Conflict of Interest

Preamble

The College has received a number of inquiries from physicians, patients and industry about conflicts of interest in medical practice. The inquiries generally fall into three categories:

1. The promotion and sale of both medical and non-medical products to patients where the opportunity exists for the physician to benefit financially;
2. Referrals of patients to facilities in which the physician holds a financial interest; and
3. Leasing space to or from a third party who supplies or sells medical products or services to the physician’s patients, and where this arrangement involves a reduced rent or preferred rental agreement for the physician.

Members of the College should be aware that all of these situations may constitute a conflict of interest, which can erode patient trust. In all circumstances, physicians are required to make professional decisions based on the best interest and wellbeing of their patient, without any potential for personal benefit. Conflict of interest can be direct or indirect, real or perceived, financial or non-financial.

The following describes the College’s position on conflict of interest as it relates to physicians practicing in BC, their family members, a corporation owned or controlled by the physician or a member of his/her family. It is supported by legislation and guiding ethical principles.

The College’s Position

Physicians should consider first the interests and wellbeing of their patients and avoid any situation that is, or may be reasonably perceived as, a conflict of interest. In any situation where there is potential for conflict of interest, members should seek direction from the College. In certain cases, the College may grant approval on the basis of specific conditions and restrictions.

The following guidelines should assist physicians who are concerned about conflict of interest in their medical practice.

1. Promoting and selling medical or non-medical products or supplies in the office

   Promoting and selling medical or non-medical products to patients for a profit is not only unethical, it constitutes a direct conflict of interest. Such transactions might reasonably be perceived as self-serving, and may compromise the fiduciary relationship between physicians and their patients. Selling products to patients should be avoided in most circumstances, especially if the same or similar products can be purchased elsewhere for a comparable price.
Products in question may include, herbal remedies, vitamins and supplements, intraocular lenses, dermatologic products, implanted devices and medical appliances, and other health-related items such as purified water or humidifiers.

Even if there is no direct financial gain for the physician, the selling of products might be considered ethically questionable since patients often believe that their physician’s recommendation naturally implies an endorsement of the product’s value and/or efficacy.

Further, concerns exist about whether or not a purchase by a patient from a physician can ever truly be voluntary since a patient may agree to make a purchase based on a misguided desire to please or secure the physician’s favour.

While selling products out of an office should not be looked upon as an opportunity to make a profit, there are some circumstances where selling products and supplies is necessary and appropriate. For example:

- The sale of products that must be administered in a medical office setting. In this case the charge for the product should not exceed the actual price paid by the physician, and may include a reasonable mark-up of 10-15% to cover overhead costs, such as handling, shipping and storage.

- The sale of therapeutic agents or medically-necessary supplies (e.g. support stockings) when no other facility can provide them at a reasonably convenient location, in a reasonable timeframe or at reasonable cost; for example, remote locations with limited access to hospitals, medical supply stores or pharmacies.

- The dispensing and sale of medications is not permitted, except in special circumstances of geographical isolation, or where the dispensing by pharmacies or agencies is not readily available.

Physicians who sell to patients should fully disclose:

- Their financial interest or arrangement with the manufacturer
- The wholesale cost of the item and the mark-up (if applicable)
- The availability of the same or a similar product elsewhere
- Documented evidence that describes the validity of the product and provides enough information for a patient to make an informed decision

(Reference: Policies and Guidelines, Selling Products out of the Office, College of Physicians and Surgeons of Nova Scotia.)

2. Referrals to facilities in which the physician has a financial interest.

Physicians who hold investment in a treatment or diagnostic facility that is operated separate and apart from their office practice must not refer their patients to that facility. Exceptions may include:

- Circumstances where limited diagnostic or treatment facilities exist and where alternatives are not readily available;
• Situations where the referring physician who holds investment also directly provides care and services approved by the College for that facility.

In these situations, a physician’s percentage return must be directly related to the physician’s equity or interest in the facility, and cannot be based on the percentage of volume of referrals. The patient should also be informed about the physician’s involvements in the facility.

(Reference: Conflict of Interest Policy, College of Physicians and Surgeons of Alberta.)

3. Leasing space to or from a third party

Physicians who rent space to or from a third party supplier of medical goods, appliances, services or equipment may be in a conflict of interest if they refer their patients to that supplier, and in exchange receive a preferred rental arrangement; for example, the referring physician’s rent is determined based on the volume of business generated by that physician; or the rent is markedly different from fair market value. This type of arrangement is not acceptable, and should be avoided.

Guiding Ethical Principles

CMA Code of Ethics

Fundamental Responsibilities

1. Consider first the wellbeing of the patient.

2. Practice the profession of medicine in a manner that treats the patient with dignity and as a person worthy of respect.

7. Resist any influence or interference that could undermine your professional integrity.

Responsibilities to the Patient

11. Recognize and disclose conflicts of interest that arise in the course of your professional duties and activities, and resolve them in the best interest of the patients.

12. Inform your patient when your personal values would influence the recommendation or practice of any medical procedure that the patient needs or wants.

13. Do not exploit patients for personal advantage.

23. Recommend only those diagnostic and therapeutic services that you consider to be beneficial to your patient or to others. If a service is recommended for the benefit of others, as for example in matters of public health, inform your patient of this fact and proceed only with explicit informed consent or where required by law.

Responsibilities to the Profession

49. Be willing to participate in peer review of other physicians and to undergo review by your peers. Enter into associations, contracts and agreements only if you can maintain your professional integrity and safeguard the interests of your patients.
50. Avoid promoting, as a member of the medical profession, any service (except your own) or product for personal gain.

Questions and Answers

1) How is the term “conflict of interest” defined?

The term conflict of interest as it applies to the practice of medicine refers to circumstances where a primary interest (such as patient health) is compromised by a secondary interest (such as financial profit). It describes a clash between a physician’s duty to act in the patient’s best interest, and that physician’s opportunity for personal gain. Physicians are required to make professional decisions based on the best interest of their patient, without any potential for personal benefit.

2) Under what circumstances would a conflict of interest occur?

A conflict of interest occurs when a professional or business arrangement provides an opportunity for a physician to receive a personal benefit over and above payment for his or her professional services. Conflict of interest can be direct or indirect, real or perceived, financial or non-financial. Common examples of conflict of interest situations include those where a physician: 1) accepts commissions, rebates, or gifts from any third party who provides a service to a patient; 2) profits directly or indirectly as a result of ordering drugs, appliances or diagnostic procedures from or referring work to any business or facility; 3) rents premises to or from a third party who supplies medical products, appliances, services or equipment to the physician’s patients, and in exchange receives a preferred rental arrangement.

Acknowledgements

In developing this updated policy on Conflict of Interest, the College referred to and cites several documents produced by other organizations, including existing policies from the Colleges of Physicians and Surgeons of Alberta, Manitoba, Ontario and Nova Scotia, the American College of Obstetrics and Gynecologists, the Canadian Medical Association, the American Medical Association, and the American Society of Plastic Surgeons.

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