

M E M O R A N D U M
COLLEGE OF DENTAL HYGIENISTS OF ONTARIO
69 BLOOR STREET EAST, SUITE 300
TORONTO, ONTARIO, M4W 1A9

TO: CDHO Registrants & Stakeholders
FROM: Fran Richardson
DATE: June 2010
RE: Draft Conflict of Interest Regulation

The previous draft of the Conflict of Interest Regulation was withdrawn by the CDHO Council in January 2008 from consideration by the Ministry of Health & Long-Term Care (MOHLTC) due to the fact that the practice of dental hygiene was entering new territory and the previous draft did not address the new and emerging realities.

The current, attached draft was passed by the CDHO Council on May 28, 2010 and is being circulated the requisite 60 days to registrants and interested stakeholders.

Please note the following changes, additions and explanations:

- (3)(f) indicates that a registrant may not, for example, sign a contract or enter into a verbal or expressed agreement with an employer, or anyone else, that contradicts the *RHPA, 1991* or restricts the registrant from exercising her or his professional judgment with respect to client care; i.e., the employer may not predetermine treatment
- (3)(i) indicates that a registrant who practices in more than one health care area, i.e., dental hygiene and massage therapy, cannot tell their massage therapy clients that they must also receive their dental hygiene services from her or him, or s/he will not continue to provide the client with massage therapy services.
- (7) indicates that a registrant may not participate in a program or plan that the CDHO considers a conflict of interest even if the employer initiates the program or plan; i.e., the employer engages a consultant who tells the dental hygienists in the office what should be included in the treatment plan, the recare intervals and how much to bill.
- (8) indicates that a non-profit organization such as a community college or public health unit may accept a piece of equipment for evaluation or trial, but, that the dental hygienists must not limit their treatment concerns based on the evaluation/trial equipment but on the needs of the client. Another example would be the gift of a certain brand of toothbrush for use in a clinic that treats street youth. If, in the dental hygienist's professional opinion, a client required another type of brush, then that should be the one that is recommended.

Comments regarding the draft regulations should be forwarded to Jane Cain at jcain@cdho.org by Monday, September 27, 2010.

CONFLICT OF INTEREST

1.-(1) In this Part:

- (a) "associated registrant" means a registrant of the College who,
 - (i) engages in the practice of dental hygiene as an employee, or an associate of another registrant; or
 - (ii) engages in the practice of dental hygiene in partnership with another registrant; or
 - (iii) provides dental hygiene services to clients of another registrant within that registrant's offices as an independent contractor.
- (b) "a College" means a college within the meaning of the *Regulated Health Professions Act*.
- (c) "person" includes a corporation.
- (d) "registrant" includes a health professional corporation.
- (e) "related corporation" means a corporation wholly or substantially owned or controlled by the registrant or a related person of the registrant.
- (f) "related person" means any person connected with a registrant 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 registrant or a related person or related corporation and a person where a reasonable person could conclude that the exercise of the registrant'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 registrant has a conflict of interest where that registrant or a related person or related corporation, directly or indirectly,

- (a) accepts a rebate, credit or other benefit by reason of the registrant referring a client to any other person;
- (b) offers, makes or confers a rebate, credit or other benefit to a person by reason of the referral of a client to the registrant;
- (c) offers, makes or confers a rebate, credit or other benefit to a client where the service is paid in whole or in part by a third party except for the provision to the client, at no charge, a product of nominal value to be used in the maintaining or promoting of well-being or oral health;
- (d) accepts, makes or confers a rebate, credit or other benefit in respect of dental hygiene materials or equipment including those intended to be provided to clients that influences or may appear to influence the exercise of professional judgment in respect of the purchase or use of those materials or equipment;
- (e) uses without reasonable payment any premises or equipment provided by a person who stands to gain financially from the supplying of premises, dental hygiene materials or equipment by or to the dental hygienist;
- (f) enters into an agreement or arrangement **including employment** or causes another registrant to enter into an agreement or arrangement that interferes with the registrant's ability to properly exercise his or her professional expertise or judgment in respect of the treatment or referral of a client;
- (g) engages in any form of revenue, fee or income sharing with any person other than:
 - (i) an associated registrant;
 - (ii) a registrant of another College;
 - (iii) a non-profit organization whose oral health services are substantially funded by a Canadian government;
 - (iv) under an arrangement with a non-profit organization that has been approved by the Executive Committee, or
 - (v) in accordance with a written agreement that states that the registrant has the responsibility for and control over all the clinical and professional aspects of the dental hygiene practice including record keeping and billing; or
- (h) charges clients a different amount for the same good or service depending on whether the clients are paying directly for the good or service.

(i) practices in another regulated or non-regulated health care discipline and inappropriately connects the provision of dental hygiene services to the use of the other services provided

- (4) No registrant may engage in a conflict of interest.
- (5) Despite subsection (4) a registrant may refer a client to a related person or a related corporation for either a service or a product so long as the client is first advised both verbally and in writing of the following:
- (a) the nature of the relationship with the related person or related corporation;
 - (b) the name and contact information of at least three other local providers of the service or product (or if there is no local provider, three other providers who are as close as possible to the client); and
 - (c) that the client's choice of another provider of the service or product will not affect the client's ability to obtain the same service from the registrant as if the client had chosen the related person or related corporation.
- (6) **It is a term, condition and limitation of every certificate of registration that** a registrant shall promptly provide to a representative of the College any document or explanation requested about the registrant's arrangement or relationship with another person to enable the College to assess whether there is a conflict of interest
- (7) A registrant shall not participate in an arrangement that constitutes a conflict of interest as described in this regulation even if the arrangement is initiated by a partner, associate, employer, client or other person
- (8) A registrant who works for a non-profit organization may participate in an arrangement where gifts or benefits are conveyed to the organization by persons who have other relationships with the organization (e.g., vendors of supplies or equipment to a school) so long as suitable safeguards are in place to ensure that no exercise of professional judgment is compromised.