

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

Complainant v. The College of Physicians and Surgeons of British Columbia

DECISION NO. 2017-HPA-141(a)

January 11, 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, 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 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 January 4, 2018	
APPEARING:	For the Complainant: Self-represented	

DECISION

I INTRODUCTION

[1] On January 16, 2017, the Complainant wrote the College complaining of the Registrant’s conduct in the clinic where they share office space. The Complainant alleged that the Registrant repeatedly undermined their professional relationship by demeaning, bullying and exhibiting misogynistic tendencies toward her. Specifically, the Complainant alleges that the Registrant, after finishing with his patient care and despite being asked to stop, has repeatedly interrupted her clinical patient care by playing loud music and whistling.

[2] The College investigated the complaint and a Medical Reviewer in the Complaints and Practice Investigation department of the College prepared a report for the Inquiry Committee’s Panel C which met on September 22, 2017. After considering the report, the Inquiry Committee decided to conclude the matter without criticism of the Registrant but directed Registrar staff “to send strongly worded correspondence insisting that the physicians work out their differences in a professional manner.”

[3] The Complainant filed an Application for Review with the Review Board on October 18, 2017, in which she alleged that the disposition was unreasonable.

[4] On January 5, 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.

[5] After reviewing the record of investigation provided by the College (the "Record") and the Complainant's submissions, I am satisfied that this matter can be appropriately dealt with at Stage 1.

II BACKGROUND

[6] The Complainant is a physician who practices in a clinic where she shares office space with the Registrant and two other physicians who I will reference as Physician A and Physician B.

[7] In her letter of complaint to the College, the Complainant alleged that since September 2016, the Registrant had been playing loud music and whistling after he finished his patient care but while the Complainant was still providing care to her patients. The Complainant noted that she had enlisted the aid of Physician A to resolve the situation between her and the Registrant. On January 12, 2017, the Complainant approached the Registrant and asked him to turn his music down or close his office door as the noise was interfering with her counselling a patient; the Registrant refused to do either. The Complainant believes that the Registrant "has a problem with women or a sense of superiority due to his maleness" as he does not show the same disrespect to Physicians A and B who are male.

III INFORMATION CONSIDERED IN DECISION

[8] 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.

IV APPLICABLE LEGISLATION

[9] 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.

[10] 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. Section 33 (5) of the Act requires the Inquiry Committee to request that the registrant who is the subject of the complaint provide it with any information that he or she wants the Inquiry Committee to consider.

[11] Section 33(6) of the Act stipulates that, after considering any information provided by the registrant, the Inquiry Committee may

- (a) take no further action if the 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;
- (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.

[12] In this instance, the Medical Reviewer, Complaints and Practice Investigations department of the College prepared a "Reviewer's Summary and Points for Consideration" for the Inquiry Committee that summarized the complaint and the results of the investigation and set out points for consideration. The Inquiry Committee reviewed the summary and determined that the matter ought to be disposed of without regulatory criticism of the Registrant pursuant to s.33(6)(a) and noted that the matter was not resolvable by means of the regulatory body. The Inquiry Committee instructed the Registrar to write the Complainant conveying the disposition and insisting that the physicians work out their differences in a professional manner.

[13] 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.

[14] 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.

[15] 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.

[16] 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. The Complainant has asked the Review Board to review only the reasonableness of the Inquiry Committee's disposition of the complaint.

IV THE REASONABLENESS OF THE DISPOSITION

[17] 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 conduct a new or further 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.

[18] 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].

[19] 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]

[20] 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).

[21] The Medical Reviewer who prepared the summary of the investigation of the complaint is a medical doctor. The Inquiry Committee panel that considered the matter consisted of four physicians and three representatives of the public. Both the Medical Reviewer and the Inquiry Committee were well qualified to assess whether the Registrant's actions contravened the College's practice standards and bylaws.

[22] The Inquiry Committee had before it the Medical Reviewer's summary, the original complaint and supplemental letter from the Complainant, the Registrant's response to the complaint and input from Physicians A and B. Physician A provided a statement to a staff member at the College's Complaints and Investigation Department in which he explained that there is a history of conflict between the Registrant and the Complainant dating back a couple of years, initially involving conflict between each physician's staff members. Physician A expressed the opinion that the Registrant seems to lack respect for the Complainant. Physician B wrote the College that he is aware of the issue complained about and noted that he does not wish to take sides. He stated that he has not experienced the Registrant playing music loudly or causing a disruption when Physician B sees patients in the evening while the Registrant is also in the clinic. Physician B finds the Registrant to be respectful and courteous to Physician B's female staff and notes that none have complained.

[23] 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.

[24] The Complainant did not question the adequacy of the investigation nor do I.

[25] In her Statement of Points, the Complainant explained her delay in responding to the Review Board and then made the following brief submission reiterating a point she made in her letter appended to the Application for Review of an Inquiry Committee Disposition Decision:

As highlighted in the previously submitted complaint letters, music and whistling during patient consultation is disruptive. Out of several patients who have witnessed and vocalized their dissatisfaction regarding the disruptive noise, I will submit a few names and if the review committee would like to contact them directly their contact details are as follows: (contact information redacted).

[26] In the application for review the Complainant submitted that the Inquiry Committee's disposition was unreasonable because she believes that she provided sufficient evidence that the Registrant's playing of music and whistling was disruptive to the Complainant's practice of medicine, that his behavior toward her was misogynistic and bullying and that the Inquiry Committee erred in deciding that the matter was not resolvable by a regulatory body. In short, she disagrees with the result.

[27] The evidence before the Inquiry Committee consisted largely of a "he said, she said" scenario in which the Complainant alleged that the Registrant intentionally disrupted the Complainant's practice by playing music loudly and whistling while the Complainant was seeing patients and the Registrant denying the allegation and

asserting that it was the Complainant who had it in for him. Of the remaining two physicians in the practice, one offered a statement that was critical of the Registrant and the other was largely supportive of him.

[28] I am satisfied that the Inquiry Committee's decision to dismiss the complaint under s.33(6)(a) fell within the range or possible, acceptable outcomes that are defensible on the facts and the law. The fact that the Complainant does not agree with the outcome does not make the disposition unreasonable. There was evidence and law to support the Inquiry Committee's conclusion that the matter complained of was not resolvable by means of a regulatory body such as the committee and to dispose of the matter without criticism of the Registrant.

[29] Further, the Inquiry Committee's decision to dispose of the complaint as it did was conveyed to the Complainant in a letter written by the Medical Reviewer on behalf of the Inquiry Committee that was sufficiently transparent, intelligible and justifiable to be reasonable.

V CONCLUSION

[30] 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