

Discretionary Reporting Q & A

Interprofessional Reporting

1. **Question:** In some settings, an organization may decide who should report a client to the Ministry of Transportation of Ontario (MTO). If the organization decides that a physician should report, could the occupational therapist be liable if the physician does not report the client?

Answer: Occupational therapists 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 to report. If the organization determines that the best person is the physician, the occupational therapist should document any concerns about fitness to drive and notify the physician responsible for making the report. The College is unable to comment on legal matters such as liability, because liability is context specific.

2. **Question:** Which regulated health professionals can report to the MTO?

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

Consent

1. **Question:** Can a client withdraw consent for an occupational therapist to make a discretionary report to the MTO after concerns are identified?

Answer: Client consent is required for occupational therapy assessment or treatment but not for occupational therapists to make a discretionary report to the MTO. Therefore, once an occupational therapist has decided to make such a report, a client cannot withdraw consent for the occupational therapist to do so. Legal provisions in the *Highway Traffic Act, 1990* permit an occupational

therapist to disclose this information. Refer to section 203 (3) of the Act.

Temporary Conditions

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

Answer: Occupational therapists are not required to report transient impairments to the MTO. In the above situation, the occupational therapist should recommend that the client temporarily refrain from driving until their physician reassesses their ability to return to driving. In addition, the occupational therapist should document their discussion with the client and their recommendations in the client record.

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

Answer: Occupational therapists 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 or functional or visual impairments. Occupational therapists should use their clinical judgement to determine whether it is appropriate to discuss fitness to drive with the client and to recommend that they not resume driving until they have followed up with their physician. Finally, occupational therapists should document their discussions, decision-making, and recommendations in the client record.

Liability and Professional Obligations

1. **Question:** Does an occupational therapist need to document their decision not to make a discretionary report?

Answer: Yes. Occupational therapists should be able to justify the rationale for their decisions and document that rationale in the client record. Occupational therapists may choose to use a resource such as the [Decision-Making Framework](#) to structure their decision-making process. Any decisions related to discretionary reporting should be reasonable and based on sound rationale informed by evidence from the occupational therapy assessment.

2. **Question:** Does the exemption from legal action for an occupational therapist making a discretionary report to the MTO, as outlined in the *Highway Traffic Act, 1990*, include civil litigation or just criminal activities?

Answer: 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 occupational therapist who makes a discretionary report in good faith is protected from legal actions or proceedings being brought against them for making the report.

3. **Question:** The College's Discretionary Reporting of Fitness to Drive states that an occupational therapist should not get into a vehicle with a client unless the therapist is trained to conduct on-road assessments. Is this true?

Answer: The College does not recommend that an occupational therapist 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, the occupational therapist, and the public.

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

Answer: No. In this situation, the occupational therapist must take steps to address the immediate risk of danger to the client or others. These steps could involve notifying the police and a physician about the concerns relating to the client's fitness to drive. The occupational therapist should document in the client record the identified safety risk and the steps they took to mitigate it.

Reporting Someone Other Than the Occupational Therapist's Client

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

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

Resources

1. **Question:** Where can occupational therapists access the Canadian Council of Motor Transport Administrators' (CCMTA's) "Medical Standards for Drivers," which are referenced in the College's Discretionary Reporting of Fitness to Drive?

Answer: The CCMTA's "Medical Standards for Drivers" can be found online: <https://www.ccmta.ca/web/default/files/PDF/NSC-FULL/NSC%20-%20FULL%20SET%20ENGLISH%20MARCH%202022.pdf>. They are free to download.

2. **Question:** Where can occupational therapists access the Canadian Medical Association's (CMA's) resource *Determining Medical Fitness to Operate Motor Vehicles*, (9th edition, which is referenced in the College's Discretionary Reporting of Fitness to Drive?

Answer: The CMA's *Driver's Guide: Determining Medical Fitness to Operate Motor Vehicles*, 9th edition, can be found online. The hard copy or PDF version can be purchased for a fee.