

# COMPLAINTS & DISCIPLINE UPDATE

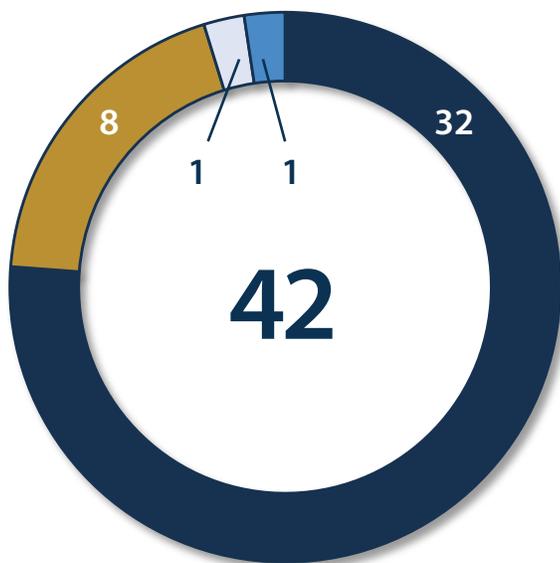


APRIL–JUNE 2018

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

This UPDATE reports on the College’s complaints and discipline activities for the second quarter of 2018. It provides summaries of cases in which a caution / counsel was issued by the Complaints Authorization Committee (CAC), a publicized settlement was reached through the Alternative Dispute Resolution process, or a finding was made by the Adjudication Tribunal.

## CAC DECISIONS BY OUTCOME JANUARY–JUNE 2018



Complaint dismissed ● Referred to tribunal hearing ●  
 Cautions / Counsels ● Alternative dispute resolution ●

## WHAT ARE “CAUTIONS / COUNSELS”?

The Complaints Authorization Committee issues a caution or a counsel when it finds reasonable grounds to believe a physician engaged in “conduct deserving of sanction” (as defined in the *Medical Act*) but it has determined that a referral to a hearing was 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, often in respect to communication
- Persistent or egregious conduct toward colleagues

**Many complaints can be avoided by improving physician–patient communications.**

## SUMMARY OF RECENT COMPLAINTS ACTIVITY

	Q1	Q2	Year to Date
Complaints received	28	24	52
CAC decisions	20	22	42
CAC meetings	4	4	8

# COMPLAINTS & DISCIPLINE UPDATE

## ALLEGATION #1: Specimen Misdiagnosis

### ALLEGATION

A patient alleged that a physician misdiagnosed her specimen as cancerous.

### COMPLAINTS AUTHORIZATION COMMITTEE DECISION

The Committee retained a consultant from another province to provide an opinion on the expected standard of practice.

The consultant was of the opinion that this was not a straightforward case and that the physician's error in interpretation fell within the expected standard of practice. However, the Consultant also noted that the diagnosis reached was unusual and provided the opinion that the physician should have sent the case for expert pathology review to a pathologist with more experience in this area.

The Committee accepted the Consultant's opinion and 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.*

### CAUTION / COUNSEL

The physician was counselled to:

- Refer cases for expert pathology review in circumstances where the specimen reveals an unusual diagnosis with serious consequences to the patient.

## ALLEGATION #2: Implantation of Incorrect Medical Device

### ALLEGATION

A patient alleged that a physician inserted the wrong medical device during a surgical procedure.

### COMPLAINTS AUTHORIZATION COMMITTEE DECISION

The physician acknowledged that an incorrect device was inserted but was unable to determine the source of the error. The Committee retained a consultant from another province to provide an opinion on the expected standard of practice.

The consultant was of the opinion that, despite the number of people that could have made a mistake that would lead to the implantation of an incorrect device, the physician was in control of the surgery and was therefore ultimately responsible for the mistake. The consultant also noted that the physician did not meet the expected standard of practice, citing the breakdown in the process of double- and triple-checking that the device was correct before it was implanted.

The Committee accepted the consultant's opinion and 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.*

### CAUTION / COUNSEL

The physician was counselled to:

- Ensure that robust clinical guidelines and procedures are in place and followed for collecting patient-specific medical devices.

# COMPLAINTS & DISCIPLINE UPDATE

## ALLEGATION #3: Unauthorized Disclosure of Health Information

### ALLEGATION

A patient alleged that a physician disclosed his health information to a third party without his consent. With consent of the child's other parent, the physician had written to a third party about the patient's child, but the letter also disclosed health information relating to the patient.

### COMPLAINTS AUTHORIZATION COMMITTEE DECISION

The Committee agreed there were reasonable grounds to believe that the physician had disclosed the patient's personal health information to a third party without consent.

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:

*(p) Giving information concerning the condition of a patient or any services rendered to a patient to a person other than the patient, except with the consent of the patient or as required by law or permitted by law.*

### CAUTION / COUNSEL

The physician was counselled to:

- Not disclose personal health information without the consent of a patient, unless the disclosure is required by law or permitted by law.

The College of Physicians and Surgeons NL has adopted the CMA Code of Ethics as an ethical guide for physicians practising in Newfoundland and Labrador. Physicians should familiarize themselves with this code, which can be found on the CMA website: [www.cma.ca](http://www.cma.ca).

## ALLEGATION #4: Comments Reflecting Lack of Respect

### ALLEGATION

A patient alleged that a physician spoke to her in a manner that was insulting and demeaning while discussing the physician's recommendation for a pap test.

### COMPLAINTS AUTHORIZATION COMMITTEE DECISION

The Committee was concerned that the patient felt demeaned and insulted by the physician and agreed that the comments alleged to have been made were inappropriate. The Committee noted that the physician did not deny making the comments, but said that the patient had misinterpreted them.

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:

*(oo) Inappropriate comments or questions reflecting a lack of respect for patient's dignity or privacy.*

### CAUTION / COUNSEL

The physician was cautioned to:

- Avoid making comments that reflect a lack of respect for patient's dignity.

The physician was counselled to:

- Complete a course in effective communication, as approved by the Committee.

For further details about the complaints process, see [www.cpsnl.ca](http://www.cpsnl.ca).  
The CPSNL Complaints Coordinator can be reached at (709) 726-8546.