

**The American Occupational Therapy Association
Advisory Opinion for the Ethics Commission**

**Ethical Considerations When Occupational Therapists
Engage in Business Transactions with Clients**

Introduction

Selling products to recipients of occupational therapy services requires an awareness of the various regulatory and ethical issues that guide how occupational therapists and occupational therapy assistants may engage in this business. Selling equipment and supplies to clients has become a common business activity for many occupational therapy practitioners (i.e., occupational therapists and occupational therapy assistants).

However, careful consideration must be made to uphold an objective, professional, and therapeutic relationship with clients who require both goods and services. This relationship may become confusing and unclear when practitioners hold outside interests beyond the therapeutic interaction. Having a financial interest in a business venture such as product sales related to occupational therapy while providing occupational therapy services to the client may be perceived as a *conflict of interest*, which exists when there is a “conflict between the private interests and the official or professional responsibilities of a person in a position of trust” (*Merriam-Webster’s Dictionary of Law*, 1996). When conflict of interest occurs in business matters such as these, a practitioner’s professional integrity may be questioned if care has not been given as to how the equipment, supplies, or other items were sold to clients. Moreover, if financial benefits exceed acceptable reimbursement rates, this could be indicative of impaired or altered professional judgment by the practitioner.

The Issues

A variety of products may be sold by occupational therapists directly to their clients, such as adaptive, durable medical, and exercise equipment, as well as books. Less common and sometimes questionable items, such as pain-relieving magnets and aromatherapy supplies, also may be sold to clients. Serious ethical questions can arise when selling products to clients while providing professional services. Thoughtful reflection on the responses to the following types of questions can be helpful in determining the appropriateness of this behavior.

- What types of products are being sold?
- If the item is related to a client’s therapeutic goals, should the product be sold to the client by the therapist providing the services?
- Should the therapist hold ownership in the company from which the product is being sold?

The answers to these questions help clarify if financial interest in completing this transaction is influencing the therapeutic recommendation. These questions are not easily answered and are further complicated by the increased emphasis toward less-traditional occupational therapy

practice settings. This emphasis has led to greater opportunities for occupational therapy practitioners to sell both goods and services to recipients of their services.

In situations in which an occupational therapy practitioner also assumes the role of product vendor, clients will need to be assured that the practitioner has adhered to compliance regulations. For example, as a vendor, a practitioner may be required to provide the client with documentation of written warranty information; policies for complaints, questions, returns, and repairs; nondiscrimination policies, a consumer bill of rights, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, P.L. 104-191) compliance regulations. Practitioners need to be aware of all of the Federal Trade Commission and or state consumer protection agencies' rules and regulations for product safety and liability.

Another potential area for concern is the potential for harm. What happens if a client is injured from the product a practitioner sold to him or her? Practitioners could be subjecting themselves to sanctions or exposure to professional liability issues from federal regulatory agencies such as the Center for Medicare and Medicaid Services (CMS; see <http://www.cms.hhs.gov/default.asp>). The product may require specific standards of infection control such as those regulated by agencies such as the Joint Commission for the Accreditation of Hospitals Organization (JCAHO, 2004–2005). Practitioners also may be required to meet prevailing industry standards as a product vendor, which may require additional state licensure. For example, durable medical equipment vendors must meet CMS standards if they want to bill CMS for the equipment. Items must be medically necessary and prescribed by a physician. The vendor must demonstrate adherence to a variety of rules and regulations ranging from product safety, storage of equipment, patients bill of rights (i.e., right to refuse equipment), complaint process and return policy.

The *Standards of Practice for Occupational Therapy* (AOTA, 2005b) supports practicing according to association and institutional policies and other relevant documents. When selling products, practitioners may be in a position to use their referral base as a source for potential customers. In such cases, it would be critical to use this source objectively, considering the existing trust that clients have for practitioners. Occupational therapy practitioners have an ethical obligation to inform clients (i.e., disclose) of outside business relationships that may give the appearance of conflict of interest and to ensure service recipients that therapeutic decisions are devoid of coercion. Whether financial interest in the business transaction is for direct or indirect monetary gain, practitioners' disclosures must be completely transparent.

The AOTA *Occupational Therapy Code of Ethics* (AOTA, 2005a; e.g., Principles 2A and B, 6B and C) require that practitioners disclose financial conflicts of interests that may involve clients. Because of the broad spectrum of this topic, several principles from the AOTA Code (AOTA, 2005a) as well as values from the *Core Values and Attitudes of Occupational Therapy* statement (AOTA, 1993) are applicable to the issue of selling goods and services to clients:

<p><i>Principles from the Occupational Therapy Code of Ethics (2005) Applicable to Selling Goods and Services to Clients</i></p>	
<p>2. Occupational therapy personnel shall take measures to ensure a recipient’s safety and avoid imposing or inflicting harm. (NONMALEFICENCE)</p>	<p>Occupational Therapy Personnel Shall:</p> <p>2A. Maintain therapeutic relationships that shall not exploit the recipient of services sexually, physically, emotionally, psychologically, financially, socially, or in any other manner.</p> <p>2B. Avoid relationships or activities that conflict or interfere with therapeutic professional judgment and objectivity.</p>
<p>3. Occupational therapy personnel shall respect recipients to assure their rights. (AUTONOMY, CONFIDENTIALITY)</p>	
<p>6. Occupational therapy personnel shall provide accurate information when representing the profession (VERACITY)</p>	<p>Occupational Therapy Personnel Shall:</p> <p>6B. Disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.</p> <p>6C. Refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive, or unfair statements or claims.</p>

Primary among the core values are *Justice* and *Altruism*. “Justice places value on the upholding of such moral and legal principles as fairness, equity, truthfulness, and objectivity. This means...we maintain a goal directed and objective relationship with all those served” (AOTA, 1993, p. 1086). It is important for practitioners to reflect on their therapeutic practice and business interests to ensure that the two are clearly separate and that clients have full disclosure and information on both.

Occupational therapy practitioners have a “duty” and an obligation to provide occupational therapy services in an altruistic manner to clients. Altruism is one of seven core concepts that guide the values, actions, and attitudes of occupational therapy practitioners. (AOTA, 1993). Occupational therapy interventions should be goal directed, avoiding any perceived potential to

exploit recipients of service for financial gain. Participating in activities outside of this focus may damage the therapeutic relationship according to Principle 2A of the Code (AOTA, 2005a). According to JCAHO (2004–2005), *exploitation* is defined as “taking an unjust advantage of another individual for one’s own advantage or benefit” (p. GL7). Health care providers have an obligation to protect clients from real or perceived abuse, neglect, or exploitation from anyone. Individuals who operate a private occupational therapy practice and sell therapeutic supplies and equipment to clients must ensure that the items are necessary for the clients return to function; that the amount charged for products is fair and reasonable according to industry standards and practices; and that disclosures meet all of the legal, federal, and professional requirements.

Case Scenario and Discussion

An occupational therapist who works in a private practice setting also is part owner of a durable medical equipment company. She recommends to a client the need to purchase certain items to enhance functional performance in home safety and provides the client with the name of her company as a resource for this equipment. She does not tell the client of her financial holdings in this company, nor does she provide a list of other vendors who also can supply the same equipment.

The client follows the occupational therapist’s instructions and purchases the equipment. Later, when the client receives the invoice for the equipment, he notices that the therapist is listed as an owner of the company. The client calls and expresses anger in the occupational therapist failing to inform him of her financial holdings in the company.

Disclosure of the occupational therapist’s role in this company may have prevented the client from feeling exploited. It is possible that the situation could have been avoided by offering a list of other potential vendors from which the client could make the purchase. Doing so could avoid the perception of impropriety and enable the client to make an informed decision, which is supported by Principles 2B and 3 of the Code (AOTA, 2005).

According to Principle 6B, occupational therapy personnel shall “disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship” (AOTA, 2005, p. 5). “Disclosure would at least be unlikely to have as corrosive an effect on that trust as would clients learning of the same undisclosed and apparently hidden conflict” (Brock, 1990, p. 35). What would happen if this client were referred to the therapist in the future? Would the objective therapeutic relationship be compromised? Would the client respect the therapist’s role as his health care provider (Fidelity)? The trust so critical to a therapeutic relationship may be breached and ultimately reflect negatively on the profession of occupational therapy and those that provide services (Principle 6D).

Guidelines to the Occupational Therapy Code of Ethics

The *Guidelines to the Occupational Therapy Code of Ethics* (AOTA 2006, in press) are overarching statements of morally correct action intended to help practitioners attain a high level of professional behavior. The guidelines can be applied to complex situations in which further clarification of perplexing problems would be helpful. Guideline 6, Conflict of Interest, states

that “avoidance of real or perceived conflict of interest is imperative to maintaining the integrity of interactions”(AOTA 2006, in press). Guideline 6.2 states that “occupational therapy personnel shall not take advantage of or exploit anyone to further their own personal interests” (AOTA, 2006, in press). Truthfulness (Veracity) is demonstrated by being accountable, honest, forthright, accurate, and authentic in our attitudes and actions (AOTA, 2003).

Engaging in business ventures in a competitive health care environment obligates occupational therapy practitioners to become educated in all of the rules and regulations that govern these endeavors. Practitioners must become educated on the ethics of prudent practice as well as appropriate business behaviors such as disclosure when dual roles of practitioner and entrepreneur are assumed. For example, maintaining objectivity can become clouded if a practitioner prescribes a wheelchair for a client and also sells this equipment to the client. Are the practitioner’s intentions to provide the proper basic wheelchair, or is he motivated by profit to provide the most expensive wheelchair covered by the client’s insurance?

Medicare regulations stipulate that practitioners should not engage in “self-dealing.” According to Goldman (2004, italics added), “*self-dealing* occurs when a decision maker is motivated in part for personal gain and not entirely on what is good for the company” (client). Financial rewards can be quite tempting but may be a breach of the honesty and trust that are a professional responsibility toward those whom occupational therapy practitioners serve.

Further, “[occupational therapists]. . .have a fiduciary responsibility to safeguard the well-being of beneficiaries, and health professionals may not engage in self-dealing” (Baker, Caplan, Emanuel, & Latham, 1999, p. 182). When potential conflicts arise, fiduciaries are required to make a full disclosure of the conflict. According to Edge and Groves (1999),

A fiduciary relationship is a special relationship of loyalty and responsibility that is formed between the client and practitioner. The client has the right to believe that the practitioner will maintain a higher level of accountability in regard to health care than that expected from most other relationships. (p. 296, italics added)

A critical point made by Sulmasy (1993) about physicians and the selling of goods and services, is that

The client is an exceptionally vulnerable person in the hands of the physician. The client entrusts his body, his dignity, and his secrets to you. The physical effects of being ill compound this vulnerability, affecting to varying degrees the client’s decision-making, communicative, and motor capacities in ways that always limit, even minimally, the autonomous agency of the individual who is sick. (p. 32)

According to Principle 2 of the Code, “OT personnel shall take reasonable precautions to avoid imposing or inflicting harm upon the recipient of services or to his or her property” (Nonmaleficence; AOTA, 2005, p. 640). So conceivably, Sulmasy’s point of view is appropriate to occupational therapy practitioners as well.

Conclusion

This advisory opinion is not intended to exclude occupational therapists from entrepreneurial ventures; instead, it is intended to educate them on the numerous issues related to product sales and potential ramifications if conducted in a manner contrary to industry standards. Business, professional, and legal issues should be considered when conducting business for profit with clients.

Occupational therapy practitioners' behavior is representative of the therapeutic relationships they seek to achieve as well as a demonstration and reflection of the profession of occupational therapy. Practitioner's have an obligation to cause no harm, real or perceived, toward clients and to retain public trust. Participation in behaviors that may cast a shadow or negatively reflect the professional standards that practitioners seek to uphold should be avoided. "Professionalism extols attributes such as being knowledgeable and skillful; altruistic; respectful; honest; compassionate; committed to excellence and on-going professional development; and showing a responsiveness to the needs of clients and society that supersedes self-interest" (Jecker, 2004, pp. 47–48). It is, therefore, always important for occupational therapy practitioners to ask "to what end do these interactions contribute to the therapeutic goals?"

"Our professional training provides us with the skills and obligation to maintain objectivity and transparency in all interactions. We must adhere to our professional boundaries and remain committed to maintain appropriate limits...with clients or their families" (Purtilo & Haddad, 2002, p. 213).

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