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Contact Hours: **2**

## Ethics and Law in Occupational Therapy Practice

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**LEARNING OUTCOME AND OBJECTIVES:** Upon completion of this course, you will be prepared to incorporate ethical principles and behaviors into the practice of occupational therapy. Specific objectives include:

- Identify the meaning of ethics and ethical theories.
- Discuss the core values, principles, and standards of conduct of the AOTA Occupational Therapy Code of Ethics.
- Describe how civil and criminal laws apply to the practice of occupational therapy.

### WHAT ARE ETHICS?

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Ethical action goes beyond rote compliance with principles and is a manifestation of moral character and mindful reflection. It is a commitment to benefit others, to virtuous practice of artistry and science, to genuinely good behaviors, and to noble acts of courage. Recognizing and resolving ethical issues is a systematic process that includes analyzing the complex dynamics of situations, weighing consequences, making reasoned decisions, taking action, and reflecting on outcomes. (AOTA, 2015a)

Ethics is a branch of philosophy concerned with the nature of values in regard to matters of human conduct. Ethical theory guides a practitioner in determining right and wrong action in a situation and provides a moral compass.

### Ethical Theories

In order to clarify why what is considered to be “right” or “good” actually is right or good, philosophers engaged with questions of ethics have generally sought to formulate and justify

ethical theories. These theories are intended to explain the fundamental nature of that which is “good,” why it is “good,” and why the ethical principles most commonly used to evaluate human conduct follow (or do not follow) from these theories. Ethical theories may be presented for different purposes, as described below:

- **Descriptive ethical theories** seek to describe what people consider to be “good” or “right.” Such theories may be considered true or false depending on whether they do indeed describe correctly what people consider to be good or right.
- **Normative ethical theories** are intended to justify judgments concerning what people should do or not do. Normative theories are primarily concerned not with what *is* the case but with what *should be* the case in an ideal situation.
- **Teleological ethical theory**, also called consequentialist theory, claims that it is the consequence, or end result, of an action that determines whether the action is right or wrong.
- **Deontological ethical theory** argues that it is the motivation, as opposed to the consequences of an action, that determines whether the action is right or wrong. (Loyola University New Orleans, 2014)

## Ethical Dilemmas

An ethical dilemma arises when a professional becomes caught between two conflicting duties that mutually exclude one another but that would each be ethically viable if considered separately. In order to protect the best interests of the patient and to minimize the risk of ethical and/or legal complaints, it is of utmost importance that professionals develop the skills and are aware of the resources available for the successful resolution of ethical dilemmas.

Resolution of ethical dilemmas in the clinical setting requires a thoughtful and careful decision-making process and may include any or all of the following steps:

- Identifying ethical issues, including any conflicting values and duties. Relevant codes of ethics, standards, legal principles, agency policies, and one’s personal values must be considered.
- Identifying which individuals, groups, and/or organizations are likely to be affected by the ultimate decision. Who is involved and who has the right and/or the responsibility to make the decisions?
- Identifying possible courses of action, the participation involved in each, and possible benefits and risks of each option. Whom would each choice affect and how? What are the risks and potential benefits of each option?
- Consulting with colleagues and appropriate experts. Many healthcare institutions have formal ethics committees to assist in the resolution of ethical dilemmas, particularly in



more complex cases such as those that involve delicate end-of-life issues. Ethics committees generally consist of members from a variety of clinical and nonclinical backgrounds, such as healthcare professionals, bioethicists, clergy, lawyers, and lay persons.

- Making and documenting the decision. A written record of the decision-making process is a crucial component in resolution of an ethical dilemma.  
(NASW, 2013)

#### CASE

Lucy works as an occupational therapist on the postoperative orthopedic floor of a large urban hospital. Mr. Smith, who recently sustained a transradial amputation of his dominant upper extremity, was just referred to Lucy for therapy. Lucy evaluated Mr. Smith previously and has begun his occupational therapy program. Today, Lucy arrives at Mr. Smith's room for his scheduled OT session but finds Mr. Smith still in bed in his hospital gown. Lucy inquires about this at the nurse's station and is told that Mr. Smith stated he did not want any OT today "because he just wants to die." This is the third time this has happened this week.

Lucy faces an ethical dilemma. While the ethical principle of autonomy dictates that Mr. Smith does have the right to accept or refuse occupational therapy interventions, Lucy is concerned that continued missed therapy sessions may lead to a poorer overall functional outcome for Mr. Smith in the long term. This would run counter to the ethical principle of beneficence, or acting in a clinical manner that would positively affect a patient's well-being.

Lucy documents the missed visit for the morning and goes immediately to the rehab director to discuss the dilemma. Lucy and the rehab director consult with the nursing staff, a social worker, and Mr. Smith's surgeon, as well as with Mr. Smith and his wife. It is eventually established that Mr. Smith is experiencing depressive symptoms, which is not uncommon with him being a new amputee.

The surgeon starts Mr. Smith on an antidepressant and communicates with the nursing staff to monitor Mr. Smith for any adverse side effects and any changes to his depressive symptoms. Lucy adds new goals in relation to depression management and occupational engagement and, at her next patient visit, educates Mr. Smith and his wife on support groups and provides materials on depression after amputation. The consultations and agreed-upon course of action are documented in Mr. Smith's medical record, and Mr. Smith is accepting of the plan.

## AOTA OCCUPATIONAL THERAPY CODE OF ETHICS

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Codes of ethics are formal statements that set forth standards of ethical behavior for members of a group. In fact, one of the hallmarks of a profession is that its members subscribe to a code of ethics. Every member of a profession is expected to read, understand, and abide by the ethical standards of its occupation.



In order to assert the values and standards expected of members of the profession of occupational therapy, the **American Occupational Therapy Association (AOTA)** developed the Occupational Therapy Code of Ethics. As stated in its preamble:

The Code is an AOTA Official Document and a public statement tailored to address the most prevalent ethical concerns of the occupational therapy profession. It outlines Standards of Conduct the public can expect from those in the profession. It should be applied to all areas of occupational therapy and shared with relevant stakeholders to promote ethical conduct. The Code serves two purposes:

1. It provides aspirational Core Values that guide members toward ethical courses of action in professional and volunteer roles.
2. It delineates enforceable Principles and Standards of Conduct that apply to AOTA members.

(AOTA, 2015a)

## Core Values

The Code describes seven long-standing Core Values that guide the ethical conduct of occupational therapy practitioners and provide a foundation to guide their interactions with others. These values should form the basis of determining the most ethical course of action. They include:

1. **Altruism:** Demonstrating concern for the welfare of others
2. **Equality:** Treating all people impartially and free of bias
3. **Freedom:** Allowing the personal choice, values, and desires of the client guide interventions
4. **Justice:** Recognizing and supporting diverse communities such that all members can function, flourish, and live a satisfactory life, and addressing unjust inequities that limit opportunities for participation in society
5. **Dignity:** Promoting and preserving the individuality and dignity of the client by treating him or her with respect in all interactions
6. **Truth:** Providing accurate information in oral, written, and electronic forms
7. **Prudence:** Using clinical and ethical reasoning skills, sound judgment, and reflection to make decisions in professional and volunteer roles

(AOTA, 2015a)



## Principles and Standards of Conduct

(Content in this section is reprinted with permission from the AOTA Occupational Therapy Code of Ethics (AOTA, 2015a).)

The Principles and Standards of Conduct that are enforceable for professional behavior include:

1. Beneficence
2. Nonmaleficence
3. Autonomy
4. Justice
5. Veracity
6. Fidelity

### **BENEFICENCE**

**Principle 1. Occupational therapy personnel shall demonstrate a concern for the well-being and safety of the recipients of their services.**

Beneficence includes all forms of action intended to benefit other persons and requires taking action by promoting good and preventing or removing harm (Beauchamp & Childress, 2013). For example, in occupational therapy practice, beneficence requires acting in a clinical manner intended to result in a positive outcome for the client.

#### ***Standards of Conduct Related to Beneficence***

Occupational therapy personnel shall:

- A. Provide appropriate evaluation and a plan of intervention for recipients of occupational therapy services specific to their needs
- B. Reevaluate and reassess recipients of service in a timely manner to determine whether goals are being achieved and whether intervention plans should be revised
- C. Use, to the extent possible, evaluation, planning, intervention techniques, assessments, and therapeutic equipment that are evidence-based, current, and within the recognized scope of occupational therapy practice
- D. Ensure that all duties delegated to other occupational therapy personnel are congruent with credentials, qualifications, experience, competency, and scope of practice with respect to service delivery, supervision, fieldwork education, and research



- E. Provide occupational therapy services, including education and training, that are within each practitioner's level of competence and scope of practice
- F. Take steps (e.g., continuing education, research, supervision, training) to ensure proficiency, use careful judgment, and weigh potential for harm when generally recognized standards do not exist in emerging technology or areas of practice
- G. Maintain competency by ongoing participation in education relevant to one's practice area
- H. Terminate occupational therapy services in collaboration with the service recipient or responsible party when the services are no longer beneficial
- I. Refer to other providers when indicated by the needs of the client
- J. Conduct and disseminate research in accordance with currently accepted ethical guidelines and standards for the protection of research participants, including determination of potential risks and benefits

## **NONMALEFICENCE**

### **Principle 2. Occupational therapy personnel shall refrain from actions that cause harm.**

Nonmaleficence entails the obligation to not impose a risk of harm even if the potential risk is without malicious or harmful intent. However, in the context of standard of due care, under which the goal of an intervention must justify the risks imposed to achieve those goals, a treatment that might cause the client to feel pain may be justified by potential longitudinal, evidence-based benefits of the treatment (Beauchamp & Childress, 2013).

### ***Standards of Conduct Related to Nonmaleficence***

Occupational therapy personnel shall:

- A. Avoid inflicting harm or injury to recipients of occupational therapy services, students, research participants, or employees
- B. Avoid abandoning the service recipient by facilitating appropriate transitions when unable to provide services for any reason
- C. Recognize and take appropriate action to remedy personal problems and limitations that might cause harm to recipients of service, colleagues, students, research participants, or others
- D. Avoid any undue influences that may impair practice and compromise the ability to safely and competently provide occupational therapy services, education, or research



- E. Address impaired practice and when necessary report to the appropriate authorities
- F. Avoid dual relationships, conflicts of interest, and situations in which a practitioner, educator, student, researcher, or employer is unable to maintain clear professional boundaries or objectivity
- G. Avoid engaging in sexual activity with a recipient of service, including the client's family or significant other, student, research participant, or employee, while a professional relationship exists
- H. Avoid compromising the rights or well-being of others based on arbitrary directives (e.g., unrealistic productivity expectations, falsification of documentation, inaccurate coding) by exercising professional judgment and critical analysis
- I. Avoid exploiting any relationship established as an occupational therapy clinician, educator, or researcher to further one's own physical, emotional, financial, political, or business interests at the expense of recipients of services, students, research participants, employees, or colleagues
- J. Avoid bartering for services when there is the potential for exploitation and conflict of interest

## CASE

Tia is an occupational therapist in a midsize inpatient rehabilitation facility. She has recently noticed that her patient Michael, a young man recovering from a traumatic brain injury, seems to be developing feelings for her that go beyond the usual therapist-client relationship. Tia has not paid too much attention to the comments that Michael makes about her appearance and how attractive he finds her, as she believes this is a part of Michael's injury.

Upon initiating a therapy session with Michael one morning, Tia enters Michael's room and he presents her with a pair of earrings and asks her to be his girlfriend. While Tia appreciates Michael's generosity, she quickly realizes the ethical problem at hand. Tia schedules a meeting with the rehab director and Michael's counselor to discuss the situation and to weigh her options.

## Discussion

Is it ethical for Tia to accept this gift or begin a relationship with this client?

No. Under the Principle of nonmaleficence, Standards of Conduct F and G, of the Occupational Therapy Code of Ethics, it states that occupational therapy personnel shall "avoid dual relationships, conflicts of interest, and situations in which a practitioner . . . is unable to maintain clear professional boundaries or objectivity" and "avoid engaging in sexual activity with a recipient of service . . . while a professional relationship exists."



If Tia did want to pursue a relationship with Michael, the ethical choice would be to explain to Michael that she cannot do so while he is still a patient of the clinic where she is employed. Tia and Michael may pursue a relationship after he completes rehab and is discharged. Alternatively, if Michael chooses to complete his rehab at a different facility, this would also allow them to begin dating without creating a dilemma of a professional nature for Tia.

## AUTONOMY

### **Principle 3. Occupational therapy personnel shall respect the right of the individual to self-determination, privacy, confidentiality, and consent.**

Practitioners have a duty to treat clients according to the clients' desires, within the bounds of accepted standards of care, and to protect the clients' confidential information. Also referred to as *self-determination*, autonomy acknowledges clients' rights to make a determination regarding care decisions that directly affect their lives based on their own values and beliefs (Beauchamp & Childress, 2013).

#### ***Standards of Conduct Related to Autonomy***

Occupational therapy personnel shall:

- A. Respect and honor the expressed wishes of recipients of service
- B. Fully disclose the benefits, risks, and potential outcomes of any intervention; the personnel who will be providing the intervention; and any reasonable alternatives to the proposed intervention
- C. Obtain consent after disclosing appropriate information and answering any questions posed by the recipient of service or research participant to ensure voluntariness
- D. Establish a collaborative relationship with recipients of service and relevant stakeholders to promote shared decision making
- E. Respect the client's right to refuse occupational therapy services temporarily or permanently, even when that refusal has potential to result in poor outcomes
- F. Refrain from threatening, coercing, or deceiving clients to promote compliance with occupational therapy recommendations
- G. Respect a research participant's right to withdraw from a research study without penalty





- H. Maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communications, in compliance with applicable laws, including all aspects of privacy laws and exceptions thereto (e.g., Health Insurance Portability and Accountability Act [Pub. L. 104–191], Family Educational Rights and Privacy Act [Pub. L. 93–380])
- I. Display responsible conduct and discretion when engaging in social networking, including but not limited to refraining from posting protected health information
- J. Facilitate comprehension and address barriers to communication (e.g., aphasia; differences in language, literacy, culture) with the recipient of service (or responsible party), student, or research participant

### **PATIENT SELF-DETERMINATION ACT**

The responsibility held by healthcare providers to ensure and respect a patient’s right to autonomy is also legally enforced by the Federal Patient Self-Determination Act (PSDA) of 1991. The PSDA mandates that any Medicare- and/or Medicaid-certified healthcare institution must actively work to educate adult patients and the community as a whole about the rights of a patient to accept or refuse healthcare interventions. The PSDA obligates healthcare providers to ensure that patients are informed of their legal rights, under individual state law, to make decisions about their own healthcare, as well as to create an advance directive for themselves.

This law mandates that patients admitted to healthcare facilities be asked whether they have an advance directive in place; that healthcare facilities maintain policies and procedures regarding advance directives; and that this information be provided to patients when they are admitted. (The PSDA defines an advance directive as a “written instrument, such as a living will or durable power of attorney for healthcare, recognized under state law, relating to the provision of such care when the individual is incapacitated.”) Advance directive laws were put into place in response to several highly visible legal cases in order to protect the right of a patient to predetermine whether or not to receive life-sustaining healthcare interventions (Castillo et al., 2011; Washington State Hospital Association, 2014).

### **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

The Health Insurance Portability and Accountability Act of 1996 addresses issues related to fraud and abuse within the healthcare system. The most well-known provision of the act is its standards regarding the electronic exchange of sensitive, private health information. Known as **privacy standards**, these rules 1) require the consent of clients to use and disclose protected health information, 2) grant clients the right to inspect and copy their medical records, and 3) give clients the right to amend or correct errors. Privacy standards require all hospitals and healthcare agencies to have specific policies and procedures in place to ensure compliance with the rules. (*See “Resources” at the end of this course.*)



## JUSTICE

### **Principle 4. Occupational therapy personnel shall promote fairness and objectivity in the provision of occupational therapy services.**

Occupational therapy personnel should relate in a respectful, fair, and impartial manner to individuals and groups with whom they interact. They should also respect the applicable laws and standards related to their area of practice, which may include prohibitions against discrimination according to disability, race, religion, gender, age, sexual orientation, or lifestyle.

#### ***Standards of Conduct Related to Justice***

Occupational therapy personnel shall:

- A. Respond to requests for occupational therapy services (e.g., a referral) in a timely manner as determined by law, regulation, or policy
- B. Assist those in need of occupational therapy services in securing access through available means
- C. Address barriers in access to occupational therapy services by offering or referring clients to financial aid, charity care, or pro bono services within the parameters of organizational policies
- D. Advocate for changes to systems and policies that are discriminatory or unfairly limit or prevent access to occupational therapy services
- E. Maintain awareness of current laws and AOTA policies and Official Documents that apply to the profession of occupational therapy
- F. Inform employers, employees, colleagues, students, and researchers of applicable policies, laws, and Official Documents
- G. Hold requisite credentials for the occupational therapy services they provide in academic, research, physical, or virtual work settings
- H. Provide appropriate supervision in accordance with AOTA Official Documents and relevant laws, regulations, policies, procedures, standards, and guidelines
- I. Obtain all necessary approvals prior to initiating research activities
- J. Refrain from accepting gifts that would unduly influence the therapeutic relationship or have the potential to blur professional boundaries, and adhere to employer policies when offered gifts
- K. Report to appropriate authorities any acts in practice, education, and research that are unethical or illegal



- L. Collaborate with employers to formulate policies and procedures in compliance with legal, regulatory, and ethical standards and work to resolve any conflicts or inconsistencies
- M. Bill and collect fees legally and justly in a manner that is fair, reasonable, and commensurate with services delivered
- N. Ensure compliance with relevant laws and promote transparency when participating in a business arrangement as owner, stockholder, partner, or employee
- O. Ensure that documentation for reimbursement purposes is done in accordance with applicable laws, guidelines, and regulations
- P. Refrain from participating in any action resulting in unauthorized access to educational content or exams (including but not limited to sharing test questions, unauthorized use of or access to content or codes, or selling access or authorization codes)

## VERACITY

### **Principle 5. Occupational therapy personnel shall provide comprehensive, accurate, and objective information when representing the profession.**

Veracity is based on the virtues of truthfulness, candor, and honesty. In communicating with others, occupational therapy personnel implicitly promise to be truthful and not deceptive, recognizing the client's right to accurate information. Veracity is valued as a means to establish trust and strengthen professional relationships and requires thoughtful analysis of how full disclosure of information may affect outcomes.

#### ***Standards of Conduct Related to Veracity***

Occupational therapy personnel shall:

- A. Represent credentials, qualifications, education, experience, training, roles, duties, competence, contributions, and findings accurately in all forms of communication
- B. Refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, misleading, or unfair statements or claims
- C. Record and report in an accurate and timely manner and in accordance with applicable regulations all information related to professional or academic documentation and activities
- D. Identify and fully disclose to all appropriate persons errors or adverse events that compromise the safety of service recipients



- E. Ensure that all marketing and advertising are truthful, accurate, and carefully presented to avoid misleading recipients of service, research participants, or the public
- F. Describe the type and duration of occupational therapy services accurately in professional contracts, including the duties and responsibilities of all involved parties
- G. Be honest, fair, accurate, respectful, and timely in gathering and reporting fact-based information regarding employee job performance and student performance
- H. Give credit and recognition when using the ideas and work of others in written, oral, or electronic media (i.e., do not plagiarize)
- I. Provide students with access to accurate information regarding educational requirements and academic policies and procedures relative to the occupational therapy program or educational institution
- J. Maintain privacy and truthfulness when using telecommunication in the delivery of occupational therapy services

#### CASE

Vinh is an occupational therapist who has just started a new job in rehab facility. On Vinh's fourth day at work, a client phones in to cancel her mid-morning appointment. The rehab supervisor overhears the receptionist telling Vinh that her client won't be coming in and tells Vinh to be sure to document the treatment as if it had taken place. When Vinh questions the ethics of doing so, her supervisor states, "We reserved the time, so it counts as an appointment."

Later, the rehab supervisor pulls Vinh aside and says, "Look, I know you're new here, so you probably aren't aware that we're struggling financially. None of us want to lose our jobs, so we usually just pad the minutes a little bit. Besides, it's just the government and big insurers who are paying for the services, and they'll be none the wiser. We can count on you to be a team player, can't we?"

#### Discussion

Should Vinh do as the rehab supervisor asks?

No. Falsifying records clearly violates the Principle of veracity, Standard of Conduct C, of the Occupational Therapy Code of Ethics, which states that "occupational therapy personnel shall record and report in an accurate and timely manner and in accordance with applicable regulations all information related to professional or academic documentation and activities."

As a new employee, Vinh may feel especially uneasy about questioning her supervisor's instructions. Nevertheless, it is very important that she speak again with the rehab supervisor—



and perhaps the facility's director—to explain her unwillingness to record false information in violation of professional ethical standards and, quite likely, legal requirements. According to the Principle of justice, Standard of Conduct L, it is Vinh's ethical duty to "collaborate with employers to formulate policies and procedures in compliance with legal, regulatory, and ethical standards and work to resolve any conflicts or inconsistencies."

If her supervisor insists upon continuing with false documentation, Vinh should take action "to report to appropriate authorities any acts in practice, education, and research that are unethical or illegal," as described under the Principle of justice, Standard of Conduct K. She may also wish to consider seeking other employment if necessary.

## FIDELITY

### **Principle 6. Occupational therapy personnel shall treat clients, colleagues, and other professionals with respect, fairness, discretion, and integrity.**

Fidelity refers to the duty one has to keep a commitment once it is made. In the health professions, this commitment refers to promises made between a provider and a client or patient based on an expectation of loyalty, staying with the client or patient in a time of need, and compliance with a code of ethics (Veatch et al., 2010). Fidelity also addresses maintaining respectful collegial and organizational relationships (Purtilo & Doherty, 2011).

#### ***Standards of Conduct Related to Fidelity***

Occupational therapy personnel shall:

- A. Preserve, respect, and safeguard private information about employees, colleagues, and students unless otherwise mandated or permitted by relevant laws
- B. Address incompetent, disruptive, unethical, illegal, or impaired practice that jeopardizes the safety or well-being of others and team effectiveness
- C. Avoid conflicts of interest or conflicts of commitment in employment, volunteer roles, or research
- D. Avoid using one's position (employee or volunteer) or knowledge gained from that position in such a manner as to give rise to real or perceived conflict of interest among the person, the employer, other AOTA members, or other organizations
- E. Be diligent stewards of human, financial, and material resources of their employers, and refrain from exploiting these resources for personal gain
- F. Refrain from verbal, physical, emotional, or sexual harassment of peers or colleagues



- G. Refrain from communication that is derogatory, intimidating, or disrespectful and that unduly discourages others from participating in professional dialogue
- H. Promote collaborative actions and communication as a member of interprofessional teams to facilitate quality care and safety for clients
- I. Respect the practices, competencies, roles, and responsibilities of their own and other professions to promote a collaborative environment reflective of interprofessional teams
- J. Use conflict resolution and internal and alternative dispute resolution resources as needed to resolve organizational and interpersonal conflicts, as well as perceived institutional ethics violations
- K. Abide by policies, procedures, and protocols when serving or acting on behalf of a professional organization or employer to fully and accurately represent the organization's official and authorized positions
- L. Refrain from actions that reduce the public's trust in occupational therapy
- M. Self-identify when personal, cultural, or religious values preclude, or are anticipated to negatively affect, the professional relationship or provision of services, while adhering to organizational policies when requesting an exemption from service to an individual or group on the basis of conflict of conscience

## Ethics Violations

The Ethics Commission (EC) of the AOTA has developed the *Enforcement Procedures for the Occupational Therapy Code of Ethics* (AOTA, 2015b) to address alleged violations of the Code. The EC receives, deliberates, and acts upon such complaints when they are filed against AOTA members or individuals who were AOTA members at the time of the alleged incident. Whenever feasible and appropriate, members should first pursue other corrective steps within the relevant institution or setting and discuss ethical concerns directly with the potential respondent before resorting to the ethics complaint process.

## SUBMITTING A COMPLAINT

A complaint may be filed by submitting an "Ethics Complaint Form" (*see "Resources" at the end of this course*). The complaint form and supporting documentation, including any attachments, must be mailed to the address on the complaint form and clearly marked "CONFIDENTIAL, Attn: Ethics Program." Complaint information must include a description of the actions and behavior that the complainant believes were in violation of the Code and the specific Principles allegedly violated (i.e., "Principle 2, Standards of Conduct A, B, and D").

A copy of the complaint form and supporting documentation will be provided to the respondent and to EC members. All information related to a potential ethics complaint is confidential and



available only to the respondent, EC members, and the AOTA ethics staff. The EC does not accept anonymous complaints or those submitted by telephone or facsimile.

## REVIEW PROCESS AND SANCTIONS

The process is designed to ensure fundamental fairness, objectivity, and confidentiality to all parties before a final decision is reached. The EC initial review of complaint submissions takes place within 30 to 60 days, and the timeline for investigating and rendering a decision on a complaint varies from several months to about a year.

If the EC determines that unethical conduct has occurred, it may impose sanctions, which are defined as follows:

- **Reprimand:** A formal expression of disapproval of conduct communicated privately by letter from the EC Chairperson that is nondisclosable and noncommunicative to other bodies (e.g., state regulatory boards or National Board for Certification in Occupational Therapy). Reprimand is not publicly reported.
- **Censure:** A formal expression of disapproval that is publicly reported.
- **Probation of Membership Subject to Terms:** Continued AOTA membership is conditional, depending on fulfillment of specified terms. Failure to meet terms will subject an Association member to disciplinary actions or sanctions. Terms may include but are not limited to a) remedial activity, applicable to the violation, with proof of satisfactory completion by a specific date; and b) the corrected behavior which is expected to be maintained. Probation is publicly reported.
- **Suspension:** Removal of Association membership for a specified period of time. Suspension is publicly reported.
- **Revocation:** Permanent denial of Association membership. Revocation is publicly reported.

Further details regarding filing complaints, review and investigations processes, disciplinary council, and appeals are provided in the *Enforcement Procedures for the Occupational Therapy Code of Ethics* (AOTA, 2015b).

## LEGAL ISSUES AND OCCUPATIONAL THERAPY PRACTICE

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Occupational therapists and occupational therapy assistants practice within a society governed by state and federal laws. Laws flow from ethical principles and are limited to specific situations and codified by detailed language. These rules of conduct are formulated by an authority with power to enforce them. Each state's legislature has the power to create and enforce laws governing the profession of occupational therapy, including licensure.



SOURCES OF LAW		
Type	Statutory	Administrative
Source	Laws passed by legislative bodies of federal, state, and local governments	Executive powers, delegated by the legislative branch
Functions	Protects and provides for the general welfare of society	Carries out special duties of various agencies
Example	The state legislature passes an Occupational Therapy Practice Act and establishes an Occupational Therapy Board, with the details described in that state's legal statutes.	The state's Occupational Therapy Board adopts rules governing the licensure and standards for the practice of occupational therapy within that state, as described in the state's administrative code.

## State Occupational Therapy Practice Acts

In the United States, occupational therapist licensure is required in all 50 states as well as in the District of Columbia, Puerto Rico, and the Virgin Islands. Licensure is required in each state in which a therapist practices. All occupational therapy licenses must be renewed on a regular basis (which varies by state), and most states require the completion of some level of continuing education in order for a licensee to qualify for license renewal.

Occupational therapists must practice within the scope of occupational therapy practice defined by individual states' occupational therapy practice acts. States' occupational therapy practice acts include rules and requirements for educational institutions and practitioners regarding:

- Scope of practice
- Licensure
- Competency
- Disciplinary sanctions
- Supervision of occupational therapy assistants

Each state practice act may have language that differs from other states in regard to evaluations/reevaluation, delegation and supervision of occupational therapy assistants, specific areas of practice restriction, or issues of direct access.

The goal of occupational therapy practice acts and their administrative boards is to protect the public by setting standards for occupational therapy education and practice. It is the responsibility of practitioners to know and abide by the provisions of these acts and abide by the rules and regulations of the state(s) in which they are licensed.

It is a criminal offense to violate provisions of a state's occupational therapy practice act. When individuals or agencies believe an occupational therapist or occupational therapy assistant has violated a provision of a state's practice act, they may complain to the administrative board of





that state. This board will investigate the allegations, and if sufficient evidence is found to support the complaint, state attorneys may file a complaint against the licensee.

Although occupational therapy practice acts do vary from state to state, they contain similar grounds for complaints, such as:

- Obtaining a license by fraud
- Practicing in a grossly incompetent or negligent manner
- Diverting controlled substances for personal use
- Being convicted of a felony

It is the responsibility of license holders to know, understand, and obey the rules and regulations of the state in which they are licensed to practice. (*See “Resources” at the end of this course.*)

#### CASE

Alexa is an occupational therapist who works in an outpatient pediatric clinic. Though she excels in her professional and clinical responsibilities, she has lately been struggling with some personal issues, including a health crisis with her elderly father and a recent acrimonious divorce. She also just found out that her teenaged son dropped out of high school.

With all the recent upheaval in her personal life, Alexa accidentally misplaced the letter from the state occupational therapy board regarding her upcoming licensure renewal deadline. Three weeks after the renewal deadline had passed, the director of the pediatric practice where Alexa works requested updated copies of state licenses for all therapist employees. Alexa realized that she had forgotten to renew her license, which was now expired. To make matters worse, Alexa also realized she had not completed sufficient continuing education to be eligible for license renewal. Alexa was extremely upset and embarrassed and became tearful in her manager's office as she described the recent stressors in her life that had contributed to her forgetting to complete her license renewal requirements.

#### Discussion

Alexa's manager, Jade, was a very supportive employer and knew Alexa to be a loyal employee and highly competent therapist who had simply made a mistake. Jade gently explained to Alexa that she would have to cease practicing immediately and begin the process of reinstating her lapsed license in accordance with the practice act specific to their state, including payment of applicable penalties and completion of requisite paperwork. In addition, they would need to call the state occupational therapy board in order to explain the situation and to determine if Alexa would be liable for any disciplinary action due to having inadvertently practiced with a lapsed license for three weeks.

They discussed Alexa's other recent personal stressors, and Jade suggested that Alexa use some of her accrued paid time off to take a pediatric continuing education course that was being offered out of state. Jade assisted Alexa in finding some respite care for her elderly father and



arranged for Alexa's son to stay with relatives temporarily, allowing Alexa to enjoy some much-needed down time while simultaneously completing the continuing education that she needed to reinstate her license.

## Civil Law and Torts

**(The information in this section is in no way intended to be a substitute for professional legal advice.)**

Civil law is concerned with harm against individuals, including breaches of contracts and torts. A civil action is considered a wrong between individuals. Its purpose is to make right the wrongs and injuries suffered by individuals, usually by assigning monetary compensation. It is important to be aware that an action can potentially be both criminal and civil in nature (Stanford & Connor, 2012).

A **contract** is a legally binding agreement between two or more parties. Breaking such an agreement—such as a written employment agreement between a healthcare agency and a occupational therapist—is called a breach of contract. Both parties to a contract must do exactly what they agreed to do or they risk legal action being taken against them. For that reason, it is vital that each party clearly understands all the terms of a contractual agreement before signing it (Hamilton, 1996).

A tort is a wrong against an individual. Torts may be classified as either intentional or unintentional.

- Intentional torts include assault and battery, false imprisonment, defamation of character, invasion of privacy, fraud, and embezzlement.
- Unintentional torts are commonly referred to as negligence. In order to be successfully claimed, negligence must consist of four elements: duty, breach of duty, causation, and damages.  
(Stanford & Connor, 2012)

## INTENTIONAL TORTS

### ***Assault and Battery***

Assault is doing or saying anything that makes people fear they will be touched without their consent. The key element of assault is fear of being touched, for example, threatening to force a resistant patient to get out of bed against his/her will. Battery is touching a person without consent, whether or not the person is harmed. For battery to occur, unapproved touching must take place. The key element of battery is lack of consent.



Examples of assault and battery in a healthcare context are:

- Forcing a client to submit to treatments for which he or she has not consented orally, in writing, or by implication
- Moving a protesting client from one place to another
- Forcing a client to get out of bed to walk
- In some states, performing blood alcohol tests or other tests without consent

### ***False Imprisonment***

False imprisonment is a tort offense that involves restraining or confining a competent person against their will. Some examples of false imprisonment are:

- Restraining (physically, pharmacologically, etc.) a client for non–medically approved reasons
- Detaining an unwilling client in the hospital, even after the client insists on leaving
- Detaining a person who is medically ready for discharge for an unreasonable period of time

(Louisiana State University Law Center, 2018)

### ***Defamation of Character***

Defamation of character is communication that is untrue and injures the good name or reputation of another or in any way brings that person into disrepute. This includes clients as well as other healthcare professionals. When the communication is oral, it is called **slander**; when it is written, it is called **libel**. Prudent healthcare professionals: 1) record only objective data about clients, such as data related to treatment plans, and 2) follow agency policies and approved channels when the conduct of a colleague endangers client safety (Stanford & Connor, 2012).

### ***Invasion of Privacy***

Invasion of privacy includes intruding into aspects of a patient's life without medical cause. Invasion of privacy is a legal issue separate from violations of HIPAA's privacy rule due to the fact that invasion of privacy goes beyond protected health information.



**CASE**

Riley, an occupational therapist, was chatting with her neighbor, Sonja, while they did yard work together. When they were finished digging up a flowerbed, Sonja shook out her wrists and said, “Wow, I feel like I just gave myself carpal tunnel syndrome from all that digging!”

“That reminds me,” Riley said. “You’ll never guess who came in for an appointment the other day. You know Manny, who works at the auto repair shop down the street? Well, he was just referred to our clinic for treatment of carpal tunnel symptoms. I always thought he was pretty tough, but it turns out that he’s a real wimp when it comes to pain. Makes you wonder if he’s all that good a mechanic, really.” Suddenly, Riley realized she had violated a Standard of Conduct in the Occupational Therapy Code of Ethics by disclosing confidential client information without authorization, as well as voicing personal and nonobjective opinions about this client. She had also put herself at risk of legal action due to slander.

**Discussion**

Riley violated the Principle of autonomy, Standard of Conduct H, in the Occupational Therapy Code of Ethics, which requires maintaining confidentiality and privacy. Not only had Riley violated a Principle of the Code of Ethics by disclosing confidential information, if the matter were to become known to her client, a legal suit of slander could be realistically be brought against Riley. Even though it may be tempting to discuss clinical aspects of client care with friends who are also healthcare professionals, the Code of Ethics and privacy laws expressly prohibit sharing of confidential patient information with unauthorized individuals.

***Fraud***

Fraud includes deceitful practices in healthcare and can include the following:

- False promises
- Upcoding (such as billing group treatment sessions as individual therapy)
- Insurance fraud

***Embezzlement***

Embezzlement is the conversion of property that one does not own for his or her own use, such as when an employee appropriates funds from a company bank account (Stanford & Connor, 2012).

**UNINTENTIONAL TORTS: NEGLIGENCE**

It is the legal responsibility of all healthcare professionals to uphold a certain standard of care. This standard is generally measured against an established norm of what other similarly trained professionals would do if presented with a comparable situation.



## ***Components of Negligent Care***

In the case of negligent care, four components must be present in order to establish a successful unintentional tort claim.

- **Duty** is established when a healthcare professional agrees to treat a patient.
- **Breach of duty** occurs when a healthcare professional fails to act in a manner consistent with what another member of that health profession would prudently do in a similar situation.
  - Misfeasance occurs when a mistake is made (such as administering a treatment to the wrong patient).
  - Nonfeasance occurs when a healthcare professional fails to act (such as not assisting a spinal-cord injured patient with proper pressure relief during a treatment session).
  - Malfeasance occurs when the negligence action involves questionable intent (such as physically pulling a resistant patient from bed and causing bruises on the patient's wrist).
- **Causation** requires that an injury of ill-effect to the patient must be proven to have been a direct result of the action (or lack of action) taken by the healthcare professional.
- **Damages** refers to the actual injuries inflicted by the accused for which compensation is owed.  
(Stanford & Connor, 2012)

## ***Principles Affecting Malpractice Actions***

Professional negligence (malpractice) is the improper discharge of professional duties or failure to meet standards of care, resulting in harm to another person. Four important principles affect malpractice actions: individual responsibility, *respondeat superior*, *res ipso loquitor*, and standard of care.

- **Individual responsibility** affirms the principle that every person is responsible for his or her own actions. Even when several other people are involved in a situation, it is difficult for any one person to remain free of all responsibility and shift all responsibility to others.
- **Doctrine of *respondeat superior*** (“let the master speak”) holds employers indirectly and vicariously liable for the negligence of their employees who are acting within the scope of their employment at the time a negligent act occurs. This doctrine allows an injured party to sue both the employee and employer, to sue only the employee, or to sue only the employer for alleged injuries. Although each person is responsible for her or his own acts, professionals with oversight



duties are held responsible for the actions of those they supervise. For example, an occupational therapist is held accountable for the actions of occupational therapy assistants that he/she supervises.

- **Doctrine of *res ipso loquitor*** (“the thing speaks for itself”) is a rule of evidence designed to equalize the positions of plaintiffs and defendants in the situation when plaintiffs (those injured) may be at a disadvantage. The rule allows a plaintiff to prove negligence by circumstantial evidence when the defendant has the primary, and sometimes only, knowledge of what happened to cause an injury.

Generally speaking, plaintiffs must prove every element of a case against defendants. Until they do, the court presumes that the defendants did meet the applicable standard of care. However, when the court applies the *res ipso loquitor* rule, defendants must prove that they were not negligent. Plaintiffs can ask the court to invoke the *res ipso loquitor* rule if three elements are present:

1. The act that caused the injury was in the exclusive control of the defendant.
  2. The injury would not have happened in the absence of negligence by the defendant.
  3. No negligence on the part of the plaintiff contributed to the injury.  
(Fremgen, 2015)
- **Standard of care** refers to the level of care provided to a patient that would be reasonably expected to be provided by another individual in a comparable situation.

## CASE

Aaron, a newly licensed occupational therapist, helped Mr. Singh get out of bed to use the restroom for the first time since his recent hip surgery. When Aaron had assisted Mr. Singh to standing, the patient in the other bed suddenly asked Aaron to get her a glass of water. Aaron, thinking that Mr. Singh was steady on his feet, left him standing alone and went across the room to the other patient. Mr. Singh lost his balance and fell to the floor, sustaining a significant head laceration.

## Discussion

Mr. Singh sued Aaron for negligence on the basis of *res ipso loquitor*. All three necessary legal elements were present:

1. The act that caused the injury was in Aaron’s exclusive control.
2. The injury would not have happened in the absence of negligence by Aaron.
3. There was no negligence on the part of Mr. Singh that contributed to the injury.

Mr. Singh won the case and Aaron was held liable for his injury.



### ***Minimizing Malpractice Risk***

Because today's healthcare consumers are more likely to take an active role in their care, more likely to question the quality of healthcare services, and more apt to take legal action against providers, occupational therapists must take precautions to minimize the risk of malpractice claims being brought against them. Below are some suggested actions that may help prevent malpractice claims. **(This information is in no way intended to be a substitute for professional legal advice.)**

- **Delegate duties cautiously.** Occupational therapists are responsible for subordinates, equipment, and supplies. When assigning a task to an occupational therapy assistant, occupational therapists should ensure the task is not beyond the ability or scope of practice of the subordinate because, if an error occurs, the supervising therapist may be held responsible.
- **Develop self-awareness.** Occupational therapists must recognize their own strengths and weaknesses and use continuing education to expand their knowledge and skill set. They should not be afraid to admit lack of knowledge in some clinical areas and should not take on patients whose rehabilitative needs lie outside of their skill set or scope of practice.
- **Follow agency policies and procedures.** These documents are designed to prevent errors, injuries, and accidents. If an error occurs and legal action results, the court will want to know if the practitioner followed established policies and procedures.
- **Document actions accurately.** Legally, if an action is not documented, it did not happen. Notes should be written accurately, objectively, and without subjective judgments that could be construed as libelous.
- **Write detailed incident reports.** Practitioners must document in detail all errors, injuries, and accidents. Because long periods of time may elapse between an incident and court action, an incident report may be the only detailed account of what happened.
- **Recognize suit-prone clients and intervene appropriately.** When people feel frightened and powerless, they may become critical and demanding. By reacting defensively or avoiding such clients, an occupational therapist may inadvertently confirm clients' fears and/or foster their anger. When occupational therapy professionals listen actively, discuss treatment plans openly, and involve clients in decision-making, they help to foster trust and respect.
- **Prevent accidents.** Be alert for hazards that cause injury. Spilled water, broken equipment, protruding apparatus, exposed electrical wires, and cluttered hallways are accidents waiting to happen. When such accidents do happen, people are more likely to suffer injuries, and healthcare professionals may be held responsible.



- **Become informed consumers of professional liability insurance.** The possibility of being sued is real. Lawsuits are costly and the price of defending oneself may be immense. Given these realities, occupational therapy professionals should become informed consumers of professional liability insurance. (Hamilton, 1996)

## CONCLUSION

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As occupational therapy practitioners assume an increasingly autonomous role in the delivery of rehabilitative services, it is of vital importance that they adhere strictly to existing laws and ethical principles. Occupational therapists and occupational therapy assistants are responsible for maintaining the highest standards of professional conduct. These standards arise from ethical principles, fundamental concepts by which people gauge the rightness or wrongness of behavior, and laws, which flow from ethical principles and are limited to specific situations, codified by detailed language and formulated by an authority with power to enforce them.

Ethical standards of behavior for occupational therapy professionals have been established in the AOTA Occupational Therapy Code of Ethics and codified into law in the occupational therapy practice acts of individual states and other jurisdictions within the United States. Continuing competence in both ethics and law is vital for all practicing occupational therapy professionals, regardless of experience level or practice setting.



## RESOURCES

Enforcement Procedures for the Occupational Therapy Code of Ethics  
<https://ajot.aota.org/article.aspx?articleid=2478991>

HIPAA for professionals (U.S. DHHS)  
<https://www.hhs.gov/hipaa/for-professionals/index.html>

Occupational Therapy Code of Ethics  
<http://dx.doi.org/10.5014/ajot.2015.696S03>

OT state licensure boards  
<https://www.occupationaltherapy.com/state-licensure-boards/>

State OT statutes and regulations  
<https://www.aota.org/Advocacy-Policy/State-Policy/Licensure/StateRegs.aspx>





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## TEST

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- 1.** Ethics is concerned with:
  - a. Examining the nature of values as they apply to human conduct.
  - b. Protecting society from actions that directly threaten its order.
  - c. Punishing members of society for actions that are ethically wrong.
  - d. Organizing people to rise up and change society.
  
- 2.** An occupational therapist decides to take a rollator walker from the hospital storage closet and quietly give it to a patient who needs the walker in order to safely ambulate. The therapist does not ask the hospital's permission or ask the patient to pay for the walker because the patient is uninsured and cannot afford to purchase one. The therapist's motivation to do good by protecting the patient from future harm is an example of which type of ethical theory?
  - a. Deontological
  - b. Normative
  - c. Teleological
  - d. Descriptive
  
- 3.** The purpose of a code of ethics is to:
  - a. Describe the scope of practice of a profession.
  - b. Describe standards of behavior of a profession.
  - c. Establish laws for the practice of a profession.
  - d. Serve as a substitute for a state practice act.
  
- 4.** When an occupational therapist refuses to provide treatment based on a client's sexual orientation, the therapist is violating which Core Value of the Occupational Therapy Code of Ethics?
  - a. Altruism
  - b. Equality
  - c. Truth
  - d. Prudence



5. When an occupational therapist insists that a male patient get out of bed and participate in therapy after the patient repeatedly states that he does not feel well and wants to stay in bed, the therapist is violating which Principle of the Occupational Therapy Code of Ethics?
- Beneficence
  - Nonmaleficence
  - Autonomy
  - Justice
6. A federal law specifically dealing with the rights of patients in regard to private and/or sensitive healthcare information is the:
- Social Security Amendments of 1965.
  - Americans with Disabilities Act of 1990.
  - Health Insurance Portability and Accountability Act of 1996.
  - Occupational Therapy Practice Act.
7. Which Standard of Conduct upholds the Occupational Therapy Code of Ethics Principle of veracity?
- Fully disclosing adverse events that compromise a client's safety
  - Advocating for changes to systems and policies that are discriminatory
  - Reporting impaired practice to the appropriate authorities
  - Refraining from communication that is derogatory, intimidating, or disrespectful
8. Which sanction for unethical conduct is **not** publicly reported by the AOTA Ethics Commission?
- Reprimand
  - Censure
  - Probation of membership
  - Suspension
9. Rules established by a state board of occupational therapy are examples of:
- Common law.
  - Administrative law.
  - Statutory law.
  - Constitutional law.



**10.** The goal of state occupational therapy acts is to:

- a. Create an administrative body to define occupational therapy.
- b. Describe the scope of practice of occupational therapy.
- c. State the competency requirements of occupational therapists.
- d. Protect the public by setting standards of education and practice.

**11.** Intentional torts include assault and battery, false imprisonment, invasion of privacy, and:

- a. Negligence.
- b. Breach of duty.
- c. Breach of contract.
- d. Embezzlement.

**12.** An occupational therapist (OT) receives an order to evaluate a hospital patient who has just undergone a left hip open reduction internal fixation. The patient's postoperative precautions are for toe-touch weight bearing (TTWB) only at this time. The occupational therapist is in a hurry and does not complete a chart review prior to initiating the evaluation and assumes that the patient's weight bearing precautions are "weight bear as tolerated" (WBAT). Having not identified the proper weight-bearing precaution, the OT initiates functional transfer training with WBAT. Two treatment sessions are completed before the therapist realizes the error. On the second afternoon following WBAT functional transfer, the patient begins to complain of severe pain in the operative hip. The therapist's action is an example of:

- a. Malfeasance.
- b. Negligence.
- c. An intentional tort.
- d. A criminal offense.

