

September 1994

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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COUNCIL REPORT:

At the meeting of September 8, 1994, Council considered the following matters:

COMPLAINTS:

It was alleged that the management of a patient who had a shoulder injury had been unsatisfactory. She also alleged that the surgeon had failed to provide reports for her lawyer. On investigation, it was found that the report had not been provided by agreement since there had been no change in the patient's condition. As a consequence, no fault could be found in the care provided.

A complainant alleged that a physician had committed a sexual assault during an examination. Some months after seeing the physician, the patient had evidently become convinced that a sexual assault had taken place. An extensive investigation failed to find any credible basis for the accusation. As a consequence, it was recommended that no further action be taken.

There was a complaint regarding a post-cataract surgery prescription provided by an ophthalmologist. Shortly after the lenses were provided, it was evident that some change was necessary. The optician refused to provide any accommodation for expense involved. The patient complained that the physician

should have warned her that the prescription might change. In response to the investigation, the physician stated that most opticians would not charge patients the full amount for a replacement prescription. Investigation by the committee found that there was a wide industry variation among opticians on this matter. As a consequence, no criticism could be attached to the physician since it was his impression that the opticians generally provided this service to patients. It is hoped that physicians so affected will advise their patients to discuss this matter in advance with the specialist if there is any such prescription being filled.

There was a complaint from a hospital regarding public statements made by a physician. It was the committee's conclusion that the physician had the right to be publicly critical if this was felt to be in the best interest of his patients. It was also felt that the College was not the appropriate forum to raise these issues. If the hospital was concerned about a particular physician, an internal review of the conduct would have been more appropriate.

Council appointed a Board of Inquiry to investigate an allegation of sexual misconduct against a physician.

Council appointed a Board of Inquiry to investigate a charge of professional misconduct relating to a criminal conviction of a physician.

HEALTH DISCIPLINES LEGISLATION:

Government proposals regarding Health Disciplines Legislation were circulated to members last month. A response to these was approved by Council. In essence, Council questioned the necessity for this Legislation. There were also significant concerns regarding the impact of this intervention on the College process. Most importantly, this relates to the requirement of government approval of regulatory changes. Finally, there were significant problems with the proposals regarding delegated medical acts.

FAXED PRESCRIPTIONS:

As most physicians know, the Pharmaceutical Society recently passed regulatory changes which require that pharmacists not dispense in response to a faxed prescription until the original has been produced by the patient. While these changes were largely made for security reasons, Council was of the feeling that this will reduce the convenience of this technology to physicians and patients. As a consequence, the College will continue to work with the Pharmaceutical Society to develop a methodology which will provide for a secure, but efficient, means of transmitting prescriptions.

BUDGET:

Council approved a budget for the fiscal year 1995. As disciplinary and administrative costs have been somewhat reduced there will be no need for an annual fee increase. The invoices for same will be sent in November.

MEDICAL RECORDS:

The issue of medical records continues to be a difficult one. Until a formal policy is adopted, physicians should be reminded of several factors:

First of all, a physician is ethically obligated to forward to any new physician such information as will be useful in treating the patient. There should be no impediment to the transfer of such information. It should also be clear that this rarely requires the transfer of the entire medical record.

Secondly, the Supreme Court of Canada has stated that physicians hold the information in their files "in trust" for their patients. This creates various legal obligations regarding the way this information is handled. The physician must always act "in good faith and in the best interest of the patient". Thus, for example, if a physician refuses to transfer the information, pending the payment of an account, there may be an argument that he/she has breached this trust obligation.

The other issue which has been raised concerns the decision to charge a fee for photocopying and transfer of a medical record. There is no doubt that the physician is entitled to be so compensated. Nevertheless, any fee charged must be justified based on the effort involved. For example, if the physician is required to extensively review the record to make sure that it is accurate and suitable for transfer, there is obviously a significant element of professional time involved. If the transfer of a record is exclusively a clerical function, the cost should be proportionally lower. Thus, it would seem unwise to establish a flat fee for all such transfers. This is especially true since the *Code of Ethics* imposes on the physician the obligation to be prepared to discuss any such fees with the patient. Physicians are therefore obligated to consider the ability of the patient to pay for this service. Nevertheless, as noted above, much of such charges can be avoided by seeking alternative means of transferring the record. Either the entire record need not be transferred, or alternately, the original can be provided to the new physician to be returned after a review. In any case, it is considered improper to "profit" from one's records.

The College is considering the development of specific guidelines in this area. Comments from physicians are welcomed. In the meantime, physicians are encouraged to refer to *The Physician's Guide To Direct Billing*, produced by the New Brunswick Medical Society. The approaches stated in the guide will go a long way to avoid ethical and legal difficulties.

ACCESS TO PHYSICIANS:

Concerns have been raised regarding the policy of various physicians in accepting new patients. Physicians have the right under the *Code of Ethics* to refuse to see a patient. At the same time, the Code states that it is improper to interfere with a patient's right to choose a physician. Finally, Human Rights Legislation could be interpreted in a way which limits the ability of a physician to close their practice to a particular class of patients. The courts have interpreted medical practices to be public services to which the rules against discrimination apply.

It is realised that in various areas, both informal and formal policies have developed which may affect the access of certain patients to particular physicians. The College is working with physicians in those areas to insure that legal and ethical difficulties are avoided. In the meantime, physicians are encouraged to consider these issues when refusing to accept new patients. Comments on these issues are welcomed.

ELECTIONS:

At the last Council meeting, the Council elected Dr. Leonard Higgins of Saint John as president and Dr. Michael Perley of Woodstock as vice-president.