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## Guidelines Regarding Conflict of Interest

This document is a physician **guideline** approved by the Council of the College of Physicians and Surgeons of Nova Scotia.

**Guidelines** contain recommendations endorsed by the College of Physicians and Surgeons of Nova Scotia. The College encourages its members to be familiar with and to follow its **guidelines** whenever possible and appropriate. Note that **guidelines** may contain references to College **standards**.

### Foreword

*Professionalism in medicine requires the physician to serve the interests of the patient above his or her self-interest. Professionalism aspires to altruism, accountability, excellence, duty, service, honor, integrity and respect for others.*

- Project Professionalism, American Board of Internal Medicine, 2001

### Introduction

A conflict of interest refers to a clash between the physician's duty to act in the patient's best interests and the personal interests of the physician. Physicians must make professional decisions based upon the best interests of the patient and must ensure that their own personal interests do not conflict or appear to conflict with the interests of the patient.

### Situations in Which a Conflict of Interest May Arise

Conflict of interest may arise in a transaction that involves:

- a physician;
- a member of the physician's family; or
- a corporation owned or controlled by the physician or by a member of the physician's family.

Conflict of interest may arise in a circumstance of:

- direct ownership interest in a Facility;
- indirect ownership interest in a Facility; or
- any method of sharing the profit of a Facility.

Benefit to a physician may be direct or indirect and may include:

- any financial advantage;
- any good or service sought or received by the physician; or
- credit, except where the interest and terms of payment are reasonable and are not in any way related to the referral of patients.

Many Canadian courts, including the Supreme Court of Canada, have recognized the physician-patient relationship as a fiduciary (trust) relationship that requires physicians to act foremost in accordance with patients' wishes and best interests and to avoid promoting their own interests. Simple disclosure of a conflict does not necessarily resolve a physician's conflict of interest. Where an allegation of conflict of interest is made, the onus is on the physician to justify his or her actions.

### **College Expectations Regarding Ownership and Interest**

Physicians are entitled to have relationships with business entities, but should be aware of instances where conflicts of interest or the appearance of conflict of interest can occur. When a physician enters an agreement respecting an ownership or proprietary interest in a body or individual vending goods or services (herein "Facility"), the College's expectations are as follows:

The terms of any agreement whereby a physician gains an ownership or proprietary interest in a Facility should not:

- be related to the past or expected volume of referrals of patients or other business from the member to the Facility;
- include any requirement that the physician make referrals to the Facility or otherwise generate professional business for the Facility as a condition for entering or continuing the agreement; or
- provide the physician with a return on investment directly attributable to the physician's volume of referrals to the Facility.

The terms of the agreement should not differ significantly from terms which fully informed parties negotiating at arm's length would regard as fair for the ownership or proprietary interest which is the subject of the agreement.

Where a physician has an ownership or proprietary interest in a Facility, the College's expectations are as follows:

- Signage that is clearly visible within the Facility that should include the physician's name and should state the physician's interest in the Facility.

- When a patient requires a prescription or a referral for services, the physician should provide a non-directive prescription or referral, which can be used at the Facility of the patient's choice.
- The physician should refrain from making disparaging comments to patients about Facilities that compete with the Facility in which the physician has an interest.

### **Examples of Conflict of Interest**

The following are examples of some situations that may give rise to a conflict of interest or the appearance of a conflict of interest. This list is not exhaustive.

Referring a patient to any laboratory, pharmacy, dispensing optician, public clinic, private clinic or any other Facility in which the physician has a financial interest.

Prescribing for a patient any goods or services, including but not limited to drugs, medical appliances, diagnostic procedures, or other forms of therapy or treatment, dispensed from a Facility in which the physician has a financial interest.

Profiting directly or indirectly as a result of work referred by/to a Facility in which the physician has a financial interest.

Supplying any drug, medical appliance, product or biological preparation to a patient at a profit unless required for the immediate treatment of the patient in an emergency or where an alternate source of supply is not reasonably available. In these situations, physicians should only charge patients for cost recovery.

Accepting kickbacks, referral fees, or engaging in fee-splitting. This includes taking or receiving remuneration in the form of a commission, discount, or refund from a person who fills a prescription issued by the physician or who makes or supplies appliances.

### **Acknowledgements**

The College of Physicians and Surgeons of Nova Scotia wishes to thank the Colleges of Physicians and Surgeons of Alberta, British Columbia and Manitoba for allowing Council to review and adapt their Conflict of Interest Guidelines for the preparation of this document.

### **Further Reading**

College of Physicians and Surgeons of Alberta (2005). Conflict of Interest.

College of Physicians and Surgeons of British Columbia (2007). Conflict of Interest.

College of Physicians and Surgeons of Manitoba (2003). Conflict of Interest.

## **Document History**

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