

## PROPOSED REGULATION FOR CONFLICT OF INTEREST

### Regulated Health Professions Act, Section 95-21 of Schedule 2

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1.

It shall be an act of professional misconduct for the purposes of clause 51(1)(c) of the Health Professions Procedural Code for a member to participate in professional activities that constitute a conflict of interest in violation of this regulation.

2.

In this regulation,

(1) "*benefit*" means any benefit, gift, advantage or emolument of any kind, whether direct or indirect, and includes:

- a. any monetary payment;
- b. any rebate, credit or discount on or reimbursement of the cost of goods or services;
- c. the receipt of goods or services at no charge or at a cost which is less than prevailing market rates;
- d. the payment or reduction of any amount of any debt or financial obligation;
- e. the receipt of any consultation fee or other fee for services rendered;
- f. any loan except in accordance with a written evidence of indebtedness,
  - i) executed at the time of transfer of funds,
  - ii) witnessed at the time of actual execution by an individual whose name is legibly recorded on the document,
  - iii) available and produced to the College on demand, and
  - iv) that provides for a fixed term of the loan and fixes a set interest rate, both of which are reasonable having a view to prevailing market rates at the time of the loan;
- g. any loan that is interest free or related in any way to a referral made by the member;
- h. the acceptance of credit unless the credit is unrelated in any way to a referral of patients to the creditor and the credit is extended pursuant to an agreement in writing,
  - (i) executed at the time of the transaction,
  - (ii) witnessed at the time of actual execution by an individual whose name is legibly recorded on the agreement,
  - (iii) available and produced to the College on demand, and
  - (iv) that provides for a fixed term of credit and fixes a interest rate, both of which are reasonable having a view to prevailing market rates at the time of the transaction;

(2) "*related corporation*" means a corporation wholly or substantially owned or controlled, directly or indirectly, by a member or a related person of a member;

(3) "*related person*" means any person connected with a member by blood relationship, marriage, common-law or adoption, and

- a. persons are connected by blood relationship if one is the child or other descendent of the other or one is the brother or sister of the other,
- b. 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,
- c. persons are connected by common-law if persons are living together and, have cohabited for at least one year, or are together the parents of a child, or have together entered into a cohabitation agreement under section 53 of the Family Law Act,
- d. 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 connected by a blood relationship, except as brother or sister to the other.

3.

A member shall at all times in the practice of the profession:

- a) place the interests of his or her patients or clients ahead of the member's personal, financial, professional or other interests; and
- b) maintain the highest standards of integrity during the discharge of his or her professional responsibilities.

4.

It is a conflict of interest for a member to participate in any professional activity where the member's personal or financial considerations compromise or may compromise the member's judgment in that professional activity, or where such involvement may appear to provide the potential for the member's professional judgment to be compromised.

5.

(1) Without limiting the generality of sections 3 and 4, it is a conflict of interest for a member where the member, or a related person to the member, or a related corporation to the member, receives or accepts any benefit, directly or indirectly, from a manufacturer, dealer or other vendor of professionally related products which are or may be used by the patients or clients of the member, in consideration for or in any way connected with, the member promoting the sale of, prescribing or selling, the products of that manufacturer, dealer or vendor.

(2) Despite subsection (1), a member may receive or accept a benefit, salary or wage from a manufacturer, dealer or other vendor of professionally related products for promoting or selling its products if the member is employed by the manufacturer, dealer or vendor from which he or she accepts the benefit, provided that the member does not directly prescribe or sell such products to patients or clients.

6.

(1) Without limiting the generality of sections 3 and 4, where a member is employed by or with a company, institution, agency or other organization that provides health related services to the public, it is a conflict of interest for that member,

independently of his or her employer, to provide a professional service to a patient or client which is provided by the member's employer unless, before the member provides the service,

(a) the member informs the patient or client that the service is being provided independently of the member's employer;

(b) the member gives the patient or client the option of selecting an alternative service provider by, wherever possible, providing the patient or client with the name of at least one other comparable facility or service in the same geographic area, or, having explored all other potential facilities or services, the member concludes that access to a comparable facility or service cannot reasonably be arranged for the patient or client and the member so advises the patient or client;

(c) the member informs the patient or client of any fees for the service to be provided; and

(d) the patient or client then expresses a preference for the service in question.

7.

(1) Without limiting the generality of sections 3 and 4, subject to subsection (2), it is a conflict of interest for a member where the member:

(a) prescribes, recommends, sells or dispenses any product to, or orders any product for, a patient or client, in a situation where the member or a related person to the member or a related corporation to the member receives, or could potentially receive, any direct or indirect benefit from the sale or supply of such product; or

(b) refers a patient or client to a clinic or other facility in which the member, or a related person to the member, or a related corporation to the member, has any interest, or from which any such person receives, or could potentially receive, any benefit, directly or indirectly.

(2) It is not a conflict of interest for a member to engage in the activities referred to in subsection (1) provided that all of the following conditions have first been met:

(a) The member discloses to the patient or client as early as possible the nature of the interest or benefit to be derived by the member or the

(b) related person to the member or the related corporation to the member, in or from the facility or product in question;

(c) The member gives the patient or client the option of selecting an alternative service provider or alternative product by, wherever possible, providing the patient or client with the name of at least one other comparable supplier, facility or service in the same geographic area, and the member assures the patient or client that the choosing of an alternative supplier, facility or service will not affect the quality of health services provided by the member, or having explored all other potential service providers or products, the member concludes that access to a comparable service, facility or product cannot reasonably be arranged for the patient or client and the member so advises the patient or client; and

(d) The patient or client then expresses a preference for the service provided or the product sold or dispensed by the member.

8.

(1) Without limiting the generality of sections 3 and 4, it is a conflict of interest for a member who is an audiologist where the member sells or dispenses a hearing aid or an assistive listening device to a patient or client which the member has prescribed or ordered for, or recommended to, the patient or client, unless the following conditions have first been met:

(a) The member gives the patient or client the option of selecting an alternative supplier of the product by, wherever possible, providing the patient or client with the name of at least one other comparable supplier in the same geographic area, and the member assures the patient or client that the choosing of an alternative supplier will not affect the quality of health services provided by the member, or having explored all other potential suppliers, the member concludes that access to a comparable supplier cannot reasonably be arranged for the patient or client and the member so advises the patient or client; and

(b) The patient or client then expresses a preference for the product sold or dispensed by the member.

9.

Without limiting the generality of sections 3 and 4, where a member, or a related person to the member, or a related corporation to the member, has an interest in, or derives a benefit from, directly or indirectly, a business, product, service or facility which is not health related, it is a conflict of interest for the member to recommend or sell that product, service or business to a patient or client or refer a patient or client to that facility.

10.

Without limiting the generality of sections 3 and 4, it is a conflict of interest for a member, where the member or a related person to the member or a related corporation to the member, accepts or receives any benefit, directly or indirectly from, or confers any benefit, directly or indirectly on, any person for the purpose of making or accepting a referral of a patient or client.

11.

(1) Without limiting the generality of sections 3 and 4, it is a conflict of interest for a member to conduct, or permit to be conducted, a research project involving a patient or client, without the written and informed consent of the patient or client.

(2) The requirements of subsection (1) shall be met if the member:

(a) fully discloses the nature of the research project to the patient or client;

- (b) gives the patient or client the option of refusing to be involved in the project or withdrawing from it at any time;
- (c) assures the patient or client that a refusal to be involved in the project or a withdrawal from it will not affect the quality of services provided by the member; and
- (d) obtains a signed consent form from the patient or client.