

POSITION STATEMENT: Occupational Therapy and Medicolegal Practice

1 Position Statement

- Occupational Therapy Australia recognises that medico-legal practice is an area in which clinically experienced occupational therapy practitioners who demonstrate high level skills of professional judgement within their clinical experience and are engaged to provide reports within their areas of professional expertise.
- Occupational therapists working in medico-legal practice are bound by the relevant Expert Witness Codes of conduct as expressed by the courts as well as the professional codes of conduct that guide all registered professions.
- Occupational therapists are committed to practice impartially in the medico-legal forum, with a primary commitment being to provide the court with an accurate and objective opinion on the areas of referral and within the scope of their expertise. In so doing occupational therapists in the medico-legal field are expected to participate in evidence-informed practice, enabling objective validation for all opinions and recommendations provided as an Expert Witness consistent with the Expert Witness Code of Conduct.
- Occupational therapists engaged in medico-legal practice are committed to ongoing professional development.

2 Glossary of Terms (in alphabetical order):

Medicolegal Occupational Therapist. As consistent with the Expert Witness Code of Conduct the definition of an “expert” occupational therapist is not just based on years of experience. Rather it is a practitioner who has demonstrated high levels of skill and experience within the relevant field of opinion, being aware of the current evidence, able to critically examine not only the information provided by the client but also their own beliefs and judgment regarding the occupational therapy paradigm. (Rassafiani, 2009; Robertson, Warrender, Barnard, 2015).

Expert Witness Codes of Conduct refers to the relevant legislation of the court that outlines the conduct of the expert witness. Expert opinions must comply with the relevant state code established by legislation for the conduct of witnesses. These codes specify that the expert’s general duty is to the Court, rather than the party retaining the expert. Depending on the specific legislation requirements expert opinion legislation for each state includes but is not restricted to:

- Schedule 1 Expert witness code of conduct (ACT)
- Schedule 7 - Uniform Civil Procedure Rules 2005 [UCPR] (NSW)
- Form 44A (Victoria)
- Australian Expert Witness Code of Conduct – Part 28, rule 9C.
- Annexure C to Consolidate Civil Practice Direction (District Court WA)
- Uniform Civil Procedure Rules 1999 - Sect 428 [Queensland Consolidated Regulations]
- Supreme Court Joint Conferences of Expert Witness: Practice Note No SC Gen 11.
- Supreme Court Practice Directions 2006 Direction 5.4 (inc Guidelines for Expert Witnesses in Proceedings in the Supreme Court of South Australia) & 5.5
- Supreme Court of Tasmania Practice Direction No 1 of 2016 5 January 2016 Expert opinion evidence – Expert evidence code of conduct.
- Uniform Evidence Act Evidence, Act 2001 (Tasmania).
- Uniform Evidence Act Evidence Act 2011 (Northern Territory)

Medico-legal Assessment means the independent product of the therapist prepared under specific instruction from parties involved in the process of litigation, the content of which is provided for use as evidence by the court in its deliberations in a matter. The report can include evidence of fact, opinion or both and is prepared by a recognised medicolegal expert witness(OT Australia. NSW., 2005).

Professional codes of conduct refer to both the Occupational Therapy Code of Ethics 2001 as well as the Australian Health Practitioner Regulation Agency Code of Conduct 2014.

Professional judgement in this situation involves applying professional knowledge, skills and experience appropriate when defining the level of care, assistance and therapy required to deal with the problems and to recognise when their own level of knowledge is deficient, redundant or irrelevant. (Higgs, Fish, Rothwell, 2008)

3 Introduction: The Occupational Therapy Profession

“Occupational therapy is a client-centred health profession concerned with promoting health and well-being through occupation. The primary goal of occupational therapy is to enable people to participate in the activities of everyday life. Occupational therapists achieve this outcome by working with people and communities to enhance their ability to engage in the occupations they want to, need to, or are expected to do, or by modifying the occupation or the environment to better support their occupational engagement.” (World Federation of Occupational Therapists 2012). Occupational Therapist in Australia are university trained and must be registered to practice as an occupational therapist.

4 Purpose of Position Statement

The purpose of this statement is to outline the role occupational therapy in medicolegal practice. This position statement will inform stakeholders (medical, legal, courts, consumers) of expectations of an occupational therapist as an “Expert Witness” with relevant legislation.

5 Policy and Environmental Context

- Occupational therapists participating in medico-legal practice will maintain a commitment to the central philosophy of occupational therapy, being to focus on enabling individuals to maximise participation in activity through client centred therapy, activity modification and environmental adaptation.
- Occupational therapists will perform their work, and ensure that work performed by any employees or contractors under their guidance and instruction, is in a manner that is safe and recognises the legal requirements for occupational health and safety and other relevant employment legislation within the relevant States or countries of practice.
- Occupational therapists’ evidence will demonstrate an awareness of the relevant legislation and guidelines pertinent to their area of practice.
- Occupational therapists engaged in medico-legal practice recognise that they represent the profession at public level and will engage collaboratively and constructively with other relevant practitioners within the medico-legal area.

6 Statement of position being taken – value to society and to the profession

- Occupational therapists in medico-legal practice are responsible for accurately representing the functional needs of people who are incapacitated following injury or illness as a result of an event that has led to litigation.

- All recommendations made by occupational therapists and contained within the report will be consistent with best evidence.
- In providing an opinion the focus will be on a resumption of the subject's participation in their pre-incident lifestyle, or as close to that lifestyle as possible, without consideration for enhancement or degradation of their quality of life.
- Occupational therapists have a commitment to the court to act in an impartial, expert and professional manner at all times without influence from external parties, including referring agents, plaintiffs or other practitioners.
- Occupational therapists do not advocate on behalf of any party involved in the medico-legal process, maintaining the highest level of professional integrity at all times.

7 Principles of position.

- Occupational therapists will be registered to practice in Australia.
- Their specialist knowledge is based on their ongoing training, study and depth of experiences within the clinical field in which they are providing an opinion.
- Occupational therapists will practice in a manner which professionally, ethically, and morally does not compromise the individual with whom they have professional contact irrespective of that person's position, situation or condition in society. (Occupational Therapy Australia Code of Ethics, 2014).

8 Role of Occupational Therapists

Occupational therapists in a medico-legal practice are expected to conduct their clinical activity within professional Code of Ethics (OT Australia 2014) and Code of Conduct (AHPRA), including but not limited to:

- Maintaining client communication in a professional and confidential manner.
- Respecting cultural and individual differences.
- Participating in assessment of clients using interview, valid and reliable protocols including evidence-informed measurements of client function and participation, environmental evaluations and other relevant investigations.
- Interpreting assessment information, reviewing documentation/clinical notes and medical reports provided by the referrer.
- Providing a timely, concise and accurate documented opinion consistent with the expert guidelines regarding impartiality of providing the court with a well justified reason.
- Providing independent and impartial reports that assist the court on matters relevant to the therapist's area of expertise not being an advocate for a party.

9 Recommendations

- The development guidance material for an occupational therapist undertaking work within the medicolegal area of practice.

10 Conclusion

Practising in the medico-legal field as an occupational therapist has remained largely unregulated by OT Australia and now requires an acceptable framework to instruct and direct professional conduct in this area. This position statement has been developed by the NSW Medico-legal Interest Group, a group of experienced practitioners dedicated to preserving the integrity of practice in this field.

13 References:

Allied Health Practitioner Registration Authority (2014). *Code of Conduct*. Retrieved from AHPRA on 29/01/2016 <https://www.ahpra.gov.au/News/2014-02-13-revised-guidelines-code-and-policy.aspx>

Expert Witness Codes of conduct. Retrieved from Unisearch on 29/01/2016
co<https://www.unisearch.com.au/resources/expert-code>

Higgs, J., Fish, D., Rothwell, R. (2008) Knowledge generation and clinical reasoning in practice. In J. Higgs, M. Jones, S. Loftus, N. Christensen (Eds). *Clinical reasoning in the health professionals*. 3rd Edition. (pp.163- 172). Elsevier, Philadelphia.

OT Australia, NSW. (2005). *Preliminary guidelines for Occupational Therapy medicolegal practice*. Australian Association of Occupational Therapists – NSW. Sydney. Australia.

OT Australia (2001). *Code of Ethics*. Australian Association of Occupational Therapists. Retrieved from AAOT on 29/01/2016
<https://www.otaus.com.au/sitebuilder/onlinestore/files/14/codeofethics.pdf>

Rassafiani, M. (2009). Is length of experience an appropriate criterion to identify level of expertise? *Scandinavian Journal of Occupational Therapy*. 16, 247-256.

Robertson, D., Warrender, F., Barnard, S. (2015). The critical occupational therapy practitioner: how to define expertise? *AOTJ*, 62, 68-71 doi:10.1111/1440-1630.12157.

World Federation of Occupational Therapy (WFOT) 2012. *Definition of Occupational Therapy*. Retrieved from WFOT on 29/01/2016.
<http://www.wfot.org/aboutus/aboutoccupationaltherapy/definitionofoccupationaltherapy.aspx>