

CONFLICT OF INTEREST

PROFESSIONAL PRACTICE GUIDELINE



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COLLEGE OF RESPIRATORY THERAPISTS OF ONTARIO (CRTO) PUBLICATIONS CONTAIN PRACTICE PARAMETERS AND STANDARDS 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. BOLDDED TERMS ARE DEFINED IN THE GLOSSARY.

It is important to note 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.

The CRTO will update and revise this document every five years, or earlier, if necessary. The words and phrases in bold lettering can be cross referenced in the Glossary at the end of the document.

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INTRODUCTION

An essential element of safe, competent, and ethical care requires Respiratory Therapists (RT) to place patient/client interest above their own 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 [Conflict of Interest regulation](#), which is within the General Ontario Regulation (O. Reg. 596/94) established under the [Respiratory Therapy Act](#), was approved in 2013. This regulation clearly states that “a **Member** shall not practice the profession while in a conflict of interest”. Practicing 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, each scenario is unique and it is difficult to clearly define in advance every possible set of circumstances where a conflict of interest might exist. 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, which they can then apply to their specific situation.

Note that words and phrases denoted by **bold** lettering are cross-referenced in the Glossary at the end of the document.

This guideline is divided into three (3) 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 their professional judgement, or duty to their patient/client could be compromised, or could be perceived to be compromised, by a personal relationship, commercial interest or financial 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 their practice.

Potential Conflict of Interest

occurs where 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

is 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

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

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 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.

FOR EXAMPLE:

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

INTERESTS

PERSONAL AND FINANCIAL

The [Conflict of Interest regulation](#) (O.Reg 596/94 s.2) 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.”

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 the staff.

WHAT DO YOU DO?

The individual staff RTs would not likely be in a conflict of interest, provided they do not have significant input into decisions made about which piece of equipment to purchase. 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 they 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 there is the potential for them to have undue influence over one another, and this may have an impact on their actions.

IDENTIFYING A CONFLICT OF INTEREST

The *Conflict of Interest regulation* (O. Reg. 596/94) outlines the situations in which 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 to 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 they would consider offering a line of herbal asthma remedies in their clinic. The RT believes that these products would be beneficial to some of their patients/clients and, in addition, the RT would also receive a percentage of the profit from the sales.

WHAT SHOULD YOU DO?

There are several issues involved with the above scenario. The first deals with 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 the RT's apartment while they are travelling during the summer.

WHAT SHOULD YOU DO?

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?

SCENARIO:

An RT works both for a home care company and the local hospital. While working at a hospital, they are 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 one that the RT works for.



WHAT SHOULD YOU DO?

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 their home care company's roster. Also, there is a chance that 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 their relationship with the home care company up front.

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?
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?

FOR EXAMPLE:

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

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 their share.



WHAT SHOULD YOU DO?

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

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 judgement (O. reg. 596/94) s. 3(1)(g)?

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. In the *RHPA*, sexual abuse is defined by an action, not by the intent. In addition, under the *RHPA*'s definition of sexual abuse, only a patient can be sexually abused. As such, regulated health professionals who provide treatment to their spouse, which then makes them their patient, fall within this definition. In other words, if a health professional is found to be treating their spouse (with whom they inherently have established a sexual relationship) they too would be subject to the mandatory revocation provisions of the *RHPA*. **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.

Treating a sexual partner who does not meet the definition of a spouse under the RHPA will continue to be considered sexual abuse.

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. Emergency care of family members where no one else is available is acceptable because the benefits outweigh the "challenges posed by the personal relationship". 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](#).

PREVENTING A CONFLICT OF INTEREST

RTs should avoid any situation that may result in real, potential or perceived conflicts 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 their selection of supplier of a product or service will not adversely affect the assessment, care or treatment that they receive. (O. reg. 596/94). s. 4 (1) & (2).

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).

ILLUSTRATIONS OF WHERE A CONFLICT OF INTEREST IS UNLIKELY

1. An RT offering or availing themselves 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 RTs hospital but that offers no direct benefit to the RT*.

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.

**WHAT SHOULD YOU DO?**

It is the RTs 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 that 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 is best to err on the side of caution. Although the CRTO can provide guidance regarding conflicts of interest, the individual Respiratory Therapist is responsible at the time to determine if an actual, potential or perceived conflict of interest situation exists. 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), which was 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 means 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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