



# By-Law 5: Definitions of Conduct Deserving of Sanction

## College By-Law

This By-Law is made pursuant to paragraph 15(1)(i.1) of the *Medical Act, 2011* to establish a definition of “professional misconduct,” “conduct unbecoming,” “professional incompetence,” and “incapacity or unfitness to practice” for the purposes of sections 39-56 of the *Act*, and to identify the standards governing the practice of medicine and physician assisting.

In addition to this By-Law, medical practitioners are expected to be familiar with the Canadian Medical Association’s Code of Ethics and Professionalism (“CMA Code”) and physician assistants are expected to be familiar with the Canadian Association of Physician Assistant’s Code of Ethics (“CAPA Code”). These documents have been adopted by the College as compilations of guidelines which provide common ethical frameworks for medical practitioners and physician assistants.

### 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) “College Registrant” means a medical practitioner or physician assistant who holds or has held a licence to practice issued pursuant to the *Act*.
- (6) “Complaints Authorization Committee” means the committee appointed pursuant to s. 40 of the *Act*.
- (7) “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 practitioner, and includes College advisories (“Notices to Members”).
- (8) “Quality Assurance Committee” means the committee appointed pursuant to s. 69 of the *Act*.
- (9) “Regulations” means regulations having effect under the *Act*.
- (10) “Standard of Practice” means principles of patient care and management that are generally accepted and recognized by the medical profession or profession of physician assisting 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's [Code of Ethics and Professionalism](#), or the Canadian Association of Physician Assistant's [Code of Ethics](#), as applicable to the practitioner's licence type, provided that where a provision of the CMA Code or CAPA 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 or CAPA 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 College Registrant's suitability to practice.
- (4) Being subjected to the withdrawal or restriction of rights or privileges under the [Controlled Drugs and Substances Act](#) (Canada) of the [Food and Drugs Act](#) (Canada), or under any successor legislation.

### Practising while impaired

- (5) Practising medicine or physician assisting while the College Registrant'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 College Registrant 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 College Registrant;
  - (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 College Registrant 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) Refusing to accept a patient contrary to a Standard of Practice or Practice Guideline.
- (11) Discontinuing professional services contrary to a Standard of Practice or Practice Guideline.
- (12) Discontinuing the practice of medicine or physician assisting in the Province contrary to a Standard of Practice or Practice Guideline.
- (13) Performing without consent, a professional service for which consent is required.
- (14) 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

- (15) Failing to reveal the exact nature of a secret remedy or treatment used by the College Registrant following a proper request to do so.

### Responsibilities to the College

- (16) Failing to respond appropriately or within a reasonable time to a written inquiry from the College.
- (17) 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.
- (18) Engaging in the practice of medicine or physician assisting in an area in which the College Registrant does not have the necessary education and experience to provide safe, quality, and competent care.

### Misrepresentations

- (19) Making a misrepresentation to the College or to a representative or agent of the College.

- (20) Using a name other than the 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 services.
- (21) Using a term, title or designation relating to a specialty or subspecialty of the profession in respect of their practice of the profession unless the College Registrant 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.
- (22) Making a deliberate misrepresentation respecting a remedy, treatment, or device.
- (23) 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.
- (24) Advertising professional services in a manner which is contrary to a Standard of Practice or Practice Guideline.

#### Records and Documents

- (25) Failing to make or maintain a record in accordance with the By-Laws or a Standard of Practice.
- (26) Falsifying a record relating to the College Registrant's practice.
- (27) Creating, altering, or destroying a record relating to the College Registrant's practice other than in the manner prescribed by a Standard of Practice or the [\*Personal Health Information Act\*](#) (as amended).
- (28) Failing without reasonable cause to prepare a report or certificate relating to an examination or treatment performed by the College Registrant 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.
- (29) Signing or issuing, in the College Registrant's professional capacity, a document that the College Registrant knows or ought to know is false or misleading.
- (30) Failing to provide a patient or a patient's authorization representative with access to, or copies of, all medical records in the College Registrant's custody or control upon request, unless an exception to disclosure applies.
- (31) Accessing the personal health record of an individual in circumstances where the College Registrant is not within the individual's circle of care at the time of access, does not have appropriate consent, or is not otherwise entitled to access the record by law.

### Fees

- (32) Sharing fees with a person who has referred a patient or receiving fees from any person to whom a College Registrant has referred a patient or requesting or accepting a rebate or commission for the referral of a patient.
- (33) 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.
- (34) Charging a fee for services not performed.
- (35) Charging a fee that is excessive in relation to the services performed.
- (36) Charging a fee for a non-insured service contrary to a Standard of Practice or Practice Guideline.
- (37) 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.
- (38) 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

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

### Conflict of Interest

- (40) Having a conflict of interest contrary to a Standard of Practice or Practice Guideline.
- (41) Providing Treatment to themselves, a family member, or another person close to the College Registrant contrary to a Standard of Practice or Practice Guideline.

### General

- (42) Permitting, counselling or assisting a person who is not a College Registrant licensed by the College to perform acts which should only be performed by a College Registrant.
- (43) 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 College Registrant, while a shareholder, director, officer or employee of that corporation.
- (44) An act or omission made in the course of the practice of medicine or physician assisting that, having regard to all the circumstances, is contrary to a standard or expectation of professional conduct generally recognized by the 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 profession.

### 3. Conduct Unbecoming

Conduct unbecoming 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 the profession in which they are practicing as disgraceful, dishonourable, or harmful to the standing or reputation of the applicable 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) Persistent or egregious unprofessional conduct towards professional colleagues.
- (4) Retaliating or discriminating against a person for taking part in regulatory proceedings, including any action taken by a College Registrant against a person which has the effect of intimidating, retaliating against, coercing or imposing any loss or disadvantage against that person, or which may dissuade a reasonable person from taking part in proceedings under the *Act*.<sup>1</sup>

### 4. Professional Incompetence

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

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

### 5. Incapacity or unfitness to practice

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

- (1) Continuing to practice the profession in circumstances where a College Registrant 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

Approved by the Council of the CPSNL	March 8, 2025
Effective Date	August 29, 2025
Expected Review Date	March 8, 2030

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<sup>1</sup> Note: This is not intended to capture circumstances where professional services are discontinued by a College Registrant in accordance with the applicable Standard of Practice or Practice Guideline.