



Order F21-27

## COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Elizabeth Barker  
Director of Adjudication

June 25, 2021

CanLII Cite: 2021 BCIPC 34  
Quicklaw Cite: [2021] B.C.I.P.C.D. No. 34

**Summary:** A physician requested access to records about himself from the College of Physicians and Surgeons of British Columbia (the College). The adjudicator confirmed the College’s decision to refuse to disclose the information under s. 26.2(1) (confidential information) of the *Health Professions Act*.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 58(2) and 79. *Health Professions Act*, ss. 1 and 26 (definitions of “registrant”), 26.2(1)(a) and 26.2(6).

### INTRODUCTION

[1] The applicant is a physician and registrant of the College of Physicians and Surgeons of British Columbia (College). He made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the College for access to all the material it had about him.<sup>1</sup> The College provided some records but withheld other records and parts of records pursuant to ss. 15 (disclosure harmful to law enforcement) and 22 (unreasonable invasion of personal privacy) of FIPPA. It also withheld records pursuant to s. 26.2 (confidential information) of the *Health Professions Act* (HPA).<sup>2</sup>

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the College’s decision. Mediation did not resolve the matter and it proceeded to inquiry.

---

<sup>1</sup> He requested all records from the date of his last access request, so the request covered records for the period April 21, 2017 to May 28, 2019.

<sup>2</sup> RSBC 1996, c. 183.

[3] Before the inquiry commenced, the applicant informed the OIPC that he no longer disputed the s. 22 severing. Therefore, s. 22 is no longer an issue in this inquiry.<sup>3</sup>

[4] During the inquiry, the College decided it would no longer refuse access under s. 15, and it disclosed more than 300 additional pages to the applicant.<sup>4</sup> However, the College said it was refusing access to three pages under s. 14 (solicitor client privilege) that it had previously severed under s. 15. The College subsequently reconsidered the s. 14 severing and disclosed the three pages to the applicant.<sup>5</sup>

[5] Also, during the inquiry, the College reconsidered its application of s. 26.2 of the HPA to the records and disclosed six more pages of records to the applicant.<sup>6</sup>

## **ISSUE**

[6] The issue I will decide in this inquiry is whether the College is required to refuse to disclose the information under s. 26.2 of the HPA.

[7] FIPPA does not say who has the burden of proving that s. 26.2 of the HPA applies. However, previous orders have said that in such cases it is in the interests of both parties to present argument and evidence in support of their positions.<sup>7</sup>

[8] Both the College and the applicant provided inquiry submissions. The applicant's submission is expansive and much of what he says raises matters that are outside the scope of this inquiry.<sup>8</sup> While I have considered all of the parties' submissions and evidence, I will refer only to what I deem necessary to explain my decision about the issue in this inquiry.

---

<sup>3</sup> Applicant's November 14, 2019 email to the OIPC investigator.

<sup>4</sup> College's initial submission at paras. 61-62 and Appendix 4. The College inquiry that was the reason it severed under s. 15 had concluded.

<sup>5</sup> College's reply submission at paras. 5-6. It disclosed the pages along with the College's final submission.

<sup>6</sup> College's initial submission at paras. 38-40 and Appendix 5.

<sup>7</sup> Order F10-41, 2010 CanLII 77327 (BC IPC); Order F18-01, 2018 BCIPC 01, at para. 8, quashed on judicial review at 2019 BCSC 354 but not for reasons related to the burden of proof; Order F20-17, 2020 BCIPC 19 (CanLII) at para. 4

<sup>8</sup> The applicant provides extensive detail about disputes with the College, his ideas about how the College's quality assurance program should operate, an MSP audit of his billing, and a harassment complaint related to his work in a hospital in the 1990s.

## DISCUSSION

### **Background**

[9] The College is one of 26 health professions in British Columbia that is regulated by the HPA. Under the HPA, the College has a duty to serve and protect the public and to oversee the practice of medicine in the public interest. One of the ways the College does this is by establishing a quality assurance program to assess the professional performance of its registrants.<sup>9</sup>

[10] In 2013 and 2014 the College assessed the applicant's professional performance under its quality assurance program.<sup>10</sup>

### **The Record in dispute**

[11] The record at issue is titled *Chart Submission Review Report, Physician Practice Enhancement Program, College of Physicians and Surgeons of British Columbia* (the Report). The Report is five pages and is about a review of the applicant's medical record keeping. The first page states that the chart review was conducted on May 19, 2017 by "Dr. ...".

[12] Given the College's reconsideration of the severing during this inquiry, only the last, partially-severed page of the Report remains at issue.<sup>11</sup> The withheld information is under the following headings:

- Assessment and Recommendations – For College Use Only
  - Chart Reviewer Summary Scores; and
  - General Comments/Impressions for Panel.

### **Health Professions Act**

[13] The parts of s. 26.2 of the HPA that play a role in this inquiry are as follows:

Confidential information

26.2 (1) Subject to subsections (2) to (6), a quality assurance committee, an assessor appointed by a quality assurance committee and a person

---

<sup>9</sup> The information in this paragraph comes from *British Columbia (College of Physicians and Surgeons) v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354 at para. 1.

<sup>10</sup> Order F20-17, 2020 BCIPC 19 (CanLII) at para 7.

<sup>11</sup> Page 36 of the records in dispute. The applicant includes the first four pages of the Report with his inquiry submission at attachments Oi-Oiv.

acting on its behalf must not disclose or provide to another committee or person

(a) records or information that a registrant provides to the quality assurance committee or an assessor under the quality assurance program, or

(b) a self assessment prepared by a registrant for the purposes of a continuing competence program.

...

(6) Subsection (1) applies despite the *Freedom of Information and Protection of Privacy Act*, other than section 44 (2) or (3) of that Act.

[14] The College does not specify if it is relying on s. 26.2(1)(a) or (b). I conclude that it is relying on s. 26.2(1)(a) because the Report is obviously not a self assessment by the applicant.

[15] In addition, the term “registrant” is relevant in this case. It is defined in the HPA as follows:

1 In this Act

"registrant" means, in respect of a designated health profession, a person who is granted registration as a member of its college in accordance with section 20;

26 In this Part:

"registrant" includes a former registrant, and a certified non-registrant or former certified non-registrant to whom this Part applies;

[16] The BC Supreme Court has said that s. 26.2 of the HPA is intended to shield quality assurance program records from disclosure to the public but also from disclosure to the registrant who is being assessed.<sup>12</sup> The applicant does not agree with this interpretation.<sup>13</sup> He asserts that a registrant “needs to know the full gamut of comments, complaints, praises, or otherwise to fulfill the requisite for natural justice and/or quality of care”.<sup>14</sup> I am bound by the Court’s interpretation, and what the applicant says about it does not persuade me otherwise.

---

<sup>12</sup> *College of Physicians and Surgeons of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354 at para. 95, on judicial review of Order F18-01, 2018 BCIPC 01 (Can LII). See also F20-17, 2020 BCIPC 19 (Can LII) at paras. 33-35.

<sup>13</sup> Applicant’s submission at pp. 16-20.

<sup>14</sup> Applicant’s submission at p. 11.

**Section 79 of FIPPA**

[17] Part 2 of FIPPA provides a right of access to any record in the custody or under the control of a public body subject only to limited exceptions. Section 79 of FIPPA provides that, if a provision of FIPPA is inconsistent or in conflict with a provision of another Act, the provision of FIPPA prevails unless the other Act expressly provides that it, or a provision of it, applies despite FIPPA.

[18] Section 26.2(6) of HPA is such a provision. It expressly provides that s. 26.2(1) applies despite FIPPA. Thus, if I find that s. 26.2(1) applies to the severed information in the Report, then the applicant's right to access it under FIPPA does not apply.

*College's submission*

[19] The College submits that FIPPA does not apply to the withheld information in the Report by operation of s. 26.2 of the HPA and s. 79 of FIPPA.<sup>15</sup>

[20] The College's submissions and the affidavit of its Deputy Registrar provide background and argument about how s. 26.2 applies to the severed information in the Report.

[21] The College explains that it has established a Quality Assurance Committee and a Quality Assurance Program to help it assess the professional performance of its registrants and administer its quality assurance programs.<sup>16</sup>

[22] One of the College's quality assurance programs is its Physician Practice Enhancement Program (PPEP). A panel of the College's Quality Assurance Committee, called the PPE Panel, oversees and directs PPEP's activities.

[23] PPEP has three components, one of which is an assessment of the registrant's medical record keeping, called a peer practice assessment (PPA). The Deputy Registrar says that PPAs are based on the premise that an experienced physician can review another physician's medical records and effectively assess the quality of care being provided. He also says that peer assessors are practising physicians who have previously undergone their own PPEP assessment.<sup>17</sup>

[24] Following the PPA, the peer assessor submits a PPA report to the College, and a medical advisor for the PPEP reviews it to decide if further action

---

<sup>15</sup> College's initial submission at para. 40.

<sup>16</sup> The Quality Assurance Committee is established pursuant to the College's Bylaw 1-19(1) and 19(2)(b) and(c). The College's Quality Assurance Program operates pursuant to s. 26.1 of the HPA.

<sup>17</sup> Deputy Registrar's affidavit at paras. 4-5 and College's submission at paras. 29-30.

and assessment is required.<sup>18</sup> For instance, the registrant may need to attend a medical record keeping course and submit to another chart review. If so, a chart reviewer assesses the further chart submission and prepares a *Chart Submission Review Report* – the type of record in dispute in this inquiry. The medical advisor then decides whether to forward the registrant’s file and the *Chart Submission Review Report* on to the PPE Panel for further direction.<sup>19</sup>

[25] The College says:

The medical advisor then provides the PPE Panel with a copy of the chart reviewer’s Chart Submission Review Report. That Report contains a section entitled “assessment and recommendations – for College use only”. This section contains the chart reviewer’s comments as well as any recommendations to the PPE Panel for purposes of its *in camera* deliberations. The physician receives a copy of the chart submission review report, less the section entitled “assessment and recommendations – for College use only”. It is imperative that PPEP reports containing the chart reviewer’s comments and recommendations be kept confidential in order that the chart reviewer is able to be frank, open and candid about their chart review with the PPE Panel.

...

The withheld record is marked as page 36 and it consists of the PPA assessment and comments of the peer assessor. As indicated on the record, the advice that has been provided is for the PPEP Panel. This advice is provided for the PPEP Panel’s *in camera* deliberations about a physician’s practice to assist in decision-making about next steps. It is essential to the operation of the PPEP that this information be kept confidential in order to ensure that the assessor’s assessment, comments and recommendations to the PPEP Panel are frank, open and candid. Without an assurance of confidentiality, the PPEP purposes would be undermined and the ability of the College to carry out its public protection and public interest mandate would be hampered.<sup>20</sup>

[26] The College also says:

The PPEP has been designed and operates within a confidentiality framework. Its internal procedures ensure confidentiality. Electronic and paper records are only accessible to PPEP staff, unless the physician has authorized another College department to access the physician’s materials. All members of the PPE Panel and the Quality Assurance Committee sign confidentiality agreements....<sup>21</sup>

---

<sup>18</sup> College’s initial submission at para. 33.

<sup>19</sup> Deputy Registrar’s affidavit at paras. 8-10

<sup>20</sup> College’s initial submission at paras. 35 and 58; Deputy Registrar’s affidavit at para. 10.

<sup>21</sup> College’s initial submission at para. 24; Deputy Registrar’s affidavit at para. 22.

*Applicant's submission*

[27] The applicant submits that the College is not being consistent in what it decides it must refuse to disclose under the HPA, thus it cannot refuse him access to the information in dispute. He provides copies of documents he received that relate to the College's investigations and inquiries about him. He says, "the College has waived previously the concept of restricting release of information to me from committees... Deliberative release of such information in the past waives the secrecy that the College may want to impose..."<sup>22</sup>

[28] The applicant also submits that it makes no sense to withhold the reviewer's assessment and recommendations to the College on the last page of the Report when the College has already given him the reviewer's assessment and recommendation on the first four pages. He says:

The assessment and recommendations to the 'College' should be no different. If they are indeed different, then the peer reviewer has not lived up to the mandate that ... the physician and assessor should be open about the assessment and strategies. It would be one thing to express one view to the physician but another to the College – there should be no difference. The provision of one waives the provision of the other. In the context of this Inquiry, there is an abundance of such waiver.<sup>23</sup>

***Analysis and findings***

[29] Based on the information that the parties provide, in particular the four pages of the Report that the College disclosed during the inquiry, I make the following findings.

[30] The applicant was required to participate in a peer practice assessment (PPA). On May 19, 2017, the individual who authored the Report reviewed the applicant's charts. I am satisfied that this individual was a "registrant" as that term is used in s. 26.2(1). That is because the individual's name was preceded by the title "Dr", the Deputy Registrar's evidence was that the College uses practicing physicians to conduct reviews, and the applicant did not dispute that this individual was a registrant.

[31] There also was no dispute that the Report was provided to a medical advisor for the PPEP who subsequently forwarded it to the PPE Panel, and that the PPEP Panel is part of the College's Quality Assurance Committee. The applicant submits the College should be found to have "waived" the application of s. 26.2(1) to the entire Report because the College gave him the first four pages. Based on my own review of the Report, I am not persuaded by

---

<sup>22</sup> Applicant's submission at p. 1.

<sup>23</sup> Applicant's submission at p. 9.

---

that argument. I conclude that pages 1-4 are designed to provide feedback to the registrant whose charts are being reviewed. Page five is different as it is titled *Assessment and Recommendations – For College Use Only*.

[32] For all of the above reasons, I am satisfied that the information in dispute on page five of the Report is information that a registrant provided to the Quality Assurance Committee or an assessor under the Quality Assurance Program. I find that s. 26.2(1)(a) applies to that information. I also find that the applicant has no right of access to that information under FIPPA because s. 26.2(6) says that s. 26.2(1) applies despite FIPPA.

## **CONCLUSION**

[33] For the reasons given above, under s. 58(2) of FIPPA, I confirm the College's decision that ss. 26.2(1) and 26.2(6) of the HPA apply to the information in dispute on page five of the Report.

June 25, 2021

## **ORIGINAL SIGNED BY**

---

Elizabeth Barker, Director of Adjudication

OIPC File No.: F19-79882