



**Transitional Council of the  
College of Homeopaths of Ontario**

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## INTERPRETATIVE GUIDE

**NAME:** Professional Conflict of Interest  
**DOCUMENT No.:** 1

**This document is for information only, not consultation.**

*Note to Readers: In the event of any inconsistency between this document and the legislation that affects homeopathic practice, the legislation governs.*

### INTENT

The intent of this guideline is to provide guidance to homeopaths and the public about what may constitute a conflict of interest that may arise in a homeopathic practice.

### PREAMBLE

This interpretative document has been developed to assist homeopaths understand the concept of professional Conflict of Interest, as laid out in the draft Conflict of Interest Regulation for the College of Homeopaths of Ontario (see attached). The proposed regulation, at the end of this document, is before the Ministry of Health and Long-Term Care. Examples have been provided to explain the intent of the requirements and to assist homeopaths in avoiding situations that could be perceived as leading to a conflict of interest. The draft Conflict of Interest Regulation was distributed for 60-day public consultation from August to October, 2011.

### General Principle

Homeopaths are required to place the interests of their patients first. A conflict of interest arises when an incompatibility exists between the homeopath's personal or financial interest and the patient's interest. In other words, a conflict of interest has the potential to influence the homeopath to not put the patient first.

A conflict of interest can be direct or indirect. It need not only arise where the homeopath receives an inappropriate benefit. It can also occur where a close relative of the homeopath such as a parent, grandparent, child, spouse or sibling benefits or confers a benefit. A conflict of interest can also occur where we are dealing with a business owned and controlled by the homeopath or a close relative of the homeopath.

Since one cannot "read the mind" of a homeopath (and, human nature being what it is, one can "fool oneself"), objective rules need to be developed. The conflict of interest rules look to what a reasonable person might conclude from the surrounding circumstances regardless of what is actually going on in the mind of the homeopath.



## DESCRIPTION OF GUIDELINE

### Structure of the Draft Regulation

Subsection (1) of the regulation contains definitions of the words used elsewhere in the regulation. For example, it defines a “related person” as a close relative (e.g., parent, grandparent, child, spouse or sibling).

Subsection (2) sets out the general principle of what constitutes a conflict of interest. In essence, a conflict of interest arises where there is a competing consideration that might reasonably interfere with the homeopath’s exercise of professional judgment.

Subsection (3) describes the more common examples of conflicts of interest.

Subsections (4) and (5) indicate which forms of conflicts of interest are prohibited outright (most are) and which can exist with appropriate safeguards (e.g., referring a patient to oneself or to a related person for services or products).

Subsection (6) requires homeopaths to provide to the College, upon request, documents or information about any suspected conflict of interest. For example, if the College receives information that a homeopath is making unusual payments to the owner of a health food store who refers patients to the homeopath, the College could ask for an explanation of those payments to determine if there is a conflict of interest.

### Paying for Referrals

(3)(i) accepts a rebate, credit or other benefit by reason of the member referring a patient to any other person;

(3)(ii) offers, makes or confers a rebate, credit or other benefit to a person by reason of the referral of a patient to the member;

*Example:* A homeopath cannot give a free trip to Disneyworld to the family of a health food store owner who refers patients to him or her. Similarly, a homeopath cannot receive a credit from the owner of the health food store for every patient he sends to the health food store to purchase remedies. Such referrals are to be based on the professional judgment of who would be appropriate for the particular patient and not on the “kickbacks” received.

*Clarification:* This, like all of the provisions, is subject to the “reasonableness” test. Giving a bottle of wine or a box of chocolates once a year would not amount to conferring a “benefit”. Also, it is acceptable for a homeopath to refer a patient to a specific



supplier of a remedy (without a hope of reward) if the homeopath, in his or her professional judgment, believes that it is appropriate for the patient for him or her to do so.

### Inducements to Patients

(3)(iii) offers, makes or confers a rebate, credit or other benefit to a patient where the service is paid in whole or in part by a third party except for the provision to the patient, at no charge, a product of nominal value to be used in the maintaining or promoting of well-being or health;

*Example:* It would be a conflict of interest for a homeopath to offer a free iPod to every new patient covered by insurance. This form of inducement creates the impression that the insurance policy is paying for inducement and/or that service provided will be reduced to pay for the item i.e. the iPod. Patients should choose their homeopath on relevant criteria (reputation, skill, location, practice style) and not on the basis of inducements.

*Clarification:* A nominal gift to patients, (e.g., a tablet dispenser, samples of supplements, a calendar for appointments), is acceptable. This would not be considered as an inducement. However, even here the homeopath should exercise judgment in choosing a product that may help the particular patient's health and well-being (e.g., a tablet dispenser is of no use to a patient who takes his remedy in liquid form). On the other hand, a calendar may prove to be particularly useful to such a patient for logging of appointments or series of treatments. The homeopath should also avoid creating the impression that s/he is endorsing a particular brand of supplements unless there are unique features of the brand that are useful for a particular patient (e.g. the particular brand of supplements is well-suited to treat the patient's condition).

### Benefits for Materials or Equipment

(3)(iv) accepts, makes or confers a rebate, credit or other benefit in respect of materials or equipment including those intended to be provided to the patients.

*Example:* A homeopath orders a significant volume of supplements on a yearly basis. After reviewing three different suppliers, the homeopath decides that supplier X has the best quality and most effective supplements in treating patients. Suppliers Y and Z make comparable supplements. However, supplier Y will provide the homeopath with an LED TV if he buys from him. If the homeopath buys the supplements from supplier Y because of a personal benefit, then he may be in a conflict of interest. For his part, supplier Z promises to provide the supplements at a 10% discount. If the homeopath buys the supplements from supplier Z in order to on the cost savings to his patients, a conflict of interest is avoided.



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*Clarification:* Even if an actual conflict of interest has not occurred because the homeopath did not ask for the TV, s/he can allow the potential or a perception of conflict of interest to occur where a reasonable person would conclude that the homeopath's professional expertise or judgment was influenced by the arrangement or the relationship with a particular supplier. This provision would not only apply to expensive gifts such as TVs, tickets to sports events and the like. It could also apply to innocuous gifts (e.g. a bottle of wine, a fruit basket); if these were given to the homeopath every time h/she placed an order with the supplier.

### Below-Market Transactions

3(v) uses without payment according to market rates any premises or equipment provided by a person who stands to gain financially from the supplying of materials or equipment by or to the member or the member's patients.

*Example:* An owner of a health food store owns a building and agrees to lease an office on the first floor to a homeopath. The terms of the lease are such that the homeopath is paying much less than market value for the premises. While nothing may be said explicitly, the implication is that the lower rent is in exchange for referrals of patients to the health food store.

*Clarification:* This provision does not mean that a homeopath cannot make referrals directly. Of course, all such referrals should be based on the actual professional judgment of the homeopath as to what would be most suitable for the particular patient. Below we discuss an example of how to manage a referral to a health food store in one's own building.

### Improper Arrangements

3(vi) enters into an agreement or arrangement or causes another member to enter into an agreement or arrangement that interferes with the member's ability to properly exercise his or her professional expertise or judgment in respect of the treatment or referral of a patient;

*Example:* A Registrant of another College hires a newly graduated homeopath, but stipulates that s/he should recommend a supplement for every patient regardless of patient needs or health status or the treating homeopath's own views. The homeopath is in a conflict of interest if he or she accepts the position on these terms.

*Clarification:* This provision does not mean that a homeopath may not consider what other services are available for the homeopath's patients at his or her employer's office. However, it does mean that each homeopath must be afforded professional autonomy in how they treat individual patients and each patient must be afforded



an individual treatment plan. In addition, if a homeopath recommends a service provided by his or her employer, the homeopath must indicate to the patient that he or she has the option of obtaining those services elsewhere.

### Fee Splitting

- (3)(vii) engages in any form of revenue, fee or income sharing with any person other than:
- (i) an associated member or a homeopathic professional corporation;
  - (ii) a member of another College or a health professional corporation; or
  - (iii) in accordance with a written agreement that states that the member has the responsibility for and control over all the clinical and professional aspects of the homeopathic practice including record keeping and billing;

*Example:* A homeopath is hired by a multidisciplinary clinic owned by a corporation that manages a chain of similar clinics. The homeopath is paid 50% of what s/he bills out. The clinic manages the scheduling (every patient, including first-time ones, is booked for 5 minutes) and billing (the homeopath is not given access to any financial information including billings in her name). This arrangement would be a conflict of interest.

*Clarification:* The above example would be acceptable if there were a written contract with the multidisciplinary clinic that gave the homeopath control over all clinical and professional matters including the scheduling of patients and billings. The clinic could administer the billing so long as the homeopath sets the billing rules and monitors, perhaps on a spot-check basis, compliance with those billing rules. Such a written contractual provision, while perhaps prudent, is not required when splitting fees with other regulated health professionals who are governed by another *RHPA* College and, presumably, have similar standards.

### Product Endorsements

- 3(viii) recommends or suggests a remedy, product to a patient that is sold in any premises associated with the member without first offering to issue a written description of the remedy or product and advising the patient that he or she may purchase the remedy, product elsewhere without affecting the patient-practitioner relationship;
- 3(ix) sells a remedy or product to a patient without first offering to issue a written description of the remedy or product and advising the patient that he or she may purchase the remedy or product elsewhere without affecting the patient-practitioner relationship.

*Example:* A homeopath's patients purchase products or remedies from his/her practice or his/her supplier who also happens to be the homeopath's landlord. This may be a conflict of interest, especially where undue pressure was applied to the patient, as



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the homeopath or his/her landlord would benefit from the outcome of the patient's decision to purchase the products or remedies.

To avoid this situation, a homeopath must take active steps to advise the patient that he/she is not obligated to purchase products or remedies from the homeopath or his/her landlord, to give the patient choices to purchase the products or remedies elsewhere, and to explain to the patient that his/her decision to go elsewhere will not impact his/her therapeutic relationship with the homeopath.

*Clarification:* These provisions would not apply in cases where the homeopath recommends a product or remedies that is in no way connected to the homeopath (i.e., at a store down the street which is arms length from the homeopath). However, the homeopath should be mindful to give the patients right to choose to obtain the products or remedies elsewhere, perhaps at more convenient location or because of a lower price.

### **Advertising and Promotion**

3(x) endorsing a remedy, product or service using one's professional status

*Example:* A homeopath participates in a radio, TV, print or internet advertising campaign endorsing a new type of multi-grain, gluten-free bread on the market. S/he is introduced as a senior homeopath with over 25 years of experience. This involvement would be a conflict of interest because the homeopath is using his or her professional status to promote a commercial product. This is so even if s/he has not paid for the endorsement, because it is assumed that s/he would gain some additional benefit (e.g., an increased influx of patients to his/her practice from participating in the advertising campaign, status, advancement of a personal belief, a favour to a friend). In addition, without doing a personal assessment of the individual consumer, the homeopath should not be making any sort of clinical recommendation.

*Clarification:* This provision does not mean that a homeopath is prohibited from giving guidance and advice on products and remedies. However, this must be done privately, in the context of a therapeutic relationship, where the homeopath can exercise his/her professional judgement once s/he has had the opportunity to identify a patient's need(s) through a proper assessment.

## **RELEVANT COMPETENCIES & PERFORMANCE INDICATORS**



*Competencies are the specific knowledge, skills, attributes and abilities required of an entry-to-practice homeopath in order to practise safely and ethically. These competencies, from the Competency Profile for Entry-to-Practice Homeopaths Practising in Ontario, were adopted by the transitional Council of the College of Homeopaths of Ontario in 2012.*

- 1.11 Demonstrate an understanding of the legal and ethical obligations as it relates to the practice of homeopathy, including those imposed by the *Homeopathy Act, 2007* and the *Regulated Health Professions Act, 1991* and Standard of Practice Principles of Professional Ethics.(K)

**RELEVANT PERFORMANCE INDICATORS**

1. Demonstrate knowledge of the ethical obligations of the noted legislation, standards and related guidelines.
2. Demonstrate knowledge of the legal obligations of the noted legislation, standards and related guidelines (i.e., jurisprudence).

**DEFINITIONS**

**Registrant**

A Registrant is a member of the College of Homeopaths of Ontario.

**LEGISLATIVE CONTEXT**

*Regulated Health Professions Act, 1991, S.O. 1991, CHAPTER 18, Sched. 2, s. 95 (1)(i)*  
*Homeopathy Act, 2007, Ontario Regulation 315/12 Professional Misconduct.*

16. Acting or being in a conflict of interest in one's professional capacity.
42. Directly or indirectly benefiting from the practice of the profession while the member's certificate of registration is suspended unless full disclosure is made by the member of the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee.

**RELATED STANDARDS**

- #6 Standard of Practice on Advertising
- #8 Standard of Practice on Dual Registration
- #13 Standard of Practice on Homeopathic Prescribing
- #16 Standard of Practice on Therapeutic Relationships and Professional Boundaries



## DRAFT CONFLICT OF INTEREST REGULATION

**NOTE: THIS REGULATION WAS APPROVED BY COUNCIL ON NOVEMBER 7, 2011  
FOLLOWING A 60-DAY PUBLIC CONSULTATION**

2. (1) For the purposes of this Part, the following definitions apply unless the context indicates otherwise:

"collateral benefit" includes any advantage or gain obtained outside of the ethical operation of one's practice, whether direct or indirect and whether or not it is monetary in nature. A collateral benefit typically advantages the member more than it advantages the patient.

"person" includes a corporation.

"related corporation" means a corporation wholly or substantially owned or controlled by the member or a related person of the member.

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

- (i) 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;
- (ii) persons connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other;
- (iii) 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
- (iv) 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.

(2) A conflict of interest exists where there is an arrangement or relationship between the member or a related person or related corporation and a person where a reasonable person could conclude that the exercise of the member's professional expertise or judgment may conflict with or be influenced by the arrangement or relationship. A conflict of interest may be actual, potential or perceived.

- (3) Without limiting the generality of subsection (2) a member has a conflict of interest where that member or a related person or related corporation, directly or indirectly,
- i. accepts a rebate, credit or other collateral benefit by reason of the member referring a patient;



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- ii. offers, makes or confers a rebate, credit or other collateral benefit to a person by reason of the referral of a patient to the member;
- iii. offers, makes or confers a rebate, credit or other collateral benefit to a patient where the service is paid in whole or in part by a third party except for the provision to the patient, at no charge, a product of nominal value to be used in the maintaining or promoting of well-being or health;
- v. uses without payment according to market rates any premises or equipment provided by a person who stands to gain financially from the supplying of materials or equipment by or to the member or the member's patients;
- vi. enters into an agreement or arrangement or causes another member to enter into an agreement or arrangement that interferes with the member's ability to properly exercise his or her professional expertise or judgment in respect of the treatment or referral of a patient;
- vii. engages in any form of revenue, fee or income sharing with any person other than:
  - 1. an associated member or a homeopathic professional corporation;
  - 2. a member of another College or a health professional corporation; or
  - 3. in accordance with a written agreement that states that the member has the responsibility for and control over all the clinical and professional aspects of the homeopathic practice including record keeping and billing.
- viii. recommends or suggests a remedy or product to a patient that is sold in any premises associated with the member without first offering to issue a written instruction of the remedy or product and advising the patient that he or she may purchase the remedy or product elsewhere without affecting the patient-practitioner relationship;
- ix. sells a remedy or product to a patient without first offering to issue written instructions on the remedy or product and advising the patient that he or she may purchase the remedy or product elsewhere without affecting the patient-practitioner relationship;
- x. endorsing a remedy, product or service using one's professional status.



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- (4) No member may engage in a conflict of interest.
- (5) Despite subsection (4) a member may refer a patient to a related person or a related corporation for either a service, remedy or product so long as the patient is first advised both verbally and in writing of the following:
  - i. the nature of the relationship with the related person or related corporation;
  - ii. the name and contact information of at least three other local providers of the service, remedy or product (or if there is no local provider, three other providers who are as close as possible to the patient); and
  - iii. that the patient's choice of another provider of the service, remedy or product will not affect the patient's ability to obtain the same service from the member as if the patient had chosen the related person or related corporation.
- (6) A member shall, if requested, promptly provide to a representative of the College any document or explanation requested about the member's arrangement or relationship with another person to enable the College to assess whether there is a conflict of interest.