Board is to review the Inquiry Committee of the College's disposition of a complaint and to determine only whether that complaint was adequately

investigated and whether the disposition of the complaint was reasonable as that term is used in the law.

[75] I have already concluded that the investigation of the complaint was adequate. The facts were readily ascertainable and are not in dispute, i.e. the Registrant, a registered nurse, teaches and practices therapeutic touch and advertises and markets her business through a website that claims that therapeutic touch is intended to assist in healing and that there is evidence that supports its beneficial use for certain conditions.

[76] The evidence and law considered by the Inquiry Committee was that the College supports the use of therapeutic touch as a modality of complementary and alternative health care and that the College defines evidence and knowledge-based practice in broad terms and that a therapy or nursing intervention need not have scientific-evidence in support of its use (as that term is used by the Complainant) to be accepted.

[77] I am satisfied that the Inquiry Committee's decision to dismiss the complaint under s.32(3)(b) was reasonable as there was evidence and law to support the Inquiry Committee's conclusion that the Registrant's conduct in identifying herself as a RN when advertising and marketing a business that offered to teach therapeutic touch and provide therapeutic touch services was permitted by the College's current complementary and health care policy and therefore was not subject to investigation by the Inquiry Committee as a policy matter.

[78] The Complainant provided no evidence of any actual or threatened harm to the public resulting from the claims of efficacy of therapeutic touch made by the Registrant on her website. There was evidence before the Inquiry Committee that the Registrant noted that therapeutic touch is not intended to replace conventional therapies and she provided evidence in support of her claims. It is not for the Inquiry Committee to judge the strength of the evidence cited in support of those claims, nor is it their role to search out evidence of harm to members of the public that is based on conjecture. Accordingly, the Inquiry Committee could reasonably conclude that the Registrant's use of her RN title to market her business was not in breach of the standards regarding use of her title, knowledge-based practice or the marketing bylaw and, as such, did not warrant regulatory criticism and that the complaint ought to be dismissed under s.32(3)(c) as not raising a serious matter requiring further investigation by the Inquiry Committee.

[79] After considering all the above, I find no basis to fault the Inquiry Committee's analysis or disposition of the complaint under s. 32(3)(b) or (c) of the Act. I am satisfied that the Inquiry Committee's investigation was adequate, and its disposition fell within the range or possible, acceptable outcomes that are defensible on the facts and the law.

[80] While it might have been helpful had legal counsel more clearly articulated the distinct roles of the Registrar, the Inquiry Committee and the College and the limits on the Inquiry Committee's role in the May 10, 2017, letter to the Complainant on behalf of the Inquiry Committee, it was sufficiently transparent, intelligible and justifiable to be reasonable.

VI CONCLUSION

[81] 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.

POSTSCRIPT

[82] The use of professional titles by doctors, nurses, academics, lawyers and others is generally governed by ethical guidelines, codes of conduct or professional standards.

[83] In reviewing this matter, I was struck by the irony that the Complainant alleges that it was inappropriate for the Registrant to use her title to market her business and, yet he wrote his complaint using a university email system and signing his complaint with his title and university name and address. Further, I note that the Complainant filed each of his submissions to the Review Board on the letterhead of the university where he teaches and, again, identified himself as a professor in the faculty of nursing when it appears, from the material before me, that his complaint is based on his own personal view and there was no evidence that he was authorized to complain on behalf of the institution.

"Brenda L. Edwards"

Brenda L Edwards, Panel Chair
Health Professions Review Board