

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

James Beamish, Designated Vice-Chair, Presiding
Celia Denov, Board Member
Rob Steele, Board Member

Review held on August 14, 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:

DAVID EVANS

Applicant

and

GAIL COPPENS, PT

Respondent

Appearances:

The Applicant:	David Evans
For the Respondent:	Any Mayer, Counsel
For the College of Physiotherapists of Ontario:	Theron Viera (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 Physiotherapists of Ontario to provide the Respondent with advice about ensuring the accuracy of her reports and the need to ensure that her practice in this regard is appropriate and to take no further action.

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by David Evans (the Applicant) to review a decision of the Inquiries, Complaints and Reports Committee (the Committee) of the College of Physiotherapists of Ontario (the College). The decision concerned a complaint regarding the conduct and actions of Gail Coppens, PT (the Respondent). The Committee investigated the complaint and decided to advise the Respondent as indicated above and to take no further action.

II. BACKGROUND

3. On September 14, 2009, the Applicant was involved in a motor vehicle accident while driving his motorcycle. He sustained injuries to his cervical and thoracic spine, right shoulder, and both knees. Because of the nature of his injuries, he required extensive medical investigations and treatment from various health professionals. The Applicant submitted to his insurer a number of proposed treatment plans, known as OCF 18's, for physiotherapy services.
4. As part of her practice as a registered physiotherapist, the Respondent is regularly retained by medical assessment companies and insurers as an independent third party assessor to perform examinations to assist in determining the reasonableness and necessity of continued coverage for physiotherapy treatment.
5. In performing her assessments, the Respondent reviews the medical records provided to her by the insurer and may conduct an examination, which includes taking a history, and performing a physical examination and testing of the subject. In other cases, the Respondent bases her assessment solely on a paper review of the subject's medical file. The nature of the assessment and the content of the medical record reviewed by the Respondent are determined by the insurer.
6. The Applicant was referred to the Respondent for six independent assessments. The Respondent provided in-person, physical examinations of the Applicant on four

occasions and conducted two assessments based on a paper review of the Applicant's medical records.

7. The Respondent's assessments of the Applicant done on December 7, 2010 and May 17, 2012 each concluded that the proposed treatment plans were entirely reasonable and necessary. The assessments done on March 24, 2011 and July 14, 2011 concluded that the proposed treatment plans were partially reasonable and necessary. The paper review assessments done on August 29, 2011 and March 12, 2012 concluded that the proposed treatment plans were not reasonably necessary.

The Complaint and the Response

8. The Applicant complained:

- The Respondent repeatedly made negative comments about the Applicant's treating physiotherapist. The Respondent stated that his physiotherapist's "lack of information provided in reports is hurting [the Applicant] and [resulting in him] having to go through IME after IME";
- The Respondent submitted reports that were "riddled with mistakes" and she quoted him making statements that are "completely ludicrous";
- He believes that the Respondent's "opinion seems to be favouring [his] insurance company's bottom line";
- The Respondent failed to amend her report dated March 13, 2012 after additional documentation was provided to her; and
- At his assessment on July 14, 2011, the Respondent "suggested to [him] that it might be in the best interest for [her] to call [his treating physiotherapist] directly" for clarification of an OCF-18 form; however, the Respondent failed to follow up with the treating physiotherapist.

9. The Respondent responded to the areas of concern raised by the Applicant as follows:

- She advised the Applicant that some of the treatment plans submitted by his treating physiotherapist lacked an explanation as to why the proposed treatment was reasonable and necessary, and that this resulted in the Applicant having to undergo repeated assessments. She meant no disrespect

to the Applicant's treating physiotherapist and, in fact, complimented the progress the Applicant was making under his treating physiotherapist.

- The Respondent acknowledged that there were some minor inaccuracies in her reports but stated that she relied on information the insurer and the Applicant provided to her and noted that none of the inaccuracies was material to the conclusions in her assessment reports.
- The Respondent acknowledged that she does copy basic information from one report to another, citing that this is common practice, and thus avoids having to cover this prior ground each time.
- The Respondent stated that her reports were not biased in favour of the insurer and noted that her opinions were, for the most part, favourable to the Applicant.
- The Respondent stated that she was not aware of any further information being provided to her after the paper review of March 13, 2012 and noted that she was never asked by the insurer to complete an addendum report based on new information.
- The Respondent denied that she offered to contact the Applicant's treating physiotherapist and stated that it was not her usual practice to do so during the assessment process. She suggested that the Applicant may have confused this point with her willingness to speak with treating medical professionals *after* her assessment and report were completed.

The Committee's Investigation and Decision

10. The Committee investigated the complaint and decided to provide the Respondent advice about ensuring the accuracy of her reports and the need to ensure that her practice in this regard is appropriate and to take no further action.
11. In considering its decision, the Committee had before it the following information:
 - the Applicant's letter of complaint and the confirmation of his areas of concern;
 - the Respondent's response to the complaint, together with copies of her assessment reports and other medical information concerning the Applicant;
 - the Applicant's reply to the Respondent's response;

- the Applicant's complete medical file from his insurer; and
 - the relevant *Standards of Practice* and *Competency Profile for Physiotherapists*.
12. Regarding the concern that the Respondent made disparaging comments about the Applicant's treating physiotherapist, the Committee noted that the comments were limited to observations about the quality of the treatment plans submitted for approval and that both the Respondent and the insurer did not believe that sufficient information was included in the treatment plans. The Committee found that the Respondent was trying to assist the Applicant through the assessment process and that she meant no disrespect to his treating physiotherapist. The Committee decided to take no action regarding this area of concern.
13. Regarding the concern about the accuracy of the Respondent's reports, the Committee stated that it reviewed in detail the instances of inaccuracies documented in the Applicant's letter of complaint as well as the Respondent's explanation of how such inaccuracies might have occurred. The Committee noted that the Applicant's medical file was very complex and contained a number of discrepancies not necessarily created by the Respondent. Regarding the discrepancies between what the Respondent reported to be the Applicant's condition and what the Applicant stated was his true condition in his complaint, the Committee noted that it was not in a position to determine which version was correct. The Committee stated that it had no information to indicate that the Respondent intentionally prepared an inaccurate report. The Committee decided to take no action regarding this area of concern but reminded the Respondent about ensuring the accuracy of her reports and the need to ensure that her practice in this regard is appropriate.
14. Regarding the concern that the Respondent's opinion favoured the insurer, the Committee noted that her opinions were, for the most part, favourable to the Respondent. The Committee stated that the Respondent's assessment reports were neutral and were supported by the information contained in the reports. The Committee stated that there

was insufficient information to determine that the Respondent displayed a bias towards the Applicant's insurer. The Committee decided to take no action regarding this area of concern.

15. Regarding the concern that the Respondent did not consider new information following her paper review report of March 13, 2012, the Committee noted that there is no obligation on an assessor to complete an addendum unless a formal request is made and there was no information to suggest that such a request was made. The Committee decided to take no action regarding this area of concern.
16. Regarding the concern that the Respondent failed to contact the Applicant's treating physiotherapist when she had undertaken to do so, the Committee noted that it is not typical practice for an assessor to contact a patient's treating physiotherapist and the Respondent was not obliged to do so. The Committee stated that it was faced with conflicting accounts as to whether the Respondent undertook to contact the Applicant's treating physiotherapist and was not in a position to determine which account was correct. The Committee decided to take no further action regarding this area of concern.

III. REQUEST FOR REVIEW

17. Dissatisfied with the decision of the Committee, in a letter dated January 25, 2013, the Applicant requested that the Board review the Committee's decision.

IV. POWERS OF THE BOARD

18. 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.

19. 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

20. 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.

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 documents referred to in paragraph 11, which included the Applicant's complete medical file from his insurer.

24. The Applicant submitted that the Committee's investigation was inadequate and that the Committee should have obtained the following additional documentation:

- the original OCF 18 forms from the Applicant's treating physiotherapist, which the Applicant states contain the information that the Respondent said was missing from those forms;
- copies of the Respondent's original notes of her assessments of the Applicant, which the Applicant states may corroborate his recollection of what he told the Respondent about his condition;
- copies of the reports of other treating health professionals, which the Applicant states would demonstrate that the Respondent was biased in favour of the insurer; and,
- a copy of the Applicant's personal journal in which he recorded his comments about the assessments conducted by the Respondent.

25. Counsel for the Respondent submitted that the Committee conducted an adequate investigation. She noted that the Respondent reviewed the information that the insurer provided to her and that she had no control over what was provided. That being the case, it would serve no purpose for the Committee to review information that was not available to the Respondent when she did her assessments. Regarding the Respondent's original notes, Counsel for the Respondent noted that the Respondent was obliged to prepare her report within five days of her assessment of the Applicant and that the report would therefore be virtually a contemporaneous record of what took place at the assessment. Regarding the Applicant's journal, Counsel for the Respondent noted that the Applicant could have provided a copy of it to the College investigator but did not do so.

26. The Board finds that the Committee conducted an adequate investigation. The Record contained the Applicant's complete medical file as maintained by his insurer. That file would include all of the material that was provided to the Respondent and upon which the Respondent relied when she conducted her assessments. In addition, it contained the OCF 18 forms that the Respondent advised ought to have contained more information. The additional material referred to in paragraph 24 above would not have assisted the Committee.

27. The Board finds that reports of other health professionals that might have been at odds with the opinions expressed by the Respondent would not have assisted the Committee.

The Committee had all of the information upon which the Respondent based her opinions and concluded that those opinions were reasonable and supported by the information provided to the Respondent. Consideration of further information not available to the Respondent would not have assisted the Committee and would not likely have affected its decision.

28. The Board finds that it was not necessary for the Committee to have sought to obtain the Respondent's notes of her assessments of the Applicant. The Respondent's reports, although not dated within five days of the date of the assessments, are sufficiently close in time to be reliable contemporaneous records of what the Applicant said. The Committee found no information to suggest that the Respondent falsified any aspect of the reports. Furthermore, there was no indication that the Respondent's original notes were still available to the Committee when it conducted its investigation.
29. Regarding the Applicant's journal, the Board notes that the Applicant did not offer a copy of it to the College investigator, nor was there any indication that the investigator was even made aware of its existence. That being the case, the Board finds that the Applicant cannot now take the position that the Committee should have had the journal when he had the opportunity to provide it to the Committee and did not do so.
30. The Board finds that the Committee had sufficient relevant information to enable it to make an informed decision regarding the subject matter of the Applicant's complaint. 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

31. 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.

32. The Applicant submitted that the Committee should have found that the Respondent's unwarranted criticisms of the Applicant's treating physiotherapist were a breach of those aspects of the *Essential Competency Profile for Physiotherapists*, which provide that Physiotherapists should work collaboratively with other health professionals.
33. The Applicant submitted that the Committee should have found that the Respondent's reports were "riddled with errors" and that its failure to take action, other than to provide advice to the Respondent about ensuring the accuracy of her reports, was an unreasonable disposition.
34. The Applicant submitted that the Committee should have found that the Respondent was biased in favour of the insurer, since her opinions were often at odds with those of other treating health professionals. He submitted that the Respondent owed a duty to him as well as to the insurer and that her reports, which were not favourable to him, prejudiced his treatment and recovery.
35. The Applicant submitted that the Committee ought to have found that the Respondent should have amended her report of March 13, 2012 in light of information regarding his surgery and the recommendation from his orthopaedic surgeon that he have physiotherapy following his surgery.
36. The Applicant submitted that the Committee should have found that the Respondent ought to have followed up with the Applicant's treating physiotherapist.
37. Counsel for the Respondent submitted that the Committee reached a reasonable decision regarding all five areas of concern raised by the Applicant. Counsel reviewed all aspects

of the Committee's decision and submitted that each was supported by the information before the Committee and was reasonable.

38. The Board finds that the Committee reached a reasonable decision regarding each area of concern raised by the Applicant.
39. Regarding the concern about the views expressed by the Respondent about the Applicant's treating physiotherapist, the Board finds that it was reasonable for the Committee to take no further action. The information before the Committee was that the Respondent told that Applicant that the OCF 18 forms submitted by the Applicant's treating physiotherapist lacked sufficient information for his insurer to evaluate those treatment plans, which resulted in the necessity for repeated assessments. There was no information to suggest that the Respondent was critical of the care provided by the treating physiotherapist. In making such comments, the Respondent relied on the information that the insurer provided to her. The fact that the insurer asked the Respondent to provide successive assessments of the Applicant would support the conclusion that the insurer was not satisfied with the content of the OCF 18 forms prepared by the Applicant's treating physiotherapist. The Board finds that it was reasonable for the Committee to conclude that the Respondent was merely trying to assist the Applicant and that her comments were not derogatory.
40. Regarding the concern about alleged inaccuracies in the Respondent's reports, the Board finds that it was reasonable for the Committee to conclude that the Respondent did not create many of the discrepancies and that it was reasonable for her to copy or paste background material from previous reports. The Committee was alive to the importance of accuracy in reports since it advised the Respondent to ensure that the information in her reports is accurate.
41. The Board finds that the Committee reached a reasonable decision to take no action regarding the alleged inaccuracies in reporting the Applicant's condition in certain of her reports. The Committee noted that the Respondent was consistent in her explanation of

how she obtained the information in her assessment reports and that she accurately documented the information that was provided to her. The Board finds that the Committee reasonably concluded that there was no information to suggest that the Respondent intentionally prepared an inaccurate report.

42. Regarding the concern that the Respondent was biased in favour of the insurer, the Board finds that the Committee reached a reasonable conclusion that there was insufficient evidence to determine that the Respondent displayed such a bias. The Committee, which included three physiotherapists, reviewed the information in the Record, including the Respondent's reports. The Committee noted that the Respondent's opinions were, for the most part, favourable to the Applicant. Where the opinion was not favourable, the Committee concluded that there was an adequate rationale for that opinion. The Board finds that the Committee reached a reasonable decision to take no action regarding this area of concern.
43. Regarding the concern that the Respondent failed to reconsider her opinion in light of new information concerning surgery to repair the Applicant's right rotator cuff, the Board finds that the Committee reached a reasonable conclusion that the Respondent was under no obligation to amend her report in the absence of a formal request from the insurer. The Committee's decision to take no action was reasonable.
44. Regarding the concern that the Respondent failed to follow up with the Applicant's treating physiotherapist, the Board finds that the Committee reached a reasonable decision to take no further action. The Committee noted that there is no professional expectation that assessors will communicate with treating practitioners and that there were differing accounts as to whether the Respondent undertook to follow up with the Applicant's treating physiotherapist. The Board finds that the decision to take no further action was reasonable in those circumstances.

VI. DECISION

45. Pursuant to section 35(1) of the *Code*, the Board decides to confirm the Committee's decision to provide the Respondent advice about ensuring the accuracy of her reports and the need to ensure that her practice in this regard is appropriate and to take no further action.

ISSUED September 5, 2013



James Beamish



Celia Denov



Rob Steele