Consequences of Conflict of Interest
Conflict of Interest = Professional Misconduct

**Ontario Regulation:**

5. Having a conflict of interest;

6. Prescribing, dispensing or selling drugs for an improper purpose;

21. Charging a fee that is excessive in relation to the services performed
Bylaw 6-7 A medical corporation or holding company must not engage or invest in any business that is inimical to the proper and ethical practice of medicine or which creates a conflict of interest for the company or corporation or its employees.
A physician must safeguard his professional independence at all times and avoid any situation in which he would be in conflict of interest, in particular when the interests in question are such that he might tend to favour certain of them over those of his patient or where his integrity and loyalty toward the latter might be affected.
28. Health Professions Act – Standards of Practice

1. A physician must not, directly or indirectly, enter into any business arrangement that may create a real or perceived conflict of interest to the physician’s duty to the patient.

2. A physician must not offer or cause any inducement to be offered or received by any person, including a patient of a physician, in return for:
   a) The referral of another person to the physician or a clinic or group with which the physician is associated, whether or not the referral is medically appropriate, or
   b) The provision of any service or product, whether or not the provision of the service or product is medically appropriate.
Is It Legal to Dispense Medication?

- A Physician does have the right to purchase medications from drug wholesalers.
- **Provincially**, regulation of pharmacies and drug wholesalers is governed by the *Pharmacy Act* and the *Drug and Pharmacies Regulation Act*.
- **Federally**, the *Food and Drugs Act* is the applicable legislation.
  - *Nothing in this Part prevents any person from selling or dispensing a drug to a person authorized under a health profession Act as defined in the Regulated Health Professions Act, 1991 to dispense, prescribe or administer drugs.*
Ontario Regulations:
A Physician’s Right to Dispense Medications

Under section 4(8) of the *Medicine Act*, a physician has authority with regards to:

- *Prescribing, dispensing, selling or compounding a drug.*
Alberta Regulations: Dispensing Medications

Under the Health Profession Act regulations, members of the College of Physicians and Surgeons of Alberta will be entitled to perform a list of “restricted activities” that will include:

15(1)(e) to dispense, compound, provide for selling, or sell a Schedule 1 drug or Schedule 2 drug within the meaning of the Pharmacy and Drug Act of Alberta.
Quebec Regulations: Dispensing Medications

Section 76
- A physician must refrain from selling any drug or product as having a benefit to health, except those administered directly

Section 77
- A physician must inform the patient of the fact that he has interest in the enterprise providing the diagnostic or therapeutic services he prescribes for him

Section 104
- A physician must claim only those fees justified by the nature and circumstances of the professional services rendered
CPSBC – Guidelines

1. Promoting and selling medical or non-medical products or supplies in the office

Physicians who sell to patients should disclose:

- Their financial interests
- The wholesale cost of the item and mark up
- The availability of the same or similar product elsewhere
- Documented evidence that describes the validity of the product and provides enough information for a patient to make an informed decision
(a) **Ontario Regulations:**

Under s. 16 of Ontario Regulation 114/94 of the *Medicine Act*:

- It is a conflict of interest for a member where the member, or a member of his or her family, or a corporation wholly, or substantially, or actually owned or controlled by the member or a member of his or her family,
  - d) sells or otherwise supplies any drug, medical appliance, medical product or biological preparation to a patient at a profit, **except**
    - i) a drug sold or supplied by a member to his or her patient that is necessary,
      - A) for an immediate treatment of the patient,
      - B) in an emergency, or
      - C) where the services of a pharmacist are not reasonably readily available
Restrictions on Selling/Dispensing Medications and Products

(b) Alberta Regulations:

Health Professions Act – Standards of Practice

14(1) A physician may only dispense Schedule 1 or 2 drugs as defined by the Pharmacy and Drug Act to a patient when those drugs are relevant to the medical consultation or surgical procedure provided to the patient.

(2) A physician may charge a fee for dispensing a drug as defined in subsection (1); however, a physician:
   a) Must limit fees to the cost of the drugs to the physician,
   b) May include reasonable handling costs such as shipping, containers and containment systems, refrigeration and inventory maintenance costs associated with the replacement of expired drugs, and
   c) Must maintain a detailed description of the calculation of fees for inspection by the College

(3) A physician must not charge a fee for dispensing a drug or for maintaining required documentation in respect of the inventory control or dispensing of drugs

(4) A physician must not compound drugs unless specifically approved by the College
Restrictions on Selling/Dispensing Medications and Products

(b)(i) Alberta Regulations: Sale of Products – Non Prescription

**Health Professions Act – Standards of Practice**

1. Products include, but are not limited to, any product, device or appliance offered for the diagnosis, cure, alleviation or prevention of disease, disorders or injuries in a patient.

2. If a physician offers products, other than prescription drugs, for sale to a patient, the physician must not sell the product at a price in excess of the fair market price paid by the physician plus a reasonable handling cost.

Continued…
Restrictions on Selling/Dispensing Medications and Products

(b)(ii) Alberta Regulations: Sale of Products – Non Prescription

3. If a physician offers products for sale to a patient, the physician must, at a minimum, create and maintain records detailing the following:
   • The actual cost of the product to the physician, including any rebate or price reduction provided to the physician
   • The name of the manufacturer and the supplier of the product
   • The date the product was supplied to the physician
   • The expiry date of the product, if any, and
   • Any additional costs incurred by the physician, including any formula or calculation used by the physician to determine the additional cost added to the price of the product charged to the patient
Restrictions on Selling/Dispensing Medications and Products

(c) Quebec Regulations:

**Code of Ethics of Physicians** Professional Code
(R.S.Q., c. C-26, s. 87) section 73

- A physician must refrain:
  1. from seeking or obtaining *undue* profit from the prescription of apparatus, examinations, medications or treatments;
  2. from granting, in the practice of his profession, any benefit, commission or rebate to any person whatsoever;
  3. from accepting, in his capacity as a physician by using his title of physician, any commission, rebate or material benefit with the exception of customary presents and gifts of modest value.
Restrictions on Selling/Dispensing Medications and Products

(d) British Columbia Regulations:

CPSBC – Guidelines

1. Promoting and selling medical or non-medical products or supplies in the office
   Selling products and supplies is appropriate where, for example:
   - The sale of products must be administered in a medical office setting. In this case, the charge for the product should not exceed the actual price paid by the physician, and may include a reasonable mark-up of 10-15% to cover overhead costs, such as handling, shipping, and storage
   - The sale of therapeutic agents or medically-necessary supplies when no other facility can provide them at a reasonably convenient location, in a reasonable timeframe or at a reasonable cost;

The dispensing and sale of medications is not permitted, except in special circumstances of geographical isolation, or where the dispensing by pharmacies or agencies is not readily available.
Restrictions on Selling/Dispensing Medications and Products

(d)(i) British Columbia Regulations: CONTRADICTION!!

CPSBC – Guidelines
1. Promoting and selling medical or non-medical products or supplies in the office
   • Promoting or selling medical or non-medical products to patients for a profit is not only unethical, it constitutes a direct conflict of interest. Such transactions might reasonably be perceived as self-serving, and may compromise the fiduciary relationship between physicians and their patients. Selling products to patients should be avoided in most circumstances, especially if the same or similar products can be purchased elsewhere for a comparable price.
Restrictions on Selling/Dispensing Medications and Products

(d)(ii) British Columbia Regulations: Restrictions on Selling “Products”, e.g. Skin Care

The CPSBC Conflict of Interest General Ethical Policy Statement (College Quarterly March 2007)

“If the practice or activity you are involved with requires or includes the sale of merchandise such as skin care products or any other materials, the price should reflect your cost, and where appropriate, a modest handling cost up to 15%.

When you advertise your services there must not be any “come-ons” such as discounts, prizes, or “freebies”.”
Relations with Pharmaceutical Companies and Conflicts of Interest

The CPSO has issued a special advisory: **MD’s Relations with Drug Companies** as follows:

*Physicians should not dispense pharmaceuticals or provide diagnostic or other services for material gain unless they can demonstrate that these cannot be provided within a reasonable distance by an appropriate other party.*

*Physicians should not invest in pharmaceutical companies or related undertakings if knowledge about the success of the company or undertakings might inappropriately affect the manner of their practice or their prescribing behaviour.*

Continued…
Conflicts of Interest (Professional Misconduct)

Special advisory continued…

Practicing physicians should not be affiliated with pharmaceutical companies if the nature of their affiliation influences their medical practice inappropriately.

Practicing physicians should not accept a fee or equivalent consideration from pharmaceutical manufacturers or distributors in exchange for seeing them in a promotional or similar capacity.

Continued…
Conflict of Interest (Professional Misconduct)

Special advisory continued…

*Practicing physicians should not accept personal gifts from the pharmaceutical industry or similar bodies*

*Practicing physicians may accept patient-teaching aids appropriate to their area of practice provided these aids carry only the logo of the donor company and do not refer to specific therapeutic agents.*
Conflict of Interest:
Case Law

KROP (RE) [1998] O.C.P.S.D. No. 6

**Facts**
Dr. Krop maintained a family practice focused on Environmental Medicine. Dr. Krop’s wife owned and controlled a company, American Ecology Inc., which supplied drugs or biological preparations to Dr. Krop’s patients.

**Nature of Conflict of Interest**
Dr. Krop sold or otherwise supplied drugs or biological preparations to his patients at a profit through the company owned and controlled by his wife.

**Outcome**
Dr. Krop was found guilty of employing inappropriate tests, diagnosis, and making inappropriate prescriptions.

Continued…
Conflict of Interest: Case Law

**KROP (RE) [1998] O.C.P.S.D. No. 6:**

**Penalty**
Dr. Krop received a reprimand recorded on the Register and was ordered to adhere to recommendations with respect to his Complimentary Medical Practices. He was also required to provide patients with sufficient information to make informed choices in respect of complimentary medical services and products.

In rendering their penalty, the Committee stated that: “it should not be misconduct to refer a patient, honestly and without conflict of interest, to unconventional or complementary practitioners when appropriate and where there is no reason to believe such a referral would expose the patient to harm”.
Conflict of Interest
Case Law


Facts
Dr. Lambert was before the Discipline Committee in May 2002 on two allegations. The second involved an allegation of disgraceful dishonourable and unprofessional behaviour in respect of attempting to sell a non-medical product during the course of a routine visit for blood tests.

Nature of conflict of Interest
He became angry when the patient declined and when she refused to provide him with the names of her friends. This resulted in the revocation of his license.

Outcome
Dr. Lambert was found guilty of professional misconduct.

Penalty
Revocation of his medical licence.
Case Law: Conflict of Interest

Devgan v. College of Physicians and Surgeons of Ontario, 2005
CanLII 2325 (ON SCDC)

Facts
Dr. Devgan was a GP with an interest in homeopathic medicine. Complaints were made against him from the families of 3 deceased patients who were diagnosed with terminal cancer. Dr. Devgan promised he could cure the patients with non-traditional intravenous therapy (Carnivora) and vitamin and mineral supplements. He charged the patients $30,000 US for one month's worth of treatment. He claimed the amount charged was similar to that charged at international clinics and was necessary to cover the costs of his “research” – which was mostly travel related costs.
Case Law:
Conflict of Interest

Devgan v. College of Physicians and Surgeons of Ontario, 2005 CanLII 2325 (ON SCDC)

Nature of Conflict of Interest
Dr. Devgan sold or supplied drugs to patients for profit, contrary to s. 16(d) of Ontario Regulation 114/94 under the Medicine Act.

Outcome
The Committee found that “the overall fees charged seem[ed] excessive on their face in relation to the underlying costs of the drugs....” The Committee was also not satisfied by Dr. Devgan’s “vague references” to research as the main argument for the cost of the treatment, as it was not substantial enough to justify the fees charged. Dr. Devgan was found to be in a conflict of interest, having sold certain medical products at a profit.

Penalty
Dr. Devgan’s certificate of registration was revoked.
Justifiable Components For Selling Medications

i. The Actual Cost of the Drug
ii. Dispensing Fee
iii. Ordering and Re-Stocking Fee
iv. Professional Fee
Justifiable Components for Selling Medical Products

- Biological products:
  - Stock those not available in regular pharmacies if possible (i.e., health food stores or from the United States, etc.)
- Dressing and sterilization kits. Try to add something you need to your surgery or practice and/or those only available in medical supply companies.
- Cosmetic products or other cosmetic preparations
- Consider a relationship with a compounding pharmacy
- Place a Notice on the reception desk that you or a member of your family have a financial interest in the company that manufacture the product.
Recommendations for Selling Prescription Medications

- Prescribe medications reasonably required and justifiable
- Obtain a DIN number so patients can claim on their insurance
- Design invoices to withstand College audits
- Design standard packaging that meets requirements in the Regulations, use sticky labels and keep a copy of the label in the patient’s chart
- Avoid renewing prescription medication
- Keep the mark-up within the guidelines and records of the break down of the mark up
Requirements for Prescriptions and Packaging Medications for Sale

- In addition, a physician dispensing medication should ensure that the labelling on the container contains at a minimum:
  - Name of the medication;
  - Date dispensed;
  - Quantity dispensed;
  - Dosage;
  - Directions for use;
  - Patient’s name;
  - Physician’s name and address.
The End