



GUIDELINES

Conflict of Interest in Professional Practice

The purpose of this document is to assist registrants in determining whether a conflict of interest exists related to providing professional services.

What is Conflict of Interest?

A conflict of interest exists whenever a registrant puts him or herself into a position where people, including clients, could *reasonably* conclude that his or her professional judgment is influenced by any forms deriving potential personal benefit. These forms may include physical, emotional, financial, political and/or business benefits. In some cases, the personal benefit accrued by the registrant is indirect, for example, in the form of payment or other benefit to a close friend, family member, spouse, business associate, corporation, Not For Profit organization or partnership in which they hold a significant interest, or a person to whom they owe an obligation.

Principle Six of the CSHHPBC Registrants' Code of Ethics, states that:

16. A Registrant must not exploit any clinical relationship with a client or others to further his/her own physical, emotional, financial, political or business interests at the expense of the best interest of the client or others, or compromise the honor of the profession or reduce the effectiveness of the services that the registrant provides.

17. Without limiting the generality or scope of section 16, a registrant must not:

- *use coercion or take advantage of any relationship of trust or dependency to engage in professional misconduct of a sexual nature with a client;*
- *initiate or continue treatment of a client if such treatment is ineffective, unnecessary or no longer indicated;*
- *breach or nullify a professional contractual agreement without cause;*
- *disparage the skill, knowledge, or services of another registrant;*
- *charge fees for services that were not rendered*

18. Unless a registrant obtains the consent of the registrant's employer, a registrant who is employed by a public health authority or agency must not provide or offer to provide private for-fee services or products to someone who is a client of the registrant's employer, or

refer someone who is a client of the registrant's employer to another registrant who is also employed by the same employer so that the second registrant may provide private for-fee services or products to that client.

19. A registrant must not secure or accept referrals or clients by providing, directly or indirectly, any significant incentives, financial or otherwise, to other colleagues, professionals or referring services.

What is meant by “reasonable”?

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. Therefore a decision can be tested to be reasonable if it passes scrutiny by applying these three principles. Provided in this document are reviews of case examples with questions that will assist registrants in determining what constitutes a “reasonable” conclusion and whether a conflict of interest exists or is perceived to exist.

What is a Perceived Conflict of Interest?

Conflict of interest in professional practice may exist whenever a registrant's action or inaction could appear to influence their ability to act in a client's best interest and/or to follow best practice guidelines. Perceived conflict of interest occurs when a *reasonably* well informed person could have a *reasonable* perception that registrants are making decisions in their professional practice that promote their personal interest(s).

What is Cognitive Bias?

Cognitive bias is an inclination to make systematic errors based on cognitive factors rather than evidence. The bias(es) may result from information-processing shortcuts (“heuristics”). This includes errors in judgment, social attribution and memory that skew the reliability of evidence and lead one to present or hold a partial perspective at the expense of (possibly) equally valid alternatives.

A number of cognitive biases may influence a registrant's decisions about whether or not they are in conflict of interest in their professional practice, and may therefore impair their ability to act in a client's best interest and/or to follow best practice guidelines. Cognitive biases that may influence judgment include, but are not limited to:

Anchoring or Insufficient Adjustment – the tendency to rely too heavily on past reference or initial information so it shapes our view of subsequent information

Choice-Supportive Bias – the tendency to distort our memories of chosen and rejected options to make the chosen options seem more attractive

Confirmation Bias – the tendency to search for or interpret information in a way that confirms our preconceptions, and to disregard facts that support different conclusions

Group Think – the tendency to conform to the opinions of the majority of individuals (with peer pressure sometimes evident), therefore losing independence of thought or expression of thought

Omission Bias – the tendency to judge harmful actions as worse, or less moral, than equally harmful omissions (inactions)

Outcome Bias – the tendency to judge a decision by its eventual outcome instead of the quality of the decision itself

Selective Perception – the tendency for expectations to affect perception by actively screening-out information that we do not think is important

Self-serving Bias – the tendency to claim more responsibility for successes than failures and/or to evaluate ambiguous information in a way beneficial to our interests

Status Quo Bias – the tendency to like things to stay relatively the same

How can I decide if I have a Real, Potential or Perceived Conflict of Interest?

Because of the potential influence of cognitive bias, it is usually helpful to examine your Code of Ethics and discuss your situation together with other colleagues/registrants who are not likely to be under the influence of the same bias(es), who are not likely to be facing the same conflict of interest, and who will not be otherwise influenced by their personal relationship with you. In some cases, your employer will offer guidelines that help you to interpret your Code of Ethics for your specific practice situation.

A list of processes for identifying, examining and mitigating conflict of interest is provided after the following case examples.

Conflict of Interest Case Examples:

CASE 1

A registered Speech-Language Pathologist employed in a school district is approached by the parent(s) of a client and requested to provide continued services during the summer months when the school district does not provide these services. The parent is willing to pay for professional services provided during the summer months directly to the SLP and provide a written consent form. Does this constitute a conflict of interest?

Decision Making Process – Questions

Would continued professional services provided during the summer months be in the best interests of the client/child? *If yes, continue the decision making process. If no, there is no need to offer the services and doing so would present a conflict of interest.*

Did the parent initiate the request for continued services? *If yes, continue the decision making process. If no, then a reasonable conclusion implies the services were offered by the registrant for a financial gain and therefore in the best interest of the professional thus at the very least a perceived conflict of interest exists.*

Did the parent sign a consent form which indicated the terms and conditions of the professionals services to be provided? *If yes, continue the decision making process. If no, then a reasonable conclusion may be that an understanding and agreement concerning the arrangement was not reached leading to a claim of a conflict of interest.*

Did the SLP advise and seek approval from his/her employer about the arrangement? *If yes, continue the decision making process. If no, transparency has not been exercised, the registrant is in violation of the Code of Ethics and a reasonable conclusion may be one of a perceived conflict of interest.*

Did the SLP secure professional liability insurance for the purposes of providing professional services on a private contract basis and notify the college? *If yes, the registrant has exercised justification, transparency and intelligence to ensure there is a reasonable conclusion that a conflict of interest does not exist and has met the requirements of the college bylaws. If no, the registrant is in violation of the college bylaws, is open to personal financial legal damages/costs and is putting the client at risk regarding receipt of any warranted legal awards.*

CASE 2

A Registered Speech-Language Pathologist receives provincial funding to conduct clinical assessments and consult with pre-school staff about management of children with complex developmental disorders. She is considering offering for-fee private therapy services to those children about whom she consults, during the summer months when the pre-schools are closed. She is concerned about the appearance of a conflict of interest if she approaches the parents of the potential clients directly, so has asked the pre-school administrators and teachers to contact parents and let them know that for-fee therapy would be offered through this potential provider through the summer months.

Questions – Decision Making Process:

Is there a potential conflict of interest for this registrant if she offers for-fee private services to children who attend pre-schools in which she consults for a publicly-funded program?

If there is conflict, is it mitigated by the fact the public services are not active during the summer months, when the Registrant intends to provide for-fee services?

In either instance, is there potential for a perceived conflict of interest by the Registrant's colleagues, employer, and/or clients and potential clients?

Does soliciting indirectly for-fee clients, through other professionals, mitigate any potential or perceived conflict of interest?

If there is potential or perceived conflict of interest, are there other actions the Registrant could take to ensure clients are not put at any disadvantage by the conflict?

Are there steps the Registrant should take in addressing this issue with her employer? Would the Registrant's interactions with individual clients during the summer create any bias that would influence her professional judgment of the same client during subsequent interactions under the public service? (For example, would it possibly distort the Registrant's perception of priority needs in other children who did not receive the private summer services?)

Observer Comments:

This situation presents a potential conflict of interest. If the Registrant offers or provides for-fee services for her own profit, without expressly receiving permission in advance from her public employer, she is in violation of Principle Six, tenet 18(a) of the Code of Ethics, which states: *Unless a registrant obtains the consent of the registrant's employer, a registrant who is employed by a public health authority or agency must not provide or offer to provide private for-fee services or products to someone who is a client of the registrant's employer, or*

In addition, the Registrant may be perceived to be in a conflict of interest situation because she is using her publically funded role to solicit candidates for private services. Her position of power as a consultant in the pre-school district may unduly influence potential private clients, particularly if they are not fully informed of all options available to them.

Rather than asking pre-school staff to contact potential clients to inform them of the service, it would be more appropriate for the Registrant to provide information to the staff regarding the availability of this service, which can then be shared with families who may ask about for-fee services for their child for the summer. Further, she should ensure that families would be provided with a comprehensive list of all appropriate for-fee S-LP services that might be available to them, not just the service offered by this registrant.

In instances where the potential/perceived conflict of interest exists and clients of the public service express an interest in contracting for-fee private services from the publicly-employed S-LP, families should be informed of and sign a full disclosure statement about the Registrant's conflict and a statement of understanding detailing the service being offered, how they learned about it, and any time constraints on the service.

Ultimately, conflict would be avoided if the registrant limits her private SLP services to this population in districts where she does not provide public services during the school year.

CASE 3

A Registered Audiologist works in a public health system. A few years ago, at a professional conference, he met an Audiometric Technician who works at a second site within the same health system. As they got to know each other, they found they had many interests in common. Over time the Registrant and Audiometric Technician developed a

friendship and often met for social and recreational activities outside the work environment.

Recently, the Registrant transferred to the other site to cover a two-month leave of absence. During his first two weeks at the new site, he observed the Audiometric Technician working with clients. He was surprised to see that she appeared to be using some of the equipment inappropriately and he also suspected the equipment was not calibrated properly. The Registrant observed the Audiometric Technician practicing some techniques in ways that raised questions about patient safety, and appeared to be practicing restricted activities unsupervised. The Registrant began to wonder if the Audiologist who assigned the work has an appropriate supervisory program in place to monitor the Audiometric Technician's professional activities. He doesn't want to jeopardize the friendship by confronting his friend about the possible practice issues, particularly since he's only at that site temporarily, but he also doesn't want to see clients safety compromised.

Questions – Decision Making Process:

As the Registrant is not the one who set the parameters for the Audiometric Technician's duties, should he keep his observations to himself?

Should the Registrant talk directly to the Audiometric Technician about his concerns?

Would he initiate a conversation in the work environment, or when they are socializing?

Should the Registrant talk to the Audiologist who assigned the work to the Audiometric Technician, or would this infer that the assignment or the level of supervision is not appropriate?

Observer Comments:

The Registrant who transferred to the site is responsible for understanding the difference between a personal relationship and a professional relationship in order to establish and maintain appropriate boundaries and to act in the best interests of the patient. In this case, there is a dual relationship: a personal relationship and a work relationship.

The Registrant should recognize how his personal relationship may lead to a conflict of interest. A warning sign is a willingness to overlook triggers that he would normally act on, but in this situation may delay or prevent action to protect the personal relationship. The Registrant should identify the conflict between his personal and work relationship and resolve the differences.

Principle Two of the Code of Ethics requires Registrants to *make the welfare of a client the registrant's primary concern*. Further, *a registrant must be professionally responsible for all treatment and services rendered by the registrant or by other personnel, including students who are under the supervision of the registrant. A registrant must not delegate any service requiring professional competence to unqualified personnel.*

The Audiologist who assigns responsibilities to the Audiometric Technician is responsible for ensuring the Audiometric Technician has the appropriate knowledge, skills, and competence to complete the tasks safely and ensuring the appropriate supervision is in place when any questions about competence arise, or when delegating restricted activities. If the Registrant has been put in a position of temporarily assuming the role of the permanently employed Audiologist at this site, he must act in the best interest of the clients and find a solution to any potential practice compromises. An Audiologist who observes a potential problem must make a decision related to the degree of risk that the patient is exposed to. If the situation is urgent, intervention must be immediate. If the level of risk is of a lesser degree, the Audiologist can act in a manner that respects other team members and recognizes their expertise but assists the Audiologist who has organized the program and assigned the activities by providing feedback based on observations. If the situation is urgent, intervention must be immediate. If the level of risk is of a lesser degree, the Registrant can act in a manner that respects other team members and recognizes their expertise but assists the Audiologist who has assigned the activities by providing feedback based on observations.

It is also prudent to have a discussion with the Audiometric Technician to identify and discuss the boundaries of their work and personal relationship. As the Audiometric Technician may not have the same level of understanding of the regulatory framework and professional obligations, there is value in clarifying and coaching to ensure a common understanding.

CASE 4

A Registered Speech-Language Pathologist works part-time for a community agency and sees clients, mostly seniors with a variety of speech, language and swallowing problems, in their homes. Recently the Registrant talked to a friend of hers who is a natural foods merchant and is selling a new fluid thickener. The friend told the SLP that the thickener is all natural and actually enhances the flavour of the fluids. She suggested that the SLP could sell the thickeners directly to appropriate and interested clients and receive a commission for the sales.

Since the Registrant treats many clients with swallowing problems, and is often advising them to purchase fluid thickener at the pharmacy, she thinks it would be very convenient for them if they could purchase it directly from her when she visits them, particularly since many of them also have mobility challenges. She would never recommend a product that she doesn't feel is effective and appropriate but she could use the extra money she would earn through sales, since she only has a part-time salary and has young children to support. The Registrant decides to get a sample of the thickener from her friend and try it herself with a variety of fluids. She finds the fluids do taste very good, as do her children, and thinks that the thickener may be beneficial for some of her patients. She agrees to offer it for sale to patients with the stipulation that if patients do not like the product they can receive a full refund after their first purchase.

Questions – Decision Making Process:

Does selling this product for profit by the Registrant present any real or perceived conflict of interest?

If so, does the fact that this service will save clients the time and expense of purchasing the same or similar products mitigate the conflict?

If there is a conflict, and the Registrant chooses to proceed with sale of this product, are there further steps she should take to ensure clients are not put at any disadvantage by the conflict?

Would sale of the product for her friend without accepting a commission mitigate all conflict?

Observer Comments:

Tenet 16 of Principle Six of the CSHHPBC Code of Ethics states that: *A Registrant must not exploit any clinical relationship with a client or others to further his/her own physical, emotional, financial, political or business interests at the expense of the best interest of the client or others, or compromise the honor of the profession or reduce the effectiveness of the services that the registrant provides.*

Conflict of interest occurs when a Registrant is in a position in which his or her professional judgement concerning the proper care of a patient could be unduly influenced by a secondary interest such as profit from a sale. The Registrant believes the new fluid thickener will benefit some of her clients and she could also use the extra money she will earn through sales, since she only works part-time and has young children to support. She believes she is acting in her clients' best interests. What the Registrant has not considered is that she may jeopardize the relationship of trust between client and health practitioner. If a client perceives that the Registrant is motivated by her desire to make money rather than her desire to pursue the patient's well being, the client may lose trust in the S-LP and possibly in the profession. Regardless of what her actual motivations are, it is the perception of possible inappropriate behaviour that can damage the relationship.

There exists an inherent imbalance of power in any health practitioner-client relationship. S-LPs have authority, special knowledge, and access to resources that clients do not. Thus clients are in vulnerable positions in relation to their S-LPs. Individuals who depend on health professionals for their care may worry about disappointing the professional if they do not go along with suggestions for purchasing products. They may feel obliged to purchase a product out of concern that if they don't, the relationship will become strained and their care may be compromised.

Because the Registrant stands to personally gain from the sale of the fluid thickener she is therefore in a conflict of interest position. There may be three acceptable options:

She could decline to sell the fluid thickener.

She could offer to sell the fluid thickener at cost and therefore not profit from the sales, however, she should also inform each client of all alternative similar products that are equally accessible.

She could continue to sell the fluid thickener provided that she discloses her interest in the sale to each client and informs them where else they can purchase this and all alternative similar products AND assures the client that his or her care will not be compromised regardless of the client's decision to purchase or not to purchase this particular product.

Processes for Identifying, Examining and Mitigating Conflict of Interest

When you are confronted with a potential Conflict of Interest, start exploring the issue by documenting a full, factual description of the situation.

Examine the facts to determine the nature of the relationship that is involved in the conflict and who/what is involved.

When employers or colleagues could be impacted by a decision, disclose the situation as soon as you become aware of it, and seek advice on policy and procedures already in place.

Determine any and all financial implications of the conflict, based on all possible decisions that might be made about the situation.

Identify any biases that may impact on the judgment of those involved in any decisions.

Describe how others might perceive the situation. Consider it from the perspective of other colleagues, clients and the general public.

If conflict is identified, determine the potential advantages and disadvantages of proceeding with actions/inactions that are implicated versus all alternatives.

If conflict is identified, but a decision is made to proceed with actions/inactions that are implicated, determine the best ways to mitigate any potential impact on others.

Determine the best means to be transparent about any conflict that is being declared.

References:

College of Audiologists and Speech-Language Pathologists of Ontario

College of Physical Therapists of Ontario

College of Registered Nurses of British Columbia

College of Speech and Hearing Health Professionals Bylaws; www.cshhpb.org

Wikipedia: http://en.wikipedia.org/wiki/Decision_making;

http://en.wikipedia.org/wiki/List_of_cognitive_biases;

<http://en.wikipedia.org/wiki/Bias>

Appendix A – CSHHPBC Code of Ethics

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