



CONSCIOUS DECISION-MAKING IN OCCUPATIONAL THERAPY PRACTICE

*Store at Tab #3 of your Registrant Resource Binder
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Introduction

Each of us is required to make a multitude of decisions every day. The nature of these decisions moves along a continuum. They may present as simple or concrete choices that have little impact on the individual(s) involved or they may be complex with an outcome that greatly affects others and has a long-lasting impact. In the majority of situations the decision-making process is habitual and invisible. Occasionally situations arise that require a very thoughtful and calculated or “conscious” decision. The following framework is provided to assist occupational therapists in making conscious decisions that reflect accountable, principled practice.

The Need for a Decision-Making Framework

The practice environment has changed dramatically over the last decade. There are many factors contributing to today’s more complex and challenging practice environments. A constant shift toward autonomous practice brings added responsibility for managing one’s own practice. Institutional and organizational settings also continue to shift toward management styles that offer fewer opportunities for OTs to network and gain support from supervisors and peers. The public’s expectation for accountability grows stronger. New technologies, a growing evidence base, and new funding structures also add to the complexity of today’s work environment.

The following guide is intended to help therapists identify and consider the principles inherent in any practice scenario, and to choose a course of action in keeping with their regulatory and professional accountabilities. It is not intended to replace current College resources but rather to enhance them by offering a mechanism for therapists to process the information.

“Conscious” Decision-Making

“Conscious competence” serves as a fundamental concept within the College’s Quality Assurance Program and was first described by the College in An Introduction to the Quality Assurance Program (November 1998, revised 2002, Registrant Resource Binder, section 5; also available on-line at www.coto.org). The College defines a **consciously competent practitioner** as one who:

- knows his or her strengths and limits
- knows the guidelines and rules
- makes good choices consciously and deliberately, and
- is able to explain why he or she took a particular course of action

As stated earlier, many decisions are made every day and although they may be sound, often they are arrived at automatically or routinely. Every so often however, a situation presents itself whereby the therapist becomes aware of the need to consider the issue and choose a course of action carefully and deliberately.

A Conscious Decision-Making Process

Situations that require conscious decisions frequently involve an ethical dilemma and are often initially identified by the therapist as an uneasy or hesitant feeling. Becoming aware of and understanding this gut feeling or “niggly” is usually the first step toward a conscious decision-making process.

Ethical decisions are about doing the right thing. Unfortunately, there are many situations when the right thing feels wrong because a positive outcome for everyone involved is not possible. There is no tool or process that will completely eliminate the difficulty attached to these decisions. However, if a conscious decision-making process has been followed you can feel confident that a reasonable outcome can be achieved.

A review of decision-making tools reveals there are many approaches and many similarities within them. The specific steps of the process are less important than the “consciousness” of completing the process. In order to ensure a sufficient level of consciousness in the decision-making process the therapist needs to:

- know the facts and contributing factors
- identify the available courses of action
- know the guidelines, rules and principles, and
- be able to explain and evaluate the decision

The framework that follows serves as one mechanism that will help to accomplish conscious decision-making. This framework is also available as a pull-out on pages 11-12 and on the College web site, www.coto.org.

A Conscious Decision-Making Framework

Step One: Describe the situation

Ask yourself the following questions:

1. What are the facts of the situation?
2. What is the scope of the referral?
3. Who is the client?
4. Who are the other stakeholders?
5. What is the underlying issue(s)?

Step Two: Identify the principles related to the situation

(including but not limited to the following: Professional Boundaries; Accountability; Confidentiality; Informed Consent; Transparency; Effective Communication; Conflict of Interest)

Step Three: Identify the relevant resources to assist with the decision-making

1. Is there any relevant legislation, regulation(s) or guidelines?
2. Are there any individuals with expertise in the area?
3. Is there any relevant evidence (literature, research, best practice)?

Step Four: Consider if you need further information or clarification

1. Do you understand the intent of the legislation, standard or guideline?
2. What evidence exists (literature, research, best practice)?
3. Are there any missing facts? Have you identified the client's best interests?
4. Are all of the stakeholders and their interests identified?

Step Five: Identify the options

Step Six: Choose the best option

Apply the principles and any legislation, standard, guideline or policy that applies. Consider the expected outcome and potential impact of each option.

Step Seven: Take action

Step Eight: Evaluate the decision

1. How comfortable do you feel that you chose the best option?
2. What was the impact of your decision on those involved?
3. Did you achieve the expected outcome?
4. Would you make the same decision again, or do something differently?

Applying the Principles to the Decision-Making Framework

The above framework relies on consideration of the principles of practice in relation to the situation. Knowing how to identify and apply these principles is key. There are many factors that impact on the final decision. These include client needs, professional ethics, professional standards, legislation, guidelines, policies, and therapist competence. Maintaining a focus on the key principles can help to organize the process and ensure the end result is one of *principled OT practice*. While greater detail can be found in the College's *Principled Occupational Therapy Practice* (COTO, 2002), the following briefly summarizes the key principles of OT practice:

Accountability

As regulated professionals, occupational therapists are required to clearly demonstrate that they serve the client's best interest. Accountability means the therapist is responsible, and can account for his or her actions.

Professional Boundaries

A professional-client relationship is an unequal relationship. In order to ensure a trusting relationship the professional must not misuse or abuse the position of power by crossing boundaries.

Informed Consent

Consent is defined as the client's permission to proceed with an agreed-upon course of action. Informed consent requires that the person making the decision receive all available information, including alternative options.

Confidentiality

Occupational therapists are entrusted with personal and often sensitive information about their clients. The therapist has a responsibility to respect, secure and protect the privacy of this information.

Effective Communication

It is considered a competency of practice for the therapist to utilize an effective communication process that promotes shared understanding and includes appropriate use of verbal, non-verbal and written communication.

Transparency

Transparent practice requires full disclosure, which ensures integrity within the client-therapist relationship. This requires clear, open communication, and involvement of the client as an informed participant. The therapist is responsible for ascertaining the nature and extent of information to be shared and with whom it needs to be shared.

Conflict of Interest

A conflict of interest arises when the therapist has a relationship or interest, which could be seen as improperly influencing the therapist's professional judgment, or ability to act in the best interest of the client. Conflicts, whether they are real or perceived, need to be addressed.

While identifying the principles is important, understanding the weighting of them in any given situation is also critical. This is most often determined by the extent to which they are supported in law, regulation or policy. The general hierarchy or weighting is as follows: legislation and regulation, standards and essential competencies of practice, practice guidelines, policies and procedures. The role of each of these is described below.

Legislation and Regulation

Legislation is determined by elected representatives to government and is intended to represent the public interest. Regulations are also approved by government and must be consistent with the intent of the legislation they define. While it is clear that one must abide by the laws and regulations that apply in the situation, it is also important to remember that there is always the need for interpretation and the use of judgement when applying these rules. Case law, sometimes called common law or judge-made law, often helps to define the intent of these laws and may serve as an additional guide for interpretation.

There are many laws that govern the practice of health professionals. Some apply broadly, such as the *Health Care Consent Act and Regulated Health Professions Act* and others are more specific to the type of practice or population served, such as the *Mental Health Act, Child and Family Services Act* or *Insurance Act* (see page 10 for further references).

Standards of Practice/Essential Competencies

Standards of practice include the essential competencies (knowledge, skills and behaviours) that define the profession and define the generally accepted level of practice for the profession. Although they are not established as regulation, the Standards are supported in regulation. It is considered professional misconduct not to practice according to the standards of the profession. It is also an essential competency to apply the standards within one's practice. Standards published by the College attempt to reflect the commonly recognized and generally accepted practice of occupational therapists in Ontario. For this reason it is important to remain aware of and follow the common practice of OT colleagues as well as current research and published findings and evidence within OT practice.

Practice Guidelines, Policies and Procedures

The College publishes Practice Guidelines that provide detailed information on specific topics that represent current best practices. Practice Guidelines cannot cover all eventualities of practice. Institutions and organizations may establish policies and procedures that provide further guidance for specific situations. Similar to practice guidelines they generally articulate a standard or position and provide direction to achieve the desired result.

Policies and procedures may be established by individual employers, agencies or institutions, and clarify process in specific situations.

Case Study: Working Through the Decision-Making Framework

The following scenario will help to demonstrate how the decision-making framework outlined on page 3 can assist in considering the applicable principles of practice and determine some reasonable options:

You are an occupational therapist who works in the community and you have received a referral to assess a 72-year-old man who lives with his wife. You are informed the client has recently suffered from a myocardial infarction and you are to complete an assessment and provide an appropriate program to support his return home. Upon assessment, you notice that he may have some visual deficits unrelated to his cardiac condition, and after further visual screening you determine he has visual deficits. During the assessment, the client informs you that he drives his wife to the grocery store weekly. You are concerned that he should not be driving and that he poses a danger to himself, his wife, and others in general by getting behind the wheel. You tell the client about your concern and he assures you that his vision is fine and he has absolutely no trouble driving. He states it is just a ten-minute drive once a week, and one of the few things he is able to do to help his wife. He also tells you his doctor knows he is driving and isn't concerned so you really mustn't worry about it. You leave the assessment unsettled but uncertain of what to do about it.

Step One: Describe the Situation

You have received a referral with a request to assess and treat. There is limited direction or background provided. You have identified visual deficits while assessing overall functional performance. You have also identified that your client is engaged in an activity (driving) that you believe is unsafe for him and others given his visual difficulties.

The client's wife is obviously aware he is driving and allows him to take her out regularly. The client's physician is also reportedly aware about the driving and isn't concerned. You are concerned he may have an accident and harm or even kill himself or others as a result of his decision to drive. You don't know if you could be held responsible in some part because you know he shouldn't be driving.

The issue is whether or not to act on the safety concern. To take action would go against the client's wishes, yet you believe you not only have an obligation to ensure the safety of your client, but other members of the public as well.

Step Two: Identify the Principles Related to the Situation

Accountability: The OT is responsible for his/her actions and is expected to act in the best interest of the client. The OT is also expected to act in accordance with the standards of the profession, using the knowledge, skill and judgment reasonably expected of an OT. The OT also has an obligation to ensure the safety of her client and, as a recognized health professional, of the public.

Confidentiality: The OT must maintain client confidentiality. It is considered professional misconduct to share personal information without the consent of the client or legal authority to do so. The client has not consented in this case. It is only appropriate to release information if there is a legal requirement or authority to do so.

Informed Consent: The client needs to be given sufficient information to understand what the therapist is proposing and what the risks and alternatives are with respect to agreeing or not agreeing with the plan.

Step Three: Identify the Relevant Resources to Assist with Decision-Making

It can be a challenge just to determine which resources to refer to. The hierarchy described earlier can provide some direction. Adherence to any legislation, regulations or other legal requirements is expected and therefore identifying such information is a good place to start. With respect to legislation in this scenario, the *Highway Traffic Act* has some relevancy. It is important for the OT to understand whether or not she has a duty or requirement to report her concerns under this legislation. In fact the Act only requires *medical practitioners* to report to the Registrar of Motor Vehicles such information as the client's name, address and medical condition if the medical practitioner believes it is dangerous for the client to operate a motor vehicle. Therefore this legislation does not provide the OT with the legislative requirement to release information without consent. It does however clarify that the physician is required to report the concern (assuming he or she believes there is concern about driving as a result of the client's medical status).

Having identified confidentiality as one of the issues in this case, it is also important to determine if there is any privacy legislation that addresses this issue. While (at the time of publication) provincial legislation is not yet in place there is federal legislation that provides some direction. In addition, the provincial government has introduced privacy legislation a few times and therefore, review of the underlying principles may help to provide guidance. The information available reveals that proposed privacy legislation supports the protection of client confidentiality. It also supports the need for client consent in order to release information except in some situations including when there is concern of serious risk of harm.

Another resource that may provide a type of legal authority to release information is referred to as common or judge-made law. There is common law related to duty to warn. Given that most OTs will not be readily familiar with common law, it may be necessary to access a legal representative to assist with both identifying and understanding this type of information. Generally speaking, duty to warn involves a judgement about the nature or extent of potential risk, the probability or predictability of the behaviour causing the risk and the ability to identify the person(s) at risk. If there is sufficient risk of harm, then the duty to warn serves as the legal authority to release information.

Step Four: Consider if You Need Further Information or Clarification

At this stage in the process it is helpful to determine if more information would be helpful. Consider if you have missed any factors that will impact on the decision. For example in this scenario you may want to consider if the vision screening used in the initial assessment provides sufficient evidence to allow you to make a conclusive decision about the client's ability to drive safely. Do you know if the assessment is valid and reliable? What is your own knowledge base in this area of practice?

As stated in the Position Statement *On the Interpretation of the Controlled Act of Communicating a Diagnosis* (March 1996), OTs often play an important role in collecting and interpreting data that contributes to and may confirm or lead to confirmation of a diagnosis. When a therapist is alerted through an assessment, to signs or symptoms that are suggestive of a disease or disorder, it is important to consider the need for a diagnostic practitioner to be involved (in this case perhaps an optometrist or ophthalmologist). In these situations, the College would expect the therapist to make the client aware of the significance of the finding and recommend the appropriate action, including referral to another health professional.

Step Five: Identify the Options

Once you have sufficient information, try to consider at least two different ways of dealing with the situation. In this case, any of the following options could be considered:

1. Do nothing about the driving and carry on with intervention specific to the referral.
2. Alert another source about the safety concern. This could include:
 - a) a family member (such as his spouse)
 - b) the treating physician
 - c) the Ministry of Transportation or police.
3. Refer to another source for further assessment:
 - a) Driving Assessment Centre
 - b) Optometrist or Ophthalmologist.You may leave it at that point or wait for the results and then inform or alert another source (#2) if it is necessary.

Step Six: Choose the Best Option

1. This option places considerable weight on the principles of confidentiality and informed choice. On the positive side, it allows the OT to respect the client's wishes. As well, the client's own knowledge and

expertise about his condition is valued. In choosing to do nothing, the OT would need to feel comfortable that there isn't sufficient risk of harm to support a duty to warn. It is true that everyone accepts some risk when getting into a car. This option may also be reasonable if the OT believes the visual screen results are unreliable.

The negative aspect of this option is the fact that the OT did screen further for visual deficits and the client performed poorly. The OT may have an obligation to refer the client to another professional (see option 3).

2. Alerting another source supports an obligation to ensure the safety of the client and others. Other individuals may have a different ability to assess or manage the risk of harm. For example, if alerted by the OT, the physician may be able to confirm there is a medical concern that makes it dangerous for the client to drive. The physician can and must then report to the Ministry of Transportation, with or without client consent. By alerting the physician the OT may also be acting within the consent granted to communicate with another member of the health care team.

Family members may also be able to support the therapist's efforts to convey concern, however their involvement is not always welcome, and the down side of this option lies with the risk of the client claiming there was a breach of confidentiality. The OT would have to demonstrate sufficient reason to have acted against the client's wishes and instead on a duty to warn.

3. This option may be seen as an intermediate step with that of alerting someone else. Instead of reporting her concerns about driving immediately, she may choose to make a recommendation for further assessment of the client's vision. The client may appreciate the opportunity to act on the recommendation on his own. This process may also allow for some negotiation to explore the issue further and then if the client continues to disregard identified concerns, the OT or others involved will have sufficient evidence to proceed with a duty to warn.

Step Seven: Take Action

After considering the option and information gathered, take the action you believe to be most appropriate.

Step Eight: Evaluate the Decision

You may know immediately if your decision was right or it may be some time in the future. Regardless, it is important to reflect on the process:

- How comfortable do you feel that you chose the best option?
- What was the impact of your decision on those involved?
- Did you achieve the expected outcome?
- Would you make the same decision again, or do something differently?

Remember that the most challenging decisions are often the result of dilemmas that involve ethical issues and often do not have one correct response. While the outcome is the focus of the decision, being able to explain the rationale for it may be just as important.

This tear-out worksheet has been provided as a template for working through decisions in your practice. Detach and make copies as required. The worksheet is also available on-line at www.coto.org.

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Reference List

College of Occupational Therapists of Ontario, *Code of Ethics*. Toronto, Ontario: COTO, 1996, revised 2002.

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