Updated January 31, 2023

Standard for Consent

College of Occupational Therapists of Ontario
Regulator of occupational therapists in Ontario

Introduction

The Standards of Practice establish the minimum expectations for all occupational therapists in Ontario. They describe how occupational therapists will provide safe, quality, ethical, accountable, and effective services. The Standards apply to all registrants of the College of Occupational Therapists of Ontario ("the College"), regardless of practice setting, job title, or role. The Standards, together with the Code of Ethics, Competencies, and Practice Guidance, establish the expectations for professional practice and the delivery of occupational therapy services.

Code of Ethics	The Code of Ethics defines the College's expectations for ethical practice. It includes a set of values and principles, and is intended for use in all **contexts** and for all levels of decision-making. It forms the foundation for occupational therapists' ethical obligations. Occupational therapists must know and adhere to these principles.
Competencies	The *Competencies for Occupational Therapists in Canada,2021,* articulates the broad range of skills and abilities required of all occupational therapists. Occupational therapists are to remain familiar with the Competencies to inform practice and professional development.
Standards	Standards of Practice establish the minimum expectations for occupational therapists—expectations that contribute to public protection. Standards apply to all occupational therapists, regardless of their role, job description, or area of practice.
Practice Guidance	Practice Guidance provides information about specific practice situations or legislation. These are recommended practices.

How the Standards are developed and updated

The Standards are based on core occupational therapy principles outlined in the *Competencies for Occupational Therapists in Canada* (2021). The College monitors and revises Standards regularly through its committees, subcommittees, focus groups, and panels. The College consults with registrants and the public to ensure the Standards include core practice elements before seeking approval by the College's Board of Directors. Registrant input is vital to ensuring the Standards reflect changing practice environments and expectations. Data from College committees and program areas such as Investigations and Resolutions, Quality Assurance, Registration, and the Practice Resource Service helps the College keep the Standards current.

How the Standards are used

Clients and the public

Occupational therapy clients and the public use the Standards to understand what they can expect from occupational therapists. These expectations include knowing that services are being provided in ways that are accessible, culturally sensitive, equitable, and inclusive.

The College

The College uses the Standards in all statutory programs to ensure that applicants and registrants have the competencies and skills to practise effectively, to address questions or concerns about a registrant's practice, and to review and support the provision of quality services.

Failure to comply with the Standards constitutes professional misconduct (*Ontario Regulation 95/07*, s. 1 [1]).

The College's Practice Resource Service is available as an additional resource to help registrants and the public if they have questions about the Standards and occupational therapy practice. The Practice Service is confidential and available at 416-214-1177 or practice@coto.org.

Occupational therapists

Clinical and non-clinical occupational therapists are expected to use these Standards in their daily practice and, when requested by the College, be able to demonstrate how their practice meets the performance indicators. Occupational therapists must be able to provide a reasonable rationale when a Standard was not met, including when contextual factors required a deviation from the expectations.

In applying the Standards, occupational therapists must use professional judgement in the following ways:

- Determine how to best meet client needs in accordance with the Standards.
- Understand that these Standards are the College's interpretation of regulatory and practice expectations. When Standards and legislation conflict, the legislation prevails.
- If workplace policies conflict with the Standards, collaborate with their employers to identify and work toward resolving the differences in clients' best interests.

Employers

Employers of occupational therapists use the Standards to know and follow the College's expectations of occupational therapists working at their organization.

Educators and students

Educators and students use the Standards to inform curriculum and placement expectations.

Use of the terms "client," "patient," and "service"

The College uses the term "client" to align with the *Competencies for Occupational Therapists in Canada*. It states that clients are "people of any age, along with their families, caregivers, and substitute decision makers. Therapists may also work with collectives such as families, groups, communities, and the public at large" (2021, p. 19). **The term "clients" applies to people and organizations that occupational therapists work with in both clinical and non-clinical settings.**

The *Regulated Health Professions Act, 1991* (RHPA) uses the term "patients" to refer to people receiving care from regulated health professionals. This definition is not as broad as the term "client" used in the *Competencies.* In these Standards, the College uses the broader term "client" with one exception: it remains consistent with the RHPA by using the term "patient" when referring to sexual abuse legislation.

The term "service" is used throughout these Standards to encompass all aspects of occupational therapy, including assessment, intervention, and consultation. "Service" also includes non-clinical roles

or activities completed by occupational therapists in their practice setting (for example, leading education sessions, coordinating services, researching, or teaching).

How the Standards are organized

As one document, the Standards are sorted alphabetically by title. Each Standard contains:

- An introduction to the main topic explaining why the Standard is important
- Performance indicators or specific behaviours that show how the Standard is to be met
- A list of further resources, including College, legislative, and regulatory documents

General resources

Association of Canadian Occupational Therapy Regulatory Organizations, Association of Canadian Occupational Therapy University Programs, and Canadian Association of Occupational Therapists. (2021). *Competencies for occupational therapists in Canada*. https://acotro-acore.org/sites/default/files/uploads/ot_competency_document_en_hires.pdf

College of Occupational Therapists of Ontario. (2020). *Code of Ethics*. https://www.coto.org/resources/code-of-ethics

Occupational Therapy Act, 1991, Statutes of Ontario (1991, c. 33). Retrieved from the Government of Ontario website: https://www.ontario.ca/laws/statute/91o33

Ontario Regulation 95/07, Professional Misconduct. (2007). Retrieved from the Government of Ontario website: https://www.ontario.ca/laws/regulation/070095

Regulated Health Professions Act, 1991, Statutes of Ontario (1991, c. 18). Retrieved from the Government of Ontario website: https://www.ontario.ca/laws/statute/91r18

Standard for Consent

Under the law, occupational therapists are required to obtain two types of consent:

- *Informed consent* before starting and throughout the delivery of occupational therapy services (assessment, intervention, and consultation) (*Health Care Consent Act, 1996*)
- *Knowledgeable consent* for the collection, use, and disclosure of clients' personal information and personal health information (*Personal Health Information Protection Act, 2004*)

Importantly, the process of obtaining consent is ongoing. When occupational therapists ask clients for consent, it is expected that they consider the **power imbalance** in client-therapist relationships. Occupational therapists must ask for consent in a way that is culturally sensitive and that allows clients time to ask questions, decline all or part of the services, or withdraw from services at any time.

If another health professional is obtaining consent on behalf of the occupational therapist, they must be a member of another regulated profession that uses the informed consent process outlined in the *Health Care Consent Act, 1996*.

Occupational therapists are expected to:

1. Determine client capacity to provide consent

1.1 Collaborate with clients using relevant communication and information-gathering methods to determine capacity. Use interpreters or augmentative communication tools if needed. Allow time for clients to understand the information and ask questions before finalizing capacity decisions.

1.2 Assume that clients are capable of providing consent unless there is information that indicates otherwise. Do not presume incapacity based on:

a. Age
b. Communication challenges
c. Diagnosis of a psychiatric or neurological condition
d. Disability
e. The fact that a guardian, power of attorney, or substitute decision-maker is in place
f. Language differences
g. Personal bias about social or cultural structures of marginalized groups or communities
h. Refusal of intervention

1.3 Gather relevant information and apply clinical reasoning and judgement to determine the client's capacity to decide on the proposed services.

1.4 If the occupational therapist finds that the client does not have the capacity to provide consent:

a. Explain to or assist the client in exercising their right to have a review of the finding.
b. Use the *Health Care Consent Act, 1996* hierarchy of substitute decision-makers (see Appendix) to determine who is to provide consent.

c. Inform the client that the substitute decision-maker will make decisions regarding occupational therapy services. Involve the client in discussions about services whenever possible.

2. Obtain informed consent

2.1 Follow the *Health Care Consent Act,1996* to ensure that clients have all the information a reasonable person would need to decide about the occupational therapy services. This information includes:

a. Scope and reason for the referral or services
b. Purpose and nature of the services
c. Expected benefits and risks of proceeding, including any cultural, ecological, or economic considerations
d. Likely consequences of not proceeding
e. Expected outcomes
f. Alternative courses of action
g. The right of clients to withdraw consent at any time
h. How services will be paid for
i. Any legal authority given through a legal process for occupational therapy services

2.2 Allow time and opportunity for questions and discussion about the proposed services.

2.3 Respect clients' choice if they decide not to proceed.

2.4 Explain each component of the plan and obtain ongoing consent when moving from one component of services to another.

2.5 Use interpreters or augmentative communication tools to support the informed consent process.

2.6 Obtain consent from clients to involve others in service delivery, such as students and occupational therapy assistants. Clarify their roles and responsibilities.

2.7 Be clear about any fees involved and ensure that they are agreed upon before services start.

2.8 Apply an informed consent process to third party referrals (for example, independent examinations or expert reports). Explain that the services are at the request of the third-party payer. Describe the nature and scope of the occupational therapist's role and reporting responsibilities.

3. Obtain knowledgeable consent

Knowledgeable consent refers to the collection, use, and disclosure of personal information according to the privacy legislation that applies to the occupational therapy practice. In Ontario, one of three privacy laws applies: the *Personal Health Information Protection Act*, *2004*, the *Personal Information Protection and Electronic Documents Act, 2000*, or the *Privacy* Act, 1985.

3.1 Know which privacy law applies to the occupational therapist's practice and follow the legal requirements for consent and ongoing consent for the collection, use, and disclosure of

information.

3.2 Explain to clients why information is being collected, used, and shared and with whom. Make sure that clients understand that they have a right to withdraw consent, but that the withdrawal cannot be applied retroactively to information already shared.

3.3 Provide professional contact details in case questions arise later about how information was collected, used, and shared during occupational therapy service delivery.

3.4 For third party referrals (for example, independent examinations or expert reports):

a. Obtain consent for the disclosure of assessment results, reports, and intervention plans to third party payers, other professionals, partners, and interested parties unless exceptions to this disclosure apply under privacy legislation
b. Obtain consent before reviewing any additional client health information that was provided by the third party after the original assessment services were completed (for example, other medical reports or surveillance material).

4. Handle client information respectfully and responsibly

4.1 Collect only as much client information as is needed to provide the services.

4.2 Access only records that apply to the occupational therapist's role and practice.

4.3 Protect the confidentiality of client information and ensure that all information is secured against unauthorized access, loss, or theft.

4.4 Understand privacy legislation and organizational policies and procedures.

4.5 In the case of third party referrals, take reasonable measures to ensure that any assessment information shared is accurate and represents the occupational therapist's professional opinion.

5. Document both informed and knowledgeable consent

Documentation can take the form of a note in the client record, signed and dated consent forms, or a consent policy, procedure, or guideline that is referenced in the client record. A signed consent form does not necessarily prove that informed or knowledgeable consent has been obtained. Consent forms should not be a substitute for the communication process that must accompany proper informed consent. Forms, however, can be used to support the process and to standardize methods of obtaining consent.

5.1 Ensure that documentation is timely (determined by practice factors such as workplace policies, client risk, and reporting priorities) and includes notes on these details:

a. Whether or not the client understood and agreed to all, some, or none of the proposed services and plans of care.
b. Risks, limitations, and benefits of the services discussed.
c. Any limits imposed on the collection, use, and disclosure of the client's personal information and personal health information.
d. Type of alternative communication methods used or details of interpretation services.

e. Name of the substitute decision-maker. If applicable, include a copy of authorizing documents such as power of attorney for personal care.

6. Manage withdrawal of consent

6.1 Ensure that clients understand their right to withdraw consent and any implications of doing so.

6.2 If the client withdraws consent, continue the services only if immediate withdrawal poses a serious risk to the health or safety of the client or others. Explain to the client why the withdrawal cannot be immediate.

6.3 Ensure that the record includes all services provided before consent was withdrawn and the reasons the clients withdrew consent (if known).

6.4 If the client withdraws consent for disclosure of health information, explain that withdrawal cannot be applied retroactively to information already shared.

Related College documents

Consent Checklist
Decision Tree for Obtaining Consent
Standard for Record Keeping
Standard for the Supervision of Students and Occupational Therapy Assistants

Resources

Health Care Consent Act, 1996, Statutes of Ontario (1996, c. 2, Sched. A). Retrieved from the Government of Ontario website: https://www.ontario.ca/laws/statute/96h02

Office of the Privacy Commissioner of Canada. (2018). *Summary of privacy laws in Canada*. https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/02_05_d_15/

Personal Health Information Protection Act, 2004, Statutes of Ontario (2004, c. 3, Sched. A). Retrieved from the Government of Ontario website: https://www.ontario.ca/laws/statute/04p03

Personal Information Protection and Electronic Documents Act, Statutes of Canada (2000, c. 5). Retrieved from the Justice Laws website: https://laws-lois.justice.gc.ca/eng/acts/p-8.6/

Privacy Act, Revised Statutes of Canada (1985, c. P-21). Retrieved from the Justice Laws website: https://laws-lois.justice.gc.ca/eng/acts/p-21/fulltext.html

Appendix: Hierarchy of Substitute Decision-Makers

When a healthcare practitioner believes that a client is not capable of making a decision about assessment, intervention, admission to a care facility, or personal assistance, they must obtain consent from the substitute decision-maker unless the circumstances warrant urgent intervention.

In most situations, the substitute decision-maker does not have to be appointed by the courts. They must be at least 16 years old unless they are the parent of the client, and they must be capable of giving consent.

The *Health Care Consent Act, 1996* (s. 20 [1]) lists a hierarchy of persons who can provide substitute consent. Generally, the practitioner must obtain consent from the highest-ranking person who is available and willing to be a substitute decision-maker. An exception is if a lower-ranking substitute is present and believes that the higher-ranking substitute would not object.

Based on the *Health Care Consent Act* (s. 20 [1]), the hierarchy is as follows:

1. The client's court-appointed guardian of the person if the guardian has the authority to give or refuse consent to treatment
2. Attorney for personal care conferred by a written form when the client was capable
3. Representative appointed by the Consent and Capacity Board
4. Spouse or partner
5. Child or parent (custodial parent if the child is a minor)
6. Parent of the incapable person who has only a right of access
7. Sibling
8. Any other relative

Note: If no person described in the hierarchy meets the requirements, the occupational therapist would go back to the top of the hierarchy, where the Public Guardian and Trustee shall make the decision to give or refuse consent.

Glossary of Terms

Co-create
Co-create is to "create (something) by working with one or more others" (Merriam-Webster, n.d.).

Context
Context strongly influences occupational possibilities and healthcare services. There are three layers of context:

1. Micro context refers to the client's immediate environment: their own state of health and function, family and friends, and the physical environment they move through
2. Meso context refers to the policies and processes embedded in the health, education, justice, and social service systems that affect the client
3. Macro context refers to the larger socioeconomic and political context around the client: social and cultural values and beliefs, laws, and public policies

Culturally safer
Culturally safer is a refinement on the concept of cultural safety. Competent occupational therapists do everything they can to provide culturally safe care. But they remain aware that they are in a position of power in relation to clients. They are mindful that many marginalized people—Indigenous people, for example—have a history of serious mistreatment in healthcare settings. These clients may never feel fully safe. Occupational therapists allow those who receive the services to determine what they consider to be safe. They support them in drawing strength from their identity, culture, and community. Because cultural safety is unlikely to be fully achievable, occupational therapists work toward it.

Ecological considerations for care
Occupational therapists consider the wider impact of the tools used to practise in order to support the sustainability of environmental resources. As environmental stewards where possible, occupational therapists recognize the ecosystems on which human health depends and support sustainability as part of a global initiative.

Intersectionality
Intersectionality describes how a person's multiple social identities (for example, ability, age, class, education, ethnicity, gender, geography, immigration status, income, indigeneity, race, religion, and sexual orientation) combine, overlap, or intersect to create different modes of discrimination and privilege. Intersectionality can help occupational therapists understand the myriad factors affecting a client's health and the disparities in access to healthcare.

Power imbalance
Occupational therapists are in a position of trust and authority over their clients. As a result, the client-therapist relationship is inherently unequal, which results in a power imbalance in favour of the occupational therapist. The client relies on the occupational therapist's clinical judgement and experience to address health-related issues, and the occupational therapist knows the client's personal information and has the ability to influence the client's access to other resources and services.

This power imbalance places the client in a vulnerable position in the therapeutic relationship. Occupational therapists are expected to be aware of this inherent imbalance and ensure that professional boundaries are maintained to protect the client's best interests and keep the client safe.

Vulnerable client
The vulnerability of a client is determined by many factors, including their health status, life stage, social context, ability to access supports and resources, and the overall complexity of their condition and needs. Some indications of client vulnerability in occupational therapy practice may include those people who are at risk of being highly dependent on the occupational therapist or the services they can help them access, and where services may be prolonged or are high risk and intensive.

Resources

Merriam-Webster. (n.d.). Cocreate. In *Merriam-Webster.com dictionary*. Retrieved November 27, 2022, from https://www.merriam-webster.com/dictionary/cocreate

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