

Conflict of Interest

As a Member of the College of Respiratory Therapists of Ontario, you are professionally accountable to practise in accordance with the standards of practice of the profession. The CRTO uses the phrase “standards of practice” to refer to the legislation, regulations, standards, policies and guidelines that establish practice parameters. This Practice Guideline may, therefore, be used by the CRTO to determine whether appropriate standards of practice and professional responsibility have been met and/or maintained.

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The patient/client and Respiratory Therapist relationship is fiduciary (duty of loyalty, good faith and diligence) in nature and is built on trust. That trust is very important and should not be undermined by a conflict of interest or the perception of a conflict of interest. This practice guideline outlines what constitutes a conflict of interest and provides direction for members in dealing with conflict of interest situations.

WHAT IS A CONFLICT OF INTEREST?

A conflict of interest is created when you put yourself in a position where a reasonable person could conclude that you are

- undertaking an activity or
- have a relationship

that affects or influences your professional judgment. You must ensure that your professional judgment is not influenced by, and does not appear to be influenced by, any financial or non-financial consideration. You should not be seen, or perceived, to give preferential treatment to any person or organization. Professional misconduct is defined as practising respiratory therapy while in a conflict of interest. Before acting, take a step back and consider how your action(s) might be interpreted by someone else.

Respiratory Therapists must protect the trust relationship between themselves and their patients/clients. Do not place yourself in a position where a reasonable patient/client, or other person, might conclude that your professional expertise or judgment may be influenced by your personal interests, or that your personal interests may conflict with your duty to act in the best interests of your patient/client. It is not necessary for your judgment to actually be compromised.

HOW IS CONFLICT OF INTEREST DEFINED?

A conflict of interest exists where a Respiratory Therapist engages in any private or personal business, undertaking or other activity or has a relationship in which,

- the Respiratory Therapist's private or personal interest directly or indirectly conflicts, may conflict or may reasonably be perceived as conflicting with his or her duties or responsibilities as a health care professional, or
- the Respiratory Therapist's private or personal interest directly or indirectly influences, may influence or may reasonably be perceived as influencing, the exercise of the member's professional duties or responsibilities, and
- A conflict of interest may be actual or apparent (perceived).

WHAT IS A BENEFIT?

Conflicts of interest are often described as involving the receipt of a benefit that conflict with one's duty to a client. A benefit may be described as a financial or non-financial consideration to a Respiratory Therapist that might reasonably conflict or appear to conflict with one's duty to a

client. Conflict of interest concerns arise even where the benefit is conferred upon a person related to the Respiratory Therapist, or a company, corporation, business partnership or entity that is owned or controlled, wholly, substantially or actually, directly or indirectly, by the Respiratory Therapist or a person related to the Respiratory Therapist. Non-financial benefits may include a personal gain or advantage, for example, in a research project a benefit that may influence treatment decision or clinical activities.

WHAT KIND OF CONFLICTS OF INTEREST ARE THERE?

While most people think about financial interests when they consider a conflict of interest, it is important to realize that conflicts of interest may be other than financial in nature.

A real (actual) conflict of interest exists when a “person has a private or personal interest of which he or she is aware, that is connected with the person’s professional responsibilities that it would reasonably influence the person carrying out their duties”. A real conflict exists whether or not you are subjectively influenced by the private interest and regardless of whether you obtain personal benefit.

An apparent (or perceived) conflict exists when there is “an apprehension, which a reasonable person could have, that a conflict of interest exists”.

An apparent conflict of interest exists as soon as a reasonable person foresees that you have a private interest that may influence how you carry out your duties or responsibilities.

WHAT IS A PERSONAL OR A PRIVATE INTEREST?

A personal or private interest that conflicts with a professional duty may arise if you solicit or receive a benefit, gift, advantage, preferential treatment, or honorarium, including:

- monetary payment
- hospitality
- a rebate, credit, discount or reimbursement for goods or services
- a payment or reduction of a debt or financial obligation
- a payment of a fee for consultation or other services
- a loan
- a present (particularly if it is more than token in nature)
- a service at a reduced or no cost

The size and significance of the personal or private interest is relevant to considering how to manage the situation.

A conflict of interest cannot be avoided by moving the benefit to a related person or a related company. In other words, in considering whether or not a real or apparent conflict of interest exists, you must also consider that benefits to a related person or a related company are also a benefit to you. It is also improper for you to offer a benefit, gift, etc., to another health professional that may influence their professional judgment because this places the other professional in a position of conflict of interest.

WHEN MAY I PROVIDE SERVICE IF I AM IN A CONFLICT OF INTEREST POSITION?

In some situations a conflict of interest is so significant that a Respiratory Therapist should not provide a service to the client at all (e.g., a client who severely injured your family member in a drunk driving accident). In other cases the client may be in such a vulnerable or dependent position that disclosure is an inadequate safeguard (e.g., a dependent family member, an elderly client). However, in most circumstances, services can be provided by the Respiratory Therapist with appropriate safeguards. In the event you have a conflict of interest respecting a product or service you must, at a minimum:

- disclose to the patient/client, prior to the service or product being provided, that you have a conflict of interest and the nature of the interest or benefit; AND
- inform the patient/client the option of selecting an alternate service provider or product (and, where one exists, provide the name of at least one comparable service provider or product); AND
- assure the patient/client that the service, products or health care provided will not be adversely affected by his or her selection of an alternate supplier or product;

AND THEN

- permit the patient/client to select which service or product he or she wants.

As with any other interaction with your patient/client, it is very important to keep documentation of your interactions with respect to conflict of interest.

ILLUSTRATIONS OF CONFLICTS OF INTEREST

1. Gifts solicited, offered, or received for services or care provided OR when it might be perceived that the gift is for services or care provided. This may include meals, entertainment, or travel (e.g. a home oxygen vendor offers you, or a related person tickets to a hockey game and you are in a position, or perceived to be in a position, to influence the referral of patient/clients for home oxygen services).
2. Free registration for an event which is solicited, offered, or received from or by a supplier when other participants are required to pay a registration fee, except in situations where the free registration is in recognition of your participation in the event (e.g. as a presenter or moderator).
3. Referral of a patient/client to a business in which you or a related person/company has a financial or other interest where you do not disclose the interest to the patient/client and provide alternatives, where available, and choices.
4. Offering, soliciting or using an exhibitor's pass to a convention when you are not an employee or an affiliate of the exhibitor.
5. Using confidential information for personal benefit without consent, such as for grant funding or in an application for another job.
6. Submitting a manuscript for publication without full disclosure of funding, equipment and supplies support.

ILLUSTRATIONS OF WHERE CONFLICTS OF INTEREST ARE UNLIKELY

1. Offering, or availing yourself of a hospitality suite or hospitality food and beverage to which a broad group of individuals have unrestricted access.
2. Soliciting, offering, or accepting pens, paper or other reasonable or incidental items or gifts of a promotional nature at a conference.
3. Soliciting, offering or accepting entertainment or hospitality that is not related to any exercise of professional judgment as a respiratory therapist (e.g. a vendor of respiratory therapy equipment offers you tickets to an entertainment event and you are not in a position, or perceived to be in a position, to influence the purchase of equipment).
4. Accepting reasonable, usual and customary hospitality (e.g. attending a holiday party given by a company)

ADDITIONAL CONSIDERATIONS

Self-referral is referral of a patient/client, by you, to a business in which you or a related person/company have a financial or other interest. Self-referral is permitted where there is full disclosure and assurances to the patient/client, including providing the patient/client with the option of seeking alternative services. You should retain written documentation to verify that full disclosure was made to the patient/client.

If you are employed by a company, institution, agency, etc., you may independently provide a professional service to a

patient/client that is provided by your employer if, before providing the service, the patient/client is informed that the service is independent of the employer, the patient/client is given the option of seeking alternative services, the patient/client is informed of any fees involved and the patient/client selects your service/product. Again, you should retain written documentation to verify that full disclosure was made to the patient/client. Normally you would also ensure that your employer is agreeable to this practice as well.

You may manage a patient/client's property or finances only if you have been appointed the person's attorney or guardian of property in accordance with the Substitute Decisions Act. The appointment should not be made because of an existing or previous professional relationship (e.g., you are selected because you are a family member or a close friend). It is important to note that professional misconduct is defined, in part, as "Influencing a patient or client to change his or her will or other testamentary instrument". Conflicts of interest involving vulnerable clients must be managed with extra caution.

A FINAL WORD

If you are in doubt err on the side of caution. Although the College can provide guidance regarding conflicts of interest, the individual Respiratory Therapist is responsible at the time to determine if a conflict of interest situation exists. If someone else believes that you are in a conflict of interest position, that person may submit a complaint to the College.

G L O S S A R Y

related person	means any person connected with another person by blood relationship, marriage, common-law, co-habitation, partnership or adoption, namely: <ul style="list-style-type: none">• persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other• persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other• persons are connected by common-law if the persons have a conjugal relationship and live together, have a cohabitation agreement or are the parents (together) of a child• persons are connected by a partnership when they live together or have a close personal relationship that is of primary importance in both lives• persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other person or a blood relation of the other person.
related company	means a company, corporation or business partnership or entity that is owned or controlled, in whole or in part, directly or indirectly, by a person or another person related to the person.
Respiratory Therapist	is a Member of the CRTO.

Comments on this practice guideline are welcome and should be addressed to the Professional Practice Advisor of the College of Respiratory Therapists of Ontario.

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