

5.1 Conflict of Interest In Practice

POLICY:

A conflict of interest is a breach of an obligation to one's professional ethics that has the effect or intention, of advancing one's own interest (financial or otherwise), in addition to the interests of the patient. A conflict of interest occurs when the practitioner has a vested personal interest in addition to the best interest of the patient that may consciously or unconsciously influence the treatment options recommended by the practitioner. Professional decisions must be made with the patient's best interest as the prime consideration. There must be no conflict with that interest. A physiotherapist must not render service in any situation that will compromise his/her professional integrity, standard of practice or place himself/herself in a conflict of interest or perceived conflict of interest.

1. Referral for Profit

Referral for profit is a conflict of interest. It occurs when a practitioner profits, either directly or indirectly, as a result of referring or recommending another practitioner or facility. In order to prevent a possible referral for profit situation, the member should provide options when referring a patient for additional physiotherapy services (e.g. treatment, equipment etc.)

The following are examples of potential conflict situations:

- a) **Kickbacks:** Kickbacks include loans, credit, debt reductions, gifts and other financial benefits given, whether directly or indirectly, to the referring practitioner in exchange for each referral or for a specific volume of referrals.
Referral reporting fees are another type of kickback disguised as a fee paid to the referring practitioner for consultation or a referral report. In other words, the referring practitioner is receiving a fee for providing the necessary information on patient's cases that he or she is morally and ethically required to provide without charge.
- b) **Rental agreements:** Health care practitioners who own commercial property may lease office space to other practitioners. Charging high rent but guaranteeing a specified volume of referrals to the tenant, or charging tenants low rent in exchange for a specified volume of referrals to the building owner is a conflict of interest whether the agreement is explicit or implied.

Where rental properties are owned, directly or indirectly, by health care practitioners, but where the leases reflect fair and recent market rates and are not contingent on referrals or business volume, are not considered to be referral for profit situations. This is because the rent is both fair and does not vary according to the number of referrals made between the property owner and tenant.

- c) Shares in publicly traded corporations: A referring practitioner who holds share in a publicly-traded corporation that owns a clinic, facility or business to which he or she is referring, but has no control over the operation of the corporation or facility, is not involved in a referral for profit situation. This is because the profit resulting from the ownership of stock consists primarily of increases in equity or share prices. Any financial gain for referrals would be negligible and unlikely to induce any inappropriate referrals.
- d) Selling product for profit: Physiotherapists may sell physiotherapy related products to patients at cost. The patient must be provided with options regarding other locations that the particular product is available. “Cost” includes the price of purchasing the product plus other actual and reasonable expenses, including ordering, delivery and maintaining stock. The mark-up may also cover the costs of time spent fitting or modifying products and educating patients about their use, but only where the costs are not covered by payments for treatment. This is not referral for profit because the practitioner is only recovering costs and does not earn a net profit from supplying products to his or her patients. The financial benefit of the situation rests with the patient, rather than the practitioner.

2. Endorsement

Endorsement is defined as “the recommendation of an advertised product for a fee”. It is ethical to recommend a product based on its qualities and benefits to the patient. A particular brand name, however, should not be endorsed with either a direct or indirect financial gain by a member.

3. Research and Development of Products or Services

A physiotherapist involved in the research and development of physiotherapy related products or services may sell directly to a patient. However, all sections under “conflict of interest” policy apply.

4. Multi-Disciplinary Clinics

Multi-disciplinary clinics provide settings where members of several different professions work together in a facility. Cross-referrals between professionals within the clinic are common. However, patients need to be informed of other treatment location options.

Exceptions to Referral for Profit

Some exceptions may be necessary to accommodate anomalies in service delivery (e.g. under-serviced or rural areas). The practitioner must ensure that no patient loses access to quality health care because of referral for profit prohibitions. In cases where an exception is justified, disclosure to the patient is required.

Treatment of Immediate Family Members

An ethical physiotherapist will not charge fees to immediate family members unless no other professional with the specific skills is available in the community.

Immediate family is: mother, father, siblings, children, spouse, grandparents, and grandchildren

Also included in the above are relations permanently residing in the physiotherapist's household or with whom the physiotherapist permanently resides.

Disclosure of Conflict of Interest

Disclosure is an unacceptable remedy for a conflict of interest situation. There may be exceptions to this statement as in the "exceptions to referral for profit" section above.