COLLEGE of PHYSICIANS and SURGEONS of NEW BRUNSWICK

BULLETIN

COLLÈGE des MÉDECINS et CHIRURGIENS du NOUVEAU-BRUNSWICK

May 1996

This Bulletin is forwarded to every medical practitioner in the province. Decisions of the College on matters of standards, amendments to Regulations, By-Laws, guidelines, etc., are published in Bulletins. The College therefore assumes that a practitioner should be aware of these matters.

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At its meeting on 12 April 1996, Council considered the following matters:

COMPLAINTS COMMITTEE

The Committee considered a complaint from a hospital employee alleging that a physician had made inappropriate and threatening comments. The physician responded that his remarks were misconstrued. On review, the Committee found the remarks completely unacceptable. Nevertheless, it was not clear that they constituted professional misconduct. Thus, the Committee determined to take no further action, but expressed its concerns regarding the physician's conduct. In reviewing the matter, Council noted that such situations can arise and are best handled at the hospital level. If such does not take place, matters may be brought to the College's attention. However, by that time, the positions have become entrenched. To avoid matters escalating, an early and consistent response at a local level would be better for all concerned.

The Committee received a complaint from a patient who had been referred from out of province to see a surgeon here. In consultation with several others, the surgeon determined that further surgery was not necessary. However, the original treating physicians in the other province refused to accept the patient back. Thus, the patient was left in an uncertain state, pending rather difficult arrangements to find alternative care for her nearer to home. In the end, it was determined that the physician here had acted appropriately considering the circumstances. It was the feeling of Council that where a patient is referred out of province, there is an on-going responsibility on the local physician to accept that patient on return, or make alternative arrangements.

There was a complaint that a physician had charged a patient for a pharmaceutical sample that he had obtained free of charge. The Committee felt that this was inappropriate, as such samples are distributed to the physicians so they can be passed
freely on to patients. Nevertheless, there are no specific regulations or rules, under Federal legislation, prohibiting this. For that reason, Council determined to take no further action on this specific matter. Nevertheless, Council wished it to be made clear that any further use of such samples, such as resale or bartering with pharmacies would be considered improper.

There was a complaint regarding the method by which a physician terminated the care of a patient. There had been an on-going dispute with the patient's family and the physician had determined that the care could not be provided to any member of this family. The patient, who was not directly involved in the dispute, took exception to this. The Committee determined that the physician had acted properly by giving appropriate notice to the patient regarding seeking alternate care.

There was a complaint regarding a "locum" physician who had replaced another physician for several months. A dispute arose regarding the relocation of the practice and other matters. On reviewing the matter, the Committee determined that neither physician had clearly articulated their respective obligations concerning the arrangement. The arrangement was

not the typical "Locum" situation, and, as a consequence, details regarding their respective responsibilities, including such matters as retention of records, should have been sorted out in advance.

There was a complaint regarding the treatment provided by an obstetrician during a labour and delivery. In reviewing the matter, the Committee found that the obstetrician had managed the delivery, which was very precipitous, quite appropriately. Nevertheless, the nursing notes described the patient as very "uncontrollable". Some months later, the patient filed the complaint. The Committee notes that it may be difficult to avoid such complaints, but they seem to occur more frequently when the consultant has had limited contact with the patient, either before or after delivery.

There was a complaint from two patients that a physician had inappropriately failed to attend them at an Emergency Department of a small hospital. Upon reviewing the matter and the medical records involved, the Committee found that there was no evidence that the physician had acted inappropriately in these cases.

There was a complaint regarding treatment provided to an infant with a mouth infection. One of the issues concerned the directions provided to the parents regarding the treatment. There was a discrepancy in the version between the physician and the pharmacist involved. The Committee notes that physician and the pharmacist share responsibility for the communication of such matters, particularly where there is risk if there is an error in the instructions.

There was a complaint regarding the management by a surgeon following an incident in which equipment failed during a procedure. In reviewing the matter, the Committee felt that the surgeon's response in this situation was appropriate, that the patient was fully informed after the procedure, and appropriate consultations were arranged in follow-up.

There was a complaint regarding the treatment provided to a child who attended an Emergency Department. The complainant alleged that the physician had acted rudely when the child became upset. It was impossible to determine the precise course of events. Such episodes may be somewhat unavoidable when patients, and their parents, are upset and when there are many demands on the physician. All the physician can do in that context is to realize the risks which flow from such situations.

ACCESS TO PHYSICIANS

There continues to be complaints regarding accessibility of physicians. The following commentary is provided from the Newsletter of the College of Physicians and Surgeons of Ontario:

> The College has learned of informal agreements that apparently exist among some physicians in some small and medium-sized communities to refuse to accept patients who wish to change doctors within the community.
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> We have recently noticed a marked increase in the number of complaints from patients in this regard. For the most part, these patients do not present themselves as unreasonably demanding or as wishing disciplinary action against any particular doctor, but they do question, as does the College, the propriety of agreements among doctors aimed at limiting patients' freedom of choice and their ability to obtain another opinion.
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> It would seem logical that when a patient expresses serious doubts about his or her relationship with a particular physician, that physician might consider it wise to facilitate a referral to another doctor. Experienced physicians know this and have acted accordingly for years. Those physicians who choose, in conjunction with their colleagues, to keep dissatisfied patients on their rosters by refusing to refer them to a colleague are acting neither in the best interests of the patient, nor of themselves.
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> In addition, they would appear to be in violation of Section 5 of the Canadian Medical Association's *Code of Ethics*, which reads:
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> > *"An ethical physician will recognize that a patient has the right to accept or reject any medical care recommended. The patient having chosen a physician has the right to request of that physician opinions from other physicians of the patient's choice."*
>
> While Section 12 of the same Code states that, *"an ethical physician shall, except in an emergency, have the right to refuse to accept a patient"*, this could not be construed to condone a system of collusion to prevent patients from ever seeing another physician in a particular community.
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> The increase in the incidence of inquiries and expressions of concern, some of which could well become formal complaints, suggests that doctors may wish to reconsider the wisdom of agreements that limit patient choice as described above.

REGULATORY CHANGES

Enclosed please find Regulations recently adopted by Council on Advertising and Content of Medical Records. In addition, enclosed please find draft statements concerning medical records as well as potential conflicts of interest. These are provided to members for comment.

Third Party Attendance

Concerns have been expressed by several physicians regarding the request by employees of certain agencies, such as insurance companies, that they attend, with the patient, any assessment by a physician.

Council has serious concerns regarding this practice. Physicians are strongly cautioned regarding allowing such attendance. This is on two bases.

First of all, when a third party attends with a patient, there is no protection for the patient similar to the rules which govern the conduct of a physician on such matters as confidentiality. If the observer breaches confidentiality, there are not the same remedies as would be available to the patient if such had been done by the physician.

Council is also troubled that, in some situations, this approach seems to be an attempt to by-pass the opinion, and report, of the physician. It is Council's opinion that it is for the physician to interpret signs and symptoms. If an observer is able to make direct observations regarding the history and physical findings, and thus have access to information which has not been subject to interpretation by the physician, this cannot be in the patient's best interest.

Physicians have expressed concerns that the consent for the attendance of these observers does not always appear to have been freely given by the patient.

Nevertheless, there may be situations where the physician may feel that it is in the patient's best interest to have a third party attend the examination. If the physician feels this is the case, and it can be determined from the patient that the consent for such attendance is freely given, then the physician may allow such. In all other circumstances, such attendance should be discouraged.

Elections

Nominations for elections to Council have now closed. Elected, by acclamation, are Dr. Pamela Walsh, Riverview in Region 1, and Dr. Beatriz Sainz, Oromocto, in Region 3.

There will be an election in Region 2. The candidates are Dr. Christine Davies and Dr. James Parrott.

Annual Announcements

By now, each licensed physician in New Brunswick will have received two copies of the Annual Announcement. This policy was instituted for the sake of efficiency in mailing. Physicians are encouraged to make the additional copy available where it will be of value. If further copies are required, they can be purchased from the College office.

Medical Act

Amendments to the *Medical Act* were introduced at the Spring session of the Legislature. These represented changes originally proposed last year, plus several additional measures required by the Department of Health. Physicians who wish a copy of the Bill may contact the College office. Upon passage, all physicians will receive a consolidated version of the *Act*.

Methadone

Health Canada has announced a change in the rules regarding the use of methadone for treating narcotic addictions. Specific authorization for each patient will no longer be required. Rather, physicians will be given a general right to prescribe methadone for such patients as they deem appropriate. This should allow easier access to this program for physicians and their patients. Information on this is available from the College office.

Dispensing by Physicians

For many years, some physicians, in response to local needs, have dispensed medications from their offices. Others also do so on an *ad hoc* basis. Both situations are allowed under the *Medical Act* and the *Pharmacy Act*. However, physicians who dispense medications must, under College policy, follow the rules established under the *Pharmacy Act* and *Regulations* regarding labelling, packaging, and record-keeping. Information on this is available from the College office.

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