



# Discretionary Reporting Q&As

## Interprofessional Reporting

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- Q:** In some settings, an organization may decide who should report a client to the Ministry of Transportation Ontario (MTO). If the organization decides that it should be a physician who reports, could the Occupational Therapist (OT) be liable if the physician doesn't report the client? What should the OT do if they work on a multi-disciplinary team where the organization has not identified who will report a client to the MTO?

**A:** OTs should clarify organizational expectations for medical reporting of clients with fitness to drive concerns, including who will take responsibility for reporting on behalf of the team if more than one team member has the authority for reporting. If the organization determines the best person would be the physician, when an OT identifies fitness to driving concerns, the OT should document the concerns and notify the physician who is responsible for making the report. The College is unable to comment on legal matters such as liability as liability is context specific.

If the OT works on a multidisciplinary team where the organization has not identified who will report a client to the MTO, the team can determine who would be the best person to make the report.

- Q:** Have any other regulated health professionals been added to the list for discretionary reporting?

**A:** Under the *Highway Traffic Act, 1990*, physicians, nurse practitioners, optometrists and occupational therapists are authorized to make a discretionary report to the MTO.



## Consent

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1. **Q:** Should an OT tell a client during the informed consent process that if concerns about their fitness to drive are identified, the OT may be obligated to make a discretionary report?

**A:** If the OT is completing an assessment for the purposes of assessing fitness to drive or if they know based on the information available to them that they will be addressing fitness to drive, yes, they should inform the client of their authority to make a discretionary report if concerns are identified.

If the OT is performing a general functional assessment and does not have any prior knowledge of concerns relating to a client's fitness to drive, then the OT should use their judgement to determine if they need to notify the client ahead of time, about any professional obligations related to discretionary reporting.

2. **Q:** What if a client declines to proceed with the occupational therapy assessment after an OT discusses their professional obligation for discretionary reporting?

**A:** An OT cannot proceed with an occupational therapy assessment if a client does not provide informed consent. If the client declines to proceed, the OT should have a discussion with the client about any potential implications of not participating in the assessment and explore any concerns about proceeding. If the OT referral is specific to fitness to drive and the client refuses the assessment, the OT should document this information in the clinical record and notify the referral source.

3. **Q:** Does an OT need to obtain consent prior to making a discretionary report to the MTO about a client's fitness to drive?

4. **A:** No, the OT does not need to obtain consent prior to making a report. We recommend the OT inform the client that a report will be made and discuss any potential implications associated with the discretionary report. If the situation permits, the OT can take the opportunity to discuss alternate plans to manage community mobility.



5. **Q:** Can a client withdraw consent for an OT to make a discretionary report to the MTO after concerns are identified?

**A:** Once an OT has determined they are going to make a discretionary report to the MTO a client cannot withdraw consent for an OT to do so. There are legal provisions in the *Highway Traffic Act, 1990* that permit an OT to disclose this information; please refer to Section 203(3) of the *Highway Traffic Act, 1990*.

6. **Q:** Can a client withdraw consent for an OT to disclose information to other care providers about their fitness to drive after concerns are identified?

7. **A:** Yes, a client can withdraw consent for an OT to disclose information to other care providers about their fitness to drive, including sharing reports or documentation. Even if a client withdraws consent, an OT can still make a discretionary report to the MTO as outlined in Section 203(3) of the *Highway Traffic Act, 1990*.

Note: If the OT believes the disclosure is necessary to eliminate or reduce the risk of serious harm to the client or others, the OT can disclose relevant information. Please refer to the *Personal Health Information Protection Act, 2004*, Section 40(1).

8. **Q:** What should an OT do if they believe notifying the client a discretionary report has been made will cause harm to the client, OT or others?

**A:** If the OT believes that informing the client a discretionary report has been made will cause harm to the client, OT, or others, the OT can decide not to inform the client. In this case, concerns about the release of the report should also be communicated to the MTO checking the appropriate boxes on the reporting form or contacting the MTO directly.



## Temporary Conditions

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1. **Q:** If a client has had a recent surgical procedure, for example, shoulder operation or knee replacement, and is limited in their ability to drive, should the OT make a discretionary report to the MTO?

**A:** OTs are not required to report transient impairments to the MTO. OTs should recommend the client temporarily refrain from driving until their physician reassesses their ability to return to driving. The OT should document their discussion with the client and their recommendations in the clinical record.

2. **Q:** Does an OT need to make a discretionary report to the MTO if they are working with a stroke client in acute care?

**A:** OTs working with stroke clients in acute care should discuss with their team whether it is appropriate to make a discretionary report to the MTO based on the client's medical condition, functional or visual impairments. OTs should use their clinical judgement to determine if it is appropriate to discuss fitness to drive with the client and recommend they not resume driving until they have followed up with their physician. OTs should document their discussions, decision-making, and recommendations in the clinical record.

3. **Q:** If an OT is unsure if a client's condition is episodic, can the OT recommend the client not drive until they follow up with their family physician?

**A:** If an OT is unsure if a client's condition is transient or episodic and the OT identifies concerns related to the client's fitness to drive, the OT should discuss these concerns with the client and recommend they not drive until they follow up with their physician or nurse practitioner. The OT should document any concerns, recommendations and discussions in the clinical record and make referrals for follow-up as appropriate.



## Guide to Discretionary Reporting Resources

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1. **Q:** Where can I access the Canadian Council of Motor Transport Administrators' (CCMTA) Medical Standards for Drivers that are referenced in the Guide to Discretionary Reporting?

**A:** The CCMTA's Medical Standards for Drivers can be found online: <http://ccmta.ca/images/publications/pdf/Determining-Driver-Fitness-In-Canada-Final.pdf>. They are free to download.

2. **Q:** Where can I access the Canadian Medical Association's (CMA) resource Determining Medical Fitness to Operate Motor Vehicles (9th edition) that is referenced in the Guide to Discretionary Reporting?

**A:** The CMA's Driver's Guide: Determining Medical Fitness to Operate Motor Vehicles (9th edition) can be found online: <https://joule.cma.ca/en/evidence/CMA-drivers-guide.html>. There is a fee to purchase the hard copy or PDF version.

## Liability and Professional Obligations

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1. **Q:** Does an OT need to document their decision not to make a discretionary report?

**A:** Yes, an OT should be able to justify the rationale for their decision and document that rationale in the clinical record. OTs may choose to use a resource such as Conscious Decision Making in Occupational Therapy Practice to structure their decision making process (<https://www.coto.org/resources/conscious-decision-making-in-occupational-therapy-practice>). Any decisions related to discretionary reporting should be reasonable and based on sound rationale informed by evidence from the occupational therapy assessment.



2. **Q:** Does the exemption from legal action for an OT making a discretionary report to the MTO as outlined in the *Highway Traffic Act* include civil litigation, or just criminal activities?

**A:** The College is unable to comment on legal action that clients may undertake regarding civil litigation. The *Highway Traffic Act, 1990*, Section 204(2) includes a provision that any OT who makes a discretionary report in good faith is protected from legal actions or proceedings being brought against them for making the report.

3. **Q:** The Guide to Discretionary Reporting stated that an OT should not get into a vehicle with a client unless they are trained to conduct such assessments, is this true?

**A:** The College does not recommend that an OT conduct an on-road assessment unless they are trained to conduct such an assessment and have the necessary supports in place to ensure the safety of the client, OT and the public.

4. **Q:** If an OT feels that a client presents an immediate risk of harm to themselves or others due to an urgent risk such as observing an intoxicated client entering a vehicle, should they make a discretionary report to the MTO?

**A:** No, in this situation the client presents an immediate risk of danger to themselves or others. The OT must take steps to address the risk. This could involve notifying the police and a physician about their concerns relating to the client's fitness to drive. The OT should document the identified safety risk and the steps they took to mitigate it in the clinical record.

## Reporting Someone Other than Your Client

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1. **Q:** Can an OT make a discretionary report to the MTO concerning someone who is not their client?

**A:** No, an OT can only report a client if they have met the client, either for an assessment or for the provision of OT services. See *Highway Traffic Act, 1990*, section 203(4).