2022 PROFESSIONAL CONDUCT REPORT

The Medical Act, 2011, requires the College of Physicians and Surgeons of Newfoundland and Labrador (the College) to accept and process all written complaints against physicians licensed in Newfoundland and Labrador.

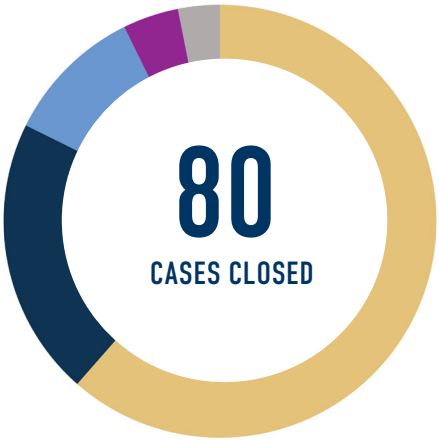
This report communicates the College's complaints and discipline activities during 2022. It summarizes cases in which the Complaints Authorization Committee (CAC) issued a caution/counsel, a publicized settlement was reached through the Alternative Dispute Resolution process, or a finding was made by the Adjudication Tribunal.

82
COMPLAINTS RECEIVED

DECREASE OF 21 OVER 2021

COMPLAINTS RESOLVED BY OUTCOME

(FILES CLOSED IN 2022)



- Dismissed (58%)
- Early Resolution (25%)
- Cautioned or counselled (10%)
- Referred to Tribunal (4%)
- Dismissed with direction (3%)

COMPLAINTS RECEIVED BY CATEGORY IN 2022

YEAR-OVER-YEAR SUMMARY	2022	2021
Complaints received	82	103
Complaints files closed	80	75

For further details about the professional conduct process, visit www.cpsnl.ca.

2022 PROFESSIONAL CONDUCT REPORT

COMPLAINTS AUTHORIZATION COMMITTEE (CAC) REPORT

As the regulator for medical practice in the province, it is the College's legislated mandate to receive, address, and resolve complaints related to physicians' professional conduct and competence. It is a responsibility we take very seriously.

At the College, this work is overseen by the Complaints Authorization Committee (CAC). The CAC has seven members – two public representatives and five physician representatives. Its job is to determine if there are reasonable grounds to believe that a physician has failed to meet the College's expected standards of conduct and competence.

In 2022, the CAC held nine meetings and oversaw the opening of 82 new professional conduct files and the closure of 80 files.

Throughout the year, the CAC remained focused on improving efficiencies in the complaints process, particularly for lower-risk concerns. Increased efforts to mediate these types of files resulted in the resolution of 25% of files through early resolution processes. New approaches to facilitating early resolution allowed the CAC to focus more of its efforts on files where remediation, and potentially discipline, may be necessary to protect the public.

Other process and administrative changes in 2022 included the development of online complaint submission forms for members of the public, adding frequently asked questions to the College website, and adding a new Duty to Report a Colleague online form for physicians.

Looking forward to 2023, the CAC will continue to deliver improvements that will assist the public and physicians in navigating the professional conduct process. This work is part of the larger efforts to deliver on the College's vision for quality healthcare in Newfoundland and Labrador through the regulation of the medical profession in the public interest.

STANDARDS OF PRACTICE AND PRACTICE GUIDELINES

Standards of Practice updated in 2022:

- Accepting New Patients
- Complementary & Alternative Medicine
- Ending the Physician-Patient Relationship
- Medical Assistance in Dying
- Physician Treatment of Self, Family Members, or Others Close to Them
- Professional Responsibilities in Medical Education
- Duty to Report a Colleague

Practice Guidelines updated in 2022:

- Opioid Prescribing
- Opioid Prescribing for Opioid Use Disorder
- Uninsured Services

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2022 CAUTIONS AND COUNSELS

The CAC issues a caution or a counsel when it reaches the opinion that there are reasonable grounds to believe a physician has engaged in "conduct deserving of sanction" (as defined in the *Medical Act, 2011*) but determines that a referral to a hearing is not warranted.

CASE #1: Supporting responsible population health and health education

A physician was counselled to support the profession's responsibility to act in matters relating to public and population health and health education, specifically in respect of the COVID-19 pandemic.

The CAC noted that physicians have specialized knowledge of the healthcare system and medical science. As a result, their opinions on these topics carry special weight to members of the public, regardless of whether that person states they are speaking as a physician or as a citizen.

In the circumstances of a public health emergency, physicians are expected to be viewed as supporting the efforts of provincial and federal public health officers.

The CAC agreed that the requirement to support the profession's responsibility in public and population health is not meant to discourage all criticism of the work of public health, but rather that physicians are expected to use a measured and evidence-based approach when disseminating information to the public regarding the work of public health.

CASE #2: Maintaining professional behaviour

A physician was cautioned to avoid impugning their colleagues' reputations without objective evidence in support of their position.

The CAC agreed that there were reasonable grounds to believe that the physician's statements, which purported that a high quality of care could only be provided by a "board-certified physician," impugned the reputation of their colleagues who do not hold such certification.

CASE #3: Maintaining prescribing responsibility

A physician was cautioned to prescribe ivermectin/Stromectol only in accordance with the usage authorized by Health Canada.

In its review, the CAC agreed that physicians are expected to prescribe medication according to the principles of patient care and management that are generally accepted and recognized by the medical profession in Canada and those expressed in the College Standard of Practice: Prescribing.

When issuing a prescription for off-label use, the CAC agreed that the physician would be expected to obtain informed consent to issue the prescription and compile a detailed medical record of the discussion. The CAC agreed that medication should not be prescribed for off-label use in circumstances where Health Canada has issued a specific recall or safety alert, indicating that the medication is not authorized for the intended off-label use.

CASE #4: Reviewing all investigations before beginning a procedure

A physician was counselled to implement a process to ensure that all investigation results available before and relevant to an intended procedure are reviewed pre-operatively.

The CAC retained a consultant physician to review the care provided. The consultant was of the opinion that the physician should have reviewed the results of all relevant laboratory results in the patient's medical records before beginning the procedure and prescribed antibiotics before the patient was discharged.

CASE #5: Complying with the Highway Traffic Act

A physician was counselled to comply with the reporting obligations under s. 174.1 of the *Highway Traffic Act.*

Physicians have a legal and professional obligation to maintain the confidentiality of patient information. There are circumstances, however, where physicians are required to report particular events or clinical conditions to the appropriate government or regulatory agency.

The CAC noted that under the *Highway Traffic Act,* physicians have an obligation to report to the registrar in the following circumstances:

> *174.1 (1) A medical practitioner licensed under the Medical Act, 2011, a nurse practitioner as defined in the Registered Nurses Act, 2008 or an optometrist licensed under the Optometry Act, 2012 shall report to the registrar the name, address, date of birth and clinical condition of a person 16 years of age or older attending the practitioner or the optometrist for medical or optometric services who, in the opinion of the practitioner or optometrist, is suffering from a condition that may make it dangerous for the person to operate a motor vehicle.*

CASE #6: Ordering appropriate diagnostic imaging

A physician was counselled to complete an educational activity on breast diseases and screening and to complete a reflective exercise on changes that they could make to their practice in the assessment of breast disease.

The CAC agreed that a family physician licensed by the College would be expected to be familiar with the Canadian Task Force on Preventive Health Care's "*Recommendations Concerning Clinical Breast Exam and Breast Self Exam* " and exercise clinical judgment in applying these recommendations when providing patient care. Physician members of the Committee agreed that for the patient's age and clinical presentation, the physician should have requisitioned imaging to investigate the concerns relating to her breasts.

CASE #7: Ensuring flexibility with patients when appropriate

A physician was counselled to offer flexibility, in appropriate circumstances, with the office policy that MCP cards must be presented on all occasions.

The CAC reviewed the CMA Code of Ethics and Professionalism, which has been adopted by the College as a compilation of guidelines providing a common ethical framework for physicians.

Under the "*Fundamental Commitments of the Medical Profession*," the Committee noted that physicians are expected to "*consider first the well-being of the patient; always act to benefit the patient, and promote the good of the patient."*

The CAC agreed that in these specific circumstances, taking into consideration the patient's elderly age, her previous attendance at the clinic, and the fact that her MCP card was not expired, there were reasonable grounds to believe the physician did not act in the patient's best interest when they refused to provide them with medical care until such time as their MCP information could be officially confirmed.

CASE #8: Treating colleagues with dignity and respect

A physician was counselled to treat all colleagues with dignity and as persons worthy of respect and to complete continuing professional development courses on effective team interactions, ethics and boundaries.

The CAC agreed that there were reasonable grounds to believe that a physician engaged in persistent or egregious unprofessional conduct towards a professional colleague, a registered nurse, during a professional interaction.

CPSNL HEARING 2021-001
IN THE MATTER OF:
Dr. Krista Brown

In a written decision dated August 10, 2022, an Adjudication Tribunal of the College of Physicians and Surgeons of Newfoundland and Labrador found Dr. Krista Brown, an Obstetrician/Gynecologist, guilty of professional misconduct in relation to a complaint filed by a patient in 2019.

The Tribunal accepted a statement of facts that both the College and Dr. Brown had agreed on. This statement noted the following events, which took place in 2019. In summary:

The complaint related to Dr. Brown's management of the patient's labour and delivery.

On January 10, 2019, for treatment of increased blood pressure, the patient (who had a complex medical history) was admitted to the hospital under the care of a different physician. At the time of admission, the patient was at 37 weeks plus 5 days gestation.

On January 14 and 15, in an effort to induce labour, the patient was prescribed vaginal Cervidil.

On January 17, for the same reason, another prostaglandin was prescribed. Labour still did not begin. In further efforts to induce labour, an Oxytocin infusion was initiated later that evening. It was discontinued because it posed difficulty for assessing the patient's contractions. The fetal heart rate was recorded as normal throughout the attempts to induce labour.

Dr. Brown became involved in the patient's care on the morning of January 18. After assessing the patient, she ordered Oxytocin to be re-started. By midday, the patient's body temperature was slightly elevated and Dr. Brown began treating the patient for suspected chorioamnionitis.

Tachycardia was detected at about 6:00 p.m. on the evening of January 18. At 7:20 p.m., the fetal heart rate tracing was considered abnormal according to the applicable standards of practice. Dr. Brown attended at the patient's bedside and was made aware of the abnormal tracing and that the nursing staff was unable to capture the contraction pattern. Dr. Brown ordered an increased dose of Oxytocin medication but did not arrange for urgent delivery.

The patient reached full dilation at 11:00 p.m. and began pushing to deliver the infant. At 11:40 p.m., Dr. Brown was called to assess the patient and review the fetal heart tracing. The fetal heart rate was still abnormal with repeated complicated decelerations. At this point, Dr. Brown determined that an urgent delivery was required. She recommended an

CPSNL HEARING 2021-001
IN THE MATTER OF:
Dr. Krista Brown (cont.)

attempted forceps delivery, which she assessed would result in a quicker delivery than a cesarean.

The patient was moved to an operating room and the infant was delivered by forceps 35 minutes after midnight on January 19. After the infant's head emerged, Dr. Brown identified that the baby had a mild to moderate shoulder dystocia. That resulted in a delay of less than 1 minute to complete the delivery.

The infant was immediately transferred to the neonatal intensive care unit's team for resuscitation, but the baby did not survive.

The patient did not learn of her infant daughter's death while Dr. Brown was present. Dr. Brown also did not visit the patient at any time during the patient's stay in the hospital.

The Tribunal accepted Dr. Brown's plea of guilty of "professional misconduct" in violation of section 4(h) of the *College By-Law No. 5: Code of Ethics* , which is conduct deserving of sanction under the*Medical Act, 2011* .

The Tribunal found that Dr. Brown's care of the patient—in particular, her failure to appreciate the significance of the abnormal fetal heart tracing and the consequent need for urgent intervention—demonstrated errors in judgment that did not meet the standard of practice that is expected of an obstetrician/gynecologist, and that her failure demonstrated gross negligence or reckless disregard for the health and wellbeing of the patient and her infant daughter.

The Tribunal accepted a submission for sanctions that was jointly prepared by the College and Dr. Brown.

It then ordered that:

1. The Tribunal issue a reprimand to Dr. Brown.
2. Dr. Brown successfully complete professional development courses covering "appropriate management of labour and delivery" and "effective communication with patients" within four months of the date of the Tribunal's Order.
3. Dr. Brown pay the hearing costs of the College in the fixed amount of $10,000.
4. The College Registrar publish a summary of the Tribunal's decision and the sanctions ordered.