



GUIDELINE: USE OF SURVEILLANCE MATERIAL IN ASSESSMENT

Store at Tab #4 of your Registrant Resource Binder

Surveillance material is often obtained without the knowledge or consent of the client, usually takes the form of a video and/or photographs and may be accompanied by an investigator report. Within the insurance industry (i.e. the auto sector, long-term disability or Worker's Safety Insurance Board [WSIB]), the use of surveillance material is becoming common practice in many disability claim situations. Increasingly, as part of the medical legal case or an independent examination, health care professionals involved in rehabilitation are being asked to review surveillance material as part of their client assessment or the rendering of a professional opinion, based on a paper review.¹

Included in these guidelines will be a discussion of the following key issues:

- Is there an obligation to review surveillance material?
- Does viewing of surveillance material require consent?
- If you evaluate the surveillance material, should it be done before or after the assessment and how much client involvement should be included?
- Is it reasonable to review surveillance material when there is no client contact?

Guiding Principles

The following guiding principles are suggested for occupational therapists (OTs) who are considering the use of surveillance material in client assessments.

- It is important to remember that the health care provider is in a position of trust within the client/practitioner relationship. As a “third party” evaluator, the OT must therefore understand his/her relationship to both the client and the insurer/third party payer.
- It is important to consider the impact and validity of covertly obtained surveillance material on the therapeutic relationship and in turn the quality of the assessment/opinion.
- Use of surveillance material necessitates careful consideration of the following (but not limited to) College documents: *Code of Ethics*, *Standards for Assessment*, *Standards for Consent*, and *Standards for the Prevention and Management of Conflict of Interest*.
- OTs should decline to express any opinion on surveillance material where there is significant doubt as to the identity of the person portrayed in the material.
- OTs should be cautious about assuming the role of surveillance material interpreter. Surveillance material interpretation may be viewed as a specific skill and can present challenges with respect to the identification of the individual presented and the conditions under which the material was secured.

¹ It is prudent for OTs to consider or inquire as to whether the surveillance material was obtained in a legal and appropriate manner, prior to reviewing it.

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- Among the considerations for OTs who are asked to review surveillance material are issues around their own knowledge, skill and judgment. An OT who does not feel that he/she is experienced in the interpretation of surveillance material or is unsure about its meaning, may wish to decline to comment on it as part of his/her evaluation.

With Client Involvement:

- Surveillance material, similar to any other documentation used to provide background on a client, should ideally be received prior to the examination process.
- The client should be advised of the existence of surveillance material.
- Recognizing that the surveillance material may influence the OT's opinion, the OT should review the material with the client. This will allow the client an opportunity to respond and put the surveillance material in context. The client's response should be documented and included in the report.
- OTs should carefully note what material was reviewed and relied upon, prior to rendering an opinion. A description of this information should be included with the report itself, including the specific segments reviewed, that are congruent or contrary to the conclusions reached.

If the surveillance material is presented to the OT after their examination is complete, the OT needs to determine if he/she will consider viewing this material. If the decision is made to review the material, then it should be reviewed with the client present. Again, this allows the client an opportunity to respond. In addition, a description of this information should be included in the opinion itself including the specific segments viewed that are in congruence or contrary to the conclusions reached.

Without Client Involvement:

There is an expectation of OTs, as articulated in the *Code of Ethics*, that they represent and act in the best interests of their clients. The viewing of surveillance material without client involvement may affect this expectation, particularly if there is any uncertainty about the material under evaluation. The College appreciates that in practice the professional opinion of an OT through a paper review (no client contact) which includes surveillance material is often sought by the insurance industry and for medical legal purposes. While it is ultimately left to the clinical judgement of the OT whether or not to engage in this task, the OT should consider the broad limitations that exist when commenting on surveillance material where no direct client contact has occurred. OTs should also consider the following:

- The review of surveillance material in conjunction with a written report in order to render an expert opinion may not require the consent of the client provided that the registrant has not had any prior relationship to the client.
- If the OT has any doubts concerning the content or authenticity of the surveillance material, they should decline to render an opinion.
- The OT must qualify the limitations associated with their expert opinion. The OT must consider under what circumstances the material was obtained and whether alternative explanations exist for the observed behaviour.
- The OT's opinion and conclusion must be limited to the comparison of the data in the written material and the surveillance material only. No conjecture as to the future abilities of the client or the client's credibility can be provided, as the information available is insufficient.

A Re-examination of the Key Issues

Is there an obligation to review surveillance material? OTs are autonomous practitioners who are accountable for their competence, decisions and actions. There is therefore no obligation to review surveillance material and in fact the decision to review it or not is left to the clinical judgment of the OT, based upon their level of competence and in consideration of the guiding principles discussed above.

Does viewing of surveillance material require consent? If surveillance material is being reviewed within the context of a paper review and the OT has had no prior contact with the client, consent is not required. If the OT had any prior contact with the client and intends to use the surveillance material to render an opinion, then consent is required. Consent in this situation is required because of the nature of the therapeutic relationship and the provision of health care that characterized the prior contact. In providing this health care, the OT was required to obtain informed consent for his or her involvement. This informed consent encompassed what, why and how information was going to be used. If the OT later considers additional information in making his/her decision, it would occur without valid consent which would be contrary to the *Standards for Consent* (COTO, 2008).

If you evaluate the surveillance material, should it be done before or after the assessment and how much client involvement should be included? The College strongly recommends that surveillance material be viewed together with the client as this enables the client to provide context, validate or offer explanations to refute what may appear in the surveillance material. Variations to this approach are left to the discretion of the occupational therapist as long as the *Standards for Consent* (COTO, 2008), the *Code of Ethics* (COTO, 2011) and the *Standards for Occupational Therapy Assessments* (COTO, 2007) are followed.

Is it reasonable to review surveillance material when there is no client contact? The College recognizes that OTs are often requested to review surveillance material without client contact. While the decision to review surveillance material in this manner remains at the discretion of the OT, the limitations in using this approach are articulated above and may compromise the validity and integrity of the professional opinion.

Note: OTs are accountable for the practice they provide to the public. Guidelines are issued for the assistance of the profession. They represent guidance on how OTs should practice. Guidelines are intended to support, not replace, the exercise of professional judgment by OTs in particular situations.

This guideline was initially prepared in 2000 in cooperation with the, now defunct, Regulatory Rehabilitation Working Group of the Federation of Health Regulatory Colleges of Ontario. While the guideline developed at that time remains generally consistent with current expectations, the College has revised the document to better reflect occupational therapy practice. For additional information, please contact the College.

*Developed: June 2000
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