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OCCUPATIONAL THERAPISTS ACT 2005



CODE OF PRACTICE 2009

OCCUPATIONAL THERAPISTS' BOARD OF WESTERN AUSTRALIA

Code of Practice

1. INTRODUCTION

The Occupational Therapists' Board of Western Australia (the Board) is the statutory authority established to perform functions pursuant to the *Occupational Therapists Act 2005* (the Act).

Under section 95(1) of the Act, the Board may, with the approval of the Minister for Health (the Minister), issue codes of practice. The Board has issued this Code of Practice (the Code) to convey to and to assist an occupational therapist to understand, the standards required under this legislation to discharge his or her duties and responsibilities in an appropriate and professional manner.

Primarily, an occupational therapist must maintain awareness of, and comply with, the *Occupational Therapists Act 2005*, the *Occupational Therapists Regulations 2007*, and any other Board guidelines issued from time to time.

Pursuant to section 10 of the Act and with relevance to this Code of Practice, the Board has the function of—

- promoting increased levels of skill, knowledge and competence in the practice of occupational therapy; and
- ensuring these are monitored and that evidence is available to support this requirement.

1.1 Overview

An occupational therapist should demonstrate the following principles—

Competence

A client should expect safe and competent service.

Respect

A client should be treated with respect and courtesy.

Communication

A client has the right to be listened to, and to be given information in an appropriate manner.

Informed Consent—Service

A client should be informed at the commencement of service of any foreseeable implications or risks and complications that may arise, and procedures likely to be used. If, during the course of treatment, changes are made to the service/s, consent should again be obtained for the change to the service/s. A client should receive accurate and up-to-date information particular to his or her situation, and be given the opportunity to ask questions about any proposed service.

Informed Consent—Costs

A client should be fully aware of the cost of services at the outset. Informed financial consent is a pivotal aspect of service delivery.

Privacy and Confidentiality

A client's privacy must be respected. Confidentiality of client information must be upheld.

Treatment Choice

A client has the right to decide whether or not to undergo treatment.

2. ETHICAL PRINCIPLES

2.1 Obligations to the Public

The public is entitled to receive safe, effective and ethical occupational therapy services performed by knowledgeable, skilled and accountable occupational therapists. The occupational therapist will use an approach for each client that recognises the circumstances and the client's needs and background. The occupational therapist shall not take advantage of clients physically, psychologically, emotionally or financially.

The occupational therapist shall—

- (a) uphold the principle of informed consent, including the client's right to choose from a range of options;
- (b) demonstrate respect for the physical, psychological and spiritual well-being of a client;
- (c) treat all clients equitably and with respect and courtesy;
- (d) communicate relevant information clearly to the client;
- (e) identify the competing interests of different clients, prioritise those interests objectively, and address the needs of the different clients according to that prioritisation;
- (f) not exploit the relationship between an occupational therapist and a client; and
- (g) maintain a respectful relationship with members of the public in order to facilitate awareness and understanding of the profession of occupational therapy.

2.2 Obligations to the Profession

The Board expects an occupational therapist to maintain standards of practice and conduct in a professional and ethical manner. An occupational therapist is obligated to comply with the Act and Regulations, adhere to the Code and maintain professional competency that will ensure the delivery of safe, competent occupational therapy services.

The occupational therapist shall—

- (a) maintain professional integrity, and conduct all professional activities, programs and relations honestly and responsibly;
- (b) report to the Board—
 - (i) any alleged careless, incompetent or improper conduct by another occupational therapist;
 - (ii) any practice of occupational therapy or misuse of the title “Occupational Therapist” by a person not registered by the Board; or
 - (iii) an impairment matter that may affect his or her ability to practise occupational therapy;
- (c) if employing or managing other occupational therapists, ensure that those employees are registered with the Board;
- (d) as a partner, former partner, locum, employee or previous employee, respect the ownership and confidentiality of the principal occupational therapist’s practice records when establishing a new practice;
- (e) maintain awareness of, and comply with, legislative developments that may affect his or her occupational therapy practice; and
- (f) treat colleagues and students with respect, courtesy, fairness and good faith, and respect the right of colleagues and other health professionals to hold views that differ from their own.

2.3 Obligations as Professional Practitioners

Each occupational therapist must demonstrate competence and continue to update professional knowledge and skills relevant to his or her area of practice. An occupational therapist shall collaborate with professionals and others as appropriate with a goal to enhance client care.

The occupational therapist shall—

- (a) commit to the highest level of professional efficacy through the maintenance and application of current, relevant knowledge and skill to provide competent, ethical service to clients;
- (b) participate in ongoing professional development, and integrate relevant learning into his or her area of practice;
- (c) develop and maintain collaborative relationships, and exchange knowledge as required in the interests of a client’s health and wellbeing, while respecting client confidentiality and legislation and/or common law relating to consent to treatment;
- (d) act at all times with regard for other health professionals, and uphold the profession of occupational therapy;
- (e) not provide occupational therapy services when impaired by substances or any illness that could put the client at risk or affect the delivery of a competent service;
- (f) notify the Board of change of address, loss of qualifications, insolvency, civil or criminal proceedings and specified matters in relation to professional indemnity insurance (sections 43 to 47 of the Act); and
- (g) cooperate with any internal quality assurance activities and/or with a statutory investigation (see sections 73, 90 and 91 of the Act).

3. STANDARDS OF PROFESSIONAL CONDUCT AND PRACTICE

3.1 Professional Accountability

As a regulated professional, the occupational therapist is required to clearly demonstrate that he or she serves the client’s best interest. Accountability means the occupational therapist is responsible for his or her actions, is aware of his or her strengths and limitations, makes appropriate choices consciously and deliberately, and is able to give rationale for a particular course of action.

The occupational therapist shall—

- (a) be responsible for ensuring his or her ongoing competence to provide quality care;
- (b) be responsible for defining his or her own scope of practice, and the extent that legislation, regulations, standards, competencies, guidelines and policies related to the practice of the profession apply to his or her practice;
- (c) recognise the parameters of his or her professional competence, and limitations of his or her knowledge and skills. For clients whose needs fall outside the domain of the occupational therapist’s competence, assistance and resources must be sought, or the client must be referred to appropriate professional services;
- (d) update his or her knowledge and skills before commencing practice in a different area or specialty of occupational therapy;
- (e) not discriminate against clients or others on the basis of ethnicity, handicap, national origin, age, gender, sexual preference, religion, political beliefs or status in society;

- (f) consider the cultural background of the client;
- (g) act in accordance with the highest standards of professional integrity and impartiality, and not exploit professional relationships for personal gain or for imposing religious, political or other beliefs;
- (h) in accordance with Board policy¹, update his or her knowledge and skills before re-entering the workforce if he or she has not practised occupational therapy in the preceding five (5) years;
- (i) ensure he or she is covered by an insurance policy for negligent acts and omissions (professional indemnity) if subject to the Board's requirements under Section 31 of the Act;
- (j) when supervising a person currently holding conditional registration under the Act—
 - (i) be directly responsible for treatment provided to clients;
 - (ii) provide appropriate training and feedback in accordance with the Board's guidelines; and
 - (iii) ensure the conditionally registered occupational therapist understands and adheres to the professional and ethical standards of occupational therapy practice in accordance with this Code;
- (k) treat the client only while occupational therapy can be shown to be of benefit therapeutically with positive demonstrated outcomes. Care that is not justified constitutes over-servicing;
- (l) not directly induce or solicit clients from the practice of another occupational therapist;
- (m) not overstate or understate the seriousness of a client's condition; and
- (n) when engaged in study and research, approach relevant ethics committees for advice and approval, and be guided by the World Medical Association Declaration of Helsinki, and the National Health and Medical Research Council (NHMRC) Statement on Human Experimentation. .

3.2 Transparency

Transparent practice requires full disclosure and clear, open and thorough communication to ensure integrity within the client-therapist relationship. It is inappropriate to withhold information that may impact on the client's ability to become involved as an informed participant. The occupational therapist is responsible for ascertaining the nature and extent of information to be shared, and with whom it needs to be shared.

The occupational therapist shall—

- (a) practise in an open, professional and objective manner that recognises any potentially competing expectations of the client and other stakeholders including self-interest;
- (b) not misrepresent his or her role or competence to the client, and represent his or her knowledge, skills and abilities in a clear, open manner;
- (c) not misrepresent professional qualifications, education, experience or affiliations. Descriptions of practice, experience, techniques and training are permitted, in that they support the public's ability to make an informed choice;
- (d) recognise the importance of clear understanding with respect to financial matters with clients. Arrangements for payments and payment rates should be settled at the beginning of a therapeutic relationship, and the bill must reflect services actually rendered;
- (e) be cautious in prognosis, act only on up-to-date information and not exaggerate the efficacy of his or her services or give specific guarantees regarding the results to be obtained from occupational therapy treatment;
- (f) not advertise or make a statement that, in any way—
 - (i) is false, misleading or deceptive;
 - (ii) is designed to mislead or deceive;
 - (iii) creates an unjustified expectation of beneficial treatment;
 - (iv) promotes the unnecessary or inappropriate use of his or her services;
 - (v) claims that he or she has unique prominence in the practice of occupational therapy; or
 - (vi) is likely to bring the profession into disrepute;
- (g) ensure that advertising materials or statements do not intend, or are not likely, to appeal to a client's fears, anxieties or emotions concerning his or her treatment or condition or the possible results of his or her failure to obtain the offered services;
- (h) not pay or give anything of value to a representative of the media, commercial supplier or anyone else in anticipation of, or in return for, professional publicity in a news item, or for receiving or making a referral;
- (i) not seek or accept anything of value from a representative of the media, commercial supplier, client (other than value for occupational therapy services provided) or anyone else in anticipation of, or in return for, some derivable benefit to the donor; and
- (j) only use occupational therapy practice names which are not misleading or deceptive, likely to mislead or deceive, or are not vulgar or sensational.

¹ Policies are available on the Board website at: www.otbwa.com.au

3.3 Confidentiality and Privacy

The occupational therapist is entrusted with personal and sensitive information about clients, and has a responsibility to respect, secure and protect this information subject to any legal requirement to the contrary (e.g. mandatory reporting). When sharing with those individuals who have the appropriate authority to receive it, the quantity and content of information provided should reflect a principle of a “need to know” basis only.

The occupational therapist shall—

- (a) not voluntarily disclose to any third party either verbally or in writing, information obtained in a professional relationship with a client except—
 - (i) as required by law; or
 - (ii) where the client has given written permission to disclose the information (e.g. to the other relevant health professionals involved in the treatment of the client);
- (b) comply with the provisions of the *Privacy Act 1988* (Commonwealth) and, in particular, the National Privacy Principles which deal with the collection, use, storage and correction of sensitive health information. Specific information for collection of health information can be found at www.privacy.gov.au. (Also see 3.8c)

3.4 Professional Boundaries

An occupational therapist-client relationship is an unequal relationship, and the occupational therapist is responsible for establishing and maintaining professional boundaries with his or her clients. The occupational therapist is in a position of power because of the knowledge he or she holds, and the client's need for that knowledge. To ensure a trusting relationship, the occupational therapist must not misuse or abuse the position of power by crossing boundaries.

The occupational therapist shall—

- (a) not exploit a trust relationship with clients, students and/or subordinates;
- (b) be responsible for setting and maintaining professional boundaries, given the significant power imbalances in an occupational therapist-client relationship;
- (c) not enter into a personal relationship or violate professional boundaries with a current client, or someone with whom the client has a significant personal relationship (e.g. child's parent);
- (d) never—
 - (i) have sexual intercourse with a client;
 - (ii) initiate any form of sexual conduct in the client's presence;
 - (iii) make any inappropriate contact with a client;
 - (iv) make sexual proposals to a client;
 - (v) tell a client of his or her own sexual problems, desires, practices, preferences or fantasies;
 - (vi) show disrespect for a client's sexual orientation; or
 - (vii) make sexually suggestive comments or innuendo to a client.
- (e) on recognising the potential for professional boundary violations by either the occupational therapist or the client (e.g. feelings of attraction,) discuss the issue with the client and, if unable to resolve it, transfer the client to another occupational therapist; and
- (f) prior to entering into a relationship with a former client or someone with whom the client has a significant personal relationship, thoughtfully and carefully consider the implications.

3.5 Professional Communication

The occupational therapist is expected to use clear communications as a fundamental requirement to developing the occupational therapist-client relationship. Effective communication will promote shared understanding with those with whom the occupational therapist interacts.

The occupational therapist shall—

- (a) subject to the consent of the client, ensure there is a clear, mutual understanding of the occupational therapy plan by all stakeholders involved with the client;
- (b) fully inform the client of the purpose and process of any testing/assessment, and how the results will be used prior to its administration.
- (c) not discuss or offer an opinion in a disparaging way on the competency, quality of service provided or methods used by another professional or an agency without deliberation and thoughtful consideration of all issues; and
- (d) prior to offering a professional opinion about the competency or services provided by another occupational therapist, another professional and/or another agency, consider—
 - (i) if they have sufficient information;
 - (ii) the quality of that information;
 - (iii) his or her competence in evaluating the information;
 - (iv) his or her motivation to provide the opinion;
 - (v) the potential impact on the client; and
 - (vi) who has requested the opinion and for what purpose.

3.6 Consent and Informed Consent

To ensure that the client's best interests are served, the occupational therapist must seek informed consent by the client to promote free choice and support an honest, client-centred approach. Consent is defined as the client's permission to proceed with an agreed course of action. Informed consent requires that the person making the decision receives all the information that a reasonable person in the same circumstances would require in order to make a decision, including options and responses to any reasonable requests for additional information.

If the client is unable to give informed consent, appropriate steps must be taken to have a guardian appointed for the client in accordance with current legislation.

The occupational therapist shall—

- (a) obtain consent to treatment in writing, and document evidence of such consent for occupational therapy services;
- (b) respect the right of the client either to consent or refuse to consent to participate in occupational therapy services;
- (c) respect the client's right to know the specific nature of the services being provided both initially and on an ongoing basis. The occupational therapist, at the earliest opportunity, should ensure the client understands—
 - (i) the nature and purpose of the treatment/service to be provided;
 - (ii) the expected benefits and limitations of the treatment/service;
 - (iii) the material effects, risks and side effects of the treatment/service;
 - (iv) any alternative treatment or courses of action that might reasonably be considered;
 - (v) the likely consequences of not undertaking the treatment/service;
 - (vi) the scope of the referral;
 - (vii) the payer of the services;
 - (viii) the potential extent of confidentiality maintained; and
 - (ix) with whom verbal or written reports/documentation will be shared; and
- (d) comply with current legislation where it exists, and adhere to the principles of informed consent for all occupational therapy services provided to the client.

3.7 Conflict of Interest

A conflict of interest arises when the occupational therapist has a relationship or interest that could be seen as improperly influencing the occupational therapist's professional judgement or ability to act in the best interests of the client. Conflicts, whether real or perceived, need to be addressed.

The occupational therapist shall—

- (a) not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgement and skill;
- (b) not become involved in fraudulent or unethical activity related to his or her professional practice;
- (c) make every effort to avoid dual relationships (e.g. treatment of family or friends) that could impair his or her judgement or increase the risk of exploitation; and
- (d) only provide professional services to family and friends if there is full disclosure of all potential issues to all involved stakeholders. A thorough and objective intervention must occur.

3.8 Keeping of Records

An occupational therapist is responsible for the content of the record related to the occupational therapy service. The record must reflect the occupational therapist's professional analysis and/or opinion, intervention and recommendations.

The occupational therapist shall—

- (a) keep records and reports clearly, concisely, accurately and objectively for the information of professional colleagues, for legal purposes and to record plans and interventions for clients;
- (b) bearing in mind the circumstances in which the service is being provided, for individual and ongoing consultations it is normally expected that client records contain the following—
 - (i) the client's medical history, including the presenting complaint, if appropriate;
 - (ii) the occupational therapist's initial and any subsequent assessment of the client, the client's diagnosis and any changes to that assessment or diagnosis from time to time;
 - (iii) the proposed treatment goals and management plan, and any modifications;
 - (iv) the treatment given to the client on each occasion;
 - (v) the client's response to the treatment, both subjective and objective; and
 - (vi) any referrals made or other treatment, strategies or advice recommended or given to the client;
- (c) provide a copy of the health record where a request has been made by a client under the *Freedom of Information Act 1992* (WA) or otherwise (note the *Privacy Act 1998* (Commonwealth) Schedule 3, clause 6) (also see 3.3b); and

- (d) maintain records (time, storage, destruction and ownership) as required by the *State Records Act 2000* if employed in a government organisation or otherwise according to applicable workplace policies and the *Privacy Act 1988* (Commonwealth).

3.9 Use of Titles

Pursuant to section 86 of the Act, it is an offence for a person to use the title “occupational therapist” unless the person is registered. Further, a person must not advertise or imply that he or she is registered or entitled to practise occupational therapy unless the person is registered.

Pursuant to section 30 of the Act, the Board may, upon application, register an occupational therapist as a specialist in a branch of occupational therapy prescribed by the regulations as a specialty.

[Note: As at December 2008, the Occupational Therapists’ Board of Western Australia is working to establish processes for registration of specialty titles].

4. GLOSSARY OF TERMS

The following definitions are intended to clarify the Board’s interpretation of the following commonly used terms, and provide some additional context for their use in this document.

4.1 Client

The client is the individual (or group of individuals) whose occupational performance has resulted in a request for occupational therapy service. It is the client to whom the occupational therapist has a primary duty to apply the principles of practice. A competent client is able to demonstrate they have legal capacity to judge whether the service/s to be provided are in his or her own best interest.

4.2 Competence

Competence is a complex integration of knowledge, skills and professional behaviours and judgement. It embodies the ability to generalise or transfer and apply skills and knowledge from one situation to another.

4.3 Impairment

Under the Act impairment is considered to be present when;

- “(a) a person is affected by his or her use of or dependence on alcohol or a drug to such an extent that the ability of the person to practise as an occupational therapist is or is likely to be affected;
- (b) a person suffers from an impairment to such an extent that the ability of the person to practise as an occupational therapist is or is likely to be affected.”

4.4 Incompetence

Incompetence is the professional care that displays a lack of knowledge, skill or judgement or disregard for the welfare of the client of a nature or to an extent that demonstrates the occupational therapist is unfit to continue to practise or that the occupational therapist’s practice should be restricted.

4.5 Record

A record means information, however recorded, generated by the occupational therapist or an individual supervised by the occupational therapist, pertaining to occupational therapy services provided. This includes, but is not limited to, therapy goals, progress toward goals, attendance and remuneration.

4.6 Unprofessional and Unsatisfactory Professional Conduct

Unprofessional and unsatisfactory professional conduct includes—

- (a) improper or unethical conduct in relation to professional practice;
 - (b) incompetence or negligence in relation to the provision of occupational therapy;
 - (c) a failure to comply with the standards in this Code;
 - (d) conduct that may constitute an offence under law;
 - (e) infamous conduct in a professional respect;
 - (f) misconduct in a professional respect;
 - (g) conduct discreditable to the occupational therapy profession;
 - (h) providing a person with health services of a kind that are excessive, unnecessary or not reasonably required for the person’s wellbeing;
 - (i) influencing or attempting to influence, the conduct of another occupational therapist in a way that may compromise patient care;
 - (j) fraudulent or dishonest behaviour in the practice of occupational therapy; and
 - (k) professional conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgement or care in the practice of occupational therapy.
-