

## **Practice Standard: Conflict of Interest**

Registrants of the College of Occupational Therapists of Nova Scotia are accountable for the practice they provide to the public. Standards are issued by the College to ensure a minimum level of practice is maintained for occupational therapists in Nova Scotia. Standards are intended for the protection of occupational therapy clients. Although standards are prescriptive, occupational therapists are still expected to exercise professional judgment in their practice and apply the standards within the context of their environment. Occupational therapists are also expected to follow the standards set by their employer; when the employer's standards seem to conflict with this standard, occupational therapists should contact the College for clarification.

### **Statement of Purpose**

The purpose of this document is to ensure occupational therapists in Nova Scotia are aware of the minimum expectations for addressing conflicts of interest within an occupational therapy practice.

College publications contain practice parameters and standards which should be considered by all Nova Scotia occupational therapists in the care of their clients, and in the practice of the profession. College publications are developed in consultation with occupational therapists and describe current professional expectations. It is important to note that these College publications may be used by the College or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

### **Background Information**

Occupational therapists, like many health practitioners, are in a unique relationship of trust with their clients. In practice, a conflict of interest arises when the occupational therapist has a relationship or interest which could be seen by a reasonable person to influence their professional conduct in relation to a client. A conflict of interest can be perceived, potential, or actual, and can arise within personal, professional, or business relationships. A conflict of interest can exist even if the occupational therapist does not benefit directly (e.g., a conflict of interest will still arise if the benefit accrues to a family member or the occupational therapist's business). Therefore, a perceived or potential conflict of interest is as significant as an actual conflict of interest. A conflict of interest, whether it is actual, potential, or perceived, needs to be addressed.

Conflicts of interest can compromise the profession's values. Occupational therapists are in a fiduciary relationship with their clients and, as such, have an ethical and legal responsibility to act solely in their clients' best interests. Client trust is delicate and can be irrevocably compromised due to conflict of interest concerns. Confidence and respect for the occupational therapist's organization can also be damaged, along with the public's perception of the profession overall.

## Practice Standard Organization

The Conflict of Interest Standard is divided into the following headings:

1. Key Responsibilities
2. Definitions
3. Criteria:
  - a. Recognition of Conflict of Interest
  - b. Prevention of Conflict of Interest
  - c. Management of Conflict of Interest
  - d. Special Considerations
4. References
5. Frequently Asked Questions
6. Risk Assessment and Management Framework
7. Conflict of Interest Process Model

### 1. **Key Responsibilities**

- Occupational therapists must recognize, prevent, and manage conflict of interests in their practice.
- The criteria below describe the minimum expectation for the recognition, prevention, and management of conflicts of interest within an occupational therapy practice.
- The performance indicators listed below each criterion describe more specific behaviours that demonstrate the expectation has been met.
- There may be some situations where the occupational therapist determines that a particular performance indicator is not relevant due to client factors and/or environmental factors, but the occupational therapist must provide a rationale for any variations.
- Occupational therapists must use their professional judgment to determine how to recognize, prevent, and manage conflicts of interest to best meet the needs of the client.
- Occupational therapists should contact the College if they are unclear whether there may be a conflict of interest or how best to manage the conflict of interest.
- Occupational therapists must recognize that when a conflict of interest is identified, client consent does not remove the occupational therapist's responsibilities to properly address the issue.

## **2. Definitions**

A working understanding of the following definitions is essential for the appropriate interpretation of this document.

### **Client**

Any individual, group, community, agency, organization, or population who is the recipient or intended recipient of services from an occupational therapist, and, where the context requires, includes a substitute decision-maker for the recipient or intended recipient of services. This includes individuals with occupational performance issues arising from physical, cognitive, psychological, social and/or environmental barriers.

### **Conflict of Interest**

In occupational therapy practice, a conflict of interest arises when the occupational therapist has a relationship or interest, which could be seen by a reasonable person as improperly influencing their professional judgement or ability to act in the best interest of the client. A conflict of interest can be **actual**, **potential** or **perceived**.

**Actual:** Occurs where an occupational therapist has already performed an action when a relationship or interest has influenced their ability to serve the client's best interests. An actual conflict of interest means an action has already occurred.

**Potential:** Occurs where a reasonable person foresees that an occupational therapist has a relationship or interest sufficient to influence their ability to serve the client's best interests should the occupational therapist become involved in the client's care. (COTBC, 2019)

**Perceived:** Occurs where a reasonable person determines that an occupational therapist's ability to act in the best interest of a client might be affected due to competing interests - even if this is not actually the case. (COTBC, 2019)

### **Family member of a Registrant:**

A family member is defined as a child, parent, grandparent, uncle, aunt, brother, sister, step-relatives, grandchild, niece, nephew, first cousin, and spouse of the registrant. (COTNS Registration Regulations)

### **Fiduciary duty**

The legal, professional, and ethical duty to act solely in the client's best interests.

### **Gift**

Something voluntarily given to another individual without expectation of compensation. Gifts can have varying monetary or emotional value and be of varying cultural significance. (COTBC, 2015)

### **Personal Interest**

Refers to gains of a personal, professional, political, academic, financial, or material nature. They include the interests of an occupational therapist, an occupational therapist's friend, family, or colleagues, or those organizations with whom the occupational therapist owes an obligation or debt. (COTBC, 2015)

**Professional boundary**

The “implicit or explicit demarcation separating the professional relationship with a client from one that is personal” (COTO, 2015). Boundaries make relationships professional and safe for clients (COTBC, 2006).

### 3. Criteria

#### a. Recognizing a Conflict of Interest

A conflict of interest may not be obvious and even an experienced occupational therapist may not easily recognize it. A situation may potentially lead to a conflict of interest or be perceived by others as presenting a conflict of interest although the occupational therapist may not see it that way.

An occupational therapist must proactively be alert to and recognize any actual, potential or perceived conflict of interest. (COTO, 2016).

#### **Performance Indicators**

An occupational therapist must:

1. Identify types of conflict of interest.
2. Identify situations that may lead to conflict of interest.
3. Recognize that treating a family member is a conflict of interest.
4. Consider the implications that conflicts of interest have for clients and the public's perception of the profession.
5. Identify the activities that may influence the occupational therapist's ability to be impartial in a client-therapist relationship.
6. Recognize if a situation involves any direct or indirect benefit (i.e. personal, professional, political, academic, financial, or material) to the occupational therapist could affect his or her professional judgement.
7. Recognize and reflect upon any strongly held opinions, biases or beliefs pertaining to race, gender, religion, age, sexual orientation, disability, nationality or other grounds protected by human rights which may affect their ability to meet client's needs.
8. Consider whether others could potentially perceive a conflict of interest which could compromise the occupational therapist's ability to serve a client's best interests.
9. Seek advice from knowledgeable individuals such as managers, discipline leaders, peers or the College, when in doubt whether an actual, potential or perceived conflict of interest exists.
10. Identify any conflict of interest-related policies and procedures of the occupational therapist's organization, where applicable.
11. Consider feedback from others who may perceive a conflict of interest.

## **b. Preventing a Conflict of Interest**

An occupational therapist must make deliberate efforts, including communication with clients, to avoid or prevent an actual, potential or perceived conflict of interest from occurring.

### **Performance Indicators**

An occupational therapist must:

1. Avoid participating in activities or arrangements which may potentially compromise their ability to serve a client's best interests (e.g., accepting monetary awards, benefits or values for the number of referrals).
2. Manage professional boundaries in a way that prevents conflict of interest (e.g., avoid treating family and where possible, avoid treating friends).
3. Avoid using status as an occupational therapist to receive benefits, other than proper payment for professional services (i.e. perks or benefits from vendors or discounts).
4. Avoid preferential or discriminatory treatment towards particular clients or organizations. (i.e. providing additional services or resources to certain clients of similar beliefs).
5. Apply any conflict of interest related policies and procedures of the occupational therapist's employer or organization and/or demonstrate a consistent approach based on College standards.
6. Maintain a relationship of trust and confidence by not taking advantage of his or her position, including access to privileged information or knowledge received in dealings with clients or organizations.
7. Whenever possible, provide clients with alternative options for receiving occupational therapy services in circumstances where a perceived or actual conflict of interest exists, or a potential conflict of interest may arise.

### **c. Managing Conflict of Interest**

There are instances where a conflict of interest cannot be avoided. In those circumstances, the conflict of interest must be managed. For instance, in a small rural community it may be more ethical for an occupational therapist to provide services to a client who is also a friend, rather than not providing services.

The occupational therapist will be proactive in effectively managing and mitigating an unavoidable conflict of interest.

#### **Performance Indicators**

An occupational therapist will:

1. Take the appropriate steps, where possible, to resolve or remove themselves from a situation where a conflict of interest is recognized or perceived.
2. Take the following steps where a conflict of interest cannot be resolved:
  - a. Disclose to the client and/or stakeholders the perceived, potential, or actual conflict of interest.
  - b. Provide the client with information about options available and allow the client to make an informed choice.
  - c. Inform the client that he or she has the right to decline service at any time.
  - d. Document the steps taken to address the conflict.
3. Seek assistance from the College or colleagues as required.

#### **d. Special Considerations**

There are specific situations for occupational therapists that commonly occur in practice and can lead to a conflict of interest. The following section provides guidance to occupational therapists in these situations.

The occupational therapist will not exploit the therapeutic relationship with a client for any form of personal gain, benefit or advantage, which may interfere with his/her exercise of sound professional judgement. The occupational therapist will refrain from exchanging gifts or other benefits of such value that may impact expectations for the type of care a client will receive or influence the perception that the occupational therapist's integrity may be compromised.

One of the most common issues for occupational therapists is the presentation of gifts from clients or commercial sources. Gifts from client may indicate a relationship that has progressed beyond a professional status or may be given with specific motivations or expectations. Gifts from commercial sources have the potential to create an obligation and a loss of objectivity. When considering whether to accept a gift, occupational therapists should consider:

- The motivation of the giver;
- The monetary or emotional value of the gift;
- Any constraints or conditions on the gift;
- The potential or perceived conflict of interest;
- The cultural meaning of the gift and/or
- Employer policy regarding gifts.

Occupational therapists are expected to refrain from exchanging gifts or other benefits of such value that may impact expectations for the type of care a client will receive or influence the perception that the occupational therapist's integrity may be compromised.

#### **Stakeholder Relationships**

Through their professional activities, occupational therapists often interact with various stakeholders, such as equipment vendors, companies, and manufacturers. An occupational therapist may have a close relationship or rapport with an equipment vendor through regular interaction while assisting clients. Similarly, an occupational therapist may develop a business association with a vendor while also providing assessment and recommending equipment. These interactions may lead to an actual, perceived, or potential conflict of interest. When managing professional relationships with stakeholders, occupational therapists are expected to act in the best of the client rather than the private interest of either party. If acting as a liaison between the vendor and the client, occupational therapists are expected to promote the client's choice of vendor and/or equipment or provide clients with options to choose a vendor and then act as a liaison. Where a personal or business relationship exists with a vendor, occupational therapists are expected to disclose the nature of the relationship and provide the client with all available options and choices. Occupational therapists should assure the client that any choice will not affect their professional relationship with the client.



## Self-Referral

Occupational therapists may provide additional professional or business services in addition to their primary employment. Self-referral occurs when an occupational therapist working in one professional setting refers clients to themselves in another setting in which the occupational therapist has any interest or gains any benefit. For instance, an occupational therapist working in a hospital refers a client to a clinic in which they have a financial interest. Occupational therapists are expected to avoid self-referral when there is a potential, perceived or actual financial benefit, unless alternative options are not in the best interest of the client or the client is at risk of not receiving the services. When this occurs, occupational therapists are expected to manage their conflict of interest.

#### **4. References**

College of Occupational Therapists of Ontario (COTO) (2016). Standards for Prevention and Management of Conflict of Interest. Toronto, ON

College of Occupational Therapists of Ontario (COTO) (2015). Standards for Professional Boundaries. Toronto, ON

College of Occupational Therapists of British Columbia (COTBC) (2019). Practice Standard for Conflict of Interest. Victoria, BC.

College of Occupational Therapists of British Columbia (COTBC) (2006). Code of Ethics. Victoria, BC.

British Columbia College of Nurses/Midwives (BCCNM) (2020). Professional Standard: Conflict of Interest. Vancouver, BC.

## 5. Frequently Asked Questions

**I work full-time with the Nova Scotia Health Authority and also have a private practice. Can I see the client privately who was previously on my unit?**

In this situation, there is potential for conflict of interest in this scenario because the occupational therapist works with similar populations in both the public and private setting. The potential exists because the occupational therapist can influence the referral process to financially benefit themselves should they become involved.

Others may also believe that the occupational therapist is influencing the referral process and benefitting financially, even if this is not the case. This is perceived conflict of interest.

An occupational therapist must take steps to identify, report and avoid or mitigate the conflict of interest. It is best practice to avoid a conflict of interest situation rather than attempting to mitigate.

The occupational therapist should contact the referral source to disclose that there is a potential conflict of interest. At this time, the occupational therapist must first consider avoiding the conflict by not accepting the private referral. If this is not in the interest of the client, the conflict must be managed by following these steps:

- a. Disclose to the referral source that there is a perceived, potential, or actual conflict of interest.
- a. Provide the referral source with information about options available and allow the referral source to make an informed choice.
- b. Inform the client that he or she has the right to decline service at any time.
- c. Document all steps in this process.
- d. Seek assistance from the College or colleagues as required.

Occupational therapists may also have additional responsibilities with their employer(s) with respect to reporting conflict of interest situations.

**I noticed that small gifts are frequently left on my desk from a particular vendor/client/client's family member. Is it wrong for me to accept these gifts?**

If a gift, donation or sponsorship of any value is offered, consider the possible motives of the giver and the potential for conflict of interest. Recognize the potential for a gift, donation or sponsorship to create an obligation. Understand that accepting even a small offering may influence your judgment, cause you to lose objectivity or appear to others as a conflict of interest. (BCCNM, 2020). If you have done everything you think you can and are still unsure of how to proceed, please consult the College.

**I understand that as an occupational therapist I cannot show preference to any one vendor when recommending equipment for a client; however, what if I have had negative experiences working with a vendor in the past and I don't believe they will be the best choice for my client, can I let my client know?**

A conflict of interest can be present in the vendor/occupational therapist relationship in many circumstances. An occupational therapist cannot show preference to any one vendor; however, it may also be a conflict of interest if you suggest a client not choose a particular vendor. We encourage occupational therapists to speak directly to vendors to address any challenges. The vendor may not be aware that there are any issues. The selection of the vendor is up to the client. If you have done everything you think you can and are still unsure of how to proceed, please consult the College.

**I work at an educational institution in a teaching and research role. What do I need to consider?**

Occupational therapists working in these roles are also required to recognize, prevent and manage conflict of interest. These steps are essential such as in a teaching capacity for the instructor/student interaction and when participating in or completing projects with approval from the research-supporting institution's research ethics board (REB).

**I have identified a conflict of interest in my practice, but the client consents to proceed with services. Is this sufficient?**

No. Client consent does not remove the responsibilities of the occupational therapist to address the conflict of interest situation appropriately. When a conflict of interest situation is identified, occupational therapists must make deliberate efforts, including communication with clients, to avoid or prevent an actual, potential or perceived conflict of interest from occurring.

If the conflict of interest cannot be avoided, the occupational therapist must manage the conflict of interest. While a step in this process involves client consent, the occupational therapist cannot solely rely on their consent to move forward with the process.

## **Risk Assessment and Management Framework**

Recognizing, preventing, and managing conflicts of interest requires occupational therapists to reflect and make reasoned decisions regarding the provision of services. The College recommends occupational therapists use a risk management framework to minimize risk and prevent harm. A risk management framework is a tool that assists registrants to identify potential risk factors, assess their probability and degree of harm, and take steps to mitigate any associated risk. Risk management is a cyclical process, requiring on-going monitoring and review.

### 1. Identify Risk Factors:

#### *Client*

- The cultural beliefs and values of the client and their family members
- Vulnerability of the client given any physical, mental, cognitive, emotional, or social issues
- Ability to give accurate and complete information due to language barrier, speech deficits, poor comprehension, or visual or sensory deficits
- The client's ability to provide informed consent and direct their care

#### *Occupational Therapist*

- Knowledge of employer's policies and procedures
- Knowledge of various cultural and social norms related to giving and receiving benefits and gifts
- Ability to establish and maintain professional boundaries
- Ability to communicate to client and family at an appropriate level

#### *Practice Environment*

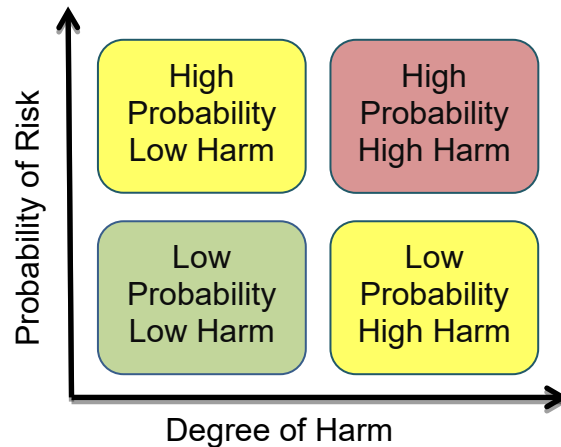
- Accessibility of other occupational therapists to provide care (e.g., rural vs. urban practice environments)
- Employer policies and procedures
- Existing social norms (e.g., a history of participating in vendor incentive programs)
- Power of referral source to influence funding or continuation of services
- Client population
- Available equipment vendors, companies, and manufacturers
- Availability of colleagues and their approach to conflict of interest
- Accessibility of professional services, such as legal counsel or ethicist

#### *Therapeutic Relationship*

- Power balance and occupational therapist's ability to influence the course of treatment
- Client-centred approach and trusting relationship

## 2. Assess Probability and Degree of Harm:

Once risk factors are identified, the occupational therapist needs to assess how likely the risk factors are to occur (their probability) and the degree of harm or impact to the client, the occupational therapist, the organization, and the profession.



## 3. Mitigation Strategies:

Listed below are some strategies to mitigate risk. This list is not meant to be exhaustive:

- Review any existing policies or procedures related to conflict of interest
- Refer to alternative services where available
- Increase understanding of the significance of gifts in various cultures
- Identify culturally and socially acceptable alternatives to receiving gifts (i.e. sharing gifts with the health-care team)
- Maintaining a list of available vendors and their services to promote client choice
- Disclose any conflict of interest to employer and clients
- Review requirements for service with third-party payers and clients

## Conflict of Interest Process Model

