

Legal Aspects of Occupational Therapy

Third Edition

Bridgit Dimond

MA, LLB, DSA, AHSM, Barrister-at-law,
Emeritus Professor of the University of Glamorgan

 **WILEY-BLACKWELL**

A John Wiley & Sons, Ltd., Publication

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Foreword

Few will have failed to notice that we live and work in an increasingly litigious world. And while some might argue that legislation gives rise to burgeoning bureaucratic processes and a risk-adverse approach, others will recognise the role legislation plays in driving up the standards which govern our society.

Occupational therapy, alongside other health and social care professions, must be practised in a safe, ethical and transparent manner with due attention being paid to the rights of those receiving services. As undergraduates, occupational therapists will be offered an overview of key legislation relating to practice, and as students and later as qualified professionals they must be able to demonstrate an understanding of the legislative framework, as well as the application of the law, in relation to their particular working environment. From meeting a service user for the first time and agreeing a plan of intervention, through recording and implementing that plan, and dealing with the ensuing challenges and complexities, occupational therapists must be able to show that they work within the law.

Whether they be students, newly qualified practitioners, clinical experts, managers of services, educators or researchers, there will be aspects of the law that apply to their activities.

This book, with its guidance on all of the key legislation that currently applies to occupational therapists, is an essential guide to practice within a safe and lawful context. It will help therapists define the relevant legislation, clarify the associated duties incumbent upon them, assess risk and deliver their planned interventions in an appropriate and lawful manner. Once opened and consulted for the first time, I am confident that it will become an invaluable text for those within our profession, ensuring safe and lawful interventions and a true understanding of the legal context that applies to a broad spectrum of occupational therapy practice.

Julia Scott
Chief Executive, College of Occupational Therapists
May 2010

Preface to Third Edition

The aim of the third edition of this book is to provide an updated outline of the law relating to occupational therapy practice which is of direct relevance to occupational therapists (OTs). This third edition addresses the law relevant to occupational therapy against the complex background of major organisational and legal changes in health and social care. Further significant changes have occurred within the NHS and social services and in statute and case law over the past few years and this third edition attempts to cover these from the perspective of the OT. We at last have the legislation covering decision making on behalf of mentally incapacitated adults in the form of the Mental Capacity Act 2005, and the Mental Health Act 2007 makes significant changes to the Mental Health Act 1983, notably the introduction of supervised community treatment orders and independent mental health advocates.

As for the first and second editions, no previous legal knowledge is required and a similar format is followed for this edition. A new chapter covering pain management, palliative care and legal aspects relating to death has been added. It is hoped that this third edition will continue to prove to be a book for readers to dip into according to their needs and will provide the foundation for an ongoing development of legal knowledge.

Language is an important vehicle for demonstrating current philosophies and attitudes. I have preferred to use the term 'patient' or 'client' as appropriate to the context, rather than the term 'service user' which, to my mind, places those who receive health and social care on a par with railway commuters or gas and electricity consumers. Whilst the politically correct modern terminology does not recognise that certain individuals 'suffer' from specific conditions or are regarded as physically or mentally disabled, the law has not yet caught up with the modern language. Thus compensation is paid in negligence cases for 'pain and suffering'; the Chronic Sick and Disabled Persons Act 1970 is still the principal legislation on the duties of local authorities; the Disability Discrimination Act 1995 defines what is meant by a 'disabled person'; the Mental Health Act 1983 is concerned with the compulsory admission of those with mental disorder and with mentally disordered offenders; and the more recent Carers and Disabled Children Act 2000 still uses language which may not be acceptable to many occupational therapists.

I have therefore adopted the strategy that where legislation is being referred to, or cases cited, it is necessary to use the language used in that legislation. However, where the context permits, people are referred to as having disabilities or mental health issues, rather than being physically or mentally disabled.

Finally, modern usage suggests there are no 'elderly' people, instead there are 'older persons'. This may not be linguistically correct, since an 18-year-old is an older person in relation to a person below 16, but again where the context permits I have bowed to political correctness. The law has still not caught up with modern politically correct usage.

Preface to First Edition

Occupational therapists in the past have not sufficiently conveyed to the general public the complexity, extent and significance of their work in health and social care. Their contribution extends from the field of special care babies to the care of the elderly and bereaved and all intermediate stages of health, illness and social need, between birth and death. The legal issues which may arise are therefore vast and cover many areas of specialist law. It has been my task to provide the occupational therapist practitioner, student, manager and those in related professions and posts with an introduction to the laws which relate to the practice of occupational therapy. It is assumed that the reader will have no previous legal knowledge and a glossary has been provided to explain some of the technical legal language. It is essentially a book which is concerned with the practical aspects of the law as it applies to occupational therapy and examples of the specific legal concerns are derived to a considerable extent from the many questions raised with me by occupational therapists across the country. The anticipation is that this introduction to the law will enable the occupational therapist to develop the knowledge and awareness of the legal implications of her practice so that she can protect both her client and herself.

Terminology in relation to gender always causes concern and I have recognised the fact that the profession is mainly female and thus referred to the occupational therapist as 'she' or 'her'. This should be interpreted as including 'he' and 'him'. Persons cared for by occupational therapists are variously called 'patients, clients, residents, customers and consumers' and I have in the main used the term 'client', but where the context makes other terms more appropriate I have used these.

The statutory changes which took place in 1990 with the introduction of the internal market into healthcare and the developments within community care are still working their way through the role and profession of the occupational therapist. Further major changes are to come with a major reorganisation of the regulation of the professions supplementary to medicine. It is hoped that the knowledge obtained from this book on the law applying to occupational therapist will enable the reader to meet these challenges and continue to develop a comprehensive and high quality service to her clients.

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Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
ACOP	Approved Code of Practice
ACPC	Area Child Protection Committee
ADL	activities of daily living
AHP	Allied Health Professions
AOMH	Association of OTs in Mental Health
BAOT	British Association of Occupational Therapists
BCMA	British Complementary Medicine Association
CAFCASS	Child and Family Court Advisory and Support Service
CAM	complementary and alternative medicine
CDRP	Crime and Disorder Reduction Partnerships
CHAI	Commission of Healthcare Audit and Inspection
CHC	Community Health Council
CHI	Commission for Health Improvement
CNHC	Complementary and Natural Healthcare Council
CNST	Clinical Negligence Scheme for Trusts
COPE	Committee on Publication Ethics
COREC	Central Office for Research Ethics Committees
COSHH	Control of Substances Hazardous to Health
COT	College of Occupational Therapists
CPA	care programme approach; comprehensive performance assessment
CPD	continuing professional development
CPPH	Commission for Patient and Public Involvement in Health
CPR	Civil Procedure Rules
CPS	Crown Prosecution Service
CPSM	Council for Professions Supplementary to Medicine
CSCI	Commission for Social Care Inspection
CTO	community treatment order