



GUIDE TO INDEPENDENT PRACTICE

Store at Tab #4 of your Registrant Resource Binder

Introduction

The primary purpose of this document is to focus on legislative and regulatory requirements for OTs entering into independent practice. Conscious competence and compliance with all regulatory requirements correlates with OTs practising in a committed, competent and ethical manner.

OTs entering into independent practice are strongly encouraged to explore the resources as compiled by the professional associations, i.e., the Canadian Association of Occupational Therapists (CAOT) and the Ontario Society of Occupational Therapists (OSOT). As well, researching other relevant mainstream small business resources for additional information and direction is recommended.

Generally, a question and answer format has been adopted with relevant resources being provided at the end of each question/answer sub-sections or topic area. This document is organized into the following 5 topic areas:

1. **Provision of OT Services**
2. **Considerations for Establishing the Infrastructure**
3. **Operational Considerations**
4. **Risk Management**
5. **Best Practices**

1. PROVISION OF OT SERVICES

OT independent practice is defined as, “the provision of occupational therapy services as an independent provider rather than as an employee”. It is characterized by the OT functioning independent of economic or policy control by professional peers, except for regulatory and other legislative parameters. OTs have been granted the legal authority to practise autonomously [i.e., they have been named as autonomous practitioners, (*Occupational Therapy Act*, 1991)] thereby further enabling independent practice.

Compliance with all applicable legislation, regulations, standards of practice and the *Code of Ethics* are the minimum requirement for all OTs, regardless of their practice setting or type. To this end, when setting up an independent practice, it is strongly recommended that OTs review all of the standards of practice and applicable legislation, guides, guidelines and position papers.

It is also recommended that OTs in independent practice:

- Align themselves with, or establish a professional practice peer network (formalized peer networks/interest groups can be accessed through the professional associations)

GUIDE TO INDEPENDENT PRACTICE

- (Re)-familiarize themselves with the *Essential Competencies for the Practice of Occupational Therapy in Canada* - the non-clinical essential competencies may be applicable - and the following practice tools:
 - *Standards for OT Assessment*
 - *Record Keeping Checklist*
 - *Consent Checklist*
 - *Conscious Decision Making in Occupational Therapy*
- Utilize the practice resources, i.e., *On the Record* articles, FAQs and practice scenarios available on the Practice Developmental Portal (the Portal) by topic, practice area or essential competency.

RESOURCES

All College standards, guidelines, guides and position papers can be accessed on the College website www.coto.org under the *Resource Room* tab and under *Standards/Guidelines/Position Papers*. The practice tools can be accessed through the *Practice Tool* menu option in the *Resource Room*.

What legislation applies to my specific practice?

In addition to the general legislation that applies to all OTs, depending upon the setting in which you practice, additional legislation may be relevant. For example, if services are funded by private auto insurance carriers, then the Statutory Accident Benefits Statute (SABS) will impact on the administration and funding of your practice. As well, there are laws governing illness, disability, public and individual safety and the protection of rights including human rights legislation, the *Occupational Health and Safety Act*, the *Work Safety Insurance Board Act*, and the *Patient Restraints Minimization Act*. As an independent practitioner, it is your responsibility to identify, research and determine which legislation applies to your practice and how you must comply with it.

Who is my client?

There is often confusion as to who the client is, particularly when a third party payer is involved, i.e., an insurance company, the Worker Safety Insurance Board, an employer or a lawyer. OTs in independent practice must understand and be able to distinguish between the individual for whom the health care task is being provided, i.e., the “client-patient”, and the party who has made the referral and/or is paying for service, i.e., the “client-payer/referral.” It is even more important to understand your professional obligations to each.

Occupational therapists, as regulated health professionals, are obligated to apply the principle of client-centred practice as defined in the *Code of Ethics*, to the client-patient. While the salient role of the client-payer/referral source is recognized, it must never supersede the clinically objective, client-centred and the rights of the patient-client.

RESOURCES

Guide to Code of Ethics and *Code of Ethics* available at www.coto.org under *Ethical Conduct* in the *Resource Room*.

2. CONSIDERATIONS FOR ESTABLISHING THE INFRASTRUCTURE

Will you establish your independent practice as a Professional Corporation?

While not mandatory, establishing a professional corporation is an option for regulated health professionals due to provisions made to the *Balanced Budgets for Brighter Futures Act*, 2000; technical amendments to these provisions made in the *Responsible Choices for Growth and Accountability Act*, 2001, and in relation to the *Business Corporations Act* and the *Regulated Health Professions Act*. Professional incorporation makes many of the same tax and non-tax advantages enjoyed by other incorporated self-employed individuals accessible to all

regulated health professions. However, professional liability is not limited through incorporation and shareholders of professional corporations are restricted to members of the same profession (this second condition is currently under review).

While the College administers the issuing of the Certificate of Authorization, thereby allowing eligible corporations to attain the Professional Corporation status, the decision as to whether or not to set your independent practice as a professional corporation depends on a number of factors including: the nature of your practice, with whom you practice, your personal financial circumstances, and the financial circumstances of your practice. It is strongly recommended that you evaluate the advantages and disadvantages of establishing your independent practice as a professional corporation, in consultation with a lawyer and/or accountant.

RESOURCES

Professional Corporations: Information related to the process and requirements for establishing a professional corporation can be accessed on the College website www.coto.org under the *Registration* tab, by clicking on *Professional Corporations*.

Ontario Ministry of Finance. Information Bulletin: Professional Corporations. Ontario: Queens Printer for Ontario; 2001 [updated October 7, 2009; cited 2013 February 22]; available from: <http://www.fin.gov.on.ca/en/publications/2001/ibprof.html>.

Will you operate out of a home office or a separate office/commercial site?

Many OTs provide community-based client services in the client's environment, thereby opting to maintain a home office for the completion of other non-face-to-face, clinically related tasks (e.g., documentation, telephone calls, coordination activities, etc.). While this is an acceptable practice, it is important to take steps to ensure the confidentiality and security of all client personal health information and to maintain appropriate professional boundaries. If meeting with clients, other health care professionals or stakeholders in your home, it is the responsibility of the OT to familiarize and abide by all municipal and other relevant laws as they relate to operating a small business out of your home or as it relates to your neighbourhood.

Who is the Health Information Custodian (HIC)?

The *Personal Health Information Protection Act* (PHIPA) specifies who can and who cannot assume this role. An OT in independent practice qualifies to be a potential HIC. If however, you are subcontracting your services through another agency, you may be regarded as the "agent" and not the HIC. It is important to clarify whether you are the HIC or the agent upfront. If you are the agent, then ensure that your service agreement with the HIC complies with the retention of the health record as per the *Standards for Record Keeping*.

If you are the HIC, then it is important to establish an estate plan to ensure that clinical records are securely maintained and retained as per the *Standards for Record Keeping*, in the event of your demise.

RESOURCES

Checklist for Health Information Custodians in the Event of a Planned or Unforeseen Change in Practice, http://www.ipc.on.ca/images/Resources/up-abandonedrec_chklst.pdf

Personal Health Information Protection Act, 2004: An Overview for Health Information Custodians, available at http://www.health.gov.on.ca/english/providers/legislation/priv_legislation/info_custodians.pdf

GUIDE TO INDEPENDENT PRACTICE

Standards for Record Keeping, available on the College website under the *Resource Room* tab, under *Practice Standards/Guidelines/Position Papers*.

As the HIC, where and how will you store, organize and secure your clinical records? As an OT you will need to make decision related to these matters, in accordance with the *Standards for Record Keeping*.

RESOURCES

Record Keeping Checklist, available on the College website www.coto.org under the *Resource Room* tab, under the *Practice Tools* menu option.

Standards for Record Keeping, available on the College website under the *Resource Room* tab, under *Practice Standards/Guidelines/Position Papers*.

3. OPERATIONAL CONSIDERATIONS

Should I develop forms/templates/policies:

Organizations providing health care often develop forms and templates to support record keeping, their informed consent processes, and the development of patient handouts and other correspondence. Policy development also supports a proactive, transparent and standardized management of processes and situations which may arise in your independent practice. Policies can be developed with respect (but not limited) to treatment protocols, conflict of interest, the referral process, and the scope of referrals to be accepted (this should correlate to the OT's sphere of competence). The use of forms, templates and policies also promotes efficiency, structure and comprehensiveness, as it relates to various business processes and professional requirements.

Are there guidelines pertaining to marketing and advertising?

It is recommended that you review the Advertising Regulation as it appears in the General Regulation, part V. The Advertising Regulation was developed to ensure that advertising approaches adopted by regulated health professionals embrace the principles of honesty, truthfulness, transparency, and professionalism. While marketing and advertising support the viability of a business, it is important to recognize that OTs, as regulated health professionals, are held in a position of esteem and trust by the public. Furthermore, individuals seeking health care, such as occupational therapy services, are typically in a vulnerable position. It is in this spirit that the advertising regulation prohibiting “direct pressure sales or solicitation” was developed. Such negative advertising techniques exploit the trust relationship between the therapist and client, and potentially enable the therapist to unfairly pressure the client. This may, in some cases, be self-serving to the therapist, irrespective of the client's best interest. Note that this direct pressure sales or solicitation restriction does not apply to third party referral sources, who are not directly receiving the health care (e.g., institutions, therapists, insurance companies, and lawyers).

Other considerations for marketing and advertising include the manner in which you denote your designation and areas of expertise on business cards and other promotional material. Refer to the College's *Guide to Use of Title* for specifics.

RESOURCES

General Regulations, Part V Advertising as available on the College website www.coto.org under the *Resource Room* tab under the *Regulations* menu option.

Guide to Use of Title, available on the College website www.coto.org under the *Resource Room* tab, under the *Practice Standards/Guidelines/Position Papers* menu option.

Does the College have billing suggestions or requirements?

The College is not involved in setting or establishing fee guidelines associated with the practice of occupational therapy. There is however, the expectation that the fee guide adopted be equitable and transparently communicated to your clients upfront. The College is aware of the following resources for determining specific fee amounts: OSOT, CAOT, and the Professional Service Fee Guidelines, as set by the Financial Services Commission of Ontario (FSCO) – (this guideline applies to individuals providing services as funded by auto insurance [the Auto Sector]).

Remember that the financial record comprises part of the clinical record and is therefore subject to the same retention time period as all other aspects of the clinical record (*Standards for Record Keeping*, standard 9).

RESOURCES

Financial Services Commission of Ontario (FSCO). Automobile Insurance. 2011 [updated January 25]; Queens Printer for Ontario:[Available from the internet] <http://www.fSCO.gov.on.ca/en/auto/Pages/industry.aspx>.

Should I charge HST?

The decision as to whether or not 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 on an ongoing basis. Regular consultation with an accountant and/or tax lawyer may therefore be prudent. Additional information related to HST-taxable and HST-exempt OT services may be researched directly on the Canada Revenue Agency website, and may also be available through consultation with, or web links on the professional association websites (OSOT and CAOT).

RESOURCES

Canada Revenue Agency. Exempt Goods and Services. 2012 [updated November 7, 2012; cited 2013 February 22]; Available from: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/xmptgds-eng.html>.

Ontario Society of Occupational Therapists website www.osot.on.ca

Canadians Association of Occupational Therapists website www.caot.ca

Who could comprise my business practices team?

Depending upon the complexity of your independent practice you may want to consider assembling a business practice team (this is optional). Potential members of this team could include lawyers with varying expertise, a tax accountant, an insurance broker, a variety of administrative support, and banking representatives.

4. RISK MANAGEMENT

What type of liability insurance is required?

Aligned with the mandate of public protection, the College requires OTs to, at a minimum, purchase liability insurance which includes a sexual endorsement fund rider and up to \$5 million in professional liability insurance. These requirements relate specifically to protecting the interests of clients who may be harmed resulting from an OT's misconduct or incompetence.

Understandably, as a clinician considering independent practice, it is prudent to consider how best to protect yourself professionally. The OSOT and CAOT supported liability insurance packages do offer options for augmenting the minimally required professional liability package. The decision whether or not to obtain additional liability insurance is one that should be made based on your assessment of your clinical involvements, and the associated risk management factors, possibly in consultation with a lawyer.

How am I going to manage Conflict of Interest?

Proactively determining existing or anticipated conflict of interest situations in your independent practice is recommended. This will enable you to develop policies to either prevent or manage conflict of interest situations in accordance with the standards and applicable legislation.

RESOURCES

Standards for the Prevention and Management of Conflict of Interest, available on the College website www.coto.org under the *Resource Room* tab, select the *Practice Standards/Guidelines/Position Papers* tab.

Are there additional risk management considerations?

- **Risk file:** It is recommended that OTs in independent practice keep a file in which they record ongoing risk factors and complex situations, as well as the investigation and management of these instances. While information relevant to client care is documented in the clinical record, a risk file can record other relevant, sensitive, or ethical matters not belonging in the clinical record, but that may be required for future reference or evidence.
- **Infection Control** (a number of resources can be accessed on the College website).
- **Equipment Maintenance** (see standard 10 in the *Standards for Record Keeping*)

RESOURCES (PANDEMIC RESOURCES)

Standards for Infection Control, available on the College website under the *Resource Room* tab, under the *Pandemic Planning* menu option - http://www.coto.org/pdf/InfectionControl_Standards.pdf

Infection Control brochure, available on the College website under the *Resource Room* tab, under the *Pandemic Planning* menu option - http://www.coto.org/pdf/COTO_InfectionControlFlyer.pdf

Guide: Infection Control for Regulated Health Professionals, available on the College website www.coto.org under the *Resource Room* tab, under the *Pandemic Planning* menu option - <http://www.coto.org/pdf/InfectionControl-forRegulatedHealthProfessionalsFederationGuide.pdf>

Additional resources are also available on the College website www.coto.org under the *Resource Room* tab under the *Pandemic Planning* menu option.

5. BEST PRACTICE

How do I ensure that I remain abreast of evidenced-based or evidence informed practice guidelines?

While this remains a requirement for supporting the competence of all OTs, those in independent practice often have limited access to appropriate resources and supports. It is therefore recommended for OTs in independent practice to proactively and pragmatically determine how best to address this.

RESOURCES

Electronic Health Library

Allied Health Professional Development Fund

Ontario Society of Occupational Therapists

Canadian Association of Occupational Therapists

Am I ready for independent practice?

Independent practice is perceived by some as a viable employment option given changes to the number and types of publically funded occupational therapy services available in Ontario. For others, its appeal lies in the entrepreneurial opportunity to define their work and approach, set their own hours and be their own boss. While the autonomy and flexibility of independent practice can certainly contribute to work satisfaction and professional pride, the absence of an employer who defines practices and sets policy, as well as the isolation that can come with the independent practice setting, can also raise some practice challenges. In light of this it is important to carefully consider whether independent practice is within your sphere of competence.¹

NOTE: Registrants are accountable for the practice they provide to the public. Guidelines and other resource tools are published by the College for the assistance of the professional. They represent guidance from the College on how members should practice. Guidelines and other resource tools are intended to support, not to replace, the exercise of professional judgment by OTs.

