



Conflict of Interest

AT A GLANCE

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NEED TO KNOW

1.
A conflict of interest occurs where, in the mind of a reasonable person, a dietitian has a personal interest that could improperly influence their professional judgment.
2.
Some conflicts are best managed by complete avoidance.
3.
Most conflicts can be successfully managed by the DORM principle:
 - Disclosure
 - Options
 - Reassurance
 - Modifying the circumstances.

What is a Conflict of Interest?

The fiduciary duty of dietitians to their clients, reviewed in Chapter 1, includes being loyal and diligent, and acting in good faith in the best interests of clients. Where dietitians do not have a traditional practitioner/client relationship, they may still have a duty to others such as the consumers affected by their decisions, their employers or to the general public. Clients need to be able to trust dietitians. Having a conflict of interest can undermine that trust.

A conflict of interest occurs when, *in the mind of a reasonable person*, a dietitian has a *personal interest* that could *improperly influence* their *professional judgment*. In this context, "improperly" means that a dietitian considers their own, the interest of a relative or someone else's interests rather than the interests of their clients. Four concepts are fundamental to this definition of conflict of interest:

1. personal interest;
2. professional judgement;
3. improper influence;
4. the "reasonable person" test.

1. PERSONAL INTEREST

The dietitian has a personal interest, which can include any benefit, gift, advantage or preferential treatment. Examples might be monetary payment, hospitality, a rebate or discount, a loan, or other business opportunities. The interest might be direct (a cash payment to the dietitian), or indirect (a benefit to a family member, or an advantage for the employer for which the dietitian would obtain recognition). The personal interest could also be of a moral nature, (a religious or moral objection to a client choosing to hasten his or her own death).

2. PROFESSIONAL JUDGMENT

The interest relates to a professional judgment that has to be made, whether explicit (a specific treatment recommendation) or implicit (by not objecting, the dietitian may be deemed to be supportive of an action, program or product). A common factor in all conflicts of

interest is that a dietitian's professional status and capacity are in question. Decisions solely related to a dietitian's private or personal life are not the issue. A conflict between family members about who should be invited to a wedding, for instance, would not be relevant to a dietitian's professional life.

3. IMPROPER INFLUENCE

The personal interest could improperly influence a dietitian. It must be something that could hold sway over the dietitian because she or he wants the benefit or wants to avoid a loss that accompanies the interest. Thus, a customary or trivial benefit, such as a pen offered to attendees at a conference by a supplier, would not constitute a conflict of interest. On the other hand, paying for a dietitian's attendance at the conference might be viewed as an improper influence.

4. THE "REASONABLE PERSON" TEST

The interest must be weighed from the perspective of a "reasonable person" (a neutral observer, not the dietitian). Consequently, the fact that a conflicting interest did not actually influence the dietitian is irrelevant; the test of what constitutes a conflict of interest is what most people would think reasonable. As a result, a perceived or potential conflict of interest is as significant as a real conflict of interest. In this area of professionalism, appearances count.

The main goal of this chapter is to help readers recognize possible conflicts of interest and to manage them appropriately. While it would be wrong for a dietitian to avoid every benefit offered on the basis that it might be viewed as a conflict of interest, it would also be a mistake to simply assume that there is nothing wrong with accepting a benefit so long as it does not go into one's own pocket.

Categories of Conflicts of Interest

One of the greatest difficulties in dealing with conflicts of interest is that they are often hard to recognize because they come in many shapes and forms. Reviewing some of the recurring forms and examples may be the best way to study them.

RECEIVING A BENEFIT FROM A SUPPLIER

Scenario 9-1, *Gifts to Purchasing Manager*, p. 103, is one illustration. A related conflict is conferring a benefit for a referral of business. This can promote unnecessary services or, at the very least, result in a third party steering clients to a dietitian based on criteria other than a client's best interest.

INAPPROPRIATELY USING INFLUENCE OR STATUS

As regulated health professionals, Registered Dietitians have a special status in our society. In a professional relationship, clients are always vulnerable. Using professional influence to pressure people to make a particular decision, or to encourage them to make thoughtless decisions, could constitute a conflict of interest. For example, encouraging a client to change his or her will to include one's favourite charity would be inappropriate. So would advising a client to undertake an unnecessary and expensive course of treatment.

PERSONAL, MORAL OR PHILOSOPHICAL BELIEFS INTERFERE WITH PROFESSIONAL JUDGMENT

Having strong views about the morality of eating meat, for example, should not interfere with giving professional advice about its nutritional value.

SELLING A PRODUCT FOR PROFIT

Clients come to dietitians primarily for professional advice, and expect to pay for that

expertise. However, selling nutrition or exercise supplies to clients requires caution, so that clients are not misled as to whether the price of the product is at cost or includes a hidden mark-up. The conflict resides partly in any perceived personal profit motive for recommending products. Clients should be informed that the product is sold for profit and they should feel free to shop around. Dietitians should be mindful that some clients might feel pressured to buy products from them, fearing that the quality of professional service might otherwise suffer.

REFERRING DIETITIAN HAS A PERSONAL INTEREST

A similar concern exists when a client is preferred to an apparently arm's length organization in which the referring dietitian has a personal interest. Referring a client to a nutritional supplement outlet, partly owned by the dietitian's family, results in conferring an indirect benefit to that dietitian. Again, a dietitian should be mindful of personal motives in recommending products from a family business and about how this activity might be perceived by others. At a minimum, clients should be informed of the dietitian's relationship to the family outlet and they should feel free to shop around without feeling pressured.

A DIETITIAN SEEKING A CLIENT'S PARTICIPATION IN A RESEARCH PROJECT

This situation has an inherent conflict of interest. While the dietitian (and perhaps society as a whole) benefits from the client's participation, it may not benefit the client, and in some circumstances, may be potentially harmful. As explained below, this potential conflict of interest can be managed through proper safeguards.

PERSONAL USE OF THINGS BELONGING TO CLIENTS OR EMPLOYERS.

Depending on company policy, using an employer's computer to surf the Internet may be

viewed as a misuse of resources intended for professional purposes. This is a potential conflict of interest. More troublesome would be using a client's computer on a home visit. Even if the client purported to consent, the client might have felt pressured because of the dietitian's influence, and even question the basis of the dietitian's professional concern. In this case, boundary crossing is of greater concern than any subtle influence gifts might have on one's professional judgment (see Chapter 10, *Boundary Issues*).

GIFTS FROM CLIENTS.

Unless very small (and even when not solicited), gifts from clients raise the same concerns as described above. Again, that is not to say that all gifts offered by clients should be refused. The point is to consider all of the circumstances to ensure that no harm will result from accepting the gift.

Addressing Conflicts of Interest

Some conflicts of interest need to be avoided, while others can be managed through safeguards and policies. There are many examples where appropriate safeguards can remedy a conflict of interest, but three conflicts are significant and recurring situations for the profession:

1. self-referral;
2. referral to a supplier; and,
3. participation in a research project.

1. SELF-REFERRAL

A conflict of interest may occur where a member, or a related person or related corporation, directly or indirectly benefits through a self-referral, unless:

- access to comparable service, necessary products or devices is not reasonably possible for the client;
- the member has explored and exhausted all other sources as reasonably as possible; and

- the member has disclosed his/her interests to clients when making the referral.

2. REFERRAL TO A SUPPLIER

A recommendation or referral to a supplier of nutritional products, a health care facility, or a nutritional program, in which the member or related person or related corporation has a financial interest can also lead to a conflict of interest, unless the member at the same time:

- fully discloses the financial interest;
- provides the client with the name of at least one other supplier, facility or service in the same geographical area;
- informs the client that he or she has the option of using an alternative supplier, facility or service; and
- assures the client that the choosing of an alternative supplier, facility or service will not affect the quality of health services provided by the member.

3. PARTICIPATING IN A RESEARCH PROJECT

A member who participates in a research project involving professional services provided to a client may be in conflict of interest unless:

- the member fully discloses the nature of the research project and gives the client the option of refusing to be involved in it and withdrawing from it at any time; and
- the member assures the client that refusing to be involved in the research project or withdrawing from it will not affect the quality of services provided by the member.

It is important to recognize that not all conflicts of interest are prohibited. They all require an action of some sort, but complete avoidance is not necessarily the answer. Sometimes other alternatives are acceptable. Below are five scenarios illustrating conflicts of interests that might occur in dietetic practice with suggestions for dealing with them.

ACCEPTING GIFTS

SCENARIO 9-1

Gifts to Purchasing Manager

You are the food services manager and make a number of purchasing decisions for your organization. A few of your suppliers have made small gifts to you such as a box of chocolates at Christmas. Occasionally, you are taken out to lunch where you mostly discuss business. The odd tickets have also been sent your way. Now a supplier is offering to provide a significant financial contribution towards your department's education budget after hearing that it had been cut in half. Is there a conflict?

This scenario, *Gifts to Purchasing Manager*, illustrates a classic conflict of interest. Dietitians must consider whether, in the mind of a reasonable observer, the gifts offered by the suppliers would be considered to have an improper influence over their professional judgment in purchasing supplies. In assessing whether a gift should be accepted from a vendor, consider:

- the value of the benefits;
- the frequency of the gifts;
- who actually consumes the benefits;
- any policies that exist in the organization;
- the employer's knowledge of these activities;
- any generally accepted practices in the industry and profession.

Assuming that no company policy exists to the contrary, a reasonable approach would be to accept the chocolates as a trivial goodwill gesture, but make them available to all staff.

Accepting a rare lunch without alcohol at a modest establishment, where business is the primary topic of discussion, could be justified on the basis of developing a good relationship with the supplier. This would enhance the information needed to make good purchasing decisions and to avoid distractions at the office. It would be prudent, however, to advise the employer that this is happening. If not frequently offered, the tickets may be accepted, making it clear to the

supplier that they will be contributed to the organization's fundraising drive, and that they will not influence any purchasing decisions.

In many circumstances, these items could be reasonably viewed as being too inconsequential to influence professional judgment. Even if any one of the gifts were insignificant, cumulatively they might become significant so a dietitian would want to ensure that their frequency did not create an appearance of conflict. A significant financial contribution to the education budget, however, could reasonably be viewed as influencing a dietitian's professional judgment and could potentially constitute a conflict of interest. In this case, the concern is that purchasing decisions would not be based on quality and value alone, but on circumventing the limitations of the organization's budgetary process. The financial arm of the organization and the board of directors might well have chosen to reduce the purchasing budget instead of adding to the education budget.

This does not mean that it is impossible to ever receive benefits when a potential conflict of interest exists. There may be more than one way to resolve a conflict. In this case, the dietitian would definitely have to discuss the matter with her or his supervisor or employer. A contribution such as this one might be rejected outright, or alternatively, it might be accepted under strict conditions.

SCENARIO 9-2

Corporate Partnerships

You work in public health. Your organization partners with other agencies for student nutrition programs. One partner provides lunch boxes for participants at a formal fundraising event, which contain a fruit drink box, a coupon for a donut, and Vitamin C supplements for adults (1000 mg/tablet). What do you do?

MIXED MESSAGES

The primary dietetic exercise in Scenario 9-2, *Corporate Partnerships*, is communicating an educational message to students about nutrition. This message could be compromised by

the subtext that would accompany the distribution of lunch boxes containing a coupon for donuts. The target audience, the students involved in the fundraising activity, would receive a mixed message about what was nutritious.

The competing interest is indirect. You are relying on a partner, and possibly sponsors, to assist financially or otherwise in communicating a very worthwhile message about nutrition to students. Alienating the partner and sponsors could jeopardize your program. The influence is subtle pressure to acquiesce to the mixed message for the sake of a larger program. Some sort of intervention is indicated in this scenario and perhaps the challenge lies in finding the best one (see below: *Conflicts that Can be Managed Through DORM*).

SCENARIO 9-3

Promoting a Product

You work in industry. Your company produces low fat frozen meals and part of your job is to promote the sale of this product to purchasing agents for various retail outlets. The purchasing agents know that you are a dietitian. Are you in a conflict of interest?

PROMOTING A PRODUCT

The company hiring you wishes to make a profit from selling the products that you are asked to promote, and knows that consumers respect your professional opinion about nutrition. They are buying that trust. The perceived conflict lies between the interests of the company paying you to represent their product, and that of consumers and other dietetic professionals.

A reasonable person could question whether your interest lies with the company or the consumer. In most circumstances, transparent, honest and evidenced-based promoting of a product would be perceived as managing the conflict appropriately.

The situation would be quite different if you

were not employed by the company, but were retained as an independent expert to endorse the product only to purchasing agents. Purchasing agents are not clients except in the most commercial sense of the term. They can still reasonably expect, however, that you would be transparent and clearly identify your role as a sales agent for your employer. They can also reasonably expect that any nutritional claims you make would be fair and accurate, based on evidence and not misleading by omission. In that context, you would have a competing duty in your role as an "independent" dietitian and your minimal professional duty to the purchasing agent. You must ensure that representation of the product is always based on evidence.

The situation would also be quite different if, as a dietitian, you were to participate in advertisements to the general public endorsing a product with words like, "I am a dietitian and I recommend X to all of my lactose intolerant clients because it is the best product on the market". Dietitians may wish to avoid a personal endorsement of this type entirely because they are so open to misunderstanding. In that context, their duty to the general public would be a competing interest. When working for a commercial entity that deals directly with the public, dietitians should always identify themselves as representatives of their company, and should avoid any perception that they are making a clinical recommendation to anyone.

USING WORK TIME FOR SPEAKING

SCENARIO 9-4

Speaking Engagement

Normally, you work on salary from 8:30 to 4:30. Your job provides you with a lot of independence and you are often out of the office. A community partner asks you to speak to a community group during a weekday afternoon. This presentation is not in your job description. You will be paid a modest honorarium. No one will miss you at work, and you believe that this speaking engagement will enhance your relationship with the community partner. Is there a problem?

ENGAGEMENTS

In Scenario 9-4, *Speaking Engagement*, the fact that you are keeping your attendance a secret from your workplace is a good indication that something is wrong. Your primary client in this context is your employer. You are supposed to be working from 8:30 to 4:30 for your employer, and are being paid for that time. Your competing personal interest would certainly include the honorarium and using work time for other activities.

Even if you were not paid the honorarium, you would have to be confident that your employer would approve of your spending work time to "enhance" this relationship. In many jobs, it would be natural for you to discuss the invitation with your supervisor before accepting it.

SCENARIO 9-5

Sponsored Conference

You have developed an expertise in hyperlipidemia. You have been asked to speak at a conference and present a paper on a nutrition treatment of hyperlipidemia for second and third generation Asian immigrants. After agreeing to speak, you receive the conference materials and learn that each session has a corporate sponsor. A low fat yoghurt company sponsors your session. Is there a problem?

SPONSORED CONFERENCES AND ENDORSEMENTS

As in Scenario 9-3 about promoting a product, one dilemma in Scenario 9-5, *Sponsored Conference*, is whether you are using your professional status to implicitly endorse the yoghurt company. You want to avoid a situation where you felt pressured to slant a presentation in a particular way in order to avoid upsetting the sponsor. There might be an inference of influence over the content of the paper if, for example, the yoghurt company's logo was on your paper or handouts. To a large extent, the perception of conflict would depend on:

- how the sponsorship was portrayed before, during and after the conference;
- how much influence the sponsor had or appeared to have over the content of the presentation; and
- what other safeguards were in place.

Additional information would clarify the situation. A possible safeguard might be a disclaimer in the written materials indicating that you had no connection with the sponsor. The organizers of the conference could also be approached to ensure that there was no actual or perceived influence of the sponsor over the content of the presentation.

Conflicts That Should be Avoided Entirely

Some conflicts of interest need to be avoided entirely. In some cases, no amount of safeguards can present a reasonable level of confidence in the appropriate exercise of professional judgment. Accepting a benefit beyond the trivial from a supplier of products that a dietitian recommends to clients should probably be avoided at all times. No amount of disclosure to clients will provide an objective and reasonable level of confidence in a dietitian who accepts a Caribbean holiday from a company whose products they recommend to their clients. If in doubt as to whether a conflict of interest should be avoided, discuss the issue with experienced and respected colleagues.

Three conflicts of interest are not salvageable by safeguards. These occur where a member or a related person or related corporation, directly or indirectly:

1. accepts a gift, rebate, credit or other benefit due to the member referring a client to any other person or company;
2. offers, makes or confers a rebate, gift, credit or other benefit by reason of the referral of a client to the member; and
3. enters into any arrangements respecting a lease or use of premises or equipment, under which any amount payable by or to a

member or related person or related corporation is related to the amount of fees charged by the member, or to the volume of clients seen by the member.

The following circumstances should also be avoided entirely to prevent a serious conflict of interest from arising:

- **Conflicts involving clients who are more vulnerable or less able to protect themselves.** For example, a dietitian asking a client to run a personal errand is difficult to justify. Individual health clients are more likely to be vulnerable than an employer or a business colleague.
- **Conflicts that relate directly to client assessments or that involve treatment recommendations.** An example would be an employer who offers a dietitian a bonus for referring at least twenty clients a month to his brother's gym.
- **Accepting larger benefits.** It is difficult to deny the potential influence on a dietitian of increasingly large gifts. It is more likely that a reasonable observer would believe that a vacation would have a greater influence on a dietitian's judgement than a pair of theatre tickets. It is better to avoid these entirely.
- **Asking for a donation for a research project or for a loan for your business.** Always avoid any situation that puts pressure on clients, and where clients are vulnerable and may not be able to protect themselves from such a request. For example, asking a client for a loan for business start-up costs is clearly a conflict of interest. Saying that you will not treat them differently if they say no is unlikely, in the real world, to protect the client from the inherently damaging nature of the request.

SCENARIO 9-6

Promoting a Family Business

You are a dietitian with a private practice and refer clients to the dietetic nutritional supplements store owned by your family. Are you in conflict of interest?

Conflicts That Can be Managed Through DORM

Promoting a Family Business, Scenario 9-6, may be perceived as a conflict of interest. However, many conflicts of interest like this can be managed through safeguards that involve openness and transparency. Safeguards also foster an environment where clients are not pressured to make choices. These safeguards are developed using the DORM principle:

- **Disclosure**
- **Options**
- **Reassurance**
- **Modification**

Disclosure

The primary safeguard in managing any conflict of interest is disclosing to clients and any other interested party, such as an employer, the nature of the conflict and the potential benefit. While simply disclosing a conflict may not always be sufficient, failing to disclose it will almost always be a breach of professional duty. In the scenario above, *Promoting a Family Business*, you would advise the client that your family owns the store. Upon request, disclosure should also be made to the College.

Options

Providing clients with additional options will permit them to make an informed choice. In the nutritional supplements store example, you would provide your client with a list of two or three other stores for similar products or services.

Reassurance

In Scenario 9-6, a common client concern is that you will be insulted or put out if they do not accept your recommendation to buy from your family's business. It is important to reassure them that choosing another product or service from the list will not affect the quality of your professional services to them. The only exception would be where choosing the other

supplier could result in inconsistent treatment, a rare occurrence and one that is difficult to envision in this particular example. An example of possible inconsistent treatment is where a dietitian recommends a nutrition treatment with a specific combination of vitamin and mineral supplements, and the client chooses to go to an unregistered nutritionist for advice on the vitamin and mineral component of the program.

Modification

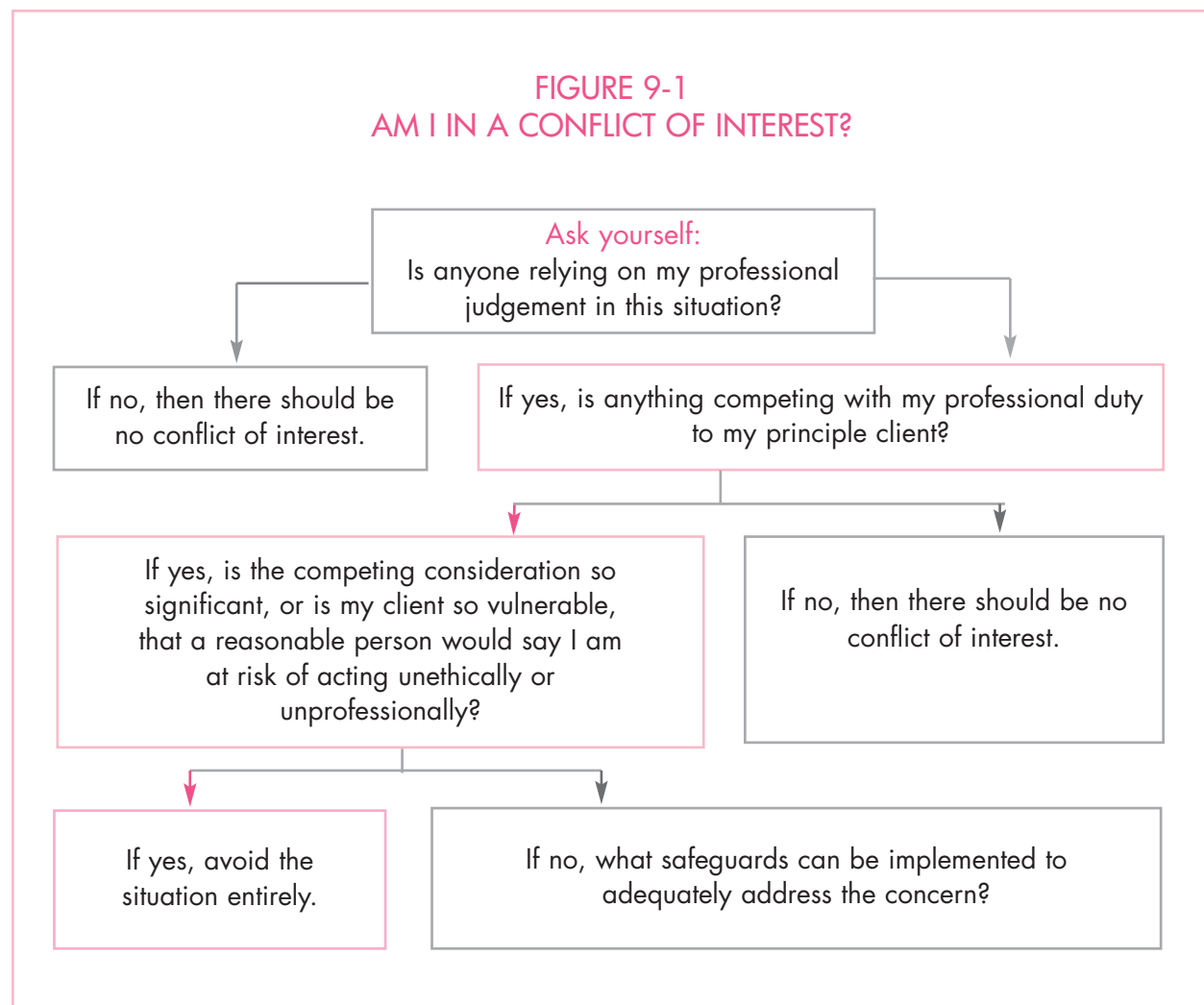
Occasionally, making a small modification in a situation can remove or greatly reduce the potential for conflict. For example, much concern would be alleviated if you were to

arrange for your family's nutritional supplements store to provide recommended products to your clients at no profit.

Conclusion

A conflict of interest occurs when a personal interest exists that could improperly influence a dietitian's professional judgment in the mind of a reasonable person. Although some conflicts are best managed by complete avoidance, most conflicts can be successfully managed by the DORM principle. If in doubt, discuss the matter with a trusted colleague or phone the College for guidance. Consider applying the decision

FIGURE 9-1
AM I IN A CONFLICT OF INTEREST?



Quiz

For the scenarios discussed earlier in this chapter, express your view as to whether the concern can be addressed through the DORM principle. If so, set out the safeguards that might successfully manage the potential conflict. See *Appendix 1* for answers.

Scenario 9-1	Gifts to Purchasing Manager
Scenario 9-2	Corporate Partnerships
Scenario 9-3	Promoting a Product
Scenario 9-4	Speaking Engagement
Scenario 9-5	Sponsored Conference

Resources

COLLEGE OF DIETITIANS OF ONTARIO

Code of Ethics Interpretative Guide, Part B: Responsibilities to the Client. See examples of financial conflicts of interest, 3-6.

résumé at www.cdo.on.ca > Resources > Publications

- *[“Conflicts of Interest and RD Practice”](#), Winter 2009, 4-8.*
- *[“Advertising and Solicitation”](#), Winter 2010, 4-7.*
- *[“Testimonials and Direct Solicitation of Clients”](#), Spring 2010, 5-7.*
- *[“Solicitation of a Client for Business When Your Client is a Group”](#), Summer 2010, 7-8.*

PUBLICATIONS

Richard Steinecke. *“A Complete Guide to the Regulated Health Professions Act”*. Aurora: Canada Law Book, section on conflicts of interest.