

Conflict of Interest

PROFESSIONAL PRACTICE GUIDELINE



Professional Practice Guideline

CRTO publications contain practice parameters and standards that should be considered by all Ontario Respiratory Therapists in the care of their patients/clients and in the practice of the profession. CRTO publications are developed in consultation with professional practice leaders and describe current professional expectations. It is important to note that these CRTO publications may be used by the CRTO or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

Resources and references are hyperlinked to the Internet for convenience and referenced to encourage exploration of information related to individual areas of practice and/or interests. Bolded terms are defined in the Glossary.

It is important to note that employers may have policies related to conflict of interest situations RTs may encounter. If an employer's policies are more restrictive than the CRTO's expectations, the RT must abide by the employer's policies. Where an employer's policies are more permissive than the expectations of the CRTO, the RT must adhere to the expectations of the CRTO.

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table of contents

Introduction	4
Definitions	5
Conflict of Interest	5
Actual Conflict of Interest	5
Potential Conflict of Interest	5
Perceived Conflict of Interest	5
Benefit	5
Financial Benefit	5
Non-Financial Benefit	5
Personal or Financial Interest	6
Personal Interest	6
Financial Interest	6
Non-arm's Length Relationship	6
Identifying a Conflict of Interest	7
Preventing a Conflict of Interest	10
Illustrations of When a Conflict of Interest is Unlikely	11
A Final Word	12
Glossary	13

Introduction

An essential element of safe, competent and ethical care in Respiratory Therapy (RT) practice is placing patient/client interests above personal and financial interests. The patient/client and RT **relationship** is **fiduciary** (duty of loyalty, good faith and diligence) in nature and is built on trust. This trust is very important and should not be undermined by a conflict of interest or even the perception of a conflict of interest.

The new ***Conflict of Interest regulation***, which is within the *General Ontario Regulation* (O. Reg. 596/94) established under the ***Respiratory Therapy Act*** (RTA), was approved in 2013. This regulation clearly states that “a **Member** shall not practice the profession while in a conflict of interest”. Practising the profession while in a conflict of interest is considered to be **professional misconduct** under the ***Professional Misconduct regulation*** (O. Reg. 753/93). Therefore, ideally RTs should not place themselves (or allow themselves to be placed) in any situation where there is an actual, potential or perceived conflict of interest. However, every scenario is unique, making it difficult to clearly define every possible set of circumstances where a conflict of interest might exist in advance. The intent of this Professional Practice Guideline (PPG) is therefore to provide Members with key factors to consider when determining if a conflict of interest is present, and then apply these factors to their specific situation.

Please note that words and phrases in **bold** lettering are cross-referenced in the Glossary at the end of the document.

This guideline is divided into three primary sections:

1. Definitions
2. Identifying a Conflict of Interest
3. Preventing a Conflict of Interest

Definitions

Conflict of Interest

A conflict of interest exists when an RT is in a position where his/her duty to their patient/client could be compromised, or could be perceived to be compromised, by a personal relationship or benefit. A conflict of interest may be actual, potential or perceived.

Actual Conflict of Interest – means that something has happened to influence an RT's professional judgment during the course of their practice.

Potential Conflict of Interest - occurs when a **reasonable person**, would conclude that an RT might fail to fulfil their professional obligation to act in the best interest of the client.

Perceived Conflict of Interest - where a reasonable person may conclude that the RT's professional judgment has been improperly influenced, even if that is not actually the case.

Benefit

A benefit may be described as a financial or non-financial consideration that might directly or indirectly influence, or appear to influence, an RT's professional judgment and/or objectivity.

Financial Benefit – considered a tangible conflict because it can be seen and measured (e.g., rebate, credit, gift, profit, business interests).

Example:

Being offered a commission for every patient that is added to a company's roster.

Non-Financial Benefit - may include a personal gain or advantage that may influence treatment decisions or clinical activities (e.g., a patient/client provides an RT with a letter of reference for a research grant application).

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 an actual, potential or perceived conflict of interest exists, an RT must acknowledge that benefits to a related person or a related company are also benefits to them.

Personal or Financial Interest

The **Conflict of Interest regulation** (O.Reg 596/94) states the following:

“A member is in a conflict of interest if the member's personal or financial interest, or the personal or financial interest of another person who is in a non-arm's length relationship with the member conflicts (actual), appears to conflict (perceived) or potentially conflicts (potential) with the member's professional or ethical duty to a patient or the exercise of the member's professional judgment ¹.”

Personal Interest – (e.g.) status, employment, career advancement.

Financial Interest - (e.g.) monetary payment, 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 that is more than token in nature, a service at a reduced or no cost.

Scenario: An equipment vendor offers a department four free registrations to an upcoming RT conference. The manager, who is an RT, raffles the registrations off to her staff.

The individual staff RTs would not likely be in a conflict of interest, provided they do not have significant input into decisions made about what equipment is purchased. However, in this scenario, there is a perceived conflict of interest on the part of the RT manager. Any reasonable person may conclude that the manager's professional judgment has been improperly influenced by the “gift”. Even if he/she did not have any input into equipment procurement decisions, there is a significant likelihood of the manager influencing the person who makes those decisions.

Non-arm's Length Relationship - People who are related to one another or joined in a business relationship are considered to be in a “non-arm's length relationship”. This is because of potential for them to have undue influence over one another, possibly having an impact on their actions.

¹ Conflict of Interest Regulation (O. reg. 596/94) s.2

Identifying a Conflict of Interest

The Conflict of Interest regulation (O. Reg. 596/94) outlines the situations where an RT might find themselves in an actual, potential or perceived conflict of interest [s. 3 (1)]. The likelihood of a conflict of interest increases when:

- The magnitude of the benefit is substantial (e.g., a full course meal with drinks at an expensive restaurant vs. muffins & coffee);
- The benefit is personal (e.g., a cash donation given a specific individual vs. the entire RT department);
- There is no educational component (e.g., a department being offered lunch during RT week without any educational session vs. a lunch & learn); and
- It involves a patient/client (or their family) where there is an ongoing professional relationship (e.g., a current home care patient/client offers their RT a piece of antique china vs. the family of a deceased patient/client offering the same gift in gratitude for the RT's past services).

Three Key Factors to Consider when Identifying a Conflict of Interest

1. Why is this benefit being offered to me? (i.e., what advantage does this transaction provide to the person/organization proposing the benefit?)
2. Are there factors in this situation that influence, or might influence, my professional judgement and/or objectivity?

Scenario: An RT working in an asthma clinic has been approached by the owner of a local health food store to see if she would consider offering a line of herbal asthma remedies in her clinic. The RT believes that these products would be beneficial to some of her patients/clients and, in addition, she would also receive a percentage of the profit from the sales.

There are several issues involved with the above scenario. The first is the fact that such an arrangement clearly places the RT in a conflict of interest, and should not be undertaken. The other concern is that the use of these herbal products is not likely part of the current medically accepted guidelines for the treatment of asthma.

3. Is it possible that others might perceive that my professional judgement and/or objectivity is impaired?

Scenario: An RT has been asked by the family of a patient/client in the pulmonary rehab clinic where they work if they can sublet her apartment while she is travelling during the summer.

This could be a conflict of interest as it may alter how the RT provides care to the patient/client in the future because the relationship is no longer purely professional in nature.

Additional Considerations

1. Is my **relationship** with this patient/client purely professional?

Treatment of a Spouse*

The sexual abuse provision in the *Regulated Health Professions Act* (RHPA) [Schedule 2 s. 1(3)] prohibits healthcare professionals from treating their spouses in a professional capacity. **Therefore, a CRTO Member must not provide respiratory therapy services to their spouse.**

* “spouse”, in relation to a Member, has been defined in the RHPA as:

(a) a person who is the member’s spouse as defined in section 1 of the Family Law Act, or

(b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years.

In addition, it is the view of the CRTO that RTs should avoid treating other family members as well. In providing treatment to a family member who is not a spouse, the Member risks not only being in an actual, potential or perceived conflict of interest, but they also risk a lack of objectivity that may affect their professional judgement. However, the CRTO recognizes that there may be circumstances where the RT is the only practitioner available to provide the necessary care, as is the case in sole-charge practice settings. In situations where it is in the patient’s best interest for the RT to treat a family member who is not their spouse, this may be permissible until such time as alternative care arrangements can be made. In such circumstances, the RT is encouraged to transfer care to an appropriate provider as soon as possible.

For more information on what constitutes sexual abuse, please see the CRTO’s Abuse Awareness & Prevention PPG.

2. Have I (or do I plan to) offer or receive a benefit (financial or non-financial) related to the referral of this patient/client to my practice or to the services that I provide?

Scenario: An RT works both for a home care company and the local hospital. While working at a hospital, he is required to arrange home oxygen for a patient/client who wants to be set up with one particular company. However, it is the RT's professional opinion that the patient/client would receive better services if they went with the company he works for.

Whether this is an actual or potential conflict of interest situation depends on if the RT will benefit in any way from adding this patient/client to his home care company's roster. Also, there is a chance the patient may perceive this to be a conflict once they find out that the RT works for the company they are recommending. The best way for the RT to deal with this is to declare his relationship with the home care company up front, before offering his professional opinion.

3. Have I (or do I plan to) enter into an **agreement** (including related to my employment) that influences/appears to influence my professional judgement.

Example: The RT Manager of a Sleep Lab enters into an exclusive service agreement with the manufacturer of a particular CPAP device because they're able to offer an incentive that the other companies cannot.

4. Have I (or do I plan to) engage in any form of revenue, fee or income sharing agreement that influences/appears to influence my professional judgement²?

Scenario: An RT owns a sleep lab and rents some of the office space to a home care company. The RT receives a percentage of the profits of the home care company; meaning that the more patients/clients the RT sends to the home care company, the greater her share.

To avoid a conflict of interest in this situation, the RT must disclose the income sharing arrangement to her patients/clients in advance of any referral to the home care company, and assure them that their care will not be affected if they choose another company.

Preventing a Conflict of Interest

RTs should avoid any situation that may result in a real, potential or perceived conflict of interest. The *Conflict of Interest regulation* states that an RT is not considered to be in a conflict of interest related to a recommendation for a referral or treatment provided that the RT:

- Discloses the nature of the relationship or benefit to the patient/client; and
- Where applicable, advises the patient/client that his or her selection of supplier of a product or service will not adversely affect the assessment, care or treatment that they receive³.

It is also advisable that the RT:

- Provide the patient with information on at least one other source of the product(s) or service(s) required; and
- Documents any discussions with patient related to conflict of interest in the patient's record (e.g., documentation of full disclosure)

² Conflict of Interest Regulation (O. reg. 596/94) s. 3(1)(g).

³ *Conflict of Interest Regulation* (O. reg. 596/94). s. 4 (1) & (2).

Illustrations of When a Conflict of Interest is Unlikely

1. An RT offering or availing him/herself of a hospitality suite or hospitality food and beverage that a broad group of individuals have unrestricted access to.
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).
5. Referring a patient/client to a home care company that has an agreement with the RT's hospital but that offers no direct benefit to the RT specifically*.

*Please Note...

Even in situations where the RT does not receive a benefit, there remains a professional obligation to put the interest of the patient/client above any personal or organizational interests.

Scenario: A staff RT works for a hospital that has a revenue sharing agreement with a respiratory home care company that maintains an office in the building. While they have not stated it outright, the hospital's management team has implied that they would like the RTs to encourage patients/clients to use this particular company.

It is the RT's responsibility to protect the interest of their patients/clients, and not allow themselves to be placed in a conflict of interest situation. Therefore, it is advisable to have a process in place that requires the RTs to disclose the hospital's relationship with that particular home care company and allow the patients/clients to choose another company if they wish. The patient/client must also be assured that the care they receive will be in no way impacted by their decision to employ the services of a different home care company.

A Final Word

Given their professional knowledge and position of authority, RTs are accountable for identifying, preventing and managing conflict of interest situations. It is important to note that consent on the part of a patient/client is not a defence in a conflict of interest situation.

The CRTO recommends that if an RT is in doubt about whether a conflict of interest situation exists, it's best to err on the side of caution. Although the CRTO can provide guidance regarding conflicts of interest, the individual Respiratory Therapist is responsible for determining if an actual, potential or perceived conflict of interest situation exists at the time. If anyone believes that an RT is in a conflict of interest, that person may submit a complaint to the CRTO.

Glossary

Agreement - a revenue, fee or income sharing arrangement.

Fiduciary - a relationship based on trust and confidence.

Member - refers to a Respiratory Therapist (RT) who is registered with the CRTO as either a Registered Respiratory Therapists (RRT), Practical (limited) Respiratory Therapist (PRT) or Graduate Respiratory Therapists (GRT).

Professional Misconduct - as defined in the *Professional Misconduct Regulation* (o. Reg. 753/93), established under the *Respiratory Therapy Act*.

Reasonable Person - an individual who is neutral and informed.

Relationship - in the course of their practice, RTs engage in therapeutic (patient/client) and professional relationships (students, colleagues, coworkers).

Related Person - any person connected with a Member by blood relationship, marriage, common-law or adoption, and

- 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, for a period of not less than three years, cohabited in a relationship of some permanence; and
- persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship.

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.



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This Professional Practice Guideline will be updated as new evidence emerges or as practice evolves. Comments on this guideline are welcome and should be addressed to:

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