

This newsletter is forwarded to every licensed medical practitioner in the Province of Manitoba. Decisions of the College on matters of standards, amendments to regulations, by-laws, etc., are published in the newsletter. The College therefore expects that all practitioners shall be aware of these matters.

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Lessons Learned

Breach of Patient Privacy

The College recently received a letter expressing concern about a breach of patient privacy. The patient was concerned that her physician had a number of patient charts in the examining room where the patient waited to see the physician. The patient was concerned that she and other patients who waited in the room had access to the personal health information in those charts, and that this was a potential breach of *The Personal Health Information Act*.

Many physicians routinely keep in one examination room patient charts with letters to be written, test results for review, consultant's reports for review, etc. Patients waiting to see the physician are left alone in the examination room with the charts. While the vast majority of patients would never consider looking at the charts, leaving charts where they are accessible is a concern.

The Personal Health Information Act requires trustees to adopt reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy, and integrity of personal health information.

Leaving patient charts in a room where patients wait for their meeting with the physician would not appear to meet the requirement to safeguard the personal health information in these charts. It would also appear not to comply with the requirements of the federal privacy legislation. The following article contains further information on the federal legislation.

PIPEDA

Effective January 1, 2004, the *Personal Information Protection and Electronics Documents Act* ("PIPEDA") came into force for the private sector. It applies to commercial activities, and the federal government has advised that it is of the view that PIPEDA applies to physician/patient relationships in the office setting, even though the cost of the visit is funded by Manitoba Health. One of the principles of PIPEDA is that personal information must be protected by security safeguards appropriate to the sensitivity of the information. The security safeguards must protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use or modification. PIPEDA states that more sensitive information should be safeguarded by a higher level of protection than less sensitive information. It also states that medical records are almost always considered to be sensitive. One of the methods of protection required by PIPEDA is physical measures, such as keeping material in locked filing cabinets and restricting access to offices where personal health information is stored. Leaving patient charts in a room where patients wait for their meeting with the physician would not appear to meet the requirements of PIPEDA.

PIPEDA is relatively new legislation and many physicians have not yet adapted their office practices to adhere to its requirements. The federal government has published a series of questions and answers entitled PIPEDA Awareness Raising Tools Initiative for the Health Sector. This may be found at the Industry Canada website at www.ic.gc.ca. As well, the MMA and/or CMA have published tools to assist physicians in complying with PIPEDA. The College encourages physicians to access these resources and to review your office practices to ensure you are appropriately safeguarding patient charts to maintain patient privacy rights.

Lessons Learned (cont'd.)

Shared Responsibility of Care

A recent Complaints Committee review highlights some of the challenges of shared responsibility of care. During the investigation of a complaint, it became apparent that there was a lack of clear communication between the physicians regarding each other's responsibility in the provision of care. In this case, the patient was referred by his family physician to a surgeon who excised a lesion, which proved to be malignant. It was not clearly indicated who would be responsible for the coordination of the patient's follow-up care. Each of the physicians assumed the other was managing the follow-up, so the patient did not receive the care he required. Members are advised to determine who will be responsible for coordinating follow-up care in such circumstances.

Advising Patients of Bad News

The Investigation Committee recently reviewed two cases that appeared to conflict with one another. In the first case, a patient complained because her physician failed to inform her of a serious illness by telephone. In the second case, the physician did call the patient to deliver the bad news, and the patient and her family complained that the news was delivered over the telephone without first contacting a family member to arrange for support. Members will appreciate that the latter issue raises concerns about personal health information and privacy.

The Investigation Committee suggests that there is no easy answer to this issue. Rather, each patient should be dealt with on an individual basis. The important principle is that patients are individuals and it is important that a physician discuss in advance with each patient how potential bad news should be delivered. We encourage all members to have a heightened awareness of this issue.

New President-Elect Dr. Heather Domke

Congratulations to Dr. Heather Domke on being elected President-Elect to the College. Dr. Domke has served on various College committees since 1996, including Legislation & Ethics (Chair), Standards (Chair), Program Review, Qualifications and Inquiry.

Dr. Domke is a family practitioner in Winnipeg and will assume the position of President-Elect at the Annual Meeting of Council in June, 2005.

Fetal Alcohol Spectrum

Disorder: Diagnostic Services

Fetal Alcohol Syndrome (FAS), partial FAS, alcohol related neurodevelopmental disorder (ARND) and alcohol related birth defects are collectively referred to as Fetal Alcohol Spectrum Disorder (FASD). The estimated prevalence of FASD is 9 per 1000, and may be much higher in some Manitoba communities. Only a subset of children and adults with FASD will have the facial features, pre and post natal growth impairment, failure to thrive, developmental delays and birth defects that identify them as having FAS. The majority of FASD individuals will not have FAS, but experience learning disability, cognitive impairment and behavioural difficulties. They often have attention difficulties and are diagnosed with ADHD. They may have poor social and adaptive skills, and lack good judgment and common sense. They may exhibit inappropriate sexual behaviour. They often fail in school, resulting in a high school drop out rate and poor employment opportunities. They are at higher risk of mental health problems such as depression, suicide, and drug and alcohol addictions. These problems can result in encounters with the criminal justice system.

Earlier diagnosis is associated with an improved long-term outcome and prevention of some of these secondary disabilities. Early diagnosis also provides an opportunity to prevent the birth of another affected child in the family.

Therapeutic educational and behavioural interventions are becoming more readily available for FASD individuals in Manitoba. FASD diagnostic services are available for children and young teens by contacting the Coordinator, Clinic for Alcohol and Drug Exposed Children (CADEC), Room CK275, Children's Hospital, 840 Sherbrook Street, Winnipeg, MB R3A 1S1, Telephone (204) 787-1828 or Fax (204) 787-1138.

Additional services are available to select rural and northern communities through telemedicine and televideo conferencing. For Thompson and other communities in the Burntwood Region referrals can be made to the Program Coordinator, Fetal Alcohol Support Team, 867 Thompson Drive S., Thompson MB R8N 1Z4, Telephone (204) 667-6580 or Fax (204) 778-1424.

Danger....Several Family Members Using a Single DPIN Number

Recently the College was notified that a DPIN printout for a patient at a Winnipeg hospital Emergency Department contained 17 medications, only 9 of which were actually being taken by the presenting patient. The other 8 were being taken by the patient's spouse.

Members should note the importance of ensuring that the DPIN number entered on a prescription is that of the specific patient for whom the medication is prescribed.

Opening of the Manitoba

Prostate Centre

CancerCare Manitoba has opened the Manitoba Prostate Centre, a provincial program devoted to timely, coordinated and interdisciplinary assessment, diagnosis and treatment of prostate disease. The Centre offers diagnostic services (urodynamics, ultrasound, cystoscopy, biopsies) as well as a range of treatment services under the guidance of Medical Director Dr. Ross MacMahon. As the Centre expands, multimodal clinics, including urology, urologic oncology, radiation oncology and medical oncology are planned.

The Prostate Cancer Advocacy Group has been involved in program development of the Centre and identifying the support needs of men and their families. These services include decision-making around treatment options as well as psycho-sexual support. These services are provided by professional staff (clinical nurse specialist, primary nurse and psychosocial clinician), and are available to all men with prostate cancer, and self-referral or referral from family physicians or other urologists are welcome. However, a medical referral will be required for patients wishing to see a physician at the Centre.

Family physicians can refer to the Prostate Centre by faxing the referral to 786-0621. Questions about referrals can be directed to the referral office at 787-2176. The Prostate Centre's general line is 787-4461.

Adverse Drug Reporting - Transdermal Fentanyl

The Canadian Paediatric Society has published the following warning:

Two cases of respiratory arrest in adolescents using transdermal fentanyl showed the following:

- In each case, this was a first-time opioid use.
- The fatal outcomes occurred at 14 and 21 hours after application of Duragesic 25.
- Transdermal fentanyl is not suitable for acute pain management or for opioid naïve patients.
- Signs of serious opioid-related toxicity include hypoventilation and cognitive impairment and should be recognized early and acted upon rapidly.

Our Apologies...

In our September newsletter, we inadvertently announced that Dr. Jack Armstrong was awarded the Order of Manitoba. In fact, Dr. Armstrong was awarded the *Order of Canada*.

College to Cease Participation

in Clinical Practice Guidelines Program and Manitoba Prescribing Practices Program

As part of the College's planning process, the Executive considered the College's participation in all government-funded programs at its meeting in June, 2004. Given the College's obligations to its core functions (registration, discipline and standards) and its current fiscal position, the decision was made to limit the College's involvement in some government-funded programs.

Effective October 31, 2004, the College ceased its participation in the Clinical Practice Guidelines Program in its current form. We are discussing with government alternate ways to assist physicians in accessing clinical guidelines from other sources, such as specialist professional societies.

The College will also cease administration of the Manitoba Prescribing Practices Program no later than March 31, 2005. The College will continue to cooperate in a multi-professional program to review prescribing issues, but it will not administer the program. At the present time, we do not have details of how any further prescribing practices program may operate. We are discussing with government the transition of this program, and will provide updates in the future.

Co-signing American Prescriptions

In mid November, many physicians received a facsimile notice suggesting they may co-sign American physicians' prescriptions, and that this was legally and medically approved.

Members are reminded of the College Statement on Prescribing Practices that does **NOT** approve such a process.

Congratulations...

- To Dr. Frank Duerksen, who was recently presented with an award by Region 2 of the Royal College of Physicians and Surgeons of Canada for outstanding service to medical education and to the international and Aboriginal communities.
- To Dr. John Foerster, who was named the recipient of the St. Boniface General Hospital Research Foundation 2004 International Award.

Message From the President

2005 brings us its share of work and interesting topics good and bad. Globally, the tsunami in south East Asia has taken its toll of lives but it did inspire a wave of generosity and solidarity from Manitobans that made me proud. A lot of fellow colleagues are at the various sites trying to provide the best possible care while most of us continue our duties in Manitoba.

At the College level the Registrar and staff will endeavour to work diligently to ensure that our mandate is fulfilled and that we are in a position to face the changing challenges of our environment.

Over the next few months you will hear more of the following topics:

1. **Physician Profiles:** The implementation of a Physician Profile system is a recommendation of the Sinclair/Thomas Cardiac Inquest Report and is presently unique to the medical profession. Details have yet to be finalized. The College has been very involved in the development process to ensure the fairness and accuracy of the information provided to the public. The Regulation has first to be approved by Council this coming February. This will permit and obligate the College to put a profile of each physician on its website for public access.
2. **The Registered Nurse Extended Practice RN[EP]:** This new first line health practitioner register will be proclaimed this April by the government. The first RN[EP] should start practising upon the successful completion of the national exam in June 2005. This should ensure competency of the nurses and thus protect the public. Similar to a midwife, the RN[EP] will be an independent health practitioner with privileges to order some diagnostic tests, prescribe drugs and perform procedures outlined in the regulations. Details on how these practitioners will relate to the medical profession are still being finalized. This regulation is a government prerogative and will go forward. The College is collaborating with the intention of ensuring the safety of Manitobans by making suggestions to help minimize the gaps that may arise in the system.
3. **Ownership Linkage:** At the Council level we are exploring the concept of ownership linkage. In brief, the Council is responsible to the owners (public of Manitoba at large) and should have a communication link with them. Physicians represent a special subgroup of the ownership but there is a multitude of special interest groups with occasionally conflicting agendas and infinite ways of regrouping the public (youth, women, elderly, acute diseases, chronic, psychiatric, surgical, preventative medicine, curative medicine, rehabilitation, etc). We are investigating the possible ways of achieving these communication goals to enhance our policy-making decisions. These could include surveys, one on one meetings, multi-stakeholder consultations, etc. These need to be timely, relevant, and efficient. The Council has initiated an assessment of how it is achieving its ends (the reason the College exists). It is difficult to find objective ways of measuring success (to what degree have we achieved our ends) and assess the individual

cost of each achievement.

This is by no means an exhaustive list of topics on our plate. As President, I am sure to be challenged by many intriguing and interesting issues and greet this New Year with unparalleled enthusiasm.

Maurice Roy, M.D.

Note from the Registrar

Warmest best wishes to all for 2005. Below are just a few of the areas in which your College is presently involved and working hard:

The President's Letter notes several important areas of involvement over the past few months:

- Dr. Babick and I have been attending meetings of the Steering Committee for Implementation of Physician Profiles. Ms. C. Sztaba from the MMA is also a member of that group. We expect the regulation to be enacted later this year. Upcoming newsletters will contain more specifics of what will be included and how the outstanding information will be collected.
- Dr. R. Sangster and I have participated in the group developing the regulation for extended practice nurses, the RN[EP]. These individuals are expected to be approved formally beginning in June 2005.
- **MANQAP:** Dr. Babick, Ms. Baker and Dr. Goldstine are working hard at redeveloping the MANQAP process. They have exciting new ideas that will allow it to be a true quality assurance program for laboratory medicine, nuclear medicine and diagnostic imaging meeting the standards of the new century. We'll keep you updated.
- **Manitoba Prescribing Practices Program:** The College will no longer be administering the MPPP [i.e. the triplicate prescription program] after March 31, 2005. The next newsletter will provide information on any changes that will be required for those who are prescribing narcotics or controlled medications.
- The CPSM is working with the College of Registered Nurses of Manitoba, the Manitoba Pharmaceutical Association, the WRHA and Manitoba Health as well as other organizations and the public to promote advances in patient safety. We also have a nominee on the Manitoba Institute for Patient Safety.

Scientific Acceptability Statement Under Review

In accordance with the College's Policy Governance Model, the College is reviewing *Statement No. 153 – Scientific Acceptability – Procedure Approval*. The full text of the Statement is available on the College website (http://www.cpsm.mb.ca/Guidelines_and_Statements/153.html).

The review of this Statement is the first step in a broader review of physician involvement in medical research projects generally, their relationship with the pharmaceutical industry and conflicts of interest.

Currently, the Statement defines "an approved research project" as:

Any project which has been approved by a Committee established by a Canadian University or regulatory authority in compliance with *The Code of Conduct* for research involving humans (final report of the Tri-Council working group – Medical Research Council (MRC), Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC, 1997).

The effect of the Statement is to require that any physician participating in medical research, including clinical trials, must limit his/her participation to a research project that has obtained ethics research board approval from a Canadian university or medical regulatory authority. Until recently, the University of Manitoba Research and Ethics Board (U of M REB) reviewed protocols from any member of this College. The U of M REB recently announced that it would no longer review protocols from physicians who do not hold academic appointments with the University. An avenue that had previously been available to members was obtaining approval from the College of Physicians and Surgeons of Alberta's Ethics Board. That board has now indicated that it will only accept protocols from its own members.

Although it is still open for physicians to participate in approved research projects that have been approved by an ethics committee established by any Canadian university or medical regulatory authority, concern has been expressed that many physicians are prohibited from participating in research by virtue of the College's policy.

The College has a role to play in protecting the public in relation to physician participation in medical research and allowing physicians to participate in medical research in a meaningful and ethical manner. The current review is intended to cover of all matters addressed in Statement No. 153, including:

- Generally, what should be the ethical requirements of physicians participating in medical research;
- In particular,
 - what should be included in the definition of experimental procedures and therapies;
 - what should be the procedure by which experimental procedures are deemed scientifically acceptable;

- what should fall within the scope of "an approved research project".

Members are encouraged to review the existing Statement and provide input on this important issue. Your comments must be received no later than April 30, 2005 and must be made in writing. Please address your comments to the attention of Ms Lynne Arnason, General Counsel, at the College's offices.

Report of Disciplinary Proceedings

**CENSURE: IC04-04-09
DR. GORDON HENRY DYCK**

On October 27, 2004, in accordance with Section 47(1)(c) of The Medical Act, the Investigation Committee censured Dr. Dyck as a record of its disapproval with respect to his conduct:

- in counter-signing prescriptions for American patients in violation of College Statement #805,
- in practising without ensuring that he had professional liability insurance coverage that extended to all areas of his practice as required by Regulation 25/03, and
- in entering into an arrangement with a pharmacy in circumstances where the pharmacy required patients to sign a waiver of legal rights against him before providing the service requested by the patient.

I. PREAMBLE

In or about February 2002, the College published in its newsletter the full text of Statement #805 on prescribing practices as follows:

*"Prescribing of medications by physicians based solely on information received without direct patient contact fails to meet an acceptable standard of care and is outside the bounds of professional conduct. There is no direct patient contact when the physician relies upon a mailed, faxed or an electronic medical questionnaire or telephone advice to the physician"**

Counter-signing a prescription without direct patient contact fails to meet an acceptable standard of care and is outside the bounds of professional conduct.

In order to meet an acceptable standard of practice, the physician must demonstrate that there has been:

1. *a documented patient evaluation by the Manitoba physician signing the prescription, including history and physical examination, adequate to establish the diagnosis for which the drug is being prescribed and identify underlying conditions and contra-indications;*
2. *sufficient direct dialogue between the Manitoba physician and patient regarding treatment options and the risks and benefits of treatment(s);*
3. *a review of the course and efficacy of treatment to assess therapeutic outcome, and*
4. *maintenance of a contemporaneous medical record*

that is easily available to the Manitoba physician, the patient, and the patient's other health care professionals.

An exception exists for physicians who are fulfilling responsibility as part of a call group.

Statements of the College represent the formal position of the College on a topic, and members of the College are expected to comply with Statements. Members of the College are also expected to be aware of all items published in the College newsletter.

Pursuant to Regulation 25/03, physicians are required to possess and maintain professional liability coverage that extends to all areas of the physician's practice, through either or both of membership in the Canadian Medical Protective Association and a policy of professional liability insurance that meets the requirements stipulated in Regulation 25/03.

Articles 12 and 45 of the Code of Conduct provide:

“12. Provide your patients with the information, alternatives and advice they need to make informed decisions about their medical care, and answer their questions to the best of your ability.

45(a) Enter into associations only if you can maintain your professional integrity.”

In the absence of direct contact with the patient, the physician has no direct knowledge of whether the patient has received information regarding the medication from the originating physician and it is not possible for the physician to obtain the informed consent of the patient in accordance with the requirements of Article 12 of the Code of Conduct.

In these circumstances, it is an abuse of the inherent imbalance of power in the physician/patient relationship to require the patient to sign a waiver in advance of receiving a service. It is therefore a violation of Article 45 of the Code of Conduct for a physician to enter into an arrangement with a pharmacy when the pharmacy requires the patient to sign a waiver of legal rights against the pharmacy and the physician.

II. THE RELEVANT FACTS ARE:

1. In or about May 2003, Dr. Dyck entered an arrangement with a pharmacy that he would counter-sign prescriptions for American patients who were customers of that pharmacy.
2. Pursuant to the arrangement with this pharmacy, during the period from on or about May 2003 to in or about February, 2004 Dr. Dyck received from the pharmacy completed patient information forms, containing such information as past medical history, allergies, and medications, and the American prescriptions the patient wished to have filled. Dr. Dyck reviewed these documents and, if acceptable to him, he counter-signed the prescriptions.
3. Dr. Dyck had no direct patient contact with any of the patients or any of the American physicians before counter-signing the prescriptions. On occasion, he did make written recommendations in connection with the patient's care.

4. Upon receipt of advice from the pharmacist that the College did not approve of physicians counter-signing prescriptions, Dr. Dyck ceased counter-signing. Upon receipt of correspondence from the College, he took appropriate steps to ensure that the pharmacy did not use his counter-signed prescriptions for any renewals or refills.
5. In his response to the College, Dr. Dyck stated that at the time, he believed that he was within the scope of the exception set forth in Statement #805, but he now acknowledges having breached the Statement.
6. At all material times Dr. Dyck was a member of CMPA, but did not have professional liability coverage with respect to counter-signing prescriptions for American patients.
7. In relation to the requirement for professional liability coverage, Dr. Dyck stated that he concluded that it was appropriate to self-insure based upon his assessment of the level of risk. After discussion with legal counsel following receipt of the College's correspondence, he became aware that self-insurance is not in compliance with the requirement for professional liability coverage in Regulation 25/03.
8. Before the pharmacy filled prescriptions for the patient, the patient was required to sign a document entitled, "Patient Acknowledgment and Limited Power of Attorney" which contained, amongst others, the following term:

“The Canadian Physician shall not be liable for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by any inadequacy, deficiency or unsuitability of the prescription issued by the Canadian Physician or the inadequacy, deficiency or unsuitability of the Canadian Physician's review of my medical information. In no event will the Canadian Physician be liable or responsible for any damages whatsoever, including direct, indirect, putative, special or consequential damages, even if advised of the possibility thereof.”

III. ON THESE FACTS, THE INVESTIGATION COMMITTEE RECORDS ITS DISAPPROVAL OF DR. DYCK'S CONDUCT IN:

1. Counter-signing prescriptions for American patients in violation of Statement #805 of the College and in violation of the requirements of the Code of Conduct.
2. Practising without professional liability insurance coverage that extended to all areas of his practice in violation of Regulation 25/03.
3. Entering into an arrangement with a pharmacy when the pharmacy required patients to sign a waiver of legal rights against him before providing the service requested by the patients.

In addition to appearing before the Investigation Committee and accepting the censure, Dr. Dyck paid the costs of the investigation in the amount of \$2,782.85.

Notices, etc...

Changes of Address

Occasionally a doctor has failed to receive communications from the College because of a change of address which has not been given to us. All members notify the College, even by telephone, of any change of address so that communications can be kept open. Please note that the College Bylaws require notification within 15 days. The College cannot be responsible for failure to communicate to registrants who have not notified us of address changes, or the results of such failures.

Notice of Council Meeting

The next Council Meeting of the College of Physicians and Surgeons of Manitoba will be held on Friday, February 18, 2005 at the Clarion Hotel beginning at 9:00 a.m. Members of the College who are interested in attending the meeting as observers are asked to notify the College at 774-4344 for registration. Registration is necessary because seating is limited.

Approved Billing Procedure

When physicians wish to recruit a colleague to carry out the practice of medicine in their place and bill in their names, the College must be advised *in advance* and approve the specific time interval. Only when written approval is received may a physician act in place of another. Without written approval as a locum tenens, one physician may replace another, but must act and bill independently.

Moving? Retiring?

If you are leaving the province or retiring from practice, the By-law requires that you advise where your records will be stored, so that we may note it on your file and advise interested parties.

By-Law #1 requires that any member who has not practised in the province for a period in excess of two years without the permission of Council shall, in accordance with section 16(1) of The Medical Act, be struck from the Register. The effective date of erasure shall be two years after that member's cessation of practice.

Officers and Councillors 2004-2005	
President:	Dr. M. Roy
President Elect:	Dr. R. Graham
Past President	Dr. S. Kredentser
Treasurer	Dr. A. Arneja
Investigation Chairman:	Dr. L. Antonissen
Registrar:	Dr. W. Pope
Deputy Registrar:	Dr. T. Babick
Assistant Registrar:	Ms. D. Kelly
Chair of Council:	Dr. M. Roy
Term expiring June 2006	
Central Plains	Dr. L. Antonissen, Portage
Interlake	Dr. C. Chapnick, Gimli
Interlake	Dr. R. Graham, Selkirk
Northman	Dr. K. Sethi, Flin Flon
Parklands	Dr. D. O'Hagan, Ste. Rose
Winnipeg	Dr. A. Alvi
	Dr. N. Goldberg
	Dr. J. James
	Dr. A. MacDiarmid
	Dr. S. Sharma
	Dr. R. Onotera
	Dr. K. Saunders
	Dr. S. Sharma
	Dr. E. Stearns
	Dr. R. Suss
University of Manitoba	Dr. R. Danzinger
Public Councillor	Mr. W. Shead
Public Councillor	Ms. S. Hrynyk
Term expiring June 2008	
Brandon	Dr. B. MacKalski
Eastman	Dr. B. Kowaluk, Oakbank
Northman	Dr. N. Nwebube, Thompson
Westman	Dr. S. Chapman, Neepawa
Winnipeg	Dr. A. Arneja
	Dr. H. Domke
	Dr. S. Kredentser
	Dr. R. Lotocki
University of Manitoba	Dean D. Sandham
Public Councillor	Mr. R. Toews
Public Councillor	Mr. W. Crawford
Clinical Assistant Register (expires 2005)	Dr. F. Al-Mohammed