

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Sonia Ouellet, Vice-Chair, Presiding
Marc D'Amours, Board Member
Gabrielle St-Hilaire, Board Member

Review held on February 21, 2013 at Ottawa, 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:

JOHN L. DIMOCK, MD

Applicant

and

LISA EGAN

Respondent

Appearances:

For the Applicant:	Laura Kraft, Counsel
For the Respondent:	Randy Slepchik and Jessica Greenwood, Counsel
For the College of Physicians and Surgeons of Ontario:	Elaine Stone (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 require Dr. John L. Dimock to attend the College to be cautioned in person regarding the requirement of maintaining confidentiality of

personal health information, and the thoroughness of his independent medical examination (IME) assessment and report. In addition, the Committee requested that Dr. Dimock “provide the Committee with a written report, approximately 2-4 pages in length, with respect to assessment and management of PTSD, and the components of a psychiatric assessment, and with respect to law and policy regarding privacy of personal health information.”

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by John L. Dimock, MD (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 made by Ms. Lisa Egan (the Respondent) regarding the conduct and actions of the Applicant who met with her on August 13, 2010 and subsequently wrote an IME for her insurer.

II. BACKGROUND

3. The Respondent was on long-term disability benefits as a result of an assault by a co-worker while on vacation in February 2008. The Respondent’s insurer required her to undergo a third party psychiatric assessment regarding her post-traumatic stress disorder (PTSD).
4. The Respondent saw the Applicant, a psychiatrist, for this assessment on August 13, 2010.
5. The Applicant produced an IME report dated August 20, 2010.
6. The Respondent did not believe that the Applicant’s report was an accurate characterization of her medical condition at the time. The Respondent submitted that the report contained inappropriate personal opinions as to her character and that the Applicant improperly permitted these personal opinions to inform his medical opinion in the report he submitted to her insurer.

The Complaint and the Response

7. By letter sent by his Counsel, the Respondent complained that the Applicant:
 - behaved in an unprofessional manner during the Respondent's IME on August 13, 2010. For example, he discussed with her the "medical circumstances" of patients who had attended his office for assessments, including mentioning at least one patient by name and discussing his medical condition, personal experiences and employment status; and
 - failed to provide an adequate report on the Respondent regarding her IME on August 13, 2010. For example, he submitted inappropriate personal opinions as to her character in the report, including recommendations about her personality type to her insurer regarding their plans for her rehabilitation.

8. The Applicant denied behaving unprofessionally during the Respondent's IME. He denied breaching the confidentiality of Mr. X.X. as he did not confirm or deny to the Respondent that this person was his patient. Furthermore, the Applicant indicated he provided a professional report concerning the Respondent, "including comments as to her personality style and recommendations for treatment of such personality style, as is expected of an independent medical examination."

The Committee's Investigation and Decision

9. The Committee investigated the complaint and, in a decision dated March 12, 2012, decided to caution the Applicant in person regarding maintaining confidentiality of personal health information, and regarding the thoroughness of his IME assessment and report. In addition, the Committee requested that the Respondent provide the Committee with a written report, approximately 2-4 pages in length, with respect to assessment and management of PTSD, and the components of a psychiatric assessment, and with respect to law and policy regarding privacy of personal health information.

III. REQUEST FOR REVIEW

10. Dissatisfied with the decision of the Committee, in a letter dated May 22, 2012, 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 allegations to a discipline hearing 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.
14. 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

15. 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.

16. The Committee obtained the following documents:
 - the Respondent’s complaint letter;
 - the Applicant’s response letter with his records regarding the assessment;
 - the Records received from the insurer;
 - the Respondent’s comments concerning the Applicant’s response;
 - the Applicant’s conduct history; and
 - College Policy statements: #8-05 *Confidentiality of Personal Health Information*, #4-07 *Physician Behaviour in the Professional Environment* and #3-09 *Third Party Reports*.

17. At the Review, the Applicant raised concerns regarding the adequacy of the Committee’s investigation, in particular, regarding the scope of the complaint. The Applicant referred to the Committee’s decision where it expressed its view that the Applicant’s “approach betrays deficiencies in his management of patients who may have PTSD. He needs to be aware of all criteria for PTSD so he can screen for it, and manage it, if found.” The Applicant indicated that he did not have an opportunity to respond to the Committee’s general conclusions regarding his care for PTSD patients. The Applicant argued that the Committee ought to have put that issue before him and allow him to respond and added, “that is not how the complaint was structured.”

18. The Board observes that the complaint includes concerns about the Applicant’s approach to an IME and the ensuing report. The Applicant had an opportunity to respond and he did respond by letter dated November 7, 2011 with his records attached. In the Board’s view, the Committee’s findings regarding the Applicant’s thoroughness regarding IME

assessments and reports is directly related to the complaint. Any disagreement the Applicant might have with the Committee's findings regarding this issue goes to the reasonableness of the decision and not to the adequacy of the investigation.

19. In addition, the Applicant asserted that the Committee should have sought "evidence of a breach of confidentiality" The Board observes that the Committee had the Respondent's concerns and comments about issues of confidentiality. Further, in his letter of response, the Applicant provided detailed comments on this issue and enclosed an extract from a newspaper article to support his position. The Board finds that the information before the Committee was sufficient for it to address this aspect of the complaint. Again, the Board finds that the Applicant's issue with this aspect of the Committee's decision is not about the adequacy of the investigation but rather, it is about the reasonableness of the decision.
20. The Board notes that the information found in the Record includes the Respondent's complaint letter, the Applicant's response letter with his records, the Respondent's additional information, the Respondent's records with her insurer and three relevant CPSO Policy statements. The Board observes that summaries of the Applicant's conduct history were included in the Record. The Board finds that the information gathered in the course of the investigation provided the essential information for the Committee to address the Respondent's complaint. In the Board's view, 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 is satisfied that the Committee's investigation was adequate.

Reasonableness of the Decision

21. 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.

Unprofessional behavior

22. In her complaint letter dated September 1, 2011, the Respondent indicated that during her IME assessment, the Applicant discussed the personal medical circumstances of a number of patients that had come to his office for assessments. These patients included another City of Ottawa employee that the Respondent had known. The Respondent stated that the Applicant mentioned by name Mr. X.X. and outlined his medical condition, his personal experiences and employment status. The Respondent indicated this made her feel uncomfortable and worried that personal details from her own session with the Applicant might be shared with others.

23. In his response letter dated November 7, 2011, the Applicant denied he behaved in an unprofessional manner during the IME. He indicated that when the Respondent asked him about his experience with treating patients with post-traumatic stress disorder, he stated:

I simply pointed out to her that I was aware of a gentleman who worked in her department, who was involved in the OC Transpo shooting and, indeed, was injured in that shooting. This knowledge is public knowledge and I enclose the relevant newspaper article concerning the gentleman in question. At no time did I acknowledge or admit that this patient was, in fact, a patient of mine and at no time did I discuss his medical condition, his personal experiences or his employment status other than my knowledge of his having worked in the same department as herself. Indeed, [the Respondent] told me that she was not aware of this gentleman and yet the original letter from yourself indicates that she, indeed, did know this gentleman.

24. The Committee found that the Applicant predisposed the Respondent not to provide a full history through his action of revealing information about Mr. X.X. and found that he compromised the IME assessment right from the start. The Committee found that the Applicant's discussion of Mr. X.X. during the appointment with the Respondent betrayed Mr. X.X.'s confidentiality and was unprofessional. The Committee decided to caution the

Applicant in person regarding the requirement of maintaining confidentiality of personal health information. Additionally, the Committee required the Applicant provide, in a written report, the law and policy regarding privacy of personal health information.

25. At the Review, the Applicant indicated that the Committee was not in a position to make a finding of breach of confidentiality as there was no information in the Record that Mr. X.X. was his patient. The Applicant indicated that he could not confirm if Mr. X.X. was or was not his patient as this could potentially breach his confidentiality obligations if Mr. X.X. was his patient. The Applicant submitted that the Committee's line of analysis was not tenable and was not supported by the information in the Record.
26. The Board notes that the parties' versions of their discussion during the IME are divergent on some points. However, they both agree that a gentleman working at OC Transpo in the Respondent's department was discussed during the IME in relation to the Applicant's experience with treating patients with PTSD. The Applicant stated that he used publicly available information (that this gentleman worked in her department, was involved in a shooting at OC Transpo and was injured in that shooting) about the gentleman to reassure the Respondent that he had experience with treating patients with PTSD. In his response, the Applicant also stated, "at no time did I acknowledge or admit that this patient was, in fact, a patient of mine." The Respondent indicated that the information provided by the Applicant rendered her uncomfortable as Mr. X.X. was a co-worker at OC Transpo.
27. As outlined in the Committee's decision, the College's Policy Statement #8-05, *Confidentiality of Personal Health Information*, states:

Under the regulations to the *Medicine Act 1991*, it is an act of professional misconduct for a physician to: "[give] information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law."

28. The Board notes that in reaching its decision, the Committee found:

In his response, [the Applicant] states that [the Respondent] asked about his experience with PTSD, and then discusses Mr. X.X. who was involved in a shooting incident. If [the Applicant] was treating Mr. X.X., he breached confidentiality by discussing the case. If he was not treating Mr. X.X., then his answer was irrelevant. [...] The Committee is of the view that [the Applicant's] discussion of Mr. X.X. during the appointment with [the Respondent] betrayed Mr. X.X.'s confidentiality and thus was unprofessional.

29. The Board notes that the Applicant referred to a gentleman and provided a number of details regarding this individual to the Respondent during the IME, albeit, according to the Applicant, as a means to reassure the Respondent that he had experience with treating patients with PTSD. The information in the Record regarding the use of Mr. X.X.'s name is conflicting. However, the Record does reflect that the Applicant used other identifying information such as the workplace, the involvement in a shooting and the injury sustained in his discussion with the Respondent. The fact that the Applicant shared this information with the Respondent worried her and made her feel uncomfortable. As noted by the Committee, "if [the Applicant] identified someone in [the Respondent's] department as having a similar problem, then it makes sense to us that she would infer he was [the Applicant's] patient, and would worry that the doctor might talk about her, too."
30. The Board finds that the information in the Record supports the Committee's concern that the Respondent could infer Mr. X.X. was the Applicant's patient and that he betrayed Mr. X.X.'s confidentiality. In finding this, the Board has considered the context in which the discussion arose and the purpose for which the Applicant stated he used the information about Mr. X.X. - that is, to reassure the Respondent he had experience with PTSD patients.
31. The Board finds that the Record supports the Committee's view that the Applicant's discussion of Mr. X.X. during the appointment with the Respondent betrayed Mr. X.X.'s confidentiality, was unprofessional, made the Respondent feel uncomfortable and worried her that he would share her own personal details with others. The Board finds it

was reasonable in such circumstances for the Committee to decide to caution the Applicant in person regarding the requirement of maintaining confidentiality of personal health information and to provide, in a written report, the law and policy regarding privacy of personal health information. The Board finds this aspect of the Committee's decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

Inadequate report

32. In her complaint letter dated September 1, 2011, the Respondent indicated, “[the Applicant’s] medical opinion as set out in the report contained inappropriate personal opinions as to her character. ... [The Applicant] improperly permitted these personal opinions to inform his medical opinion as evidenced by the report itself.” The Respondent stated that the Applicant’s ill-informed and personal opinions as to her “personality style” were not relevant or proper in discussing her medical diagnosis.
33. The Committee indicated it had an opportunity to review the IME report that the Applicant produced following the Applicant’s assessment of the Respondent. The Committee stated that it “found [the report] skimpy, almost casual, and simply unacceptable as a serious and credible psychiatric evaluation.” In the Committee’s view, “it showed many deficiencies of diagnosis and formulation.” The Committee stated that its concerns about the Applicant’s approach in this case was compounded by the fact that it was aware that the Applicant had, in the past, been the subject of complaints to the College regarding his approach to psychiatric IMEs, and that the Committee had sanctioned him in the past regarding aspects of his practice. The Committee also stated that the Applicant’s “approach betrays deficiencies in his management of patients who may have PTSD. He needs to be aware of all criteria for PTSD so he can screen for it, and manage it, if found.”
34. In reaching its decision, the Committee noted that the Applicant’s comments in his report about the Respondent’s personality style were odd in that the Applicant focussed on the

fact that the Respondent went on holiday with a colleague and did not address questions relevant to assessing the Respondent's premorbid personality. The Committee noted that the Applicant did not document anything about premorbid personality in his report. The Committee also noted:

Personality is relevant to a psychiatric consultation or assessment. [The Applicant], however, did not explain it in the context of a proper diagnostic grid. Axis II refers to personality disorders and traits and [the Applicant] did not present a formal and detailed diagnosis. Under "Axis II" in [the Applicant's] report, he marked nil. [The Respondent's] psychologist and psychiatrist did not document anything about personality. Her psychiatrist also put "nil" for Axis II.

35. Given the totality of this information, the Committee decided to caution the Applicant in person regarding the thoroughness of his IME assessment and report and further required that the Applicant provide a written report with respect to assessment and management of PTSD and the components of a psychiatric assessment.
36. At the Review, the Applicant submitted that the Committee's conclusion regarding the Applicant's practice management of patients with PTSD was outside the scope of this complaint. The Applicant argued that the Committee's conclusion was too broad given that it limited the investigation to the Respondent's IME. Furthermore, the Applicant submitted that if the Committee had concerns about his practice management of patients with PTSD, it should have given him the opportunity to respond to this aspect of the Committee's concerns. He commented that this aspect of the Committee's decision should be further investigated and reconsidered. The Applicant noted that his comments in the IME report regarding the Respondent's personality style may have been clearer under another section of the report rather than under the DSM IV and diagnosis section.
37. As indicated earlier, the Board finds that the scope of the Respondent's complaint involved the accuracy and appropriateness of the IME report, including her concerns about the inclusion of comments about her character and her personality style. In examining the Committee's decision, the Board observes that the Committee examined the IME report and other information in the Record and found it had concerns about the

Applicant's approach, stating more specifically that his "approach betrays deficiencies in his management of patients who may have PTSD" and the criteria for PTSD. The Committee commented that the Applicant "referred to personality disorders and traits and [the Applicant] did not present a formal and detailed diagnosis." The Committee noted that under Axis II (personality disorders and traits), the Applicant marked "nil". The Committee further noted that the Respondent's psychologist and her psychiatrist did not document anything about personality and also put "nil" under Axis II.

38. In the Board's view, the Committee turned its mind to the information in the Record and made findings on the appropriateness of the Applicant's comments on the Respondent's personality style in the IME report. The Board finds it was reasonable for the Committee to do so.
39. The Board further observes that the Committee's panel was composed of three psychiatrists and a public member. The Committee had the opportunity to review the Applicant's chart, his report, the Respondent's file with the insurer and the parties' submissions. The Board is satisfied that this Committee had the expertise to assess the Applicant's IME and his report and determine if he met the expected standard of care.
40. The Applicant submitted that the Committee did not provide fulsome reasons to support its findings that his report was "skimpy, almost casual, and simply unacceptable as a serious and credible psychiatric evaluation" and that the Applicant's diagnosis and formulation had many deficiencies. The Board observes that the Committee had reviewed the IME report. The Committee possesses expertise as to professional standards. The Board is satisfied that the information in the Record is in accord with the Committee's conclusion. The Applicant has not adduced information to demonstrate that the Committee's findings about the quality of his report in relation to professional standards were unreasonable.
41. The Committee noted that the Applicant's approach betrayed deficiencies in his management of patients who may have PTSD. The Committee indicated that the

Applicant needed to be aware of all criteria for PTSD so he can screen for it, and manage it, if found. The Board does not agree with the Applicant's submission that this conclusion falls outside the scope of the Respondent's complaint or that it required additional records to arrive at this conclusion. The Committee reviewed the Applicant's approach to the IME in this case, considered his conduct history and identified areas where he could improve his future practice regarding patients who may have PTSD. Given the College's legislated public interest mandate and its duty to maintain professional standards, the Board finds reasonable the Committee's request that the Applicant provide the Committee with a written report with respect to assessment and management of PTSD and the components of a psychiatric assessment.

42. Although the Applicant may not agree with the Committee's decision to caution him in person, and while he did suggest to the Board that a counsel might have been more appropriate, the Board finds that the Committee's disposition falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.

Conclusion

43. The Board finds the Committee's decision to require the Applicant to attend the College to be cautioned in person with respect to the requirement of maintaining confidentiality of personal health information, and with respect to thoroughness of his IME assessment and report to be supported by the Record and to be reasonable.
44. Furthermore, the Board finds reasonable the Committee's decision to request the Applicant provide the Committee with a written report, approximately 2-4 pages in length, with respect to assessment and management of PTSD, and the components of a psychiatric assessment, and with respect to law and policy regarding privacy of personal health information.

VI. DECISION


45. Pursuant to section 35(1) of the *Code*, the Board confirms the Committee's decision to:

- i) require that the Applicant attend the College to be cautioned in person with respect to the requirement of maintaining confidentiality of personal health information, and with respect to the thoroughness of his IME assessment and report; and
- ii) request that the Applicant provide the Committee with a written report, approximately 2-4 pages in length, with respect to assessment and management of PTSD, and the components of a psychiatric assessment, and with respect to law and policy regarding privacy of personal health information.

ISSUED June 11, 2014



Sonia Ouellet



Marc D'Amours



Gabrielle St-Hilaire