POINTS FOR PHYSICIANS TO CONSIDER BEFORE SIGNING A LEASE

March 2008 — revised November 2015
Preamble

On October 14, 2005, the Minister of Justice and Minister Responsible for the Application of Professional Legislation released the Office des professions du Québec’s recommendations regarding commercial practices between physicians and pharmacists. On March 31, 2006, in response to requests from the Minister of Justice and the Office des professions du Québec, the Collège des médecins du Québec adopted amendments to the Code of ethics of physicians in order to comply with the Office’s recommendations, even though the Code, revised in 2002, contained several provisions aimed at controlling conflicts of interest and maintaining physicians’ professional independence. These amendments to the Code of ethics of physicians were published in the Gazette officielle du Québec and came into effect on March 1, 2008.¹

The purpose of this document is to define the scope of the amendments to the Code with respect to leases and to illustrate, in concrete terms, what is expected of physicians in this regard.

Amendments to the Code arising from the recommendations

It is now specifically stipulated in the Code of ethics of physicians that a physician may not accept, in his capacity as physician or by using his title of physician, any commission, rebate or material benefit, with the exception of customary presents and gifts of modest value.

Furthermore, the Code requires that any agreement entered into by a physician regarding the use of a building or a space for the practice of his profession must be entirely recorded in writing, must indicate that it complies with the Code of ethics of physicians and must be released to the Collège des médecins du Québec upon request.

In addition, the Code now specifies that the use of a building or a space at no charge or at a discount will be considered to be a material benefit prohibited by the Code if granted by:

- a pharmacist or a partnership or joint-stock company of which the pharmacist is a partner or shareholder;
- a person whose activities are linked, directly or indirectly, to the practice of pharmacy;
- another person in a context that may present a conflict of interests, whether real or only apparent. Whether a rent is fair and reasonable is determined as a function of local socioeconomic conditions at the time it is fixed.

¹ Note that section 72 of the Code of ethics of physicians which stipulates that the lease must be in writing came into effect on December 4, 2008 and was amended on January 7, 2015.
First, it should be noted that agreements and leases must not contain conditions that affect the physician’s professional independence, in particular by regulating the act of prescribing or patient referral pursuant to a prescription.

A lease entered into by a physician with a professional or a natural or legal person who sells goods, products, medications or apparatus prescribed by the physician must provide for the payment of a fair and reasonable rent so as not to be considered a material benefit prohibited by the Code.

### The written rental agreement

The written rental agreement must, at a minimum, include the following:

- the names of the lessor and the lessee;
- the rent per square foot, per period of occupancy or as a percentage of the physician’s billings;
- a statement to the effect that the agreement complies with physicians’ ethical obligations;
- a clause authorizing release of the agreement to the Collège des médecins du Québec at the request of one of its officers.

### But what is a fair and reasonable rent? What is a prohibited material benefit?

A physician who, for his practice, rents a space from a pharmacist or from a person associated with the practice of pharmacy or who sells goods prescribed by the physician must ensure that the rent is determined based on local socioeconomic conditions and the nature and intensity of the services provided. The rent could be calculated based on an hourly rate, the surface area or as a percentage of the physician’s billings. This caveat also applies to a physician in an office-based group practice even if he is not a signatory of the lease.

The rent must never be calculated based on the number of prescriptions written or patients assessed, nor on the cost of the medications or treatments prescribed or referrals made.
Are there situations in which physicians may enter into a lease offering advantageous conditions or even accept the use of premises at no charge?

Yes. In some cases, these agreements, entered into under various specific socioeconomic conditions, allow a physician to practice his profession in a region where there is a shortage of physicians, while in other cases, they ensure the delivery of medical care and promote interdisciplinarity.

Take, for instance, the case of a physician who uses premises at no charge or at a discount and is provided with the services of a nurse in a private home for seniors with reduced autonomy; or that of a physician who makes premises available to a consulting physician a few days a month at no charge in order to provide patients with a range of integrated health care services. Similarly, a physician may agree to practice a few days a month in a remote region in premises made available at no charge by the municipality.

It is also important to remember that, in all these cases, the party with whom the physician enters into the agreement is not associated, directly or indirectly, with the practice of pharmacy or the sale of medications, products, apparatus or goods prescribed by the physician.

Conclusion

This document cannot possibly describe every situation where a conflict of interest might arise in connection with leases entered into by physicians. It is intended to serve as a reminder of the main principles to be respected in order to ensure that a rent does not constitute a material benefit prohibited by the Code of ethics of physicians.

It should be noted that any physician who has entered into an agreement regarding the use of a property or a space in order to practice the medical profession must ensure that the agreement is entirely recorded in writing, that it includes a statement by the physician to the effect that the obligations contained therein comply with the Code of ethics of physicians as well as a clause authorizing release of the agreement to the Collège des médecins upon request.

The Collège des médecins du Québec is firmly convinced that the amendments made to the Code of ethics will be respected by physicians. However, in order to fulfill its mission to protect the public, it may use the means at its disposal to intervene in situations where professional independence is threatened or may be jeopardized.

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2 Section in effect since December 4, 2008 and amended on January 7, 2015.