



Nova Scotia
Occupational Therapy
Regulator

Standards for Conflict of Interest

Standard

Issued June 2021

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Introduction

Registrants of the Nova Scotia Occupational Therapy Regulator are accountable for the practice they provide to the public. Standards are issued by the Regulator 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 judgement 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 Regulator 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.

The Regulator's 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. The Regulator's publications are developed in consultation with occupational therapists and describe current professional expectations. It is important to note that these Regulator publications may be used by the Regulator or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

The Standards are based on core occupational therapy principles outlined in the *Competencies for Occupational Therapists in Canada (2021)*.

Background

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 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 of the occupational therapist's business).

A conflict of interest can be *perceived*, *potential*, or *actual*, and can arise within personal, professional, or business relationships. A perceived or potential conflict of interest is as significant as an actual conflict of interest. All conflicts of interest, whether *perceived*, *potential*, or *actual*, must 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 comprised 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.

Definitions

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

Client means the individual who is the recipient or intended recipient of health care services from an occupational therapist, and, where the context requires, includes a substitute decision-maker for the recipient or intended recipient of health care services.

Conflict of Interest means when an 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 interests 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 means a child, parent, grandparent, uncle, aunt, brother, sister, step-relatives, grandchild, niece, nephew, first cousin, and spouse of the registrant.

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

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

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

Professional Boundary means 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).

Application of the Standards for Conflict of Interest

The following **standards** describe the minimum expectation for occupational therapists in the prevention and management of conflict of interest.

- The **performance indicators** listed below each standard describe more specific behaviours that demonstrate the standard has been met.
- There may be some situations where the occupational therapist determines that a particular performance indicator has less relevance due to client factors and/or environmental factors. Such situations would require the occupational therapist to seek further clarification.
- It is expected that occupational therapists will always use their clinical judgement to determine how to best meet client needs in accordance with the standards of the profession.

Overview of the Standards for Conflict of Interest

1. Recognition of Conflict of Interest
2. Prevention of Conflict of Interest
3. Management of Conflict of Interest
4. Special Considerations
5. Appendix: Frequently Asked Questions
6. Appendix: Risk Assessment and Management Framework
7. Appendix: Process Model

Standard 1 – Recognition of 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.

Standard 1

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

Performance Indicators

An occupational therapist must:

- 1.1 Identify types of conflict of interest;
- 1.2 Identify situations that may lead to conflict of interest;
- 1.3 Recognize that treating a family member is a conflict of interest;
- 1.4 Consider the implications that conflicts of interest have for clients and the public's perception of the profession;
- 1.5 Identify activities that may influence the occupational therapist's ability to be impartial in a client-therapist relationship;
- 1.6 Recognize if a situation involves any direct or indirect benefit (i.e. personal, professional, political, academic, financial, or material) to the occupational therapist that could affect their professional judgement;
- 1.7 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;
- 1.8 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;
- 1.9 Seek advice from knowledgeable individuals such as managers, discipline leaders, peers, or the Regulator, when in doubt whether an actual, potential, or perceived conflict of interest exists;

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| 1.10 | Identify any conflict of interest-related policies and procedures of the occupational therapist's organization, where applicable; |
| 1.11 | Consider feedback from others who may perceive a conflict of interest. |

Standard 2 – Preventing a Conflict of Interest

Standard 2

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:

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| 2.1 | 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); |
| 2.2 | Manage professional boundaries in a way that prevents conflict of interest (e.g. avoid treating family and where possible, avoid treating friends); |
| 2.3 | 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); |
| 2.4 | Avoid preferential or discriminatory treatment towards particular clients or organizations (i.e. providing additional services or resources to certain clients of similar beliefs); |
| 2.5 | 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 Regulator standards; |
| 2.6 | Maintain a relationship of trust and confidence by not taking advantage of their position, including access to privileged information or knowledge received in dealings with clients or organizations; |
| 2.7 | 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. |

Standard 3 – 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.

Standard 3

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

Performance Indicators

An occupational therapist will:

- 3.1** Take the appropriate steps, where possible, to resolve or remove themselves from a situation where a conflict of interest is recognized or perceived;

Take the following steps where a conflict of interest cannot be resolved:

- 3.2**
- 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 they have the right to decline service at any time;
 - d. Document the steps taken to address the conflict;

- 3.3** Seek assistance from the Regulator or colleagues as required.

Standard 4 – Special Considerations

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

Standard 4

An occupational therapist will not exploit the therapeutic relationship with a client for any form of personal gain, benefit, or advantage, which may interfere with their exercise of sound professional judgement.

** There are no performance indicators for Standard 4.*

One of the most common issues for occupational therapists is the presentation of gifts from clients or commercial sources. Gifts from clients 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 of conditions of the gift;
- The potential or perceived conflict of interest;
- The cultural meaning of the gift;
- 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.

Third Party Relationships

Through their professional activities, occupational therapists often interact with various third parties, such as equipment vendors, companies, and manufacturers. An occupational therapist may have a close relationship or rapport with an equipment vendor through regular interaction with 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 third parties, 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 personal relationship with the client.

Self-Referral

Occupational therapists may provide 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.

Standards for Conflict of Interest

Q: 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 benefiting 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 of interest entirely 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.
- b) Provide the referral source with information about options available and allow the referral source to make an informed choice.
- c) Inform the client that he or she has the right to decline service at any time.
- d) Document all steps in this process.
- e) Seek assistance from the Regulator or colleagues as required.

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

Q: I noticed that small gifts are frequently left on my desk from a particular vendor/client/client's family member. Is it improper 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 Regulator.

Q: I understand that as an occupational therapist I cannot show preference to any one vendor when recommending equipment to 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 the 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 Regulator.

Q: 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).

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

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 Regulator 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.

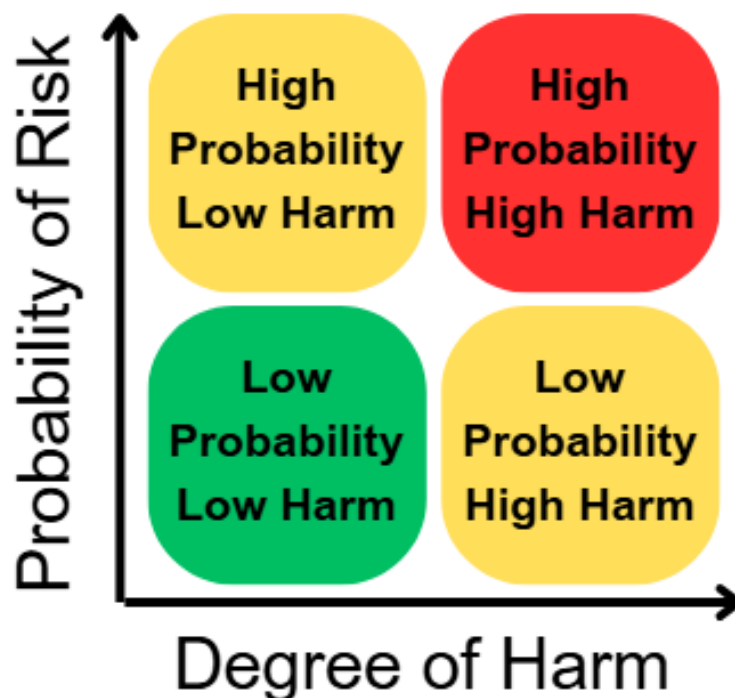
- Availability of colleagues and their approach to conflict of interest.
- Accessibility to professional services, such as legal counsel or ethicist.

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.

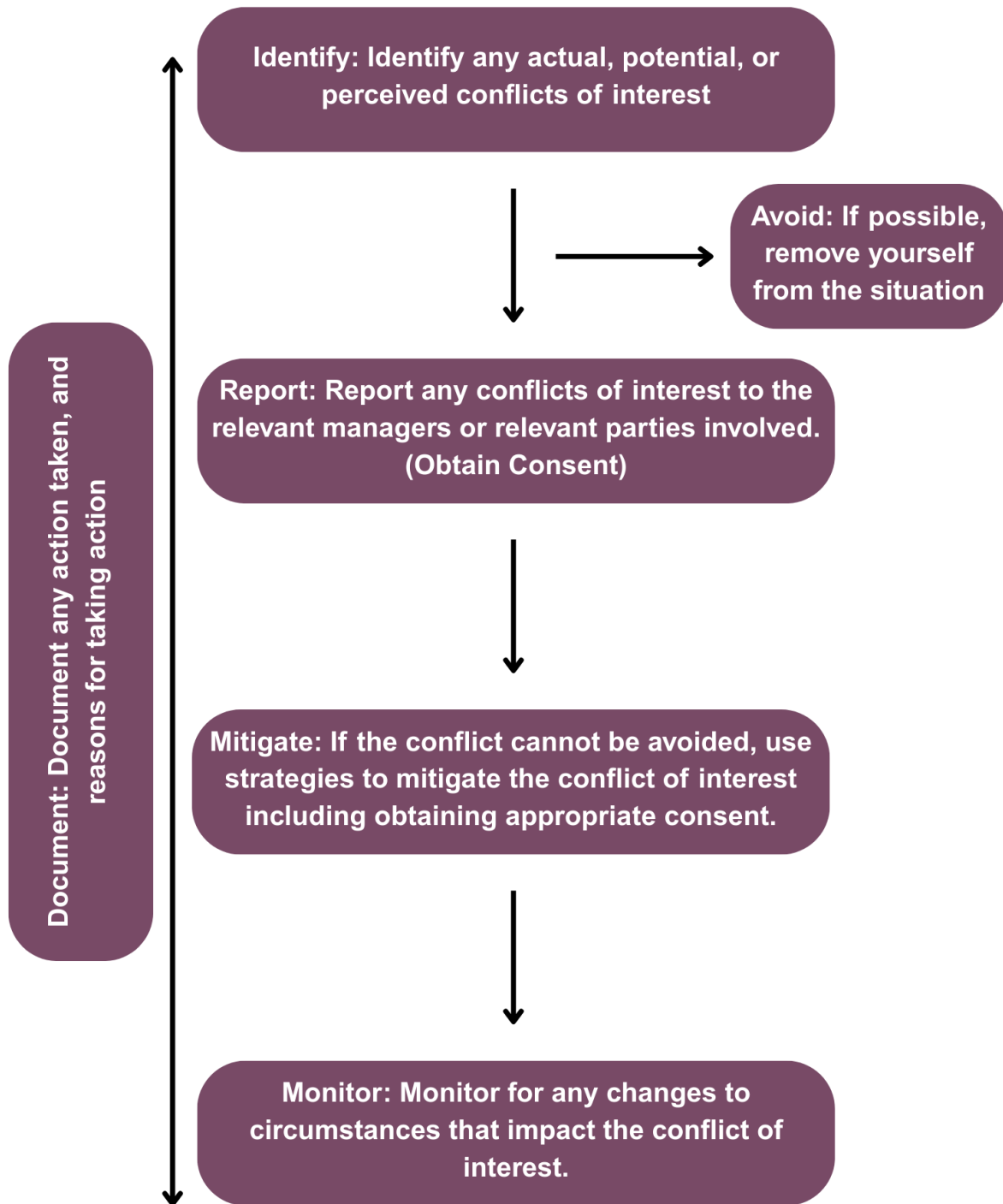


3. Mitigation Strategies

Listed below are some potential strategies to mitigate risk. This list is not meant to be exhaustive, but to provide ideas:

- 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 employers and clients.
- Review requirements for service with third-party payers and clients.

Process Model



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