



By-Law 5: Code of Ethics

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The College's Code of Ethics is made pursuant to paragraph 15(1)(i) of the *Medical Act, 2011* to establish a definition of "professional misconduct", "conduct unbecoming a medical practitioner", "professional incompetence" and "incapacity or unfitness to engage in the practice of medicine" for the purposes of sections 39-56 of the *Act*, and to identify the standards governing the practice of medicine.

In addition to this Code of Ethics, physicians are expected to be familiar with the Canadian Medical Association's Code of Ethics and Professionalism (as amended) which has been adopted by the College as a compilation of guidelines providing a common ethical framework for physicians.

1. Definitions

For the purposes of this By-law:

- (1) "Act" means the *Medical Act, 2011 (as amended)*.
- (2) "Adjudication Tribunal" means a tribunal appointed pursuant to s. 45 of the *Act*.
- (3) "By-Laws" means by-laws made by the College, pursuant to s. 15 of the *Act*.
- (4) "College" means the College of Physicians and Surgeons of Newfoundland and Labrador.
- (5) "Complaints Authorization Committee" means the committee appointed pursuant to s. 40 of the *Act*.
- (6) "Practice Guideline" means a statement by the College of best practices and recommendations in relation to a particular issue, which may have variable applicability on a case-by-case basis, depending on individual patient circumstances, local resources

and the professional judgment of the medical practitioner, and includes College advisories (“Notices to College Members”).

- (7) “Quality Assurance Committee” means the committee appointed pursuant to s. 69 of the *Act*.
- (8) “Regulations” means regulations having effect under the *Act*.
- (9) “Standard of Practice” means principles of patient care and management that are generally accepted and recognized by the medical profession in Canada, or that are expressed in a College statement of Standard of Practice.

All Practice Guidelines and Standards of Practice, as defined by this By-Law, shall be deemed to be incorporated by reference into, and to form part of, this By-Law.

2. Professional Misconduct

Professional misconduct for the purposes of s. 39 to 56 of the *Act* shall include:

Laws, regulations, and by-laws, applicable to practice

- (1) Contravening the *Act*, *Regulations*, or By-Laws.
- (2) Contravening the Canadian Medical Association “Code of Ethics and Professionalism”, as it may be amended from time to time (hereinafter referred to as the “CMA Code”), provided that where a provision of the CMA Code, is or may be inconsistent with any provision of the *Act*, *Regulations* or the By-Laws of the College, then the latter shall apply in the stead of such provision of the CMA Code.
- (3) Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a public hospital if the purpose of the law, by-law or rule is to protect the health of the public and the contravention is relevant to the medical practitioner's suitability to practice.
- (4) Being subjected to the withdrawal or restriction of rights or privileges under the *Controlled Drugs and Substances Act* (Canada) or the *Food and Drugs Act* (Canada), or under any successor legislation.

Practising while impaired

- (5) Practising the profession while the medical practitioner's ability is impaired by drugs or alcohol.

Standards of Practice

- (6) Failing to apply and maintain standards of practice expected by the profession in the branches or areas of medicine in which a medical practitioner is practising, unless the departure or modification was made in accordance with the following conditions:
 - (a) there was a reasonable basis for the departure or modification;
 - (b) the departure or modification is an exceptional circumstance and does not represent the norm for patient management by the medical practitioner;
 - (c) the departure or modification is limited, in extent and duration, to the minimum necessary to respond to the exceptional circumstance;
 - (d) the departure or modification, and the reasons for it, are documented in the patient's chart; and
 - (e) the medical practitioner has complied with any other conditions for departing from the standard.

Prescribing and Dispensing

- (7) Prescribing, dispensing, or selling medication for an improper purpose.
- (8) Prescribing medication contrary to a Standard of Practice or Practice Guideline.
- (9) Dispensing medication contrary to a Standard of Practice or Practice Guideline.

Responsibilities to Patients

- (10) Discontinuing professional services contrary to a Standard of Practice or Practice Guideline.
- (11) Discontinuing the practice of medicine in the Province contrary to a Standard of Practice or Practice Guideline.
- (12) Performing without consent, a professional service for which consent is required.
- (13) Providing personal health information concerning a patient to a person other than the patient, except with the consent of the patient or as required or permitted by law.

Responsibilities to the Profession

- (14) Failing to reveal the exact nature of a secret remedy or treatment used by the medical practitioner following a proper request to do so.

Responsibilities to the College

- (15) Failing to respond appropriately or within a reasonable time to a written inquiry from the College.
- (16) Contravening or failing to comply with:
 - (a) an undertaking or agreement with the College;
 - (b) a term, condition, restriction, or limitation on a licence or registration with the College;
 - (c) a caution or counsel issued by the Complaints Authorization Committee;
 - (d) an order made by the College's Adjudication Tribunal; or
 - (e) a directive issued by the Quality Assurance Committee.

Misrepresentations

- (17) Making a misrepresentation to the College or to a representative or agent of the College.
- (18) Using a name other than the medical practitioner's name, or variation thereof accepted by the College, as set out in the applicable register under the *Act*, in the course of providing or offering professional medical services.
- (19) Using a term, title or designation relating to a specialty or subspecialty of the profession in respect of his or her practice of the profession unless the medical practitioner has been:
 - (a) certified by the Royal College of Physicians and Surgeons of Canada in a specialty or subspecialty of the profession to which the term, title or designation relates;
 - (b) certified by the College of Family Physicians of Canada in a specialty or subspecialty of the profession to which the term, title or designation relates; or
 - (c) formally recognized in writing by the College as specialist in the specialty or subspecialty of the profession to which the term, title or designation relates.
- (20) Making a misrepresentation respecting a remedy, treatment, or device.

- (21) Making a claim respecting the utility of a remedy, treatment, device, or procedure other than a claim which can be supported as reasonable professional opinion.
- (22) Advertising professional services in a manner which is contrary to a Standard of Practice or Practice Guideline.

Records and Documents

- (23) Failing to make or maintain a record in accordance with the By-Laws.
- (24) Falsifying a record relating to the medical practitioner's practice.
- (25) Creating, altering, or destroying a record relating to the medical practitioner's practice other than in the manner prescribed by the By-Laws or the *Personal Health Information Act* (as amended).
- (26) Failing without reasonable cause to prepare a report or certificate relating to an examination or treatment performed by the medical practitioner to the patient or the patient's authorized representative within 90 days after the patient or the patient's authorized representative has requested such a report or certificate.
- (27) Signing or issuing, in the medical practitioner's professional capacity, a document that the medical practitioner knows or ought to know is false or misleading.
- (28) Failing to provide a patient or a patient's authorization representative with access to, or copies of, all medical records in the medical practitioner's custody or control upon request, unless an exception to disclosure applies.

Fees

- (29) Sharing fees with a person who has referred a patient or receiving fees from any person to whom a medical practitioner has referred a patient or requesting or accepting a rebate or commission for the referral of a patient.
- (30) Refusing to provide medical care, if urgently needed and to the extent clinically required to address the urgent need, for the reason that the collection of fees for the service is uncertain or not possible.
- (31) Charging a fee for services not performed.
- (32) Charging a fee that is excessive in relation to the services performed.
- (33) Charging a fee for a non-insured service contrary to a Standard or Practice of Practice Guideline.

- (34) Failing to itemize an account for service if requested to do so by the patient or the person or agency who is to pay, in whole or in part, for the services.
- (35) Failing to issue a statement or receipt for fee for services to a patient or the person or agency who is to pay, in whole or in part, for the services if requested by a patient, person or agency.

Boundary Violations, Impropriety, Abuse, and Sexual Misconduct

- (36) Engaging in a boundary violation contrary to a Standard of Practice or Practice Guideline.

Conflict of Interest

- (37) Having a conflict of interest contrary to a Standard of Practice or Practice Guideline.
- (38) Providing Treatment to him/herself, a family member, or another person close to the medical practitioner contrary to a Standard of Practice or Practice Guideline.

General

- (39) Permitting, counselling or assisting a person who is not a medical practitioner licensed by the College to perform acts which should only be performed by a medical practitioner.
- (40) Permitting or acquiescing in any act or omission of a professional medical corporation which would be considered professional misconduct if such act or omission were committed by a medical practitioner, while a shareholder, director, officer or employee of that corporation.
- (41) An act or omission made in the course of the practice of medicine that, having regard to all the circumstances, is contrary to a standard or expectation of professional conduct generally recognized by the medical profession or generally recognized within the applicable medical specialty or branch of medicine, and which is harmful or potentially harmful to a patient, to the public interest or to the medical profession.

3. Conduct Unbecoming a Medical Practitioner

Conduct unbecoming a medical practitioner for the purposes of s. 39 to 56 of the *Act* shall include:

- (1) An act or omission that, having regard to all the circumstances, would reasonably be regarded by medical practitioners as disgraceful, dishonourable, or harmful to the standing or reputation of the medical profession.

- (2) Permitting or acquiescing in any act or omission of a professional medical corporation which would be considered conduct unbecoming a medical practitioner if such act or omission were committed by a medical practitioner, while a shareholder, director, officer or employee of that corporation.
- (3) Conviction of a criminal act that would reasonably be regarded by medical practitioners as disgraceful, dishonourable, or harmful to the standing or reputation of the medical profession.
- (4) Persistent or egregious unprofessional conduct towards professional colleagues.

4. Professional Incompetence

Professional incompetence for the purposes of sections 39 to 56 of the Act shall include:

- (1) The demonstration by a medical practitioner’s care of one or more patients that the medical practitioner lacks skill or judgment, of a nature or to an extent that the medical practitioner is unfit to continue to practice, or that their practice should be restricted.

5. Incapacity or unfitness to engage in the practice of medicine

Incapacity or unfitness to engage in the practice of medicine for the purposes of sections 39 to 56 of the Act shall include:

- (1) Continuing to practise the profession in circumstances where a medical practitioner knows, ought to know, or has been advised that they have a deficient clinical ability as a result of a physical or mental condition, disease, or disorder.

Document History

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