

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Thomas Kelly, Vice-Chair, Presiding
Michael Boucher, Board Member
Sharon McKeown, Board Member

Review held on March 18, 2014 at London, 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:

JON CONNOLLY

Applicant

and

CURT WEST, Ph.D., C.Psych

Respondent

Appearances:

The Applicant:	Jon Connolly
For the Applicant:	Angelique Lubinski
For the Respondent:	Amanda Smallwood, Counsel (by teleconference)
For the College of Psychologists of Ontario:	Grant Daley (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 Psychologists of Ontario to offer the following advice to the Respondent:

It is important to remain attentive to the perceptions of clients surrounding confidentiality. Where possible you and your staff should consider appropriate safeguards to minimize the risk of breach, whilst taking steps to assure and maintain client confidence.

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by Jon Connolly (the Applicant) to review a decision of the Inquiries, Complaints and Reports Committee (the Committee) of the College of Psychologists of Ontario (the College). The decision concerned a complaint regarding the conduct and actions of Curt West, Ph.D., C.Psych (the Respondent). The Committee investigated the complaint and decided to offer advice to the Respondent as described above.

II. BACKGROUND

3. The Applicant was in a motor vehicle accident in August of 2008. The Economical Insurance Group referred the Applicant to the Respondent for an independent neuropsychological assessment report.
4. The assessment took place on May 3, 2012.
5. As part of the assessment, the Respondent asked the Applicant to complete a test. The Respondent left before the Applicant completed the test and directed the Applicant to leave it with the building receptionist when he finished the test.
6. The Respondent reported that, from a neuropsychological perspective, the Applicant was not experiencing significant psychological or emotional impairment.

The Complaint and the Response

7. The Applicant expressed concerns about the Respondent's assessment and report, the procedure that the Respondent followed to collect the tests, and how the Respondent's actions and those of his staff served to unreasonably compromise the Applicant's confidentiality.

8. The Committee categorized the Applicant's complaint as being:

Issue one: adequacy of information

- (a) is there any information that would suggest that the Respondent inappropriately failed to consider the views and findings of other professionals when compiling his report?
- (b) is there any information that the Respondent inappropriately manipulated testing in an effort to achieve a predetermined result?
- (c) is there any information that would suggest that the Respondent's report was factually inaccurate, as demonstrated by his description of the Applicant as being right-handed?

Issue two: reasonableness of delegation

Is there any information that would suggest that the Respondent's system of assessment unreasonably delegated authority?

Issue three: confidentiality

Is there any reason to suggest that the procedural nature of the Respondent's assessment unreasonably compromised the Applicant's confidentiality?

The Committee's Decision

9. The Committee investigated the complaint and decided to provide advice to the Respondent related to confidentiality, as indicated in paragraph 1 above.

III. REQUEST FOR REVIEW

10. Dissatisfied with the decision of the Committee, in a letter dated April 25, 2013, the Applicant requested that the Board review the Committee's decision. In his six-page letter, he summarized, "The issue I wish to dispute was related to [the Respondent's] professional conduct, wrong diagnosis, and the inaccuracies in his reporting ... I wish to be treated fairly. I am not after financial reward for this complaint. I only make the complaint because his report did to me a serious injustice, and I would not like the same done to another in my position. If I were to get one thing, it would be that [the Respondent's] report on me be invalidated."

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. In reviewing the adequacy of the Committee's investigation, the function of the Board is to examine the information and documentation obtained during the course of the investigation, which is then considered by the Committee. An investigation need not be exhaustive, but in order to be considered adequate, information that is sufficient and relevant so as to allow the Committee to fulfill its statutory function must be obtained. If it is clear that there is other information that, if obtained, could have changed the outcome of the Committee's decision, then the investigation might not be considered adequate.

16. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record), reviewed the Committee's decision, and determines that the Committee's investigation was adequate for the following reasons.
17. After reviewing the Record, the Board finds that the Committee's investigation covered the complaint and events in question and included the relevant documentation required to review the Respondent's conduct and actions. Specifically, the Board notes that the Committee's investigation included:
 - the Applicant's complaint letter to the College and related correspondence between the College and the Applicant; and
 - the Respondent's response letter to the College including the assessment report.
18. The Applicant submitted that his own investigation, conducted after he received the Committee decision, determined that the receptionist was an employee of the building management and was not one of the Respondent's staff. He submitted that the Committee should not have simply accepted the Respondent's statements regarding the receptionist but should have investigated the circumstances of the building and interviewed the receptionist.
19. The Respondent's Counsel submitted that the Respondent did not claim to have hired the receptionist or that she was his private assistant or personal regular assistant. She was simply acting as an assistant or receptionist for the Respondent in accepting the answer sheets when the test was completed. She submitted that it was thus not necessary for the Committee to interview the receptionist nor was it necessary for the Committee to investigate the physical space in the building where the assessment took place.

20. The Board notes that the test for adequacy is whether information, if obtained, would be likely to change the outcome of the Committee's decision. Despite the Applicant's submission, the Board is not convinced that the outcome of the Committee's decision would have changed if it had done a further investigation into the building space and the role of the receptionist. The Committee, in its decision, recognized that a delegation of duties took place and considered the Applicant's submissions in that regard. It was not necessary for the Committee to determine the exact employment relationship.
21. The Board concludes that the Committee collected and considered the relevant information to assess the 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

22. 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.
23. After considering the parties' submissions, including the post review submissions, examining the Record and reviewing the Committee's decision, the Board concludes for the following reasons that the decision is reasonable.
24. The Board notes that the Committee reviewed in detail and reasonably relied on the information in the Record to support its conclusions regarding the reasonableness and appropriateness of the Respondent's conduct and actions.
25. For consistency, the Board's analysis of the Committee's conclusions and decision follows, using the Committee's categorization of the multiple aspects of the complaint.

Issue One: Adequacy of Information

26. The Committee concluded that the Respondent appeared to have considered and subsequently incorporated the views and findings of other professionals as well as the subjective complaints outlined by the Applicant. The Committee stated that it was unable to identify any evidence within the records to suggest that the Respondent had unreasonably discounted salient information. It also noted that the Respondent was guided in his report by the results he had gained from his own assessment of the Applicant.
27. It concluded, after considering this information, that it did not form the view that the Respondent had acted inappropriately in his consideration and subsequent incorporation of the findings of other professionals.
28. The Committee considered whether there was evidence to suggest that the Respondent had taken action to inappropriately manipulate tests so as to achieve a pre-determined and inconsistent outcome and concluded that it was unable to identify any suggestion that tests had been manipulated. In addition, it noted that the procedural administration of such tests involves an element of repetition.
29. It determined, in view of these factors, it was not of the view that the Respondent had acted inappropriately in relation to his administration of tests.
30. The Committee considered the Applicant's concerns about factual inconsistencies within the report. In particular, it considered the view that the erroneous suggestion that the Applicant was right handed may be suggestive of wider deficiencies on the Respondent's part. It acknowledged that the Respondent had made an error in his description of the Applicant but concluded that there was no evidence to suggest that this error would have materially influenced the outcome of the assessment. In addition, the Committee noted that the Respondent had acknowledged this mistake, offered an explanation and expressed regret.

31. The Committee determined that it was unable to identify any evidence to suggest that the Respondent was guilty of professional misconduct and decided to take no further action with respect to this issue.
32. The Board notes that the Committee performs a screening function to determine what, if any, action it should take regarding a complaint. It generally conducts a paper review of the written information gathered in the investigation. It cannot make findings of credibility, professional misconduct or incompetence because it does not obtain evidence given under oath. If the Committee has concerns that specific allegations may, if proven, demonstrate professional misconduct or incompetence, it can refer the complaint to the Discipline Committee, which does conduct hearings with sworn evidence.
33. The Committee considered the information regarding this issue and determined to take no further action.
34. The Board notes that the Committee relied on information in the Record in coming to its conclusions. It considered the Applicant's allegations in this regard and applied its expertise to its consideration of the issue.
35. The Board concludes that the Committee's decision regarding this issue is reasonable as it is based on information in the Record and the Committee's own expertise in assessing that information as it pertains to the Respondent's conduct and actions.
36. In the absence of any information that the Committee's expertise was inappropriately applied, the Board finds its conclusions to be reasonable.

Issue Two: Reasonableness of delegation

37. The Committee noted the Applicant's concerns about the actions of the receptionist. However, after considering the facts and the evidence available, the Committee did not form the view that the Respondent had unreasonably delegated authority in allowing the receptionist to oversee collection of the test documents.
38. In considering this issue, the Committee noted that frequently in practice it is not the member, but one of his/her staff who checks the relevant score sheets to ensure that they have not been answered ambiguously.
39. The Committee determined that it could identify no conclusive evidence to suggest that the tests had been altered.
40. Furthermore, it noted that the Respondent had again apologized and suggested procedural improvements.
41. In view of these circumstances, the Committee did not consider further action on its part to be appropriate.
42. For these reasons, the Committee decided to take no further action with respect to this issue.
43. The Applicant made submissions, both oral submissions at the Review and written submissions post Review, concerning the role of the receptionist. His submissions concerned his findings that the receptionist was not a member of the Respondent's staff and that the receptionist, who was not trained by the Respondent, had interacted with the Applicant and had, in fact, changed some of his answers on the test.

44. The Committee considered the delegation and concluded that it could identify no conclusive evidence to suggest that the test been altered and that it is frequently staff who check the relevant score sheets.
45. Despite the Applicant's submissions concerning the role of the receptionist and her interactions with the test, the Board finds the Committee's conclusions in this regard to be reasonable.
46. As previously stated, the Committee performs a screening function. It considered the delegation of authority in this matter, and concluded it was frequently the practice to delegate and that it could find no conclusive evidence to suggest the test had been altered. It noted that the Respondent had apologized and suggested procedural improvements and, based on all determined, it decided to take no further action.
47. While recognizing the sincerity of the Applicant's submissions, the Board finds that this decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law and is thus reasonable.

Issue Three: Confidentiality

48. The Committee noted the Applicant's concern about this incident serving to breach his confidentiality. While noting that it would have been impossible to determine the extent of any potential breach of confidentiality, the Committee expressed concern that the Applicant, as a client, perceived that his confidentiality had not been secure. The Committee expressed the view that it was important for members to take appropriate action to ensure that confidentiality and the perception of confidentiality is maintained at all times.
49. In view of this, the Committee offered the Respondent the following advice in an effort to both improve his practice and prevent similar occurrences in the future:

It is important to remain attentive to the perceptions of clients surrounding confidentiality. Where possible you and your staff should consider appropriate safeguards to minimize the risk of breach, whilst taking steps to assure and maintain client confidence.

50. The Board finds the Committee's conclusion in this regard to be reasonable. The Board considers significant that the advice will remain on the Respondent's permanent (although private) record with the College, and may be considered should another complaint arise in the future. Thus, the Board finds that the advice issued to the Respondent communicates the seriousness of his conduct and importantly, acknowledges the merits of the Applicant's complaint. The advice is both educative and remedial. An advice is one of the options available to the College to enable it to fulfill its mandate to protect the public.

VI. DECISION

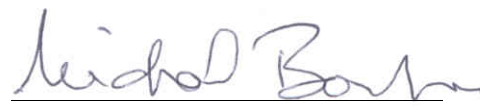
51. Pursuant to section 35(1) of the *Code*, the Board confirms the Committee's decision to offer the following advice to the Respondent:

It is important to remain attentive to the perceptions of clients surrounding confidentiality. Where possible you and your staff should consider appropriate safeguards to minimize the risk of breach, whilst taking steps to assure and maintain client confidence.

ISSUED June 4, 2014



Thomas Kelly



Michael Boucher



Sharon McKeown