

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Michael Bossin, Designated Vice-Chair, Presiding
Kathleen Ryan Elliott, Board Member
Norma Grant, Board Member

Review held on September 25, 2013 at Toronto, Ontario

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:

CAROL ANN KOLMANN

Applicant

and

**ESMAT ABDEL ALEEM MOHAMED DESSOUKI, MD AND LAKSHMI NARAYANA
PANT VORUGANTI, MD**

Respondents

Appearances:

The Applicant:	Carol Kolmann
Support for the Applicant:	Peter Kolmann
The Respondent:	Lakshmi Voruganti, MD
For the Respondents:	Alexandra Wilbee, Counsel
For the College of Physicians and Surgeons of Ontario:	Helina Leung (by teleconference)

DECISION AND REASONS

I. DECISION

1. It is the decision of the Health Professions Appeal and Review Board to confirm the decision of the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario to advise Dr. Dessouki regarding the completeness of

his independent medical examinations (IMEs) and to take no further action on the complaint concerning Dr. Voruganti.

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by Carol Ann Kolmann (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 Esmat Abdel Aleem Mohamed Dessouki, MD and Lakshmi Narayana Pant Voruganti, MD (the Respondents). The Committee investigated the complaint and decided to advise Dr. Dessouki as indicated above and to take no further action concerning Dr. Voruganti.

II. BACKGROUND

3. This complaint is in the context of independent medical examinations (IMEs) completed by Dr. Dessouki, an orthopaedic surgeon, and Dr. Voruganti, a psychiatrist, as requested by the Applicant's employer.
4. The Applicant has a permanent disability as determined by the Workplace Safety and Insurance Board (WSIB) and at the time of the IMEs conducted by the Respondents, she was receiving a non-economic loss award dating back to January 2001. The Applicant has other medical conditions that resulted in limitations and restrictions for which she needed to be accommodated at work. She also has a permanent disability from a motor vehicle accident in 2007.
5. The Applicant reported that on May 4, 2011, her employer called and advised her not to return to work, indicating that she would have to attend for assessments of her physical and psychological condition.
6. Dr. Dessouki saw the Applicant on July 12, 2011. Dr. Voruganti saw her on August 5, 2011. The service provider for the two IMEs was Sibley and Associates.

7. The Applicant was dissatisfied with the reports of both Respondents. She alleged that both reports contained misstatements that have negatively affected her life and her career.

The Complaint and the Response

8. The Applicant complained that Dr. Dessouki:
 - failed to conduct an adequate IME and failed to determine that she has a disability;
 - failed to provide an adequate report resulting from her IME in that the report contained many inaccurate statements; and
 - failed to administer his office practice in a proper manner in that on July 12, 2011, his elevator was out of service and the floor in his office was uneven, creating a tripping hazard for his patients.

9. The Applicant complained that Dr. Voruganti:
 - failed to provide an accurate report resulting from her IME in that he made an inaccurate diagnosis of her and made many inaccurate statements throughout his report; and
 - behaved in an unprofessional manner in that he failed to respond to Sibley & Associates when she filed a complaint with them regarding his IME.

10. Dr. Dessouki responded to the Applicant's complaint stating that his examination was thorough and appropriate and his report was complete and accurate. Regarding the condition of his office, he acknowledged that there is a "slight elevation in the middle" of the floor, for which there is a sign advising patients to be careful. In more than ten years in the office, he had never received a complaint about the floor before and was unaware of any patient being injured due to the elevation in the floor. To the best of Dr. Dessouki's knowledge, on the date of the Applicant's appointment with him, the elevator was in good order.

11. Dr. Voruganti responded to the Applicant's complaint by stating that his report was based entirely on the information the Applicant provided to him. Regarding the complaint that he had acted unprofessionally by not responding to the Applicant's letter of complaint sent to Sibley and Associates, Dr. Voruganti stated that there was an initial delay in responding because he was away for three weeks in November 2011. Upon his return, when advised that the Applicant had complained to the College, he felt it was appropriate to not respond directly to the Applicant.

The Committee's Decision

12. The Committee investigated the complaint and decided as indicated above.

III. REQUEST FOR REVIEW

13. In a letter dated February 25, 2013, the Applicant requested that the Board review the Committee's decision.

IV. POWERS OF THE BOARD

14. 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.
15. 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 allegations to a discipline hearing that would not, if proved, constitute either professional misconduct or incompetence.

V. ANALYSIS AND REASONS

16. 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.
17. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record)¹, and reviewed the Committee's decision.

Adequacy of the Investigation

18. 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.
19. The Committee's investigation of Doctors Dessouki and Voruganti included the following documents:
 - the Applicant's complaint;
 - Dr. Dessouki's and Dr. Voruganti's responses to the complaint;
 - the Applicant's comments on the Respondents' responses;
 - the questionnaire the Applicant completed prior to Dr. Dessouki's examination, including Dr. Dessouki's additional notes;
 - Dr. Dessouki's IME report;
 - Dr. Voruganti's IME report;
 - memoranda of numerous telephone conversations between the College investigator and the Applicant;

¹ The Record of Investigation (or Record) refers to the information obtained by the Committee as part of its investigation into the Applicant's complaint.

- the investigator’s memorandum following an on-site visit to Dr. Dessouki’s office;
- the investigator’s memorandum of her telephone call with Melissa Barker-O’Neil, who accompanied the Applicant to her appointment with Dr. Dessouki;
- the IME of the physiotherapist, Kathryn Eyre, who examined the Applicant;
- reports from the Applicant’s family physician, Dr. Cescon;
- a report from the pain practitioner, Dr. Shapero;
- information from the WSIB;
- correspondence between the Applicant and Sibley and Associates; and
- the College’s policies: *#3-09-Third Party Reports* and *#5-08-Physicians and the Human Rights Code*.

20. At the Review, the Applicant submitted that the investigation was inadequate because the Committee could have contacted her and asked her for more information. From its reasons, she sensed that the Committee did not fully comprehend her complaint. She asserted that the Committee should have checked with her employer regarding the human rights and labour aspects of her complaint. Finally, she stated that the consent she signed for the release of information from her employer and her family doctor to Dr. Dessouki was signed under duress.

21. Regarding the Applicant’s submission that the Committee did not fully comprehend her complaint, in this case the College summarized the Applicant’s concerns in writing and asked her to confirm them with a signature. She did so on January 18, 2012. Those concerns, as confirmed by her, were repeated verbatim by the Committee in its decision. There is no indication in the Record that the Committee failed to understand the Applicant’s concerns about the Respondents or investigate them accordingly.

22. In her letter of complaint regarding the Respondents, the Applicant did not raise issues of human rights or labour. Those issues, in the context of these complaints, are matters of

concern between the Applicant and her employer. Her complaint to the College concerned the manner in which the two Respondents treated her in the course of conducting their respective independent medical examinations and the reports they produced following those examinations. These were the focus of the Applicant's concerns and it was appropriate that the Committee's investigation had the same focus.

23. Finally, regarding the consent the Applicant signed for Dr. Dessouki, there is nothing on the face of that document to indicate that the Applicant signed it under duress, nor did the Applicant raise this concern in her complaint to the College. Consequently, there was no reason for the Committee to have made this allegation a part of its investigation.
24. Although Dr. Dessouki's clinical notes were sparse, the Committee did obtain the questionnaire completed by the Applicant upon which Dr. Dessouki's report was based. In addition, it had Dr. Dessouki's full IME report, information from the Applicant, her employer's letter to Dr. Dessouki and his response to her comments. Regarding Dr. Voruganti, the Committee's investigation included multiple submissions from the Applicant, Dr. Voruganti's response, comments made by the Applicant on that reply as well as his comments on the Applicant's further submissions. It also had Dr. Voruganti's clinical notes and his IME report.
25. The Board finds that the Committee's investigation covered the events in question and yielded relevant documentation that enabled it to assess the concerns raised about both Respondents. Moreover, 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

26. In considering 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, but whether the

Committee's decision can reasonably be supported by the information before it and can withstand a somewhat probing examination. In doing so, the Board considers whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

Additional Documentation

27. A preliminary issue that arose at the Review was whether, in determining whether the Committee's decision is reasonable, the Board should consider documents submitted to the Board by the Applicant at the Review, including recent information related to the Applicant's health. While the Board has no reason to question the veracity of the information contained in this documentation, it does question the relevance of the documents as to whether the Committee's decision is reasonable *in light of the information it had before it*. As a rule, the Board cannot fault the Committee for failing to consider information that arose after its decision was rendered. One exception to this rule might be post-decision information suggesting bias or conflict of interest on the part of one or more Committee members, but the recent information proffered by the Applicant related to neither of these issues. For these reasons, the Board did not consider this "new" documentation in its deliberations.

Dr. Dessouki

28. The Applicant's main concerns regarding Dr. Dessouki were (1) that he failed to consider collateral medical information she provided to him and (2) that he rushed his examination. As a consequence, the Applicant alleges that he conducted an inadequate examination resulting in an assessment full of inaccurate information and misstatements. In addition, the Applicant complained that Dr. Dessouki's elevator was out of order and the floor in his office was uneven, creating a safety hazard.
29. The Committee was sympathetic to most of these concerns. Regarding the medical information the Applicant brought to the appointment, it noted, "it would have been

prudent for Dr. Dessouki to have looked over the material simply to ensure that he had taken all of the collateral information into account.”

30. The Committee acknowledged that Dr. Dessouki’s conclusions were inconsistent with those reached by the physiotherapist, Kathryn Eyre, stating, “... there was some indication that Dr. Dessouki may have rushed his assessment which resulted in very different conclusions from those reached by the physiotherapist who conducted a two-hour assessment.”
31. Regarding the Applicant’s major concern - Dr. Dessouki’s findings that the Applicant had no physical restrictions - the Committee again noted that this was unusual, “given that she had a 15% disability with respect to her back that WSIB considered permanent and had undergone rhizotomy of the lumbar spine.”
32. That said, the Committee concluded, “In order to find Dr. Dessouki’s opinion unreasonable, however, we must find that he demonstrated lack of diligence in obtaining accurate information or that he arrived at an unreasonable decision arising from the facts.” Apart from commenting on how quickly he conducted his examination, how he ought to have reviewed the documents presented to him by the Applicant, and noting that his conclusions were unusual and inconsistent with those of the physiotherapist who had conducted a much longer examination, the Committee had no information before it upon which it could have gone further. However brief the examination, Dr. Dessouki *did* conduct a physical and verbal examination of the Applicant as he was required to do in an IME and the Committee – not being present at the examination - had no basis to find that his observations, as noted in his report, were inaccurate. Consequently, the Board finds this aspect of the Committee’s decision to be reasonable.
33. Finally, regarding the Applicant’s complaint about the elevator and the unevenness of the floor in Dr. Dessouki’s office, the Board finds the Committee’s characterization of these concerns as “minor” to be reasonable. The Committee was in no position to determine if the elevator was working on the date of the Applicant’s appointment but accurately

observed that the Applicant was nevertheless able to access Dr. Dessouki's office on that occasion. Moreover, in spite of any unevenness in the floor, there was no information before the Committee that the Applicant or anyone else had been injured as a consequence.

34. Implicit in the Committee's disposition to advise Dr. Dessouki on the completeness of his IME is the Committee's view that he had been less thorough than ideally he should have been in conducting the Applicant's IME. As the Committee indicated, its disposition is educational, designed to ensure that in the future, Dr. Dessouki takes more care than he did with the Applicant. This decision falls within the range of possible, acceptable outcomes that was open to the Committee based on the information that was before it. As such, the Board finds the Committee's decision to provide advice to Dr. Dessouki to be reasonable.

Dr. Voruganti

35. The areas of concern in the Applicant's complaint regarding Dr. Voruganti were (1) that he failed to provide an accurate IME in that his diagnosis was inaccurate and his report contained many inaccurate statements and (2) that he behaved unprofessionally by failing to respond to Sibley and Associates when the Applicant complained about him.
36. In her correspondence with the College and in her oral submissions at the Review, the Applicant listed a number of references in Dr. Voruganti's IME report that she said were not based on the information she had provided to him. These included, for example, references to: her having cats (she said she did not have cats); identifying her with a photo identity health card (her health card has no photo); her father owning a Porsche (he did not); and her being European (she is Canadian).
37. In his response, Dr. Voruganti stated that he may have been mistaken about the Applicant's health card but asserted that she had shown him some photo ID. Mention of

such matters as the cats and her father's Porsche may have been made as jokes, but he stated that he had recorded these references in his chart notes.

38. In its decision, the Committee stated that the discrepancies between the Applicant's version of events and Dr. Voruganti's report were "minor and subjective" and took no action regarding this aspect of the complaint. Whether it was appropriate for the Committee to characterize the different versions in this way, it is nevertheless impossible for the Committee to have determined which version is correct and, as a consequence, which version is accurate. The Committee has only the Applicant's allegations and Dr. Voruganti's denials before it. In numerous decisions, the Divisional Court has stated that the Committee exercises a screening function and has no jurisdiction to make credibility findings.² Consequently, in the circumstances it was reasonable for the Committee to take no action on this part of the Applicant's complaint concerning Dr. Voruganti.
39. The Applicant took issue with Dr. Voruganti's conclusion that she suffers from a narcissistic and litigious personality disorder, and that she does not suffer from claustrophobia. At the Review and in her correspondence with the College, the Applicant strongly denied that she has a narcissistic personality disorder and that no one who knows her would describe her in those terms. In terms of being "litigious" she indicated that she is simply exercising her basic rights as an employee. As for claustrophobia, although that was not the reason for her absences from work, it was a condition she had had for most of her life.
40. Dr. Voruganti responded that his opinions were based solely on the information that the Applicant had provided to him. He qualified his "diagnosis" by stating that it was accurate "within the scope of an independent psychiatric evaluation based on a single interview."
41. The Committee found "no reason to conclude that Dr. Voruganti's opinion in this case was unreasonable." The Board finds this conclusion to be reasonable.

² See, for example, *Fielden v. Health Professions Appeal and Review Board*, 2013 ONSC 4261, at paragraph 8.

42. In stating that Dr. Voruganti's opinion was reasonable, the Committee was neither agreeing nor disagreeing with his assessment. It noted, "a diagnosis in a third party psychiatric report is in fact an opinion based on information provided by the patient in an interview." While the Applicant may strongly disagree with that opinion, the Committee had no information upon which it could conclude that the opinion was not honestly held by Dr. Voruganti or that it was based on anything other than the physician's interview notes, which were extensive.
43. The second aspect of the Applicant's complaint regarding Dr. Voruganti was that he failed to respond to the service provider, Sibley and Associates, when she complained about him. According to the Applicant, she sent her letter concerning Dr. Voruganti to Sibley and Associates in September 2011 and they told her that they had forwarded the letter to him. The Applicant states that in November 2011, Sibley and Associates told her that they had still not heard from Dr. Voruganti. After getting no response for over two months, she was told that her next step was to lodge a complaint with the College. According to its "Chronology of Investigation", the College received the Applicant's complaint on November 29, 2011.
44. For his part, Dr. Voruganti stated that the Applicant's complaint about him was conveyed to him by Sibley and Associates in late October. He then was away for three weeks in November 2011 and states that upon his return, Sibley and Associates informed him that the Applicant would not wait any longer for a reply and was threatening to take legal action against him. The Applicant denies that she made such threats.
45. In its decision, the Committee stated, "the information shows that Dr. Voruganti was notified of the College complaint six weeks after learning [the Applicant] had concerns about his report. In the circumstances, it would not have been prudent for Dr. Voruganti to have engaged with [the Applicant] by responding to her concerns about the report after she had lodged a complaint against him with the College and may have been considering legal action."

46. While the Board finds it reasonable for the Committee to conclude that it would have been imprudent for Dr. Voruganti to respond to the Applicant after being notified of her complaint to the College, the Applicant's concern was that he had not responded *prior* to her initiating her complaint with the College.

47. Regarding this period of time, however, the Board notes that there is a discrepancy concerning the date that the Applicant's letter of complaint was sent to Sibley and Associates. The Applicant states that the letter was sent in September while Dr. Voruganti states that he was notified of it in late October. In the Record, there is the letter the Applicant wrote to Sibley and Associates expressing her concerns about Dr. Voruganti's report, but it is undated. Based on this information, the Committee could not have determined with any certainty what date the Applicant sent the letter or on which date Dr. Voruganti received it. Moreover, both the Applicant and Dr. Voruganti could be accurate in their recollections of when the letter was sent and received as there was no information in the Record – other than Sibley's and Associates' word to the Applicant – on how much delay there was between the time that it received the letter and when it forwarded the letter to Dr. Voruganti. Finally, there is no information in the Record on what Sibley and Associates said to Dr. Voruganti in November 2011 regarding any potential legal action by the Applicant or how it might have interpreted (or misinterpreted) the Applicant's intentions in this regard.

48. The Board finds that given the scarcity of information regarding this matter, and the discrepancies concerning the dates, it was reasonable in the circumstances for the Committee to take no action regarding this aspect of the Applicant's complaint.

VI. DECISION

49. Pursuant to section 35(1) of the Code, the Board confirms the Committee's decision to advise Dr. Dessouki regarding the completeness of his IME and to take no further action regarding the complaint concerning Dr. Voruganti.

ISSUED May 20, 2014



Michael Bossin



Kathleen Ryan Elliott



Norma Grant