

Conflict of Interest Guidelines

Introduction

A registrant is in a conflict of interest if the registrant's personal or financial interest conflicts or appears to conflict with the exercise of his or her professional judgment or duty to act in the best interest of the client.

Massage Therapists ("registrants", "RMTs", or "MTs") are in a unique relationship of trust with their clients. As a result, they must be particularly attentive to conflicts of interest. A conflict of interest may compromise the trust that a client has placed in their Massage Therapist and, on a wider scale, the confidence that the public has placed in the Massage Therapy profession. As a result, it is considered professional misconduct for a registrant to practise the profession while in a conflict of interest.¹

What is a conflict of interest?

A conflict of interest arises when a reasonable person could perceive that the registrant's professional judgment or duty to act in the best interest of the client may be influenced by a personal benefit, such as a deeply held belief or financial benefit. A conflict of interest can exist whether it is the registrant's personal or financial interest at issue or a person related to or closely associated with the registrant, such as a spouse, partner, relative or close friend.

A conflict of interest can be potential, actual or perceived. If circumstances exist where a reasonable person would conclude that the registrant's professional judgment may be compromised, then a conflict of interest exists. This is the case whether or not the individual's professional judgment is, in fact, compromised. A perceived or potential conflict of interest can damage the trust that a client has in the registrant, and the trust that the public has in the profession, as much as an actual conflict of interest.

The Conflict of Interest Guidelines are intended to ensure that registrants are aware of the College of Massage Therapists of Ontario's (CMTO's) expectations in this area.

These Guidelines may be used by the College or other bodies in determining whether appropriate Standards of Practice and professional responsibilities have been maintained.

When is a registrant in a conflict of interest?

A registrant is in a conflict of interest if the registrant's personal or financial interest conflicts or appears to conflict with the exercise of his or her professional judgment or duty to act in the best interest of the client.

¹ O. Reg 596/94 General Regulation, s.26, para. 11

Common Situations Involving Conflict of Interest

Profiled below are four common situations in which a conflict of interest can arise within a registrant's practice. This is not an exhaustive list. Any situation in which a reasonable person could believe that the registrant may not exercise his or her professional judgment in the best interest of the client could be a conflict of interest.

- a) Referrals;
- b) Recommending products or services;
- c) Fee sharing; and
- d) Referral-based rental agreements.

These profiles also articulate the expectations of registrants in those situations.

Situation 1: Referrals

Referrals must be based on the objective professional judgment of the registrant and the best interest of the client. A registrant should not receive or provide a benefit for a referral.

It is a conflict of interest for a registrant or a related person to accept a referral fee, or any other benefit, for the referral of a client to another person or business. It is also a conflict of interest for a registrant or a related person to provide a referral fee, or any other benefit, to another person or business as the result of the referral of a client to the registrant. Such practices create the appearance that the referral, whether by the registrant or to the registrant, may be influenced by factors other than the best interest of the client.

Benefits for a referral may include, but are not limited to, any gift (financial or non-financial); advantage or payment of any kind, whether direct or indirect, including monetary payments, rebates, credits, discounts, loans (where the repayment terms do not reflect fair market value) or the receipt of goods or services at no charge or less than fair market value.

On what should referrals be based?

Referrals must be based on the objective professional judgment of the registrant and the best interest of the client. A registrant should not receive or provide a benefit for a referral.

Situation 2: Recommending Products or Services

How do registrants recommend products and services without entering into a conflict of interest?

Products or services recommended by a registrant must reflect the Standards of Practice of the profession and the best interest of the client. In cases where a registrant has an interest in a product or service, this must be disclosed to the client.

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It is a conflict of interest for a registrant to advise a client to purchase a particular healthcare product if the registrant or a relative has a financial interest in that product (or the vendor of that product) unless the registrant informs the client in advance about the nature

of the financial interest. In this circumstance, if it is reasonable to do so, the registrant should also provide the client with information on at least one other source of the product.

It is also a conflict of interest to advise a client to obtain services from another practice/practitioner in cases where the registrant or a related person has a financial interest in that other practice/practitioner, unless the registrant informs the client in advance about the financial interest. In this circumstance, if it is reasonable to do so, the registrant should also provide the client with information on at least one other source of the service.

Where a registrant has recommended a product or service in which the registrant or a related person has a financial interest, the registrant should assure the client that the selection of an alternate supplier of the product or service will not adversely affect the assessment, care or treatment provided by the registrant.

Situation 3: Fee Sharing

Fee sharing with individuals or entities that are not subject to the *Regulated Health Professions Act, 1991 (RHPA)* is a conflict of interest, unless it is done pursuant to an agreement that the registrant maintains responsibility for all professional aspects of the practice.

A registrant is in a conflict of interest when they, directly or indirectly, engage in any form of revenue, fee or income sharing with any person with respect to the practice of the profession, unless one of the following exceptions applies:

- a) The fee sharing is with another registrant;
- b) The fee sharing is with a registrant of another College to which the *Regulated Health Professions Act* applies, or
- c) The fee sharing is done in accordance with a written agreement that states that the registrant has the responsibility for and control over all professional aspects of the registrant's practice, including record keeping and billing.

When is a registrant in a conflict of interest in fee sharing situations?

Fee sharing with individuals or entities that are not subject to the *Regulated Health Professions Act, 1991 (RHPA)* is a conflict of interest, unless it is done pursuant to an agreement that the registrant maintains responsibility for all professional aspects of the practice.

Situation 4: Referral-Based Rental Agreements

The terms of rental agreements must not include terms related to the volume of business referred between the tenant and the landlord.

It is a conflict of interest for a registrant to rent premises from any person or business where the rent is determined, in whole or in part, by the volume of client referrals to or from the landlord. Similarly, it is a conflict of interest for a registrant to rent premises to any person or business where the rent is determined, in whole or in part, by the volume of client referrals to or from the tenant.

When is a registrant in a conflict of interest around rental agreements?

The terms of rental agreements must not include terms related to the volume of business referred between the tenant and the landlord.