

Professional Misconduct Regulation (draft no. 2)

O F F I C I A L R E G U L A T I O N

C o l l e g e o f O c c u p a t i o n a l T h e r a p i s t s o f O n t a r i o

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Regulation Made Under the *Occupational Therapy Act, 1991*

1. The following are acts of professional misconduct for the purposes of clause 51 (1) of the *Health Professions Procedural Code*:

P R A C T I C E I S S U E S

1. For the purpose of paragraph 1, the College adopts by reference the Codes and Standards published by the College, as amended from time to time, whether made before or after this regulation, as standards of practice with which members must comply.
2. For the purpose of paragraph 1, the College adopts by reference the Codes and Standards published by the College, as amended from time to time, whether made before or after this regulation, as standards of practice with which members must comply.
3. Abusing a client verbally, physically, psychologically or emotionally.
4. Engaging in sexual misconduct or sexual harassment involving others with whom the occupational therapist has a professional relationship or a position of power or trust.
5. Doing anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose without informed consent from the client or his or her authorized representative or as required or allowed by law.
6. Giving information about a client to a person other than the client or his or her authorized representative except with the consent of the client or his or her authorized representative or as required or allowed by law.
7. Failing to provide a truthful, understandable and appropriate explanation of the nature of the assessment, intervention, or other service following a client's request for an explanation.
8. Discontinuing professional services that are needed unless it is appropriate to do so or arrangements for client continuity of care have been met.

Examples include:

- the client requests the discontinuation and sufficient time for the client to make arrangements for alternative services has been provided to the client.
- Alternate services are arranged.
- The client is given reasonable opportunity to arrange alternative services.
- Services to the client have been discontinued without consultation to the member.
- The client can no longer meet agreed upon terms of payment, and all reasonable attempts, including reasonable notice on the part of the member to facilitate such payment have been unsuccessful.
- The client has been given reasonable opportunity to achieve set client goals.
- The facility providing services has exhausted the resources allocated to those services and sufficient time for the client to make arrangements for alternative services has been provided to the client.

Areas of Change Noted

1. "Guidelines" was removed from this section as a result of registrant feedback and the subsequent debate at Council. Current guidelines will be reviewed to determine if they should remain as a guideline or be revised as a standard.
2. "Guidelines" was removed from this section as a result of registrant feedback and the subsequent debate at Council. Current guidelines will be reviewed to determine if they should remain as a guideline or be revised as a standard.
8. First sentence – "or" has replaced "and".
The following "and sufficient time for the client to make arrangements for alternative services is provided to the client" has been added to the first and last bullets.

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13. This section was in the original regulation but was not included in the draft regulation as it would have been covered in section 2 under guidelines. As guidelines will no longer be included, it is necessary to reinstate this section.

16. The "selling of services" has been added to this section.

[22.] This section has been removed from the 2nd draft as College interest for the public relates primarily to excessive fees or fraudulent behaviour. Further, the College understands that this is a business practice which in some cases may be appropriate.

[24.] See section [22] above for explanation.

9. Providing the professional service if the client requests services inconsistent with the standards of practice of the profession.
10. Continuing treatment of a client where it is no longer indicated or treatment has ceased to be effective, or providing unnecessary treatment.
11. Treating or attempting to treat a condition that the member knows or ought to know is beyond his or her expertise or competence.
12. Failing to advise the client to consult with a regulated health professional when the member recognizes or ought to recognize a condition that is beyond the competence or experience of the member or that requires such a consultation to ensure the proper care of the client.
13. Failing to supervise an assistant appropriately.
14. Permitting, counselling or assisting any person who is not a member to hold himself or herself out as a member of the profession.
15. Signing or issuing, in the member's professional capacity, a document that the member knows, or ought to know, contains a false or misleading statement.
16. Recommending or selling services or equipment for an improper purpose.
17. Failing to advise a patient or a member of the public, when requested, as to the procedure for submitting a complaint to the College.
18. Failing to supply in writing, when requested by a patient or member of the public, the address and telephone number of the College.
19. Practicing the profession while the member is in a conflict of interest.

BUSINESS PRACTICES

20. Submitting an account or charge for services that the member knows is false or misleading.
21. Charging a fee that is excessive in relation to the service provided.
22. Sharing fees with a person who has referred a patient or receiving fees from any person to whom a member has referred a patient or requesting or accepting a benefit for the referral of a patient.
- [22. Refusing to perform a professionally necessary service unless all or part of the fee is paid before the service is performed.]
23. Failing to advise the client of the fee to be charged and / or the services covered by the fee or any penalties for late payment prior to providing a service or failing to provide the client with sufficient time to refuse the treatment and arrange for alternative services.
- [24. Selling or assigning any debt owed to the member for professional services. This does not include the use of credit cards to pay for professional services.]
24. Failing to itemize an account for professional services,
 - if requested to do so by the client or the person or agency who is to pay, in whole or in part, for the services, or



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- if the account includes items that are purchased on behalf of clients.
- 25. Offering or giving a reduction for prompt payment of an account.
- 26. Breaching an agreement with a client relating to professional services for the client or fees for such service.

RECORD KEEPING

- 27. Failing to keep records in accordance with the standards of the profession.
- 28. Falsifying a record relating to a member's practice.
- 29. Failing, without reasonable cause, to provide a report or certificate relating to an assessment or intervention performed by the member, within a reasonable time, to the client or his or her authorized representative after a client or his or her authorized representative has requested such a report or certificate.
- 30. Failing to take reasonable steps before terminating practice or resigning as a member, to ensure that, for each client health record for which the member has primary responsibility,
 - the record is transferred to another member, or
 - the client is notified that the member intends to resign and that the client can obtain copies of the client health record.

ETHICAL CONDUCT

- 31. Failing to report an incident of unsafe practice or unethical conduct of an occupational therapist to the College or the therapist's employer or appropriate supervisory authority.
- 32. Making a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported as reasonable professional opinion.
- 33. Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional.
- 34. Conduct unbecoming an occupational therapist.
- 35. Practicing the profession while the member's ability to do so is impaired or while adversely affected by any dysfunction,
 - which the member knows or ought to know impairs the member's ability to practice
 - in respect of which treatment a practitioner registered by a College listed in Schedule 1 of the *Regulated Health Professions Act* has recommended, ordered or prescribed treatment to the member but the member has failed to follow the treatment.
- 36. An act or omission inconsistent with the Act, the RHPA, 1991 or the regulations under either of those acts.

25. This section was in the original regulation and but was omitted in the circulation of the first draft. It is intended to remain in the regulation.

31. OTs will only be responsible for reporting incidents of unsafe practice or unethical conduct pertaining to another occupational therapist and not all regulated and non-regulated health care providers.

37. An act or omission inconsistent with a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the *Public Hospitals Act* if,
- the purpose of the law, by-law or rule is to protect the public health, or
 - the contravention is relevant to the member's fitness to practise.

COLLEGE ISSUES

38. An act or omission inconsistent with the terms, conditions or limitations on the member's certificate of registration.
39. Inappropriately using a term, title or designation in respect of the member's practice.
40. Using a term, title or designation indicating or implying a specialization in the profession.
41. Practicing the profession using a name other than the member's name as entered in the register.
42. Practicing the profession while the member's certificate of registration has been suspended.
43. Failing to comply with an order of a panel of the College.
44. Failing to appear before a panel of the College to be cautioned.
45. Failing to carry out an undertaking given to the College or an agreement entered into with the College.
46. Failing to cooperate with a College investigation.
47. Failing to reply appropriately or within reasonable time to a written inquiry made by the College.
48. Failing to cooperate with an investigator of the College of another health profession listed in Schedule 1 of the RHPA, 1991 who produces a copy of his or her appointment as an investigator under Section 75 of the Health Professions Procedural Code.
49. Directly or indirectly benefiting from the practice of occupational therapy while the member's certificate of registration is suspended unless full disclosure is made by the member to the College of the nature of the benefit to be obtained and prior approval is obtained from the Executive Committee.
50. Having been found to have engaged in an act of professional misconduct or to be incompetent or incapacitated or a similar finding by another governing body in or outside Ontario.