

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Maria Capulong, Designated Vice-Chair, Presiding
Barbara Mellman, Board Member
David Scrimshaw, Board Member

Review held on March 10, 2022 in Ontario (by teleconference)

IN THE MATTER OF A COMPLAINT REVIEW UNDER SECTION 29(1) of the *Health Professions Procedural Code*, Schedule 2 to the *Regulated Health Professions Act, 1991*, Statutes of Ontario, 1991, c.18, as amended

B E T W E E N:

ANNETTE JARVIS

Applicant

and

ANDREW REYNOLDS QUINN, MD

Respondent

Appearances:

The Applicant:	Annette Jarvis
For the Respondent:	Emily Badley, Counsel Christopher Zhao, Student-at-Law
For the College of Physicians and Surgeons of Ontario:	Lee Ann McGillivray

DECISION AND REASONS

I. DECISION

1. The Health Professions Appeal and Review Board confirms the decision of the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario to take no further action.

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by Annette Jarvis (the Applicant) to review a decision of the Inquiries, Complaints and Reports Committee (the Committee) of the College of Physicians and Surgeons of Ontario (the College). The decision concerned a complaint regarding the conduct and actions of Andrew Reynolds Quinn, MD (the Respondent). The Committee investigated the complaint and decided to take no further action.

II. BACKGROUND

3. The Respondent is a family physician at a health centre. The Applicant was the Respondent's patient for approximately one year commencing July 2019.

The Complaint

4. The Applicant complained the Respondent behaved in an unprofessional manner towards her on their initial appointment – when the Applicant advised that she is prescribed methadone for pain, the Respondent responded with the following inappropriate remarks:
 - “I don't give out drugs;” and
 - “I'm surprised you didn't end up with a sexual disease.”

The Response

5. The Respondent denied the allegations and provided a summary of the care he provided to the Applicant. He explained that he is part of a multidisciplinary team at the health centre that is dedicated to providing excellent care to the more marginalized people in the community.
6. The Respondent explained that during their last appointment, which was by phone, the Applicant requested a letter excusing her from wearing a face mask for protection against COVID-19. The Respondent explained that such a letter was not required as their Public Health Unit had issued a statement instructing businesses that people could not be denied entry on this basis. He also explained that the Applicant's many health issues put her at

significant risk for complications of COVID and that she is someone who definitely should adhere to the basic rules of wearing a mask, careful hand washing and social distancing. The Respondent suggested to the Applicant that she could meet with a respiratory therapist to help with the mask issue, but the Applicant took great offence to this, shouted some expletives over the phone and hung up. The Respondent advised that he had not heard from the Applicant since.

7. Lastly, the Respondent explained that he was concerned that the Applicant would be unable to secure another Primary Care Practitioner as she was in a highly underserved area. As such, the Respondent had not removed the Applicant from the health centre's list of patients and remained hopeful that the Applicant would reconsider his offer to sit down and work things out.

The Committee's Decision

8. The Committee investigated the complaint and decided to take no further action.
9. In rendering its decision, the Committee considered the following:
 - The parties held divergent versions of the events.
 - The Committee is limited to a documentary review only. In the absence of independent information confirming what occurred at the initial appointment, the Committee cannot determine with any certainty, what, exactly, the Respondent might have said to the Applicant when the Applicant advised that she was prescribed methadone for pain.
 - The Respondent's explanation for not providing the requested mask exemption note made clinical sense given the medical records provided.
 - The chart notes of the parties' last clinical encounter indicate that the Applicant became angry when the Respondent did not agree to provide the note and that she hung up, which supports the Respondent's version of events.

III. REQUEST FOR REVIEW

10. In a letter dated January 15, 2021, the Applicant requested that the Board review the Committee's decision.

IV. POWERS OF THE BOARD

11. After conducting a review of a decision of the Committee, the Board may do one or more of the following:
- a) confirm all or part of the Committee's decision;
 - b) make recommendations to the Committee;
 - c) require the Committee to exercise any of its powers other than to request a Registrar's investigation.
12. The Board cannot recommend or require the Committee to do things outside its jurisdiction, such as make a finding of misconduct or incompetence against the member or require the referral of specified allegations to the Discipline Committee that would not, if proved, constitute either professional misconduct or incompetence.

V. ANALYSIS AND REASONS

13. Pursuant to section 33(1) of the *Health Professions Procedural Code* (the *Code*), being Schedule 2 to the *Regulated Health Professions Act, 1991*, the mandate of the Board in a complaint review is to consider either the adequacy of the Committee's investigation, the reasonableness of its decision, or both.

Applicant's Submissions

14. The Applicant submitted that what the Respondent wrote in his response was wrong. She provided a number of statements correcting the Respondent's version of events. For example, the Applicant stated that her husband had never met the Respondent contrary to the Respondent's statement that he accepted the Applicant as a patient because her

partner was a patient. She explained that she was never upset regarding the Respondent's decision not to provide her with a mask exemption note.

15. The Applicant submitted that the Committee should have contacted other health care professionals involved in her care, to verify some of the statements made by the Respondent, such as whether she used needles.
16. The Applicant further submitted that she understood that the Board did not make findings of credibility but that she was willing to undergo a "lie detector test."
17. In addition, the Applicant submitted that the Respondent judged her right away and that the Respondent was trying to use the Applicant's mental health to justify his actions. The Applicant submitted that she was an "awesome person" and relayed her past employment and community service.

Respondent's Submissions

18. The Respondent's Counsel submitted that the Committee's investigation was adequate. Counsel summarized the list of documents the Committee obtained and submitted that the test for adequacy is not whether the Committee obtained all information but whether the Committee obtained sufficient information to carry out its mandate.
19. In addressing the Applicant's submission that the Committee should have spoken to other health care professionals, Counsel submitted that such persons did not have relevant information with respect to assessing the complaint, specifically that the Respondent acted in a rude and unprofessional manner.
20. The Respondent's Counsel further submitted that the Committee's decision to take no further action was reasonable because the Committee was limited to a documentary review and unable to determine what was said in the encounter because there was an absence of corroborating information.

21. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record), and reviewed the Committee's decision.

Adequacy of the Investigation

22. An adequate investigation does not need to be exhaustive. Rather, the Committee must seek to obtain the essential information relevant to making an informed decision regarding the issues raised in the complaint.
23. The Committee obtained the following documents:
- the Applicant's complaint and subsequent correspondence;
 - the Respondent's response and subsequent correspondence;
 - the Respondent's medical records pertaining to the Applicant; and
 - the Respondent's College physician profile.
24. The Board finds the Committee's investigation was adequate.
25. Central to the complaint was the communication and interaction between the parties during patient visits. The Committee had the recollections of events from both parties. The Committee also obtained the Applicant's medical records that were made during or shortly after the patient visits and contained a summary of the encounters. There is no indication other information existed that would provide further insight into the interaction between the parties.
26. With respect to the Applicant's submissions that other health professionals involved in her care should be contacted, the Board is not persuaded that such information was required for an adequate investigation. There is no indication that these persons were present during the patient visits between the parties or whether they possessed information directly related to the concerns being investigated and considered.

27. The Board finds that the Committee obtained the essential information required to make an informed decision about the concerns raised in the Applicant's complaint.
28. There is no indication of further information that might reasonably be expected to have affected the decision, should the Committee have acquired it. Accordingly, the Board finds that the Committee's investigation was adequate.

Reasonableness of the Decision

29. In determining the reasonableness of the Committee's decision, the question for the Board is not whether it would arrive at the same decision as the Committee. Rather, the Board considers the outcome of the Committee's decision in light of the underlying rationale for the decision, to ensure that the decision as a whole is transparent, intelligible and justified. That is, in considering whether a decision is reasonable, the Board is concerned with both the outcome of the decision and the reasoning process that led to that outcome. It considers whether the Committee based its decision on a chain of analysis that is coherent and rational and is justified in relation to the relevant facts and the laws applicable to the decision-making process.
30. The Board notes that the Committee in its screening function is limited in its ability to make credibility determinations and can only prefer one version to the other if there is corroborating information.
31. Additionally, the Board notes that the Committee is not an adjudicative committee. It generally receives information in documentary form and does not conduct "lie detector tests." As indicated above, the Committee is limited in its ability to make findings of credibility as between the parties and to determine which version of events is correct.
32. The Board also finds it reasonable that when faced with divergent versions of events without any corroborating information to prefer one version of the events to the other, the Committee decided to take no further action with respect to the Applicant's complaint

that the Respondent behaved in an unprofessional manner towards the Applicant during her initial visit in July of 2019.

33. The Committee's decision makes it clear that it considered the Applicant's concerns, addressed them, and provided coherent reasons for its conclusions. Having considered the information in the Record and the Committee's decision, the Board finds that the Committee's decision demonstrates a coherent and rational connection between the relevant facts, the outcome of the decision and the reasoning process that led it to that outcome, and that its decision as a whole is transparent, intelligible and justified.

VI. DECISION

34. Pursuant to section 35(1) of the *Code*, the Board confirms the Committee's decision to take no further action.

ISSUED March 15, 2022

Maria Capulong

Maria Capulong

Barbara Mellman

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David Scrimshaw

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Cette décision est aussi disponible en français. Pour obtenir la version de la décision en français, veuillez contacter hparb@ontario.ca