COLLEGE OF PHYSICIANS AND SURGEONS OF NEW BRUNSWICK
COLLÈGE DES MÉDECINS ET CHIRURGIENS DU NOUVEAU-BRUNSWICK

Bulletin October 2009

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

Council Update

At its meeting on 25 September 2009, Council considered the following matters.

COMPLAINTS

Note: Amendments to the *Medical Act* now allow Committees and Council to add specific comments regarding a Complaint. These comments include a ***Counsel*** (advice as to how to improve the physician's conduct or practice), a ***Caution*** (intended to express the dissatisfaction of the Committee and to forewarn the physician that if the conduct recurs, more serious disciplinary action may be considered), and a ***Censure*** (an expression of strong disapproval). It should be noted that these are not disciplinary findings. Physicians are given the opportunity to object to any such comment. They are not recorded on Certificates of Standing.

A physician received a report on a mammogram and advised the patient that no further action was necessary. However, the report had actually recommended a biopsy, a notation which the physician missed. The physician acknowledged the error. He was ***counseled*** to take greater care in reviewing reports and their recommendations.

An employer complained that a physician had improperly provided a note allowing an employee sick leave. It was alleged that the physician had not properly assessed the patient, only speaking to the patient by telephone. In reviewing the matter, the Committee noted that the circumstances were unusual, but with a patient well known to the physician, it could be acceptable to base a request for sick leave on a telephone interview. That said, the impact of such a document was ultimately a question of the contractual relationship between the employer and the employee.

A family complained that a family physician had failed to make a timely diagnosis of a bone tumor. The patient succumbed quite quickly afterwards. In reviewing the matter, the Committee noted that the physician had responded in a timely fashion to a situation which deteriorated quickly. The Committee also noted specifically that an x-ray report on which the physician had relied was erroneous. The Committee could find no fault with the care provided by the family physician.

A physician had taken over the practice of another. A patient of the previous physician attempted to make an appointment, although he had not been seen in that office for a very lengthy period of time. The appointment was initially denied, but he subsequently obtained one through temporary staff. He did see the physician, but asserted he was denied treatment. The physician noted that the appointment was made in error, but when the patient was seen, an offer to provide treatment for an acute problem was made.

1 HAMPTON ROAD, SUITE 300
ROTHESAY, NEW BRUNSWICK E2E 5K8
1, CHEMIN HAMPTON, PIÈCE 300
ROTHESAY (NOUVEAU-BRUNSWICK) E2E 5K8
info@cpsnb.org (506) 849-5050 1-800-667-4641 FAX: (506) 849-5069 www.cpsnb.org

The Committee determined the physician had acted appropriately.

Following the death of a patient from meningitis, the Committee and Council felt it appropriate to ***censure*** two physicians regarding the care provided. The patient had been under the care of a series of physicians over the course of two visits to the Emergency Department. Initial presentation was with headache, abdominal symptoms, and fever. The first physician ordered investigations, but despite a white blood count suggestive of an infection, and a falling platelet count without explanation, failed to consider the possibility of infection, but, instead, determined that the low platelets was likely the result of chronic processes. The patient was later reassessed by the second physician, who considered the possibility of sepsis, did a blood culture, and began antibiotics. However, there was no order to monitor the patient's vital signs in an appropriate manner. The antibiotic ordered was improper for the situation, as it would not effectively treat meningitis. Furthermore, when the nurses had difficulty administering the antibiotic, no effort was made to consider alternate approaches. The patient subsequently succumbed following transfer. The Committee noted that, even with patients with chronic conditions, acute situations can develop which may require urgent treatment. While sepsis, including meningitis, may be difficult to diagnose in early stages, the Committee felt there were sufficient indicators in this matter to warrant a different approach on the part of the physicians involved.

Review Committee

The Review Committee met and reviewed several matters.

There was an appeal of a matter previously dealt with by the Complaints Committee. The patient had been referred from away after seeing several local consultants. There had been longstanding symptoms of weight loss and pain, but the referring physician felt they had become more significant. While awaiting the referral, the patient suffered further weight loss and increasing pain. After assessing the patient, the consultant determined that the patient had a chronic pain syndrome. No further investigation or suggestions were offered. A few months later, the patient was diagnosed with an abdominal tumor, to which he succumbed. The surviving family alleged that the consultant had failed to provide a proper assessment. In response, the physician asserted that, based on the chronic nature of the symptoms, there was no reason to pursue a new diagnosis. In reviewing the matter, the Committee noted that a diagnosis of a chronic pain syndrome was one to be made after eliminating other possibilities. In this case, the patient had had an ultrasound six years previously, but had never had a CT or MRI. The Committee noted that even patients with chronic conditions can develop acute problems. While the Committee noted that many physicians would feel such a long chronic history would not warrant further intervention, the Committee was troubled by the fact that the consultant here refused to even consider the possibility of significant disease and, furthermore, upon labeling the patient, evidently shut down any further assessment by the family physician for some time. The consultant also did not offer the possibility of reassessing the patient if symptoms warranted. For those reasons, the Committee felt it appropriate to ***counsel*** the physician regarding the appropriateness of being so conclusive regarding the lack of underlying cause without any investigation. Patients should have a reasonable expectation that a consultant is approaching their case with an open mind and is basing any conclusions on the best evidence available.

In another matter, after increasing concerns regarding a physician's prescribing practices, the physician voluntarily relinquished his right to prescribe Ritalin, as well as to limit new prescriptions for narcotics.

It was alleged that a physician had improperly performed a mental status assessment on a hospital patient and recommended that his driving privileges be suspended. The physician asserted that the

assessment was performed appropriately and he felt obligated to report the matter. On reviewing the matter, the Committee felt it appropriate to issue a ***caution*** to the physician regarding this scenario. The physician was covering hospital patients on the weekend. He had never seen the patient in question before. There was no specific need or request to see him. Nevertheless, on his own initiative, he woke the patient very early one morning and performed a mental status examination. He then produced documentation revoking the patient's driving status. He subsequently phoned the family, also early in the morning, to advise them of this. The Committee felt his approach was highly questionable. Discharge was not eminent, and the patient's own family physician was involved. The Committee could not find any reason to assess the patient in this manner.

CONSULTATIONS/REFERRALS

After reviewing a preliminary response to the previous request for comments from physicians regarding the consultation and referral process, there are two areas on which Council would appreciate further specific comments. One concerns the respective responsibilities between the referring physician and the consultant for ordering investigations which the consultant recommends.

Council also wishes to hear from members regarding the issue of delayed or denied consultation requests. With limited resources, many consultants are either refusing certain requests outright or delaying some matters to the point where they may now find themselves unable to accept the patient. The issue is one clearly based on resources, which are unlikely to improve. Any comments or suggestions from members regarding means to minimize difficulties for referring physicians, consultants, and their patients, would be very much appreciated. Members should feel free to contact the College by any means.

PHYSIOTHERAPY REFERRAL FEES

It has come to the attention of the Council that a small number of physiotherapy clinics are offering physicians a fee for "approving" a physiotherapist's treatment plan. While communication between professionals is important, the circumstances of this initiative are, in Council's view, more in the nature of a fee to induce referrals. Physicians are reminded that the following is considered a form of professional misconduct.

> **35. sharing fees with, or providing compensation to, any person who has referred a patient to the member or requesting or accepting a fee, rebate, commission or other compensation for the referral of a patient;**

To that end, physicians who accept such fees directly may be at risk of a complaint.

OTHER BUSINESS

In other business, Council:

- Approved a draft budget for 2010. For the first time in six years, annual fees will rise by $50. Physicians who pay by pre-authorized debit will now pay $440. By comparison, fees in other provinces range from $1,100 to $1,600

- Approved amendments to the Mandatory Reporting guideline to reflect recent changes in the *Medical Act*. These should have no practical affect on physicians. A copy is available on the College website or by contacting the College office.

- Approved a regulation on cost recovery in the case of disciplinary matters. This follows amendments to the *Medical Act*, which will allow a greater recovery of the costs involved in a disciplinary matter which results in a finding of professional misconduct. For those physicians interested, copies are available on the College website or by contacting the College office.

- Noted, with gratitude, the contribution of departing members of Council, Dr. Robert Rae, Dr. Mary Mitton and Dr. Malcolm Smith.

- Approved the Executive of the College for 2010 to include:

President:	**Dr. Terry Brennan, Fredericton**
Vice-President:	**Dr. Jean-Marie Auffrey, Shediac**
Past President:	**Dr. Paula Keating, Miramichi**
Member at Large:	**Dr. François Guinard, Edmundston**
Public Member:	**Mr. Gilbert Doucet, Dieppe**

Members should also take note of the sad and untimely passing of Dr. Anthony Lordon of Saint John. Dr. Lordon was a current member of Council and Chair of the Complaints Committee. Previously he had been Director of the Atlantic Provinces Medical Peer Review. He, and his contributions to his patients, the public, and the profession will be missed.

From the Archives

Ninety years ago

In 1919, Council raised concerns regarding the requirement that their appointees to the Medical Council of Canada must pay the registration fee for that entity, and noted that a number of physicians had been charged under prohibition legislation for improperly prescribing alcohol. There were 231 physicians licensed.

Sixty years ago

In 1949, Council determined to resist pressure to license "displaced" physicians from Europe, increased the annual license fee to $5, and instructed the Registrar to purchase a briefcase to hold Council papers.

Thirty years ago

In 1979, Council criticized a physician who had placed his name in the yellow pages of all of the phone directories in the province, expressed concern regarding the kind of surgical procedures being performed in small hospitals, and agreed to begin the process of "divorce" from the Medical Society.