



Investigations and Resolutions

An Open Approach



College of Occupational Therapists of Ontario

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Competent
Committed*

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*College of Occupational
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Introduction

This booklet provides an overview of the approach the College of Occupational Therapists of Ontario takes in investigating and resolving concerns and complaints about an occupational therapist and her/his practice. There are different kinds of concerns and complaints, and various approaches the College takes in investigating and resolving them. This booklet outlines these different situations and processes. We hope that this booklet will help answer any questions that you may have. If you need more information, please contact the College (see back page for contact information), or visit our Web site at www.coto.org.



The Role of the College

The College of Occupational Therapists of Ontario is responsible for regulating the practice of occupational therapists under legislation known as the *Regulated Health Professions Act* (RHPA). This means that the College makes sure that certain standards and guidelines are in place, and that occupational therapists who are registered with the College practice according to these standards and guidelines. All occupational therapists who practice in Ontario must be registered with the

College and use the title designation “OT Reg. (Ont.)”. Individuals who are not registered cannot use the professional designation, nor may they use the title “Occupational Therapist” or “OT”.

A key role of the College is to manage concerns and complaints about occupational therapists who are registered with the College. Concerns can be raised by any member of the public (such as individuals who have used the services of an occupational therapist), a colleague, or an employer. To protect the public interest, the College must give serious consideration to every concern or complaint brought to its attention, and ensure a fair and just review process. The College plays a neutral role in order to provide reasonable assurance to the public, the profession, other health professionals, and employers, that occupational therapists in Ontario practice safely and competently. The investigation and resolution process is *one* way that the College promotes and supports good practice. Information resources and quality assurance tools are also available to occupational therapists through the College.

Structure

All concerns and complaints that are received by the College should be addressed to the Registrar's Office. The Registrar is ultimately accountable for the College's administration of the Investigations & Resolutions processes. The Registrar also ensures that the role of the College is clear, that the public is educated about occupational therapy practice, and that resources are available to assist individuals (including occupational therapists) to work through the system of standards and guidelines when necessary. A Manager of Investigations & Resolutions works with the Registrar to manage the investigations processes, including gathering enough information to decide which committee within the College should consider the concern or complaint; managing all files for complaints and concerns that are being considered by the College; ensuring that all activity for each file is tracked properly; and coordinating Committee and panel meetings, mediations and hearings. The Manager of Investigations & Resolutions also assists with the external appeal process when necessary.

The *Regulated Health Professions Act* (RHPA) describes the responsibilities of several Committees which direct the College's work related to investigations and resolutions. These Committees include the Executive, Complaints, Discipline, and Fitness to Practise Committees, as well as the Board of Inquiry. Within their different roles, Committee members form a panel to review the case file for each concern or complaint. Panel sizes vary; however, a minimum of three people sit on every panel, including one member of the public who has been appointed to the College's governing Council by the Ontario government.

Confidentiality and Security

All information received, produced or requested by the College in the course of investigating and resolving a concern or complaint is treated in a confidential and sensitive manner. Under the *RHPA*, all Committee members and all staff are bound by obligations to manage information and materials with the greatest respect for privacy and security. All data bases, files, mailings, and discussions are managed with this in mind.



Types of Concerns

There are different types of concerns about the practice of an occupational therapist. The processes for addressing these concerns can involve different departments of the College, and are governed by different parts of the *RHPA*. The Registrar or the Manager of Investigations & Resolutions helps all individuals who contact the College with a concern by:

- helping to clarify or define the specific concern or complaint;
- reviewing the investigation and resolution process, and the potential results;
- recommending alternatives for resolution, if they exist (such as complaining directly to the registrant's employer; using an arbitrator in the insurance system; or using the courts for a financial settlement); and/or
- helping the person to better understand what they can expect from a competent occupational therapist.

Concerns usually focus on one of three areas:

Misconduct

"Misconduct" refers to instances when an occupational therapist ignores the basic rules of practice. Examples of misconduct could include failing to keep information about a client confidential, suddenly refusing to provide service to a client, working while in a conflict of interest, or treating a client without obtaining consent. Unprofessional behaviour, such as yelling at a client, is also considered to be misconduct.

Poor Practice

Occupational therapists are expected to have, and to continually develop, the knowledge, skills and judgement they need to practice safely and competently. "Poor practice" is measured against written standards of practice, and against practice that is generally accepted as reasonable by occupational therapists with experience in the area of concern. Poor practice includes:

- care that does not reflect acceptable standards;
- inappropriate or incompetent care that does not meet the generally accepted standards of practice within the profession.

Poor Health

Occasionally an occupational therapist may suffer from a disability or disease which interferes with her/his ability to provide the type and quality of care needed by a client. A concern may be brought forward by a client, a colleague or an employer if the therapist does not seem to be able to provide the appropriate care and appears to be placing her/his clients at risk. An example is substance abuse.

Addressing Concerns and Complaints

Formal Complaints

If, after speaking with the Registrar or the Manager of Investigations & Resolutions, a person wants to proceed with a concern or complaint, they must make a “formal complaint”. A formal complaint must be received by the Registrar in writing, or recorded on a tape, film, or disk. The information that the Registrar receives should clearly state that it is a complaint. The formal complaint should include the name of the occupational therapist (the “registrant”), the details of each incident which occurred (for example, the date, time, place, service being provided, other individuals involved), and the name of the person who is making the complaint (the “complainant”). All supporting documents or materials should be sent to the College. The College *must* consider every complaint it receives.

There is no time limit for filing a complaint; however, complaints about incidents that took place before December 31, 1993 cannot be accepted by the College as it did not exist before that date.

Once a complaint about a therapist has been received, the Investigations & Resolutions team will:

- confirm that the therapist is registered with the College;
- clarify the information received, and provide the registrant with a copy of the complaint.

The registrant has the opportunity to respond to the issues raised within a 30-day period. A copy of the registrant’s response to the complaint is provided to the complainant for any additional remarks.

Once this information is gathered from the registrant and the complainant, it is sent to the Complaints Committee for review. A panel is formed to review the complaint. The panel may decide that further investigation is needed. Further investigation may include such things as:

- seeking an expert opinion;
- requesting additional information;
- interviewing individuals involved in the complaint.

Once the panel has collected all of the necessary information, it considers the complaint, and then makes one of the following decisions:

- to dismiss the complaint;
- if both the registrant and the complainant agree, to settle the complaint through mediation;
- to give a written and/or verbal “caution” to the registrant. A caution provides the registrant with advice about their practice;
- to negotiate a contract (undertaking) with the registrant related to their practice;
- to refer the case to the College’s Quality Assurance Committee for competency assessment;
- to refer the case to the Discipline Committee for action if there is enough evidence for a charge of professional misconduct or incompetence against the registrant;
- to refer the case to the Executive Committee for further action if there is enough evidence that the registrant may be mentally or physically unable to practice.

Incapacity Concerns

The College may learn of a concern about a registrant’s mental or physical ability to practice through:

- a mandatory report;
- information that is given to the Registrar;
- information that is provided by the Complaints Committee.

When this happens, the Registrar collects and studies the necessary information, and provides a written report to the Executive Committee.

After it has considered the report, the Executive Committee may choose to:

- investigate further;
- appoint a Board of Inquiry;
- take no further action.

If the Executive Committee decides to investigate or appoint a Board of Inquiry, the registrant is given an opportunity to respond and participate in the process. The Board of Inquiry is made up of one public member of the College Council (appointed by the Ontario government), and two occupational therapists. The Board’s role is to fully investigate the concern. Where appropriate, the Board may ask the registrant to participate in a medical and/or psychological examination to determine the extent of the registrant’s illness. If asked, the registrant *must* have the examination. The Board makes a report of its findings to the Executive Committee.

Once the Executive Committee has all the information it needs, it can make one of the following decisions:

- to take no further action;
- to negotiate a settlement between the College and the registrant;
- to refer the case to the Fitness to Practise Committee if there is enough evidence to show that the registrant is incapable;
- to refer the case to the Discipline Committee if there is enough evidence to support a charge of professional misconduct or incompetence.

Mandatory Reports

Under the law, there are two situations that must be brought to the attention of the College for possible action. In these cases, a “mandatory report” is given to the College:

- No sexual abuse of clients is acceptable, and it must be reported to the College. “Sexual abuse” includes comments or touching of a sexual nature, as well as sexual intercourse. Any regulated health provider (such as an occupational therapist, a doctor, nurse, etc.), or the employer of a provider, must report any *reliable* information about abuse if they know the name of the occupational therapist who may have abused the client. It is best when the therapist’s client also gives permission for her/his name to be given to the College as this makes it easier for the College to investigate and resolve the issue. Providers and/or employers who know about possible sexual abuse must report it to the College within 30 days or they may be fined up to a maximum of \$25,000. You can get more information on the College’s sexual abuse prevention program by contacting the College (see back page).

- A mandatory report must be also be provided to the College when an employer, partner or associate of a registrant ends the registrant's employment because of poor performance. Further, the registrant must also be reported to the College if she/he leaves the job while under duress, involved in a program to improve their job performance, or if there are allegations of misconduct against them.

The Registrar informs the Executive Committee of the mandatory report. After it has reviewed all of the information received, the Executive Committee may decide that it needs more information in order to make a decision. The Executive Committee may ask for an investigation plan to be developed and implemented under the supervision of the Registrar.

The person who first provides the mandatory report to the College does not participate in the process of addressing the issue or complaint, unless they are asked to be a witness or to provide more information. She/he does not have access to information while the concern is being addressed by the College, and does not get a copy of the final decision.

Once the Executive Committee has all the information it needs or has asked for, the Executive Committee makes one of the following decisions:

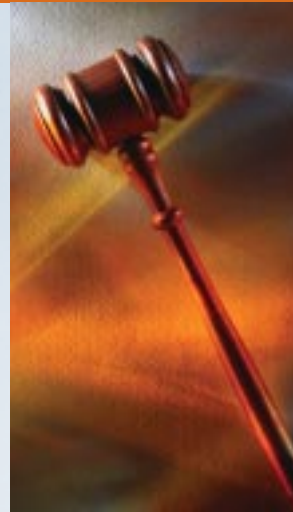
- to take no further action;
- to negotiate a settlement between the College and the registrant;
- to appoint a Board of Inquiry if incapacity is indicated;
- to refer the case to the College's Quality Assurance Committee for competency assessment;
- to refer the case to the Discipline Committee if there is enough evidence to charge the registrant with professional misconduct or incompetence.

General Concerns

Sometimes the College receives an anonymous concern about a registrant. These concerns are difficult to address, because the College does not have the name of the person who made the complaint, and there may be few witnesses. The Registrar or his/her representative may make initial inquiries about the concern based on the information available. The concerns may be sent to the Executive Committee so it can decide if further investigation is required. If the Executive Committee decides to investigate, the registrant is notified after the investigation is finished, and is given the opportunity to answer the College's concerns at that time.

Once the Executive Committee has all of the information and the registrant's response, it decides to do one of the following:

- to take no further action;
- to appoint a Board of Inquiry;
- to negotiate a settlement between the College and the registrant;
- to refer the case to the College's Quality Assurance Committee for competency assessment;
- to refer the case to the Discipline Committee if there is enough evidence to charge the therapist with professional misconduct or incompetence.



Investigations

A complaint, concern or mandatory report about an occupational therapist often results in an investigation. Investigation plans are different depending on the situation. Some may be as simple as collecting additional paperwork; others require interviewing several clients, co-workers, or team members where the therapist works. The College understands that any type of investigation can intrude on the personal and professional life of the therapist; therefore, the College develops plans to gather only the information that is necessary and useful for addressing the issue.

The panel that works on a concern guides the Registrar and/or the Manager of Investigations & Resolutions in developing the investigation plan. Investigators are trained so that they understand the role of the College in an investigation. The investigator always identifies herself/himself during the investigation by showing

a notice of appointment and a College business card to anyone she/he must interview or get information from.

Written investigation reports are provided to the panel to help it make a decision. Reports are not usually released for review by those directly involved in the process unless the report identifies a new issue that needs further response from the registrant, or it is entered as evidence at a College hearing.

Alternate Dispute Resolution

This College uses every opportunity to resolve a concern or complaint so that the College, the registrant, and the person who made the complaint are all satisfied. The College uses cooperative approaches, and tries to resolve concerns quickly. Both the registrant and the complainant must agree before the complaint can be settled through a mediator. The College uses a skilled mediator who plays a neutral role, and keeps discussions focused on only those needs and interests of each person that will help resolve the issue. When an agreement is reached, it must be approved by the referring committee panel to make sure that it serves the public interest.

Mediation is not used where concerns involve criminal activity, sexual abuse or serious professional misconduct.

Hearings

Hearings are held by panels of either the Discipline or Fitness to Practise Committees when serious matters of conduct, competence or capacity must be resolved. Panels include both public members of Council (appointed by the Ontario government) and representatives elected or appointed by the profession. Hearings are formal, and usually involve lawyers for both parties. Panel members review the case, may hear from witnesses, and may be presented with exhibits. Frequently, the College and the registrant will attempt to come to a mutual agreement on the facts of the case, and on appropriate penalties. This can shorten the length of the hearing, while maintaining protection of the public.

If a registrant is found guilty, the panel decides on a penalty for the registrant:

- the registrant may receive a formal reprimand, which is placed on the public register, and is therefore available for any member of the public to see;
- certain terms, conditions and limitations may be put on the registrant's practice (such as reduced hours of practice, or limitations of practice to a single area of skill);
- the registrant may not be allowed to practice for a period of time;
- the College may "revoke" — or withhold — the registrant's registration;
- an order may be made for the registrant to pay some costs for the College process. There will likely be additional fines if sexual abuse of a client or financial misconduct is proved.

Discipline hearings are open to the public. They are advertised by the College in a local newspaper in the geographical area where the registrant practices, and on the College's Web site. Fitness to Practise hearings are closed to the public, and the decisions reached are oriented towards rehabilitation, rather than reprimand. Fitness to Practise decisions are made public only if terms, conditions or limitations are placed on the registrant's certificate of practice.

Decisions

Formal written decisions are provided when the Executive Committee or the Complaints Committee reaches a conclusion on a concern or complaint. The size and detail of the written decision depends on the complexity of the case. Decisions are provided to individuals who are *directly* involved in the process. For example, a complainant will always receive a copy of the decision; the occupational therapist involved will always receive a copy of the decision; but an employer making a mandatory report will not receive a copy of the decision.

In most circumstances, decisions of the Discipline Committee are public and a summary is available upon request from the College. Summaries are also included in the College's annual report, and are published on the College's public register and Web site, and in the College's magazine. All other decisions are not made public, but are enforced through the Registrar of the College. All decisions are kept on file by the College.

Appeals

Decisions of the Complaints, Discipline and Fitness to Practise Committees can be appealed by anyone directly involved in the concern. The process for appeal is different depending on which type of panel or Committee was involved in the decision. Instructions for the appeal process are always provided in writing to the individuals involved.

For More Information

For more information, or if you have questions, please contact the College at:

College of Occupational Therapists of Ontario
10 Bay Street, Suite 340
Toronto, Ontario M5J 2R8
Tel: 1-800-890-6570 x. 223
or 416-214-1177 x. 223
Confidential Fax: 416-214-0586
e-mail: investigations@coto.org (This address should not be used for confidential correspondence such as formal complaints.)
Web site: www.coto.org

Other Resources

Fact sheets on various aspects of the Investigations & Resolutions processes are available on the College of Occupational Therapists of Ontario Web site: www.coto.org.

Copies of the RHPA and other legislation can be obtained from:

Publications Ontario - Government of Ontario Bookstore
50 Grosvenor Street
Toronto, Ontario M7A 1N8
Tel: 416-326-5300
1-800-668-9938

Government of Ontario, Ministry of Health
Web site: www.gov.on.ca/health/index.html

Occupational therapists may also wish to consult or seek assistance from:

Ontario Society of Occupational Therapists (OSOT)
55 Eglinton Avenue East, Suite 210
Toronto, Ontario M4P 1G8
Tel: 416-322-3011
Fax: 416-322-6705
e-mail: osot@osot.on.ca
Web site: www.osot.on.ca

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