

CONFLICT OF INTEREST IN COMMERCIAL VENTURES



Standard of Practice S-019
Quality Assurance Committee
Approved by Council: February 14, 2012
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Note to readers: In the event of any inconsistency between this document and the legislation that affects chiropractic practice, the legislation governs.

INTENT

To describe for members what a conflict of interest is for the purposes of section 1(9) of Ontario Regulation 852/93.

To advise members that:

- they may engage in commercial ventures in accordance with this standard of practice and all relevant CCO standards of practice.
- there is an inherent power imbalance that exists in the doctor/patient relationship.
- they must protect the interests of all patients above the commercial interests of the member.
- it is a potential conflict of interest to solicit patients for commercial ventures, such as self referral and selling or dispensing of products.

It is expected that a member's practice be conducted in a professional manner and that the focus of the practice be on the health care of the patients. A patient's need for health care must be the first priority over any financial considerations of the member.

A member must disclose to a patient prior to the performance of an act that is considered to be a conflict of interest. Failure to do so may be considered to be disgraceful, dishonourable or unprofessional conduct. A member must also be aware of the possibility of damage to the reputation of the profession by the appearance of a conflict of interest, even though an actual conflict of interest may not exist, and avoid creating such a perception.

A member must record any disclosure of a conflict of interest in the patient health record.

DESCRIPTION OF STANDARD

Conflict of Interest

- It is a conflict of interest for the purposes of section 1(9) of the professional misconduct regulation for a member to engage in a relationship or arrangement as a result of which the

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member's personal interests could improperly influence his/her professional judgment or conflict with his/her duty to act in the best interest of the patient.

- Without limiting the generality of section 1(9), it is a conflict of interest for a member to:
 - give or receive a rebate, gift or benefit to or from a supplier of health care products or services or to or from a health, legal or any other professional or practitioner for a patient referral;
 - give or accept credit to or from a supplier or give or receive a benefit from a supplier of health care products or services or to or from a health, legal or any other professional or practitioner for a patient referral, unless the terms of credit provide a reasonable time for repayment and a reasonable rate of interest;
 - refer or receive a referral of a patient to or from a supplier of health care products or services in which the member has a financial interest unless the member discloses the interest to the patient; and
 - sell a product to a patient for more than fair market value plus a reasonable and customary dispensing fee.
- In disclosing any conflict of interest, the member shall:
 - disclose the member's conflict of interest to the patient when giving or receiving a rebate, gift, benefit or credit, or making or receiving a referral;
 - advise the patient that his/her choice of professionals, facilities, services or suppliers will not affect the quality of the health services provided by the member;
 - record the disclosure of the conflict of interest in the patient health record; and
 - disclose information related to the referral to CCO upon request.
- A member shall not subject a patient to any undue pressure or duress in giving or receiving any referral to or from a supplier of health care products or services, or a health, legal or any other professional or practitioner;
- A member is reminded that he/she is responsible for:
 - the actions of his/her staff, while performing their roles as members of staff;
 - any communications of a commercial nature made by staff to a patient; and
 - any potential conflicts of interest staff has with a patient.

Please see Guideline G-005: Guidelines Related to Office Staff for further detail.

Self Referral

Self referral means a member's referral of a patients to facilities, services or suppliers outside the member's practice, in which the member has a direct or indirect financial interest or gains any benefit. A member may undertake self referral provided that:

- the member has advised the patient that his/her choice of facilities, services or suppliers will not affect the quality of the health services provided by the member;
- the member has disclosed his/her interest to the patient when making a referral
- the member has recorded the disclosure of the conflict of interest in the patient health record; and
- information about the referral will be disclosed to CCO upon request.

Selling or Dispensing of Products

In the context of his/her chiropractic practice, a member may market and sell products that are within the scope of the chiropractic practice. Examples include orthotics, braces, pillows and nutritional supplements. In doing so, a member shall:

- establish a reasonable and customary fee for the sale of a product and advise the patient if there are ongoing fees;
- inform the patient that the patient's choice of health care products will not adversely affect the quality of health services provided by the member;
- recognize the inherent power imbalance in the doctor/patient relationship and ensure patient interests are protected above any commercial interests of the member or staff;
- record the disclosure in the patient health record; and
- comply with, and ensure staff comply with, any conflict of interest and advertising regulations, standards of practice, policies and guidelines of CCO.

LEGISLATIVE CONTEXT

Chiropractic Act, 1991

Scope of Practice

The practice of chiropractic is the assessment of conditions related to the spine, nervous system and joints and the diagnosis, prevention and treatment, primarily by adjustment, of,

- (a) dysfunctions or disorders arising from the structures or functions of the spine and the effects of those dysfunctions or disorders on the nervous system; and
- (b) dysfunctions or disorders arising from the structures or functions of the joints.

Ontario Regulation 852/93: Professional Misconduct

The following are acts of professional misconduct for the purposes of clause 51 (c) of the *Health Professions Procedural Code*:

- 2. Contravening a standard of practice of the profession or failing to maintain the standard of practice expected of members of the profession.
- 9. Practising the profession while the member is in a conflict of interest.
- 24. Failing to disclose to a patient the fee for a service before the service is provided, including a fee not payable by the patient.
- 33. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.