

HEALTH PROFESSIONS APPEAL AND REVIEW BOARD

PRESENT:

Emanuela Heyninck, Designated Vice-Chair, Presiding
Anna-Marie Castrodale, Board Member
Dale Wright, Board Member

Review held on April 23, 2020 in Ontario (by teleconference)

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:

J.N.

Applicant

and

H.A.D., MD

Respondent

Appearances:

The Applicant: J.N.

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 state its expectation that members communicate in a respectful manner, particularly in the ICU setting and when the issue is the possible discontinuance of life-sustaining treatment, 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 J.N. (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 regarding the conduct and actions of H.A.D., MD (the Respondent) in his care of the Applicant's mother. The Committee investigated the complaint and decided to state its expectation as indicated above and to take no further action.

II. BACKGROUND

3. The Applicant is the son and Power of Attorney of his mother (the patient).
4. In December 2017, the patient was admitted to Sunnybrook Hospital where she underwent a transcatheter aortic valve implantation (TAVI) procedure. She was discharged on December 17 but required admission to Mackenzie Health on December 19 because of confusion and a fall. She was found to have had an acute to sub-acute stroke with hemorrhagic conversions.
5. The patient was started on intravenous heparin (blood thinner) but re-bled days later. Anti-coagulation treatment was held. The patient was critically ill on life support but was eventually well enough to be transferred to Reactivation Care Centre.
6. In July 2018, the patient developed urosepsis and was readmitted to Mackenzie Health. In August 2018, the patient was transferred to the ICU intensive care unit (ICU) with septic shock, pancolitis and cholecystitis.
7. The Respondent (Critical Care/Internal Medicine) was involved in the patient's care in ICU during both of her admissions to Mackenzie Health.

The Complaint and the Response

8. The Applicant is concerned that the Respondent threatened to take the patient off life support in spite of her family's vigorous protests and in spite of clear indication from the patient that she wanted to live. In addition, the Respondent:
- refused to answer questions in the ICU regarding the patient's condition;
 - threatened more than once to have the Applicant (POA) removed as POA;
 - threatened to have hospital security physically remove the Applicant from the hospital when the Applicant complained about the Respondent threatening to remove the patient from life support;
 - shared a joke with another doctor immediately after telling the Applicant that the patient had "very poor prognosis";
 - stated, "That is not the right question" when the Applicant asked the patient "Mom, do you still want to live?"
 - shook the breathing tube in the patient's throat to illustrate some ridiculous point;
 - refused to escalate the Applicant's concerns to his superiors.
9. The Respondent provided a detailed written response in which he outlined:
- his knowledge of the patient's medical condition during her hospitalization;
 - the circumstances surrounding his interactions with the Applicant;
 - the terms of the Applicant's POA and the Applicant's care instructions which he stated were in conflict;
 - the Applicant's ongoing conflicts with the hospital medical staff;
 - his actions in escalating the matter;
 - the circumstances surrounding his requesting that security escort the Applicant from the ICU.

The Committee's Decision

10. The Committee investigated the complaint and after separately considering each of the Applicant's concerns and reviewing the College Policy on Consent to Treatment, decided to state its expectation that members communicate in a respectful manner, particularly in the ICU setting and when the issue is the possible discontinuance of life-sustaining treatment, and to take no further action.

III. REQUEST FOR REVIEW

11. In a letter dated May 13, 2019, 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 the Discipline Committee 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. In exercising its mandate, the Board considers that the Committee's role is to screen complaints about its members by generally conducting a paper review of relevant documentation. The Committee examines the information it obtains to determine whether, in all of the circumstances, a referral of specified allegations of professional misconduct to the College's Discipline Committee is warranted or if some other remedial action should be taken. If the Committee determines that a referral to discipline is not appropriate, the Committee may make other dispositions such as taking no action with regard to a member's practice or directing one or more remedial measures intended to improve an aspect of a member's practice.
16. The Board considers that the Committee is to act according to the College's objectives under section 3 of the Code, which include: to maintain standards of practice to assure the quality of the practice of the profession, to maintain standards and promote continuing improvement among the members and to serve and protect the public interest.
17. The Board has considered the submissions of the parties, examined the Record of Investigation (the Record), and reviewed the Committee's decision. The Respondent did not attend the Review. As there is no legislated obligation on either party to do so, the Board draws no inference from the Respondent's non-attendance

Adequacy of the Investigation

18. 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.

19. The Committee obtained the following documents:
- the Applicant's letter of complaint and subsequent communications;
 - the Respondent's written response and subsequent communications;
 - the responses of other physicians being complained of;
 - the patient's full medical records from McKenzie Health; and
 - the College Policy #3-15: *Consent to Treatment Policy*.
20. The Committee obtained a detailed letter of complaint from the Applicant outlining issues with the care his mother received from five physicians, including the Respondent. The Applicant's concerns were confirmed in writing. The Respondent provided a letter of response that addressed each of the Applicant's concerns. The Applicant was provided with an opportunity to comment on the Respondent's response and to provide further documentation. The Applicant commented in detail on the response. He sent further correspondence referencing specific medical information from his mother's chart that supported his allegations, as well as photos and videos of his mother while in hospital. The Committee had the entire medical records documenting the patient's long stay in McKenzie Health, including test results and consultation notes of physicians involved in the patient's care. The Applicant provided the Committee with copies of ongoing communications between the Applicant and the hospital regarding his concerns and the hospital's responses to same along with the Applicant's commentary on the hospital responses.
21. 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 care and conduct. At the Review the Applicant commented that the Committee's investigation was inadequate but did not address any specific information that might have been obtained to assist the Committee in making its decision. The Board finds there is no indication in the Record 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 determining 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. Rather, the Board considers the outcome of the Committee's decision in light of the underlying rationale for the decision, to ensure that the decision as a whole is transparent, intelligible and justified. That is, in considering whether a decision is reasonable, the Board is concerned with both the outcome of the decision and the reasoning process that led to that outcome. It considers whether the Committee based its decision on a chain of analysis that is coherent and rational and is justified in relation to the relevant facts and the laws applicable to the decision-making process.
23. At the Review, the Applicant advised that this mother was dependent upon him to look after her. He had lived with his mother for 17 years, was very aware of every detail of her health and was at the hospital every day because "he was responsible for her". The Applicant detailed his mother's care journey during her prolonged stay at McKenzie Health. As her stay continued, he brought up many concerns about the care she was receiving and made numerous attempts to move his mother from the hospital however he was stopped from doing so and eventually the hospital put restrictions on his ability to care for his mother. He submitted that the Respondent was the only doctor among all of his mother's treating physicians who suggested that she go off life support.
24. The Applicant outlined the incident that led to his removal from the ICU at the request of the Respondent. He explained that he had seen his mother repeatedly try to pull out her tubes and was tethered to prevent her from doing so. The Respondent removed the tether, contrary to the Applicant's express wishes. The Applicant stated that the Respondent not only put his mother's life in danger by removing the tether but also he made the order as an act of intimidation against him in retaliation for having complained about the Respondent.

Concerns that the Respondent threatened to take the patient off life support and refused to answer questions in the ICU regarding the patient's condition

25. In his written response contained in the Record, the Respondent outlined the terms of the Applicant's POA which stated, "The following are my instructions ... I do not wish to have my life unduly prolonged by any course of treatment or any other medical procedure which offers no reasonable expectation of my recovery from life-threatening physical or mental incapacity, except as may be necessary for the relief of suffering."
26. After reviewing the POA contained in the Record and noting its contents as quoted above, the Committee determined that the Applicant's request for aggressive treatment for his mother ran contrary to her expressed notarized wishes. On this basis, the Committee concluded that it was reasonable for the Respondent to engage the Applicant in discussions on end-of-life care and Consent to Treatment legislation.
27. The Committee found that the Respondent's notes of the parties' discussions were detailed and thorough and that social workers and patient representatives made efforts to resolve the situation. The Committee implicitly recognized the stressful nature and context of these types of discussions by stating its expectations about the need for members to communicate in a respectful manner, particularly in the ICU setting and when the issue is the possible discontinuance of life-sustaining treatment.

Concern that the Respondent threatened more than once to have the Complainant removed as POA

28. Having concluded that the Applicant was likely not abiding by the terms of his mother's POA the Committee found that it was reasonable for the Respondent to advise the Applicant that the *Health Care Consent Act* sets out rules for POAs and that he had an obligation to ensure the care plan aligned with the patient's wishes.

Concern that the Respondent threatened to have hospital security physically remove the Applicant from the hospital

29. The Committee took note of information in the Record that confirmed the hospital had placed significant restrictions on the Applicant's visits with his mother due to the Applicant having engaged in threatening and intimidating behaviour toward hospital staff. Based on this information, the Committee found no reason to conclude that the Respondent acted inappropriately in informing the Applicant that he would have hospital security remove him from the hospital if necessary.

Concerns regarding the Respondent's communication

30. The Committee made specific reference to the Applicant's complaint surrounding the Respondent's jokes at a sensitive time, commenting that the Applicant was not asking his mother the right question regarding wanting to live and shaking her breathing tube to make a point. The Committee noted the Respondent's statement that his communications were always respectful and patient. The Committee determined that it could not prefer one version of events to the other without independent information, given that its investigation is by way of a review of documentation only. On this issue, the Committee repeated its expectation about respectful communication as already noted.

Concern that the Respondent refused to escalate the Applicant's concerns to his superiors

31. The Committee referred to the Respondent's contemporaneous notes that indicate the Respondent paged the shift manager at the Applicant's request and referred the Applicant to both the Chief of Medicine and the Patient Relations Department. The Committee determined this was reasonable action on the Respondent's part. The Board notes that there is confirmation in the Record that the Applicant spoke to the shift manager in response to the Respondent's page and that the Respondent himself escalated the matter to the Patient Relations Department, the Chief of Medicine and Chief of Staff.
32. The Board finds that the Committee turned its mind to the positions and submissions of the parties and relied upon the information contained in the Record in reaching its conclusions. The Board finds that the Committee's decision demonstrated a coherent and

rational connection between the relevant facts, the outcome of the decision and the reasoning process that led it to that outcome, and that its decision as a whole is transparent, intelligible and justified.

VI. DECISION

33. Pursuant to section 35(1) of the *Code*, the Board confirms the Committee’s decision to state its expectation that members communicate in a respectful manner, particularly in the ICU setting and when the issue is the possible discontinuance of life-sustaining treatment, and to take no further action.

ISSUED June 4, 2020

Emanuela Heyninck

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Anna-Marie Castrodale

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Dale Wright

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