



College of Occupational Therapists of Ontario
Ordre des ergothérapeutes de l'Ontario

Private Practice

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Introduction

Determining whether to open a private practice is a complex decision. Working in private practice requires occupational therapists (OTs) to reflect on their level of competence, knowledge of business practices, and their ability to manage their day-to-day practice while ensuring they are maintaining professional standards and meeting legislative requirements. It is an OT's responsibility to identify, research and determine if additional legislation is applicable to their private practice and how to comply with it. It is also an OT's responsibility to carefully consider their level of experience and competence in their area of practice prior to entering private practice.

The purpose of this document is to review recommended practice and provide information for OTs wishing to establish a private practice. This document pertains to OTs who: are self-employed, own and operate their own occupational therapy business, or are acting as independent contractors and subcontractors. For the purposes of this document, a client is defined as:

- (a) the person being assessed (whether in person or otherwise) and/or treated
- (b) the person for whom the occupational therapy services, recommendations or professional opinions apply.

The College acknowledges that OTs may be privately involved in a non-clinical consultative capacity where they are providing recommendations for organizations to implement. In such situations, the organization to whom the OT is providing consultation may be referred to as the customer.

This document is intended to be used along with applicable legislation and College standards to enable OTs to provide safe, competent, and ethical care.

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Providing Ethical and Competent Care

The Code of Ethics serves as a foundation for occupational therapy practice. OTs must be guided by the core values of Respect and Trust and the principles of practice that follow: Client-Centred Practice, Respect for Autonomy, Collaboration and Communication, Honesty, Fairness, Accountability, Transparency, Professional Boundaries and Conflict of Interest. When working in private practice, as with any practice setting, OTs are expected to uphold the core values and principles of the profession.

The Essential Competencies of Practice for Occupational Therapists in Canada describe the skills, knowledge and judgement OTs should demonstrate in clinical and non-clinical practice. When working

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in private practice, OTs must ensure that they are competent and follow a systematic approach to service delivery in keeping with the standards of the profession.

OTs are responsible for ensuring they are competent practitioners who are working within their professional scope of practice as defined in the *Occupational Therapy Act, 1991*.¹ As OTs working in private practice may be conducting their business in relative isolation, it is recommended that they remain abreast of evidence-informed practice and engage in ongoing mentorship in their practice area. OTs can align themselves with or establish professional practice peer networks with other OTs in similar private practice areas. OTs may also wish to contact the professional associations to access or align themselves with peer networks.

Record Keeping and Privacy

PHIPA and Health Information Custodians

When an OT is working privately, either in their own practice or contracting their services, they are accountable for documenting and maintaining their own clinical records. The OT should follow the expectations outlined in the Standards for Record Keeping, including taking steps to determine if they are the health information custodian (HIC) or the agent of the health information custodian (agent). The *Personal Health Information Protection Act, 2004* (PHIPA) specifies who can and who cannot assume this role. An OT in private practice could be a HIC; however, if an OT is subcontracting their services through another agency, they may be acting as an agent of the HIC. OTs who are HICs should establish privacy policies that are consistent with relevant privacy legislation such as PHIPA.

It is the responsibility of the OT to determine if other privacy legislation applies to their private practice and to follow what is outlined in the applicable legislation.

Retention of Clinical Records

OTs in private practice must determine if they are acting as the health information custodian (HIC) or the agent, which determines responsibility for retention of records. The expectations for retention of clinical records are outlined in the Standards for Record Keeping. OTs retaining clinical records privately, such as in their home, clinic, or office, should take reasonable measures to ensure the safety and security of those records as outlined in the Standards for Record Keeping and PHIPA or other relevant privacy legislation.

¹The scope of practice is articulated in the *Occupational Therapy Act, 1991* as follows: "The practice of occupational therapy is the assessment of function and adaptive behaviour and the treatment and prevention of disorders which affect function or adaptive behaviour to develop, maintain, rehabilitate or augment function or adaptive behaviour in the areas of self-care, productivity and leisure. 1991, c. 33, s. 3."

Succession Planning for Clinical Records

OTs in private practice should seek legal advice to establish an estate plan to ensure that clinical records are securely maintained and retained in the event of an unforeseen event, such as the death of the OT. This is referred to as succession planning.²

Record Keeping Practices When Providing Non-Clinical Consultations

OTs who are providing non-clinical consultations need to determine the most appropriate method of record keeping. This may include maintaining records consisting of the date the consultation was provided, to whom it was provided, and the recommendations that were provided. OTs should use their judgement to determine how relevant information pertaining to the consultation should be documented and maintained.

Fees and Billing

Fees for Private Practice

The College is not involved in establishing fee guidelines for occupational therapy services. OTs can perform an environmental scan to determine appropriate fees to be charged in their area of practice. It is recommended that OTs consult with the associations such as the Ontario Society of Occupational Therapists (OSOT) and the Canadian Association of Occupational Therapists (CAOT) to assist them in establishing fees for their private practice. It may also be prudent to look at fee guidelines established by regulatory organizations for specific practice areas. For example, the Financial Services Commission of Ontario (FSCO) has established the Professional Service Fee Guidelines for individuals providing services that are funded by auto insurance.

When establishing fees for private practice, the College expects that they are fair, equitable and transparently communicated upfront to clients as outlined in the Ontario Regulation 95/07: Professional Misconduct.

Financial Records

OTs are expected to maintain financial records for services provided to clients as outlined in the Standards for Record Keeping – Standard 9, Financial Records. Any waived or differential fees should be noted. The financial record is a part of the clinical record, and therefore is subject to the same retention time period.

² Information and Privacy Commissioner of Ontario, April 2019. Retrieved from https://www.ipc.on.ca/wp-content/uploads/2019/04/fs-health-abandoned_rec.pdf.

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Invoices that are provided to clients should contain: the name of the provider, their title, billing address, the name of the client, the date the services were provided, the fee for the item/service, the date and method of payment received, and any balance due or owing. If the service was provided by an occupational therapist assistant, their name and title should be transparently displayed on the invoice as noted in the Standards for the Supervision of Occupational Therapist Assistants. In cases where a client is submitting the invoice to an insurer, the OT may also need to put their College registration number on the invoice.

OTs providing consultative services to organizations need to establish transparent billing practices.

Charging HST

The decision as to whether occupational therapy service components are HST taxable or not lies within the jurisdiction of the Canada Revenue Agency (CRA). It is the responsibility of the OT to research this matter and fully comply with all requirements of the CRA, recognizing that changes to the rules can occur. OTs are encouraged to seek the services of an accountant and/or tax lawyer to ensure they are meeting their professional obligations. Additional information related to HST-taxable and HST-exempt services may be found on the Canada Revenue Agency website and the professional association websites (OSOT and CAOT).

Advertising and Use of Title

Advertising Occupational Therapy Services

OTs are encouraged to review Ontario Regulation 226/96: General – Part V, Advertising. This regulation was developed to ensure that advertising approaches adopted by regulated health professionals are honest, truthful, transparent and professional. While marketing and advertising are important components of promoting a private practice, it is recognized that OTs are held in a position of esteem and trust by the public. Furthermore, clients seeking health care services such as occupational therapy, can be vulnerable. For this reason, direct pressure sales or solicitation are prohibited as noted in Ontario Regulation 226/96, section 22. (1) A member shall not contact or communicate with, or permit any person to contact or communicate with, an individual in an attempt to solicit business.³ The direct pressure sales or solicitation restriction does not apply to third party referral sources, who are not directly receiving the health care, such as institutions, insurance companies, or lawyers. It is important to note that the regulation also applies to OTs who are advertising their services using social media.

Use of Title

OTs should review the Standards for Use of Title to determine how to denote their name, designation, and area of practice on their email signature, business cards, or promotional material.

³ Ontario Regulation 226/96. Retrieved from <https://www.ontario.ca/laws/regulation/960226>

Selling or Recommending Products

OTs commonly recommend equipment or products for client use. Many OTs may also have equipment or products available for clients to purchase. When selling or recommending products, OTs are accountable for ensuring they are knowledgeable about their safety and use with a particular client population. OTs should provide information about the products, including the cost, and provide alternative options to clients if they wish to purchase the product from other vendors. It is advised that OTs transparently and clearly communicate their recommendations regarding equipment or products to the client. Additionally, OTs should maintain financial records as outlined in the Standards for Record Keeping when a fee is charged for a product.

OTs must be aware that selling or recommending products can place them in a conflict of interest if the OT stands to benefit. OTs should review the Standards for the Prevention and Management of Conflict of Interest.

Business Practices

Development of Policies

Policy development supports a proactive, transparent and standardized management of processes and situations that may arise in private practice. When working for an employer, these policies are already established and communicated to the OT. In private practice, OTs must develop and communicate their policies to all stakeholders involved. OTs are encouraged to have their policies reviewed by other relevant professionals as appropriate.

Development of Forms and Templates

OTs working in private practice may find that the development of forms and templates promotes efficiency and structure and supports professional practices such as record keeping and obtaining informed consent. The College does not provide legal advice and as such, cannot sanction or approve an OT's forms or templates. OTs may need to seek advice from other relevant professionals and have their forms and templates reviewed.

Consulting with Other Professionals

As noted in the sections above, it is recommended that OTs consult with various other professionals when setting up a private practice including lawyers, accountants, insurance brokers, policy analysts or financial advisors. Additionally, it may be prudent to consult with mentors or business owners who have already established similar occupational therapy practices.

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Occupational therapy associations such as the Ontario Society of Occupational Therapists (OSOT) or the Canadian Association of Occupational Therapists (CAOT) may be able to provide additional information or mentorship to OTs wishing to establish a private practice.

Setting up a Corporation

Regulated health professionals are permitted to incorporate their business for the purpose of practising a health profession, providing they obtain a Certificate of Authorization from the College. OTs wishing to incorporate their business can review the Application for a Certificate of Authorization for Health Profession Corporations Guide on the College website for more information.

Risk Management

Professional Liability Insurance

All OTs, regardless of area of practice or practice status, must have professional liability insurance that meets College requirements. For details about the requirements, please refer to the College Bylaws (Part 19). The College does not endorse any insurance provider. It is the responsibility of each OT to determine which insurance provider and policy best meets their needs. If there is a change in professional liability insurance coverage (including insurer name, start date, expiry date and certificate/policy number), an OT must update their College profile online within 30 days of the change occurring.

OTs entering private practice need to consider how to protect themselves professionally. This may include purchasing additional liability insurance to augment the required professional liability insurance. When determining whether to purchase additional liability insurance, OTs need to consider their area of practice, the risk associated with the occupational therapy services being provided, and possible consultation with legal counsel or another expert in the insurance industry.

Conflict of Interest

It is recommended that OTs proactively determine existing or anticipated conflict of interest situations when establishing their private practice. This will enable OTs to develop policies to either prevent or manage conflict of interest situations in accordance with the Standards for Prevention and Management of Conflict of Interest and applicable legislation.

Maintaining Boundaries

When OTs are working privately in settings such as their own homes or clinics, it is important to maintain professional boundaries with clients and other stakeholders as outlined in the Standards for Professional Boundaries. This includes outlining policies to clients or customers regarding business practices such as hours of work and the use of electronic communication. It is recommended that OTs

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consider the use of a separate business telephone and email to maintain confidentiality of client information and professional boundaries.

Infection Prevention and Control Practices

OTs working in private practice should establish policies related to infection prevention and control best practices as outlined in the Standards for Infection Prevention and Control, including policies regarding cleaning and disinfection of supplies and equipment used in their practice.

Closing or Leaving a Private Practice

When closing or leaving a private practice, there are a number of professional obligations that an OT should consider and manage.

Continuation of Services for Existing Clients

OTs must ensure there is a plan in place for clients who need ongoing occupational therapy services. This includes having a transparent discussion with current clients to discuss the status of their goals and provide options for follow-up, such as referrals to other OT providers. The discussions and follow-up plan should be documented in the clinical record. Additionally, OTs may need to contact referral sources to inform them that they are closing or leaving a practice. OTs can review the Discontinuing Services practice guidance document for more information.

Fees and Billing

OTs should ensure there are no outstanding financial records prior to closing or leaving a practice.

Record Keeping and Privacy

The College would expect that all client records are up to date prior to closing or leaving a practice. If the OT is the health information custodian (HIC), they should ensure that records are retained securely for the specified retention period as outlined in the Standards for Record Keeping. If the OT is not the HIC, they must ensure that records are retained by the organization to whom they are contracting their services. It is recommended that OTs follow the Privacy Commissioner's guidelines for notifying clients about access to their records.

If privacy legislation other than PHIPA is applicable to an OT's practice, the OT must know and understand retention requirements pertinent to the respective privacy legislation.

Summary

Occupational therapists working in private practice are accountable for ensuring they are competent practitioners who utilize sound business practices. The OT must balance occupational therapy service delivery, client expectations, and fiscal responsibility when engaging in private practice. While the autonomy and flexibility of private practice can contribute to work satisfaction, the onus is on the OT to define practices and set policies, as well as to manage the isolation that may be inherent in a private practice setting. OTs who are contemplating establishing a private practice must ensure all relevant factors are considered.

References

Ontario Regulation 226/96: General <https://www.ontario.ca/laws/regulation/960226>

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College of Occupational Therapists of Ontario
20 Bay St, Suite 900, PO Box 78, Toronto, ON M5J 2N8
T 416.214.1177 • 1.800.890.6570 F 416.214.1173
www.coto.org

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