

## Answers to Frequently Asked Questions About: *Private Practice*

August 2020

### *Background*

This Frequently Asked Questions (FAQ) document has been prepared to supplement the **Private Practice: Legislative and Regulatory Considerations** practice guideline. It features answers to commonly asked questions from OTs in, or wishing to start up, a private practice. The list of questions is not exhaustive and will be updated as unique questions are asked. The questions, and corresponding answers are clustered into the following categories (click on the link to be taken to that section):

- A. [Business Practices](#) (business incorporation/registration, insurance coverage, required policies and procedures)
- B. [Ethical Considerations](#) (advertising, conflict of interest, fees)
- C. [Consent and Documentation Requirements](#)
- D. [Record Storage, Retention, and Disposal](#) (secure storage, retention timeframes, emailing/texting clients)
- E. [Releasing Client Records](#)
- F. [Cross-jurisdictional Practice](#) (registration requirements, working with First Nation Communities)
- G. [Adding Your Private Practice as an Employer with ACOT](#)
- H. [Other](#) (Allied Practitioner ID - PRAC ID)

### *Questions and Answers*

#### A. Business Practices

- What are the legislative requirements beyond the *Health Professions Act* (HPA) and *Occupational Therapists Profession Regulation* (OTPR) that I need to consider in my private practice?

There are some key pieces of public protection legislation that occupational therapists (OTs) in private practice need to develop/implement policies and procedures for. As well, you may require permits or licenses depending on how you decide to set up your practice/business. Also, all OTs are required to adhere to ACOT's [Standards of Practice](#) (SoP) and [Code of Ethics](#) (CoE), regardless of practice setting.

ACOT has prepared a guideline on these legislative and regulatory requirements for private practice. The **Private Practice: Legislative and Regulatory Considerations** guideline (accessible from the [Practice Resources](#) page of the ACOT website) also references the notable SoP and CoE indicators when

applicable. Reference to relevant legislation and SoP and CoE indicators is also made throughout this FAQ document.

### ➤ Do I have to incorporate or register myself as a business?

OTs are not currently permitted to incorporate or register as a “*professional corporation*” according to the [Health Professions Act](#) (only physicians, surgeons, dentists, chiropractors, optometrists and physical therapists can do so).

You can incorporate as a “*corporation other than a professional corporation*” or remain unincorporated as a sole proprietor. A sole proprietor is defined on the [Canada Revenue Agency](#) (CRA) website as:

*“an unincorporated business that is owned by one individual. It is the simplest kind of business structure.*

*The owner of a sole proprietorship has sole responsibility for making decisions, receives all the profits, claims all losses, and does not have separate legal status from the business. If you are a sole proprietor, you also assume all the risks of the business. The risks extend even to your personal property and assets.*

*If you are a sole proprietor, you pay personal income tax on the net income generated by your business.*

*You may choose to register a business name or operate under your own name or both.*

*If you operate as an individual, just bill your customers or clients in your own name. If you operate under a registered business name, bill your clients and customers in the business's name. If your business has a name other than your own, you'll need a separate bank account to process cheques payable to your business.”*

You are also able to register your sole-proprietorship or corporation. Registration with the [Canada Employment Insurance Commission](#) allows access to [employment insurance benefits](#), but also requires that you contribute premiums.

The pros and cons of incorporating and registering are best discussed with an accountant or tax lawyer.

*TIP: Refer to the CRA website for the [guide](#) on reporting self-employment income and expenses as well as capital cost allowances.*

### ➤ Do I require additional professional liability and/or business insurance when I am in private practice?

You are required by ACOT to carry a minimum of \$5 million dollars of professional liability insurance as per direction in the *Health Professions Act - Part 2, Section 28(1)(c)* and the [Occupational Therapists Profession Regulation](#) – Section 9 (see the [ACOT website](#) for the record of this decision).

Anything over and above the \$5 million dollars of professional liability insurance is up to you to determine in discussions with your liability insurance provider. The amount of coverage will depend on how you set-up your practice including but not limited to your target client population, the type of service you are providing, home-based versus clinic-based practice.

Follow up with your insurance provider to discuss other types of insurance you may wish to have for

your practice. Examples of additional coverage you may wish to have include general liability coverage, clinic insurance and/or clinic business insurance. You may also be required by contracting organizations to have Workers Compensation Board (WCB) coverage for yourself and anyone you employ (if applicable).

➤ **What kind of policies and procedures should I develop for my business?**

SoP 9.1 requires that OTs “*maintain appropriate management structures and organizational structures and processes for his/her/their practice.*” If you are working for an employer, the management and organizational structures take the form of policies and procedures that employees are expected to follow for consistency, efficiency and safety. Establishing operational processes for the various aspects of your practice and business operations serves the same purpose for you as both employer and employee.

Policies and procedures that you will want to have in place for your practice include (but are not limited to):

- consent and documentation
- records management (for client and business records)
- fees and billing, occupational health & safety (for self and employees – if applicable)
- infection prevention & control
- human resource management (if applicable)

➤ **Does ACOT have any policy & procedure templates?**

It is not in ACOT’s mandate to recommend or approve forms or templates used for any practice area/setting. You may want to seek advice from other colleagues in private practice and have any policies/procedures you create reviewed by your legal counsel.

*TIP: Check the SAOT and CAOT pages for helpful private practice resources. For example, SAOT has a private practice interest group and CAOT has [recorded webinars](#) on best practices for your practice/business.*

➤ **I am closing my practice due to retirement/moving out of province – what do I need to do?**

Whenever a practice is closed, you are required to inform your clients and refer them on to another OT or service provider if required and as appropriate (SoP 2.3). You are also required to make arrangements for secure retention of client records for the required time period (see record retention requirements section below).

Another consideration, particularly for OTs that are retiring, is ongoing professional liability insurance coverage. This would be important in case any former client wishes to pursue litigation against you. Although it is not in ACOT’s mandate to make this recommendation (we can only specify what is required while you are registered and using the title of OT), you may wish to discuss options for extended coverage with your insurance provider.

## **B. Ethical Considerations**

➤ **Are there any restrictions in how I advertise myself/my practice/any products I offer?**

The following statements regarding advertising and marketing align with ACOT’s Code of Ethics; most notably CoE 1.1, 1.2, 2.1, 2.3:

- Advertising and marketing of professional services and/or products must be factual, accurate, professional, verifiable, understandable to the intended audience.
  - In the case of advertised or endorsed products, financial affiliations must be disclosed.
- All marketing, advertising, websites and social media sites should:
  - include a way to contact the OT (i.e. phone number, email address).
  - only advertise services within the competence of the OT.
  - accurately represent education and experience.
- Advertisements should not:
  - deceive or mislead by either omitting relevant information or including non-relevant information.
  - take advantage of the weakened state, either physical or mental or emotional, of its intended audience.
  - promote a demand for an unnecessary service.
  - guarantee success of a service or an unjustified expectation about the results which the OT can achieve.
  - state or imply that the OT can obtain results not achievable by other OTs.
  - use comparative statements about service quality, health professionals or products.
  - use statements that malign another OT, other health professional or profession, clinic or facility.
  - harm the integrity of the profession.
- Advertisements that include the OT's statement of fees for a specific service need to:
  - sufficiently describe the fees and services in a way that is understandable to the intended audience.
  - refrain from comparing the fees charged to that of other OTs or health care providers.

*TIP: Members of the public call the ACOT office regularly asking for names of OTs in private practice. As it is not in ACOT's mandate to make such recommendations, we direct callers to the [SAOT](#) and [CAOT](#) "Find an OT" pages. Listing your private practice on one or both sites will assist potential clients to find you.*

*When listing your practice, be sure to include a detailed description of what services you offer and to which client age group.*

### ➤ What can I do to detect/avoid conflict of interest?

As a way of demonstrating respectful, honest, fair and equitable interactions with clients and colleagues, CoE indicators 1.2, 2.1 and 2.2 require OTs to:

*"provide services and maintain relationships in an unbiased manner"*

*"avoid any activity or relationship which would exploit or cause harm to others or to the profession"*

*"identify and resolve conflicts of interest in their professional practice"*

A conflict of interest is defined as *"a conflict between the private interests and the official responsibilities of a person in a position of trust."* Conflicts of interest arise when an OT is in a position to derive personal benefit from any actions or decisions made relating to OT service delivery. As OTs are in a position of authority and trust, they are ethically bound to practice with their clients' interests at the forefront.

Conflict of interest can be challenging to avoid when an OT's livelihood is derived from the provision of OT service. This can be particularly apparent in private practice where the interests of the OT in establishing a viable practice (e.g. recruiting a sufficient caseload, accessing funding for services, etc.) may sometimes present a potential, actual or perceived conflict of interest. A common point of conflict comes when OTs recruit clients for their private practice from a pool of clients seen in another place of employment (e.g. recruiting clients for a home modification practice from inpatients at the hospital you work at, recruiting clients for a pediatric practice from students of the school district you are employed by, etc.).

Conflict of interest can also arise when boundaries are crossed. Standard of Practice 10 indicates an *“OT shall be responsible to establish and maintain appropriate professional boundaries with clients at all times and understand the power imbalance that exists in favour of the occupational therapist in client-therapist relationships.”* The required modules on [Sexual Abuse and Sexual Misconduct](#) prepared by the Alberta Federation of Regulated Health Professions also highlight other potential client-therapist boundary violations.

Other examples of conflicts of interest can be found in the Interpretive Guide section of ACOT's [Code of Ethics and Ethical Scenarios](#) as well as in the College of Occupational Therapists of Ontario [Standards for Prevention and Management of Conflict of Interest](#) guide.

Ultimately, the interests of the client are first and foremost and your primary duty in service provision rests with the client. If a conflict of interest cannot be prevented or managed, an OT should refer the client on to another OT or appropriate service provider (as per SoP 2.3 *“recommend appropriate resources or other service providers when the service request cannot be met within the parameters of the individual's practice.”*)

*TIP: If you have any doubts about whether you are in a conflict of interest situation, talk to a trusted colleague. ACOT staff are also available to discuss and work through the situation with you.*

### ➤ What fees/hourly rate can I charge?

According to the *Health Professions Act* (HPA), ACOT cannot set or recommend fee schedules for OTs in private practice. Specifically, Section 3(2) of the HPA states:

*“A college may not set professional fees, provide guidelines for professional fees or negotiate professional fees on behalf of some or all of its regulated members...”*

CoE indicator 2.3 indicates that OTs can demonstrate integrity by basing fees on *“time spent, product produced, expert opinion rendered, special expertise, or treatment plan progression.”*

Fees should be fair, equitable and transparently communicated to clients via a service agreement in order to adhere to Standard of Practice (SoP) 2.5 - *“discuss and document the terms of agreement for services to be provided”*.

*TIP: For a sense of what the going rate is for the OT services you plan to offer, you can reach out to other OTs/allied health professionals working in private practice to see what fees they charge. SAOT also periodically surveys member OTs in private practice about fees charged. You can also benchmark against what insurance companies reimburse for occupational therapy services.*

## C. Consent and Documentation

### ➤ What consent and documentation requirements do I have to consider for my practice?

A [Standards for Documentation](#) practice guideline has been developed and is available on the ACOT website. A practice guideline relating to seeking/receiving informed consent in more complex situations (e.g. mature minors, consent from guardians in cases of divorce, consent from persons with cognitive impairment) is under development. In the meantime, contact the ACOT office if you need support to work through a complex consent situation.

### ➤ Does ACOT have any templates for consent forms?

It is not within ACOT's mandate to develop templates or forms for registrants. It is recommended that you reach out to other colleagues in private practice for examples you can adapt for your purposes. All client-related documents and forms should also be vetted and approved by your legal counsel.

## D. Record Storage, Retention and Disposal requirements

### ➤ What information privacy legislation do I need to comply with?

OTs in private practice need to adhere to requirements listed in the *Personal Information Protection Act* (PIPA) for client and employee information unless they are contracted by an organization/employer that is required to adhere to other information privacy/retention legislation (e.g. *Health Information Act* – HIA; *Freedom of Information and Protection of Privacy Act* – FOIP; *Personal Information Protection and Electronic Documents Act* – PIPEDA; *Student Records Regulation* - SRR).

Refer to ACOT's practice guideline on [Information Privacy and Disclosure Legislation](#) for more details.

### ➤ How long am I required to store my records?

Agencies, organizations or private practice providers, who are not listed as custodians or affiliates in the [Health Information Act](#) (HIA), or named in the [Student Record Regulation](#)<sup>1</sup>, are bound by the requirements in the [Personal Information and Protection Act](#) (PIPA), specifically:

An example of a *“legal purpose”* to retain records would be if a client/parent/guardian disagrees with the results or recommendations of an assessment and decides to file a lawsuit. In Alberta, there is a limit to when a civil action can be filed according to the *Limitations Act*.

ACOT has aligned record retention requirements with the timeframe noted in the *Limitations Act* (along with the time allowed to serve a claim after filing) and thus recommends that OTs in private practice store records for **at least 11 years and three (3) months after the last date of service provided to the client, or 11 years and three (3) months past the age of 18 if the client was a minor when the service was provided.** You can refer to the [Standards for Documentation](#) guideline for more information on this required retention period.

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<sup>1</sup> The *Student Record Regulation* sets out the requirements and obligations regarding the management of student records maintained by a board, an operator of a charter school, a francophone regional authority, a person responsible for the operation of a private school, or an early childhood services program.

An example of a *“business purpose”* would be requirements specified by the Canada Revenue Agency (CRA). CRA requires that all income tax records and supporting documents be kept for **six (6) years** in case an audit is requested.

### What form (paper or electronic) do my records need to be in? And what should I do to ensure my records are securely stored?

PIPA does not specify that your client records have to be paper copies; electronic versions are acceptable as long as they are [retained according to PIPA](#). There is no requirement to store paper records if electronic records are available.

Paper files should be stored in fireproof, lockable file cabinets that are locked when not in use. If transporting paper files to/between appointments, take only those documents that are required and ensure they with you at all times. Resist the temptation to leave records in your vehicle (even in the trunk) in case of vehicle break-in or theft. A paper shredder should be used when disposing of notes, draft reports, etc.

Electronic files should be password protected and housed on a secure network as described below. Mobile devices (smartphones, laptops) used to access electronic files should be encrypted and locked away when not in use.

#### ➤ What type of electronic record system should I use?

The Office of the Information and Privacy Commissioner (OIPC) created the [guide on “cloud computing”](#) for small and medium sized businesses that you may find helpful when setting up your electronic record storage.

Although most OTs in private practice will not be custodians or affiliates of health information under HIA (see ACOT’s [Information Privacy and Disclosure Legislation](#) guideline for description of custodian/affiliate), the OIPC [guide to electronic health record systems](#) provides additional guidance on best practices for record collection, use, disclosure, storage, retention and disposal for custodians and affiliates of health information. Adhering to these recommendations will ensure you are also adhering to requirements of FOIP and PIPA.

#### ➤ How do I prevent or report an information breach?

The OIPC has prepared a resource on the [Cause of Breaches and Breach Prevention Recommendations](#).

Any breaches of a client’s health or personal information must be reported to the OIPC. Breach reporting forms and resources can be accessed from the [How to Report a Privacy Breach](#) page.

#### ➤ I hope to store my client/business records electronically – does my cloud-based system need to be based out of Canada?

There is nothing in any of the information privacy legislation (HIA, FOIP, or PIPA) that requires client or employee records to be stored within Canada. However, the Canada Revenue Agency (CRA) does stipulate that your business records must be kept *“at your place of business or your residence in Canada, unless the CRA gives you written permission to keep them elsewhere.”* Refer to the CRA [keeping records](#) page for more details.

- I am on contract with an organization/school board/First Nation – who is responsible for retaining the client/student records and for how long?

Look for the clause in your contract that relates to who owns and is responsible for storage and retention of the client records you produce during the course of your contract. If it is not clearly stated, ask for clarification and/or inclusion of a clause. If the contracting organization indicates they want you to be responsible for record retention and storage, do so according to the requirements of PIPA and for the time period described above (11 years and 3 months after the last date of service provided to the client, or 11 years and 3 months past the age of 18 if the client was a minor when the service was provided).

- Can I text or email my clients?

With the increasing ubiquity of smartphones and the convenience of corresponding by email and text (and even your client's preference to do so), this is a common question raised by registrants. ACOT has prepared a practice guideline on [Electronic Communications with Clients](#) based on the advice from our legal counsel. The guideline also aligns with the guidance provided by the Office of the Information and Privacy Commissioner (OIPC), Alberta Health Services, and many other employers of OTs across the province.

*TIP: Did you know that emails and text messages exchanged between you and your clients are considered part of a client's record? This convenient way of communicating with your clients is made more complex given you need to have procedures in place for documentation and retention of those messages for the same time period as the rest of your client records.*

## E. Releasing Client Records

- What is the process for releasing client records? Does the process differ depending on who asks for the records?

The process for releasing records is influenced by which information privacy and disclosure legislation applies to your practice setting, your client population and who is asking for the records.

Refer to Appendix A of ACOT's [Information Privacy and Disclosure Legislation](#) guideline for a flow chart that takes you through the steps and offers additional reference materials on information sharing and disclosure.

## F. Cross-jurisdictional Practice

- I want to provide services to clients residing (temporarily or permanently) in other provinces/states/countries - what are the requirements?

Occupational therapists are required to be registered in the provinces/states/countries their client is physically located (temporarily or permanently) prior to the delivery of any occupational therapy service. As there are a few exceptions to this rule, it is recommended that you contact the regulatory/licensing body for the province/state/country your client is residing to see what the registration requirements are. Note that the three territories and some countries do not have regulatory bodies; in this case, make sure your clients in those territories/countries know to contact ACOT with any concerns about the services they have received.

- I am providing services to clients who are residing in Alberta and am registered to practice in Alberta, but I am residing (temporarily or permanently) outside of Alberta – do I need to be registered in the province/state/country I am providing service from?

As the registration requirements differ nationally and internationally, it is recommended that you contact the regulatory/licensing body for the province/state/country you will be providing services from to see if you need to be registered.

- I have/would like to contract with First Nation communities – are there any different requirements?

Check the contract you have with the community(ies) to see which privacy legislation they are asking you to follow and whether they have specified who will own and be responsible for storage and retention of client records. First Nation communities are under federal jurisdiction and need to comply with PIPEDA for any information they collect. PIPA is considered “substantially similar” to PIPEDA, so any of the information privacy practices you have in place for PIPA will also suffice to adhere to PIPEDA.

## G. Adding your Private Practice as an Employer with ACOT

- Should I register myself as an employer with ACOT?

ACOT registrants are required to enter their practice hours for each of their employers. Please make sure you add your private practice to your ACOT Profile.

Use the naming convention of **“Private Practice – your name/name of your business”** to assist ACOT in accurately identifying the number of OTs in private practice in the province in annual reporting to the Ministry of Health. Follow the instructions found in the [Guide to Registration Renewal](#) on how to add and classify your employment.

*TIP: Do not enter the names of the organizations/agencies you have contracts with or receive funding from, just add your private practice.*

- How do I record the practice hours in my private practice?

As with the practice hours you record for any other employer during registration renewal, include the number of hours you worked in your private practice during the registration year. You can lump all of the hours worked for the various contracting agencies/organizations in one total under your private practice.

## H. Other

- Is there a way I can refer to specialists/physicians?

Any OT, not just those in private practice, that wishes to directly refer to specialist physicians or other practitioners that direct bill the Alberta Health Care Insurance Program (AHCIP) can do so as long as they have applied for/received an Allied Practitioner ID (PRAC ID) number. This nine-digit code is required by specialists in order to receive payment for a claim made to the AHCIP for any assessment/treatment undertaken as a result of an Allied Practitioner referral.

The link to the AHCIP Practitioner Request form and instructions on the process for applying for a PRAC ID can be accessed from the [Health Professionals Business Forms](#) page of the Government of Alberta website.

### *Additional Resources*

College of Occupational Therapists of Ontario (COTO) – [Guidelines for Private Practice](#) (June 2019).

Physiotherapy Alberta College and Association (PACA) – [Business Development Resource](#).