

# **Managing conflict of interest in health care: The Roles of Professionalism and Regulatory Colleges**

**by: Deb Zelisko, M.Cl.Sc, (Aud-C), Reg. CASLPO**

**Thesis Supervisor: Raisa Deber, PhD**

**Thesis Advisors: Andrea Baumann, PhD, Brenda  
Gamble, PhD, Audrey Laporte, PhD**

# Background: Self-Regulation and Professionalism

- Self-regulation is a policy instrument used by government in the implementation of health policy<sup>1</sup>
- Self-regulation is cost effective for government because the creation, administration and renewal of standards is delegated to a non-government entity<sup>1</sup>
- Self-regulation is based on the concept of professionalism<sup>2</sup>
- Professionalism includes the notion that the health care professional will put patient needs ahead self-interests<sup>2,3</sup>

1. Howlett M, Ramesh M, Perl A (2009). *Studying Public Policy; Policy Cycles & Policy Subsystems, Third Edition*. Oxford University Press, New York.  
2. Freidson E. (2001). *Professionalism: The Third Logic. On the practice of Knowledge*. The University of Chicago Press, Chicago.  
3. Cruess RL, Cruess SR (1997). *Professionalism, laws and kings*. Clin. Invest Med 1997;20(6):407-413.

# Background: Financial Conflict of Interest

- In the delivery of health care financial conflict of interest may occur in relation to:
  - Services Provided and/or
  - Products Sold

## Financial conflict of interest may be affected by:

- How services and/or products are paid for<sup>4,5</sup>
  - E.g. fee-for-service (FFS), salary, capitation, etc.
  - Results and Incentives
- How necessity of services/products are determined and by whom
- Who pays for services:
  - Private vs third party vs industry partners

4. Thompson DF (1993). *Understanding Financial Conflicts of Interest*. NEJM; 329:573-576.

5. Carson TL (1994). *Conflicts of Interest*. Journal of Business Ethics; 13(5): 387-404.

# The importance of understanding how conflict of interest is managed:

- If acted upon conflict of interest may interfere with patient care, erode patient trust and undermine the effectiveness of self-regulation<sup>4</sup>
- Failure of regulatory colleges to address conflict of interest has the potential to result in additional societal costs
  - Other more costly policy instruments utilized (e.g. command and control policy instruments)
  - Increased risk to the public (e.g. seeking services from unregulated sources or refusing necessary services due to mistrust)

4. Thompson DF (1993). *Understanding Financial Conflicts of Interest*. NEJM; 329:573-576.

## The goal of this study:

- To understand how regulatory colleges manage financial conflict of interest which their registrants face

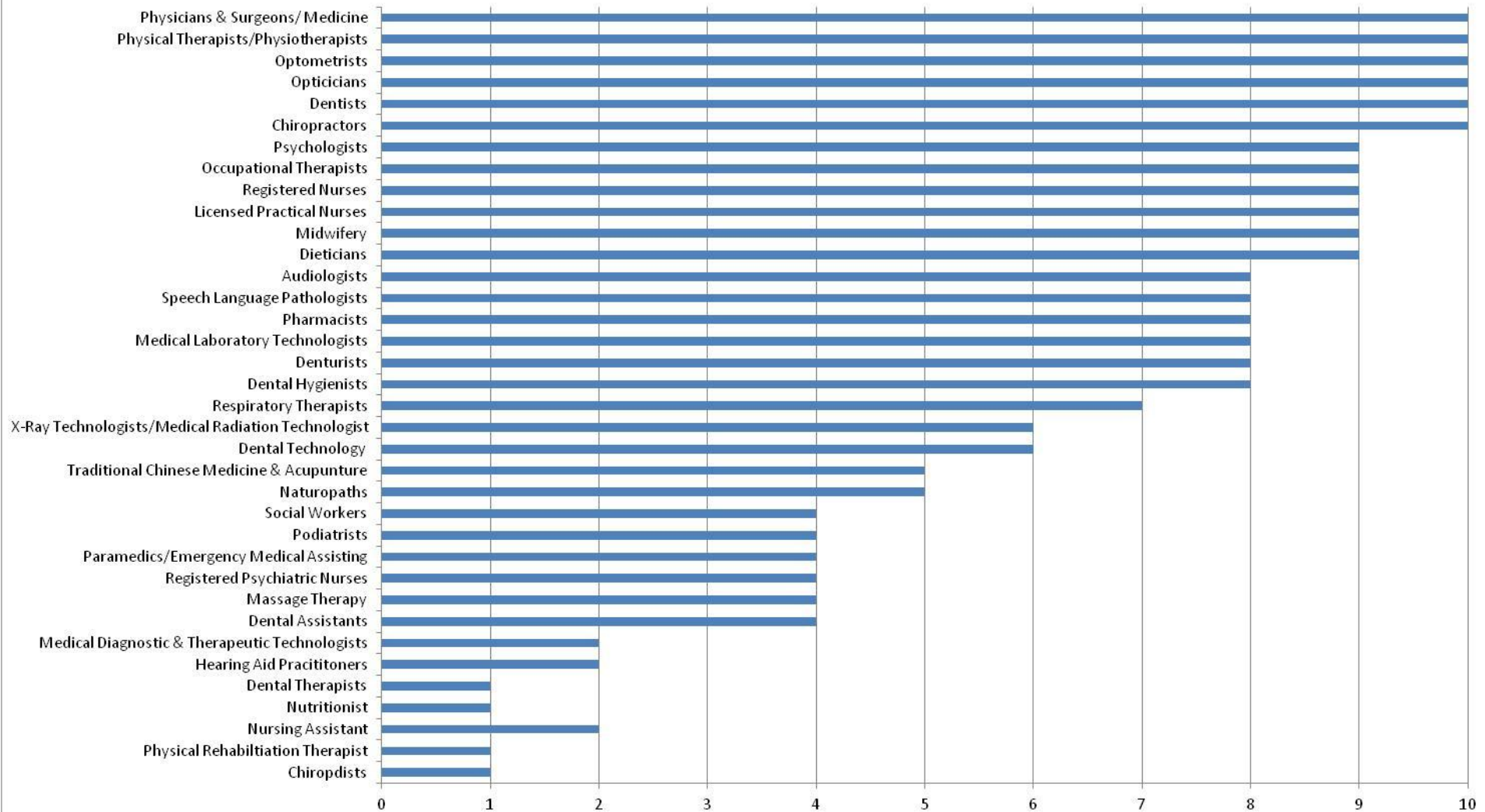
# Design & Methods

- Nested multiple-case study<sup>6</sup>
- Part I: Descriptive Study by Province of the Self-Regulated Health Professions
  - Environmental scan and document analysis
- Part II: Multiple-case study focusing on four Ontario-based self-regulated health professions
  - Key Informant Interviews

6. Yin RK (2009). *Case study research: Design and methods (4<sup>th</sup>ed.)*. Thousand Oaks, CA: Sage.

# Part I: Summary of the number of provinces in which a profession has been legislated self-regulation; considerable variation exists across professions

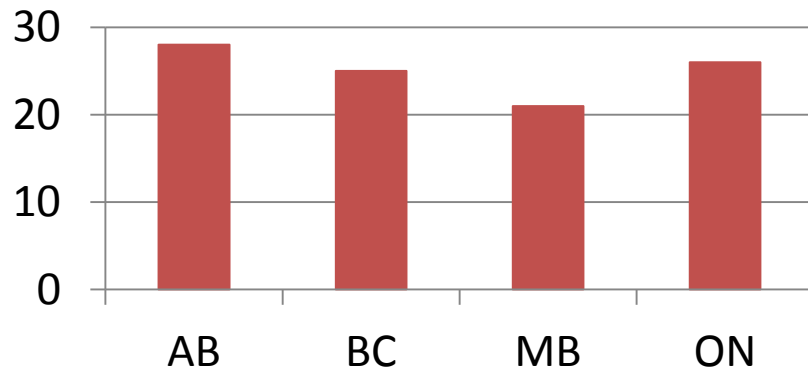
Summary of the number of provinces legislating self-regulation for each health care profession



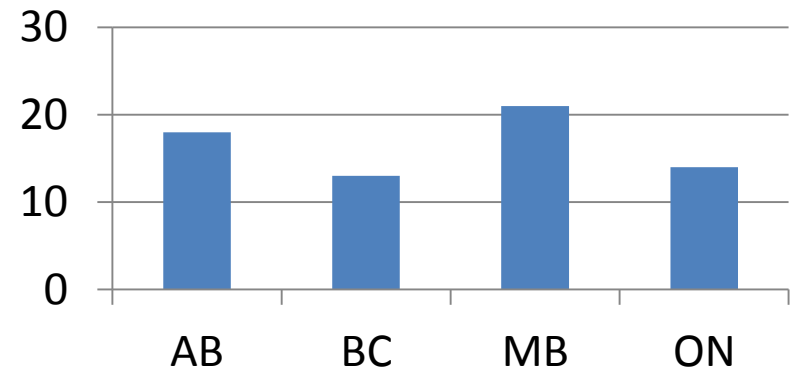
*Some professions are legislated self-regulation in every province, while others only in one or two provinces*

# Comparison of Provincial Consolidated Health Professions Legislation

## Number of Professions Included



## Number of Controlled Acts



- Only four provinces currently have overarching consolidated legislation
  - Alberta (AB), British Columbia (BC), Manitoba (MB), Ontario (ON)
  - Provincially defined:
    - List of controlled acts (professionally restricted activities) delegated to the scope of practice of specific professions
    - Objects of the colleges, including profession conduct & ethics
    - Complaints and discipline processes
- Other provinces: Defined by individual colleges or left undefined



# Focus on Ontario Self-Regulated Health Professions

- *Regulated Health Professions Act, 1991*
- 26 Professions, 14 Controlled Acts
- Included in objects of the college:
  - To develop, establish and maintain standards of professional ethics for the members.
- The study is focused on:
  - College of Physicians and Surgeons of Ontario (CPSO)
  - College of Nurses of Ontario (CNO)
  - College of Physiotherapists of Ontario (CPTO)
  - College of Audiologists and Speech Language Pathologists of Ontario (CASLPO)

# Comparison of CPSO, CNO, CPTO and CASLPO along basic regulatory and professional dimensions

	CPSO	CNO	CPTO	CASLPO (Audiology)
Number of Registrants in 2011	36,513	150,149	7,556	3,501* 614 audiologists
Title Protection & Defined Scope of Practice	Y	Y	Y	Y
Number of Controlled Acts	13	5 – 9	7	1 (audiologists)
Published Code of Ethics	Canadian Medical Association (CMA)	Practice Ethics	Standards for Professional Practice	Code of Ethics
Conflict of Interest Guidelines	Y	Y	Y	Y

# Conflict of Interest Guidelines Comparison:

## Colleges vary in the level of detail, specificity & guidance they provide to their registrants

	CPSO	CNO	CPTO	CASLPO (Audiology)
Clear definition of Conflict of Interest	<ul style="list-style-type: none"> <li>•Medical Act, 1994, Reg. 114/94 posted on website</li> <li>• Professional Conduct: Professional Misconduct Practice Guideline</li> </ul>	<ul style="list-style-type: none"> <li>•Professional Conduct: Professional Misconduct Practice Guideline</li> <li>• Independent Practice guideline</li> </ul>	<ul style="list-style-type: none"> <li>•Physiotherapy Act, 1991, Reg. 388/08 mentions conflict of interest</li> <li>•Guide to the Standards for Professional Practice: Advertising: Fees &amp; Billing; Conflict of Interest</li> </ul>	<ul style="list-style-type: none"> <li>•RHPA, Section 95-21, Schedule 2, Proposed Reg posted on website</li> </ul>
Conflict of Interest Incorporated in Code of Ethics	<ul style="list-style-type: none"> <li>• Canadian Medical Association (CMA) 2004 Code of Ethics posted which includes statement on conflict of interest</li> </ul>	<ul style="list-style-type: none"> <li>•Ethics Practice Standard does not focus on conflict of interest</li> </ul>	<ul style="list-style-type: none"> <li>• Conflict of interest not explicitly noted</li> </ul>	<ul style="list-style-type: none"> <li>•By-Law No. 2011-8; 4.2.6</li> </ul>
Learning Modules/ Practice-Based Tools	<ul style="list-style-type: none"> <li>• No direct tools</li> <li>• Online Practice Guideline section includes link to General Medical Council (GMC-UK) with more published guidelines</li> </ul>	<ul style="list-style-type: none"> <li>• Q&amp;A section of website answered 1 practice specific question related to conflict of interest</li> </ul>	<ul style="list-style-type: none"> <li>•Guide to standards for professional practice incorporates practice-based tools</li> <li>•Online Practice Scenarios</li> </ul>	<ul style="list-style-type: none"> <li>• None found</li> </ul>

# Conflict of Interest Directives

- All four colleges have general guidelines
  - Patient's needs are to be put first
  - Avoid conflict of interest
  - Full disclosure to patient if there appears to be a conflict of interest

# Conflict of Interest Definitions: CPSO

17. (1) *It is a conflict of interest for a member to order a diagnostic or therapeutic service to be performed by a facility in which the member or a member of his or her family has a **proprietary interest** unless,*
- (a) the fact of **the proprietary interest is disclosed to the patient before a service is performed**; or*
  - (b) the facility is owned by a corporation the shares of which are publicly traded through a stock exchange and the corporation is not wholly, substantially or actually owned or controlled by the member, a member of his or her family, or a combination of them.*
- (2) A member who or whose family has a proprietary interest in a facility where diagnostic or therapeutic services are performed shall **inform the College of the details of the interest.***

**College Directives: Avoid conflict of interest. If unavoidable specific guidelines to be followed along with full disclosure to patient. Includes submitting a disclosure form to the college.**

# Conflict of Interest Definitions: CNO

*A nurse's primary obligation is providing professional care to her/his clients. Nurses are in a position of trust and **cannot use their position to influence their clients for financial gain** (for example, by selling products) or non-financial benefit (for example, by soliciting money for fundraising purposes). **Nurses should avoid promoting personal interests, such as selling products or services**, to clients they are treating.*

*Selling products may give the appearance of fulfilling the nurse's personal interests over the client's needs. It is **critical that nurses in independent practice avoid conflict** of interest situations in their practice, particularly when it comes to the endorsement and advertising of products.*

***College Directives: Avoid conflict of interest and avoid selling products and services.***

# Conflict of Interest Definitions: CPTO

*A conflict of interest arises when a registrant puts him or herself into a position where **reasonable people, including patients, could conclude** that his or her **professional judgment is influenced by financial or personal benefit**. In fact, even if a registrant's judgment is not actually compromised, there may be concerns over conflict of interest. If circumstances cause a reasonable person to suspect that the registrant's judgment is affected, this constitutes a potential conflict of interest.*

*Registrants will **avoid all circumstances that may result in real, potential or perceived conflicts of interest by refraining** from participating in any activity or arrangement where their participation provides the potential for their professional judgment to be compromised. The conflict of interest situation is not avoided by structuring the arrangement to move any benefit arising to a related person.*

**College Directives: Avoid conflict of interest. If unavoidable specific guidelines to be followed along with full disclosure to patient.**

# Conflict of Interest Definitions: CASLPO

*It is a conflict of interest for a member to participate in any professional activity where the **member's personal or financial considerations compromise or may compromise the member's judgment in that professional activity**, or where such involvement may appear to provide the potential for the member's professional judgment to be compromised.*

*..... it is a conflict of interest for a member where the member:*

*(a) **prescribes, recommends, sells or dispenses any product** to, or orders any product for, a patient or client, in a situation where the member or a related person to the member or a related corporation to the member receives, or could **potentially receive, any direct or indirect benefit from the sale** or supply of such product..... It is not a conflict of interest for a member to engage in the activities referred to in subsection (1) provided that all of the following conditions have first been met:*

*(a) The member **discloses** to the patient or client as early as possible the nature of the interest or benefit to be derived by the member or ...*

*(c) The member gives the patient or client the **option of selecting an alternative** in the same geographic area, .....*

**College Directives: Avoid conflict of interest. If unavoidable specific guidelines to be followed along with full disclosure to patient.**



**Conflict of Interest is addressed through Professional Conduct mandates. How colleges address Professional Conduct Outcomes are published in the College’s Annual Report. These outcomes vary across the four colleges as summarized in the chart below:**

<b>2011 Report</b>	<b>CPSO</b>	<b>CNO</b>	<b>CPTO</b>	<b>CASLPO</b>
Complaints	2,414	345	69	Total not explicitly reported, 16 cases were reported that went to ICRC
Registrar’s Inquiries	280	81	163	Not reported
Inquiries, Complaints and Reports Committee (ICRC) outcomes to complaints	<ul style="list-style-type: none"> <li>• 1,943 no action</li> <li>• 269 caution (verbal or written)</li> <li>• 79 other remediation</li> </ul>	<ul style="list-style-type: none"> <li>• 151 no action</li> <li>• 54 caution (verbal or written)</li> <li>• 9 other remediation</li> <li>• 125 resolution</li> </ul>	<ul style="list-style-type: none"> <li>• 53 no action</li> <li>• 8 caution (verbal or written)</li> <li>• 21 other remediation</li> </ul>	<ul style="list-style-type: none"> <li>• 10 no action</li> <li>• 3 caution (written)</li> <li>• 2 other remediation</li> </ul>
Discipline referrals	46	6	2	1
Discipline Outcomes	<ul style="list-style-type: none"> <li>• 34 completed, of which 4 (13%) found guilty of unprofessional conduct</li> </ul>	<ul style="list-style-type: none"> <li>• 4 revocation</li> <li>• 24 reprimands, suspensions, etc.</li> <li>• 1 fine</li> <li>• underlying nature not specified</li> </ul>	<ul style="list-style-type: none"> <li>• Discipline hearing reported, included registrant name, and outcome</li> </ul>	<ul style="list-style-type: none"> <li>• Not reported</li> </ul>

# Next Steps

- Understand which of professional conduct outcomes pertain specifically to financial conflict of interest
  - Complaint or registrar-based
  - ICRC and/or discipline outcome
- Compare in detail learning modules and guidelines for conflict of interest
- Key Informant interviews for each college to gain further understanding of how each college manages conflict of interest