

**HEALTH PROFESSIONS APPEAL AND REVIEW BOARD**

PRESENT:

Thomas Kelly, Vice-Chair, Presiding  
Timothy P. D. Bates, Board Member  
Brenda Petryna, Board Member

Review held on January 23, 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:**

**PAUL FRANCIS ROBERT, MD**

Applicant

and

**BEVERLEY URQUHART**

Respondent

Appearances:

The Applicant:	Paul Francis Robert, MD
For the Applicant:	Naomi Loewith, Counsel
For the College of Physicians and Surgeons of Ontario:	Kerstin London (by teleconference)

**DECISION AND REASONS**

**I. DECISION**

1. It is the decision of the Health Professions Appeal and Review Board to require the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario to comply with sections 25(6) (c) and section 26(2) of the *Health Professions Procedural Code*, (the *Code*), being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, Ch. 18, and thereafter to reconsider the matter and render a further decision.

2. This decision arises from a request made to the Health Professions Appeal and Review Board (the Board) by Paul Francis Robert, 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 by Beverley Urquhart (the Respondent) regarding the conduct and actions of the Applicant in the completion of an independent medical examination (IME). The Committee investigated the complaint and decided to caution the Applicant in person regarding professionalism in the area of communications and to require the Applicant to successfully complete, within three to six months, a specified continuing education or remediation program, being College-facilitated instruction in Communications.

## **II. BACKGROUND**

3. The Respondent, a Registered Practical Nurse, injured her back at work in July 2010.
4. The Applicant, an orthopaedic surgeon, conducted independent medical examinations of the Respondent for the Workplace Safety and Insurance Board (WSIB) on September 8, 2010 and April 13, 2011.

### **The Complaint and the Response**

5. The Respondent complained that the Applicant:
  - failed to conduct an adequate assessment of her; for example he:
    - (i) conducted assessments on September 8, 2010 and April 13, 2011, that were 10 to 15 minutes duration, when the assessment clinic said that it would take up to three hours; and
    - (ii) did not allow her the opportunity to describe her pain at the assessments.
  - failed to provide adequate reports arising from the assessments; for example he:

- (i) failed to recommend an MRI and EMG to the WSIB;
  - (ii) recommended for her to return to full duties without conducting an assessment of her neck on April 13, 2011; and
  - (iii) failed to provide accurate information to the WSIB by stating she weighs 220 pounds when she weighs 120 pounds.
- 6. The Applicant responded that he performed adequate physical assessments on September 8, 2010 and April 13, 2011, with his findings from the assessments outlined in the “Physical Examination” section of his reports.
- 7. He noted descriptions of the Respondent’s pain, as outlined by her, in both of his reports under the section “Current Concerns and Symptoms.”
- 8. The Respondent had an EMG and MRI after the September 8, 2010 assessment, and he reviewed these at the time of the April 13, 2011 assessment. Based on the mechanism of injury, symptomatology and his examination findings, it was his clinical opinion that further investigations were not indicated.
- 9. On April 13, 2011, he recommended that the Respondent return to full duties. In his opinion, there had been more than adequate time for healing of any non-specific soft tissue strain injury of July 4, 2010 of the cervical spine. Any symptoms relating to her cervical spine would be as a result of the longstanding degenerative changes, and not any trauma as a result of the injury.
- 10. His handwritten notes indicated the Respondent’s weight was 125 pounds, while his report indicated that she weighed 225 pounds and had a “normal body habitus.” He acknowledged this was a typographical error and review oversight.

### **The Committee’s Investigation and Decision**

- 11. The Committee investigated the complaint.

12. The Committee determined that, on a technical level, it was satisfied that the Applicant's assessment of the Respondent, his clinical findings and opinion, and his ensuing report (which fully set out the information he based his opinion on) were reasonable and in keeping with the expectations set out in the College's policy on *Third Party Reports*. The Committee accepted that the Applicant's reference to the Respondent's weight as 225 pounds was an inadvertent error, which he has acknowledged.
13. The Committee noted, however, that it had previously received other complaints from patients regarding the Applicant's unprofessional communication, many in the IME context. In addition, it noted two concurrent complaints about communications concerns before it at the same time as this complaint. It stated that this information had served to heighten the Committee's concern in this case.
14. It concluded that it was very troubled by the Applicant's communication and what appeared to be a sustained pattern of issues related to unprofessional behaviour. Therefore, the Committee decided to caution the Applicant and to require the Applicant to complete a specified continuing education or remediation program, as set out in paragraph two above.

### **III. REQUEST FOR REVIEW**

15. Dissatisfied with the decision of the Committee, in a letter dated June 28, 2012, the Applicant requested that the Board review the Committee's decision.

### **IV. POWERS OF THE BOARD**

16. 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.

- 17. 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**

- 18. Pursuant to section 33(1) of the *Code*, 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.
- 19. The Board was assisted in its deliberations by submissions from the Applicant's Counsel, in particular, the submissions concerning the duty of the Committee relating to prior decisions.
- 20. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record), and reviewed the Committee's decision.
- 21. The Record received by the Board contains a covering letter which states: "Please note that the Record of Investigation contains a physician history reviewed by the Inquiries, Complaints and Reports Committee" and the accompanying Record contains a "CPSO Physician Profile," which is a summary of matters that have been before the Committee or its predecessor, the Complaints Committee.

22. The requirement to consider prior decisions is couched in mandatory terms under section 26(2) of the *Code*.

**Prior decisions**

- (2) A panel of the Inquiries, Complaints and Reports Committee *shall*, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). [Emphasis added]

23. The Committee has not complied with this legislative provision as it has considered only summaries of the matters detailed in the “CPSO Physician Profile” rather than the entire decisions.

24. Further, the Committee has not complied with the section 25 (6) (c) which provides as follows:

**Notice to member**

- (6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,
- (a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;
  - (b) a copy of the provisions of section 25.2; and
  - (c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5).

25. The Committee did not comply with section 25 (6) (c) because it provided the Applicant with the summary of the matters contained in the “CPSO Physician Profile” but did not provide the Applicant with the actual available prior decisions.

26. The Board finds the Committee's investigation to be inadequate as a result of its failure to comply with section 25(6) (c) and 26(2) of the *Code*.
27. The Board, therefore, returns this matter to the Committee and requires it comply with sections 25(6) (c) and 26 (2).
28. The Board notes that the Applicant's Counsel made a number of submissions relating to the reasonableness of the Committee decision, including that it was unreasonable for the Committee:
  - to have regard to prior complaints that were resolved without any decision by the Committee or its predecessor Complaints Committee;
  - to have regard to concurrent complaints in reaching its decision with respect to this complaint;
  - to dismiss evidence that corroborated the Applicant's position without any analysis of that evidence; and
  - to require the Applicant to attend for an oral caution absent any finding that he breached the standards of the profession.
29. While it would be premature for the Board to form any conclusions regarding these submissions, as the Board is returning the decision because of procedural noncompliance, the Board expects that the Committee will consider these submissions in its future reconsidered decision.

**VI. DECISION**

30. Pursuant to section 35(1) of the *Code*, the Board requires the Committee to comply with sections 25(6) (c) and 26(2) of the *Code*, and thereafter to reconsider the matter and render a further decision.

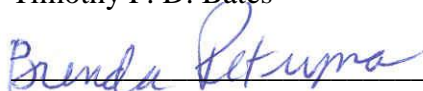
ISSUED July 25, 2013



Thomas Kelly



Timothy P. D. Bates



Brenda Petryna