

COMPLAINTS & DISCIPLINE UPDATE



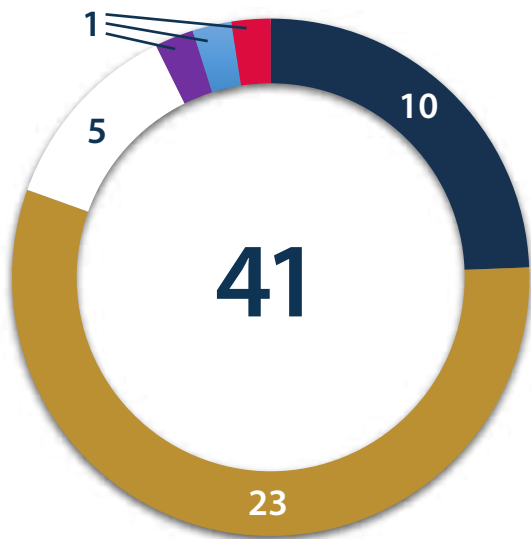
JANUARY TO JUNE 2019

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

UPDATES report on the College's complaints and discipline activities. They summarize cases in which the Complaints Authorization Committee (CAC) issues a caution /counsel, a publicized settlement was reached through the Alternative Dispute Resolution process, or a finding was made by the Adjudication Tribunal.

COMPLAINTS AUTHORIZATION COMMITTEE DECISIONS BY OUTCOME

(Files closed from January to June 2019)



- Resolved/withdrawn ●
- Complaint dismissed ●
- Complaint dismissed with direction
- Cautions /counsels ●
- Referred to alternative dispute resolution ●
- Referred to Tribunal hearing ●

January – June 2019	
Complaints received	39
Complaints resolved or withdrawn	10
CAC decisions	31
CAC meetings	6

CMA CODE OF ETHICS AND PROFESSIONALISM

The governing Council of the College of Physicians and Surgeons of Newfoundland and Labrador has adopted the Canadian Medical Association's **new code of ethics and professionalism** as a compilation of guidelines providing a common ethical framework for medical practitioners in this country.

Physicians practising in this province are expected to be familiar with this document.

To read the code of ethics, see CPSNL'S website (cpsnl.ca) or the CMA website (cma.ca).

2019 NEW / UPDATED STANDARDS & GUIDELINES

NEW Standard
Consent to Treatment

REVISED Guideline
Independent Medical Examinations

SEE CPSNL.CA FOR FULL TEXTS

IMPROVING HOW YOU COMMUNICATE HELPS AVOID COMPLAINTS

A REMINDER: You know why you make clinical choices, but do your patients? Talk to them about why a treatment is or is not necessary. Explain the reasons for clinical recommendations, and listen to your patients' concerns.

COMPLAINTS & DISCIPLINE UPDATE

WHAT ARE “CAUTIONS / COUNSELS”?

The Complaints Authorization Committee issues a caution or a counsel when it finds reasonable grounds to believe a physician has engaged in “conduct deserving of sanction” (as defined in the *Medical Act*) but determines that a referral to a hearing is not warranted. Most cautions/counsels are issued for one of these reasons:

- Failing to maintain the expected standard of practice “such as to indicate gross negligence or reckless disregard for the health and well-being of the patient” (as per the CPSNL Code of Ethics)
- A breach of the CMA Code of Ethics and Professionalism, often in respect to communication
- Persistent or egregious conduct toward colleagues
- Failing to appropriately document a patient encounter

ALLEGATION : Failure to adequately inform patient

A patient’s spouse alleged that a physician failed to appropriately manage her iron deficiency.

COMPLAINTS AUTHORIZATION COMMITTEE DECISION

The Committee agreed that the patient’s iron deficiency would be considered a serious concern, until otherwise diagnosed through investigation. The Committee agreed that the physician should have fully discussed the differential diagnosis with the patient, so that the patient understood the consequences of declining further investigation. The physician should also have offered alternate investigations when a referral was refused and documented all discussions with the patient. The Committee agreed that there were reasonable grounds to believe that the physician engaged in professional misconduct as defined in the College’s Code of Ethics:

(h) 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, such as to indicate gross negligence or reckless disregard for the health and well-being of a patient.

The physician was counselled by the Committee.

ADJUDICATION TRIBUNAL HEARING

In its written decision (January 18, 2019), a CPSNL Adjudication Tribunal found Dr. Hugh Mirolo, a psychiatrist, guilty of professional misconduct. The decision related to a complaint that the Atlantic Provinces Medical Peer Review (APMPR) filed with the College on January 10, 2018.

According to the Tribunal’s decision, Dr. Mirolo was asked to attend an interview with the APMPR on November 17, 2017. Dr. Mirolo’s lawyer sent a letter raising concerns about the request, and the interview was rescheduled for January 12, 2018. On December 27, 2017, Dr. Mirolo requested another postponement, citing a previous non-resident patient commitment. The *Medical Act*, 2011 requires a medical practitioner whose standards of practice are subject to an assessment under the Peer Assessment Program, to cooperate fully with the Peer Assessment Committee and assessors. The Tribunal did not accept the reasons provided by Dr. Mirolo for his failure to attend on January 12 and found this failure to report to be in violation of *s. 61* and *s. 62* of the *Act*. Further, the Tribunal found his conduct amounted to professional misconduct as defined in the College’s By-Law 5 (professional misconduct includes contravening the *Act*, regulations, or by-laws) and that it was deserving of sanction. The Tribunal ordered:

1. Dr. Mirolo shall pay a fine of \$5,000 to the College and \$10,000 to the College as a contribution to the costs of the hearing
2. Dr. Mirolo must cooperate fully with the Peer Assessment Committee in scheduling a new interview in Halifax, which will occur with the usual notice requirements.
3. Any failure on the part of Dr. Mirolo to comply with the above will be dealt with in accordance with Section 52 of the *Act*: Failure to Comply.

A copy of the Adjudication Tribunal’s complete decision will be provided to www.canlii.org in accordance with the College’s By-Law 9.