

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Bonnie Goldberg, Designated Vice-Chair, Presiding
Celia Denov, Board Member
Christopher King, Board Member

Heard August 27, 2013, at Toronto, Ontario, 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:

MONICA CUFF

Applicant

and

KARLA ELLIS, O.T.

Respondent

Appearances:

The Applicant:	Monica Cuff
For the Respondent:	Jessica DiFederico, Counsel
For the College of Occupational Therapists of Ontario:	Gillian Slaughter

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 Occupational Therapists of Ontario to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued 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 Monica Cuff (the Applicant) to review a decision of the Inquiries, Complaints and Reports Committee (the Committee) of the College of Occupational Therapists of Ontario (the College). The decision concerned a complaint regarding the conduct and actions of Karla Ellis, O.T. (the Respondent). The Committee investigated the complaint and decided to offer advice to the Respondent, as indicated above, and to take no further action.

II. BACKGROUND

3. The Applicant was involved in a number of separate accidents while travelling on the TTC. As a result of these accidents, she has been receiving funding from the TTC for non-earner, housekeeping and attendant care benefits. In the first accident, in 1984, the Applicant suffered severe injuries resulting in paraplegia.
4. The Applicant was involved in a subsequent accident in April 2009. On December 20, 2010, the TTC through its insurer requested an in-house assessment regarding the Applicant's abilities and need for assistance. The Respondent performed the assessment on December 30, 2010 and completed a report dated January 11, 2011. An added difficulty relating to the assessment was the fact that the Applicant was involved in another TTC accident on January 2010.
5. The Applicant disagreed with the recommendations made in the Respondent's report, specifically, the Respondent's opinion that ongoing attendant care was not required. The Applicant expressed "concerns that the Respondent was paid by the TTC to falsify her report."

The Complaint

6. The Applicant complained that the Respondent's report contained false and inaccurate information resulting in an unreasonable conclusion.

The Committee's Investigation and Decision

7. The Committee investigated the complaint. In the course of the investigation, the Respondent identified her own concern. The Respondent notified the Committee that, through the complaints process, she had discovered that Riverfront Medical Services (Riverfront), the company through which the Applicant's assessment was contracted, had changed the Respondent's report without her prior knowledge or consent.
8. The Committee conducted additional inquiries related to the Respondent's concern.
9. As a result of its investigation, the Committee decided to take no further action, noting that the Respondent reported information that she considered to be accurate and that there did not appear to be any indication that the Respondent intentionally falsified factual information in the report or that she misrepresented information about the Applicant's abilities during the assessment.
10. However, the Committee did express concern about the information uncovered during the course of the investigation related to Riverfront having altered the Respondent's report. The Committee noted the "egregious" impact that these changes could have had on the Applicant's entitlement to benefits. In the result, the Committee decided to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued.

III. REQUEST FOR REVIEW

11. Dissatisfied with the decision of the Committee, in a letter dated July 17, 2012, the Applicant requested that the Board review the Committee's decision.

IV. POWERS OF THE BOARD

12. 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.

13. 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

14. 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.
15. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record), and reviewed the Committee's decision. At the Review, the Board confirmed that the Applicant wished the Board to rely on the written submissions contained in her letter requesting the Review. The Board reviewed these submissions with the Applicant at the Review.

Adequacy of the Investigation

16. 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.
17. Having reviewed the Record, the Board finds that the documentation obtained through the Committee's investigation covered the period complained about and was sufficient

for it to address the concerns expressed by the Applicant in her complaint and to render a decision. The reasons for this conclusion follow.

18. The Board observes that the information obtained by the Committee in its investigation of this matter included the Applicant's letter of complaint and additional information; a response from the Respondent and additional information, including her report and the material on which she based the report; and the investigator's memoranda of interviews conducted with various parties. Notably, the investigator contacted a number of other individuals who might have relevant information, including staff at Riverfront Medical Services and the person dealing with the Applicant's claim at the TTC. The Committee had before it information from a homemaker who assists the Applicant. Additionally, the investigator obtained a copy of the report ultimately used by the insurance company and created a chart which isolated the differences in the reports.
19. The Board finds that the Committee's investigation covered the events in question and yielded relevant documentation to assess the complaint regarding the Respondent's conduct.
20. 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

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, reasonable outcomes that are defensible in respect of the facts and the law.

22. At the Review, the Applicant explained that the decision was unreasonable because the Committee failed to address the Respondent's misconduct in writing a report that contained inaccurate and misleading information. Regarding her hoped-for outcome, the Applicant stressed she would like the report retracted and rewritten, despite the Board's explanation that such an order fell outside its jurisdiction.

23. The Committee concluded as follows:

The ICRC is most empathetic to [the Applicant's] concerns that inaccuracies in [the Respondent's] report resulted in an unreasonable conclusion. Based on a review of the information before the ICRC, it appears that [the Respondent] reported information that she considered to be accurate. There does not appear to be any indication that [the Respondent] intentionally falsified factual information in the report or that she misrepresented information about [the Applicant's] abilities during the assessment. The ICRC noted that although [the Respondent's] report may have contained certain factual errors, the conclusion of the report, which is perhaps its most significant section, was not impacted by these errors. The decision made by [the Applicant's] insurer about her entitlement to benefits was based on the inferences the insurer drew as a result of receiving a report which had been changed. The Committee was concerned about the egregious impact these changes had on the outcome of [the Applicant's] assessment and therefore, decided to issue advice to [the Respondent].

24. The Board finds that the Committee's conclusions are reasonable as the Record before the Committee provided it with support for its conclusions. The Committee had before it a detailed response from the Respondent, in which she reviewed the assessment she conducted and provided the basis for her conclusions. She also identified the ways in which the final report differed from the report she submitted.

25. In addition to the Respondent's explanation of the assessment she conducted, her approach to such assessment and the information on which she based her conclusions, the Respondent provided her contemporaneous notes and the documentation provided to her to conduct her assessment. Thus, the Committee had before it the documentation that the Respondent reviewed to arrive at her recommendations in addition to her assessment. The

medical record provided support for the Respondent's explanation of why she chose certain dates and referenced certain medical procedures, and supported the Respondent's view that the medical record contained contradictory information that she attempted to reconcile in her assessment.


26. Furthermore, the Board finds that the Committee, which was comprised primarily of occupational therapists, employed its expertise to determine that it would take no action with respect to the Applicant's allegations that the Respondent misrepresented information or provided an inaccurate assessment for financial gain.
27. Moreover, the Board finds that it was reasonable for the Committee to issue advice to the Respondent in these circumstances. The Committee noted that Riverfront made changes that were "substantive" and which the Respondent did not approve. These changes in turn influenced the way in which the insurer interpreted the Respondent's assessment.
28. In its advice to the Respondent, the Committee highlighted the College's *Standards for Occupational Therapy Assessments*, in particular section 5.B-4, which states that an occupational therapist will take reasonable measures to ensure that any OT assessment information issued on behalf of the OT contains relevant and accurate information."
29. The Board observes that providing advice to a member is one of the educative options available to the College to enable it to fulfill its mandate to protect the public; it is not a sanction.
30. At the Review, Counsel for the Respondent explained that the Respondent no longer accepts referrals from Riverfront Medical Services; now provides her reports in a PDF "read-only" format; and ensures she receives a final PDF copy of the report sent to the insurer. The Board finds that the Committee's advice to the Respondent is reasonable and appropriately remedies the specific concerns identified by the Committee.

31. The Board recognizes that the Applicant remains dissatisfied with the content of the report and continues to pursue this matter through a variety of avenues. Nonetheless, the Board finds that the information in the Record provides support for the Committee's conclusions and the Board finds the Committee's decision to be reasonable.

VI. DECISION

32. Pursuant to section 35(1) of the *Code*, the Board confirms the Committee's decision to offer advice to the Respondent about the importance of ensuring that she personally reviews and approves any assessment report she completes prior to the report being issued and to take no further action.

ISSUED September 4, 2013


Bonnie Goldberg


Celia Denov


Christopher King