

Discretionary Reporting of Fitness to Drive

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Introduction

Occupational therapists have the authority to report concerns regarding a client's fitness to drive directly to the Ministry of Transportation of Ontario (MTO). Under the *Highway Traffic Act, 1990* (HTA), occupational therapists are identified as "prescribed persons" who may report a "person who is at least 16 years old" and who "has or appears to have a medical condition, functional impairment or visual impairment that may make it dangerous for the person to operate a motor vehicle" (section 203 (2)).

This document summarizes the discretionary reporting expectations for occupational therapists and provides direction for the application of the legislation in occupational therapy practice. This document is not intended to give specific legal advice but rather to provide an overview of the HTA, highlight occupational therapists' roles and responsibilities, and indicate where to obtain further information.

Overview

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Medical Reporting Provisions Under the HTA

Amendments to the HTA outline the requirements for medical reporting of persons who have conditions or impairments that may impact their driving ability. Section 203 of the HTA defines two types of medical reporting: mandatory and discretionary.

Mandatory reporting is a legal requirement to report that pertains to physicians, nurse practitioners, and optometrists:

203 (1) Every prescribed person shall report to the Registrar [of Motor Vehicles] every person who is at least 16 years old who, in the opinion of the prescribed person, has or appears to have a prescribed medical condition, functional impairment or visual impairment.

Under the legislation (*Ontario Regulation 38/18: Drivers' Licenses*), physicians, nurse practitioners, and optometrists must report the following prescribed medical conditions, functional impairments, and

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visual impairments:

1. Cognitive impairment
2. Sudden incapacitation
3. Motor and sensory impairment
4. Visual impairment
5. Substance use disorder
6. Psychiatric illness

Discretionary reporting is not a legal requirement but gives authority for reporting to occupational therapists, physicians, nurse practitioners, and optometrists:

203 (2) A prescribed person may report to the Registrar [of Motor Vehicles] a person who is at least 16 years old who, in the opinion of the prescribed person, has or appears to have a medical condition, functional impairment or visual impairment that may make it dangerous for the person to operate a motor vehicle.

Discretionary reporting is intended to 1) allow occupational therapists, if they choose, to report concerns about a client's fitness to drive and 2) allow occupational therapists, physicians, nurse practitioners, and optometrists to report anything that is not included in the list of prescribed medical conditions, functional impairments, and visual impairments but, in a particular circumstance, raises concerns regarding fitness to drive.

Discretionary Reporting Rules for Occupational Therapists

The HTA describes the expectations for discretionary reporting. For specific legislative references, please see the Appendix. The discretionary reporting rules that apply to occupational therapists are summarized as follows:

- Occupational therapists have the authority to report concerns about a client's fitness to drive directly to the MTO (*Ontario Regulation 340/94: Drivers' Licences*).
- Occupational therapists may report a driver but are not legally required to do so (*Ontario Regulation 340/94: Drivers' Licences*, section 14 (2)).
- Occupational therapists can report a client only if they have met the client for either an assessment or the provision of occupational therapy services (HTA, section 203 (4)).
- Occupational therapists are permitted to make a report without client consent if the occupational therapist believes on reasonable grounds that the disclosure of information is necessary to prevent or reduce risk of harm to the client or others (HTA, section 203 (3)).
- Occupational therapists must submit discretionary reports in the form and manner specified by the MTO. Standardized forms and instructions for submission are available on the MTO website.
- Occupational therapists may report any of the prescribed medical conditions, functional impairments, and visual impairments but are not limited to prescribed conditions. Occupational therapists may report any other medical conditions, functional impairments, or

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visual impairments that raise concerns regarding fitness to drive (HTA, section 203 (2)).

- Prescribed medical conditions are defined as follows:
 1. Cognitive impairment: a disorder resulting in cognitive impairment that,
 - i. affects attention, judgment and problem solving, planning and sequencing, memory, insight, reaction time or visuospatial perception, and
 - ii. results in substantial limitation of the person's ability to perform activities of daily living.
 2. Sudden incapacitation: a disorder that has a moderate or high risk of sudden incapacitation, or that has resulted in sudden incapacitation and that has a moderate or high risk of recurrence.
 3. Motor or sensory impairment: a condition or disorder resulting in severe motor impairment that affects co-ordination, muscle strength and control, flexibility, motor planning, touch or positional sense.
 4. Visual impairment:
 - i. A best corrected visual acuity that is below 20/50 with both eyes open and examined together.
 - ii. A visual field that is less than 120 continuous degrees along the horizontal meridian, or less than 15 continuous degrees above and below fixation, or less than 60 degrees to either side of the vertical midline, including hemianopia.
 - iii. Diplopia that is within 40 degrees of fixation point (in all directions) of primary position, that cannot be corrected using prism lenses or patching.
 5. Substance use disorder: a diagnosis of an uncontrolled substance use disorder, excluding caffeine and nicotine, and the person is non-compliant with treatment recommendations.
 6. Psychiatric illness: a condition or disorder that currently involves acute psychosis or severe abnormalities of perception such as those present in schizophrenia or in other psychotic disorders, bipolar disorders, trauma or stressor-related disorders, dissociative disorders or neurocognitive disorders, or the person has a suicidal plan involving a vehicle or an intent to use a vehicle to harm others (*Ontario Regulation 38/18: Drivers' Licences*, section 3.14.1 (3)).
- Conditions and impairments that are not prescribed in legislation are referred to as discretionary.
- Occupational therapists are **not** expected to report the following:
 - Concerns about a person "whose impairment is, in the [occupational therapist's] opinion, of a distinctly transient or non-recurrent nature" (*Ontario Regulation 340/94: Drivers' Licences*, section 14.1(4))
 - "[M]odest or incremental changes in ability that, in the [occupational therapist's] opinion, are attributable to a process of natural aging, unless the cumulative effect of the changes constitutes a condition or impairment described in subsection (3)" (*Ontario Regulation 340/94: Drivers' Licences*, section 14.1 (5))
- Occupational therapists who make discretionary reports in good faith are protected from

legal actions or proceedings being brought against them for making the reports (HTA, section 204 (2)).

Responsibilities of Occupational Therapists

When an occupational therapist makes a discretionary report, they are not making a determination about a person's driving privileges. A discretionary report made by an occupational therapist provides the MTO with information needed to make a decision about the status of an individual's licence. In some cases, the information provided by the occupational therapist will be sufficient for the MTO to make a decision, while in others, the MTO may request additional information.

Driving is a complex instrumental activity of daily living that, if performed by a person who is not fit to drive, presents a significant risk of danger to the driver and others. In assessing a client's functional abilities, an occupational therapist may identify concerns about fitness to drive. In these situations, the occupational therapist must understand what they are expected to do and what options are available to address such concerns. The authority for discretionary reporting offers occupational therapists one option.

Legal Requirements and Professional Obligations

Occupational therapists are not legally required to make discretionary reports. However, within their scope of practice, occupational therapists are expected to address safety concerns. If an occupational therapist identifies a potential safety issue with a client, such as a concern about fitness to drive, the therapist has a professional obligation to take action to address the concern. This action may or may not include making a discretionary report to the MTO.

Are all occupational therapists required to assess fitness to drive? The short answer is no. The legislation does not require occupational therapists to assess or report fitness to drive concerns to the MTO. The College also does not prescribe the nature and types of assessments that occupational therapists must perform. However, occupational therapists working with clients who are at least 16 years of age should determine whether assessing fitness to drive is relevant to their clients and their own current scope of practice by considering the following:

- Does the role involve addressing clients' ability to perform activities of daily living and instrumental activities of daily living in the community?
- Are many of the clients currently driving or returning to driving? Do they want to drive?
- Does the client population have medical conditions, functional impairments, or visual impairments known to have an impact on fitness to drive?
- Do red flags about a client's fitness to drive frequently present in assessment findings?
- What is the current process for addressing fitness to drive concerns?

Occupational therapists who determine that assessing fitness to drive is relevant to their practice should be prepared to address fitness to drive concerns when they arise. These occupational therapists should also ensure that they have an understanding of medical conditions, functional impairments, and

visual impairments that may affect driving. According to the Canadian Council of Motor Transport Administrators (CCMTA, 2021), “the functions necessary for driving can be categorized as either cognitive, motor or sensory (vision and hearing). Sensorimotor functions are a combination of sensory and motor functioning and are considered as a subset of motor functions” (p. 21). For a detailed list of the functions needed for driving, including a description of the function and an example in the driving context, refer to the [CCMTA's National Safety Code, Standard 6: Determining Driver Fitness in Canada, “Part 1: A Model for Administration of Driver Fitness Programs” \(2021\).](#)

National Medical Standards and Resources

The MTO assesses driver fitness against national medical standards developed by the CCMTA. When determining whether a client has or appears to have a medical condition, functional impairment, or visual impairment, occupational therapists should consider the [CCMTA's National Safety Code, Standard 6: Determining Driver Fitness in Canada, “Part 2: Medical Standards for Drivers” \(2021\).](#)

In addition to these standards, the legislation recommends that prescribed persons, including occupational therapists, consider using the resource *Determining Medical Fitness to Operate Motor Vehicles*, 9th edition (2017), which can assist in decision-making regarding fitness to drive. This resource is available for a fee from the Canadian Medical Association.

Occupational Therapy Assessment

Occupational therapists work in diverse practice areas and settings, where they are involved in a client's care in varying capacities. Thus, occupational therapists may assume different responsibilities in assessing and reporting fitness to drive based on their competence and experience in that area. To assist in understanding how occupational therapists may address this issue, the College has identified three approaches to assessing fitness to drive, informed by the three-tier expertise framework endorsed by the Canadian Association of Occupational Therapists (CAOT, 2009; Korner-Bitensky et al., 2007). The particular approach undertaken will depend on the scope and nature of the occupational therapist's role and their competence with addressing fitness to drive. Assessment findings will provide details necessary to inform the occupational therapist's decision on how to proceed with reporting.

Approaches for Assessing Fitness to Drive

- **General Functional Assessment**

Refers to the usual process undertaken by an occupational therapist when completing an assessment with a client in the practice context. During this process, the occupational therapist may identify medical conditions, functional impairments, or visual impairments that raise concerns about a client's fitness to drive. For example, when conducting an assessment in the client's home, the occupational therapist may identify that the client has significant difficulty ambulating due to loss of sensation in the right foot. If the client continues to drive, this sensory impairment may raise concerns about the client's fitness to drive.

- **Driving-Specific Functional Assessment**

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Refers to the process where an occupational therapist uses evidence-informed methods to assess specific functions known to affect fitness to drive. This process of assessment typically requires enhanced knowledge of best practices for assessing and addressing fitness to drive. For example, the occupational therapist may assess the client's visual perceptual skills after a stroke to address readiness for a driver's rehabilitation program. Occupational therapists may benefit from additional training to develop this competency.

- **Comprehensive Driving Evaluation**

Refers to the process used by an occupational therapist practising in the area of driver assessment and rehabilitation. These assessments are usually performed by occupational therapists who have specific training recognized by the MTO and who work in MTO-approved Functional Assessment Centres. This type of assessment uses both clinic-based and on-road assessments combined with expert clinical judgement supported by evidence. Clinical assessment of driving and on-road or behind-the-wheel assessment should be completed by an occupational therapist with advanced training and experience in driving assessment.

When assessing the client's ability to drive, the occupational therapist should not get into a vehicle with the client. On-road assessments of a client's fitness to drive should be performed only by occupational therapists trained to conduct such assessments, which usually involve a qualified driving instructor being present.

Occupational therapists may use one or more of the above assessment approaches in their practice depending on their level of competence. The College does not specify any defined training requirements for each assessment approach. Specific training may be required by the MTO for occupational therapists practising in approved Functional Assessment Centres. Every occupational therapist must practice within their own competence and limitations.

Decision-Making

Deciding how to proceed when a client's fitness to drive is questioned can be challenging, and the decision to report a concern about a client is never easy. Occupational therapists should always use their judgement when determining whether to make a discretionary report and should be able to describe and document their rationale for any action or inaction. Using a decision-making process allows occupational therapists to identify all available options. The College's Decision-Making Framework is a helpful reference.

Based on an occupational therapist's level of competence in assessing fitness to drive, the assessment approach used, and the assessment findings, the occupational therapist may identify one or more possible options to address fitness to drive concerns including:

- Discussing driving concerns with the client, family, or other care providers.
- Discussing driving concerns with interprofessional colleagues on the client's care team.
- Collaborating with the client about alternative community transportation options when the client is faced with a temporary or permanent medical condition or functional impairment.
- Seeking the client's agreement to cease or self-limit driving.

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- Consulting with an occupational therapist colleague who practises in the area of driver assessment and rehabilitation.
- Referring a client for further driving assessment (Comprehensive Driving Evaluation).
- Making a discretionary report to the MTO.
- Recommending and/or initiating a referral for driver rehabilitation, adaptive driving equipment, or vehicle modifications. This may require additional reporting to the MTO and should be performed only by an occupational therapist with training and experience in driver rehabilitation.

If the occupational therapist has decided to make a discretionary report, they should collaborate, whenever possible, with the client to develop a plan for alternative transportation arrangements. These arrangements can assist the client to continue engaging in necessary and meaningful occupations.

If the occupational therapist is unsure whether the client's condition is transient or temporary, these concerns should be discussed with the client, and the client should be advised not to drive until they follow up with their physician or nurse practitioner. The occupational therapist should document any concerns, recommendations, and discussions and make referrals for follow-up as appropriate.

Consent, Privacy, and Access

Occupational therapists are expected to obtain client consent for assessment and treatment and for the collection, use, and disclosure of personal health information. Occupational therapists must implement consent processes that comply with healthcare consent and privacy legislation as well as the College's Standards for Consent. In doing so, occupational therapists need to think about the primary purpose of the assessment or treatment.

Consent for Occupational Therapy Services

If an occupational therapist is completing an assessment for the purposes of determining fitness to drive or if they know based on the information available that they will be addressing fitness to drive, they must inform the client during the consent process of the occupational therapist's authority to make a discretionary report if concerns are identified.

If the occupational therapist is performing a general functional assessment and does not have any prior knowledge of concerns relating to a client's fitness to drive, the occupational therapist should use their judgement to determine whether they need to notify the client during the consent process about any professional obligations related to discretionary reporting.

Predicting what issues will arise during assessment or treatment is not always possible. The fact that consent is an ongoing process provides occupational therapists an opportunity to address new issues and changes to assessment and treatment plans, such as fitness to drive and discretionary reporting, when they arise.

Clients or their substitute decision-makers are always entitled to refuse or withdraw consent for assessment and treatment, and their decisions must be respected. If the client does not provide

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informed consent, the occupational therapist cannot proceed with the assessment. In that case, the occupational therapist should discuss with the client any potential implications of not participating in the assessment and explore any concerns about proceeding. If the referral is specific to fitness to drive and the client refuses the assessment, the occupational therapist should document this information in the client record and notify the referral source.

Consent to Collect, Use, and Disclose Personal Health Information

Consent for assessment and treatment is different from consent to collect, use, and disclose personal health information. A client can withdraw consent for an occupational therapist to disclose information to other care providers about the client's fitness to drive, including sharing reports or documentation. However, if the occupational therapist believes that the disclosure is necessary to eliminate or reduce the risk of serious harm to the client or others, the therapist can disclose relevant information. For more details, refer to the *Personal Health Information Protection Act, 2004*, section 40 (1).

An occupational therapist who believes that a client has a medical condition, functional impairment, or visual impairment that may make it dangerous for the client to drive is permitted to report this information to the MTO without client consent (HTA, section 203 (3)).

Consent and Report Filing

Even though occupational therapists are not required to obtain consent prior to making a report, they should advise their clients that a report is being made and discuss any possible implications associated with the discretionary report. Occupational therapists should also inform their clients that copies of reports can be requested. If the situation permits, occupational therapists can take the opportunity to discuss alternative plans to manage community mobility.

If an occupational therapist has a concern that telling a client that a report will be or has been made could result in risk of harm to the client, the occupational therapist, or others, the therapist may withhold information about the filing of the discretionary report. In this case, concerns about the report's release should be communicated to the MTO by checking the appropriate boxes on the reporting form or contacting the MTO directly. Under the *Freedom of Information and Protection of Privacy Act, 1990*, the MTO is required to provide the client with a copy of any report if requested unless evidence exists that release of the information would threaten the safety of the client, the occupational therapist, or others.

Documentation

Occupational therapists should ensure that the client record includes documentation of any concerns related to a client's ability to drive, including the occupational therapist's observations of the client, the assessment findings, discussions with the client, and any action taken (for example, a discretionary report being made to the MTO). Occupational therapists should also document any referrals, reports, and communications with the client, other healthcare providers, and the MTO.

Communications With Clients

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Occupational therapists should inform clients that the submission of a discretionary report does not mean that the occupational therapist is deciding to suspend or remove driving privileges. Clients should be made aware that occupational therapists are providing information that the MTO will use in making a decision regarding the status of an individual's driver's licence and that the submission of a report does not automatically result in the client's licence being suspended or revoked.

Occupational therapists may inform clients that if they present with one of the mandatory prescribed medical conditions, functional impairments, or visual impairments, a suspension will be issued unless additional information is included that indicates that the CCMTA medical standards have been met. Where this information is provided in the discretionary reporting section, the MTO will determine whether any further details are needed before a decision is made.

Forms

Occupational therapists are required to use the standardized form provided by the MTO when making a discretionary report, *Medical Condition Report Form* (2022). This form, along with instructions on how to complete and submit it, is available on the [MTO website](#).

Interprofessional Collaboration

Occupational therapists who work with other professionals with mandatory or discretionary reporting authority may need to determine not only whether a report to the MTO for a particular client should be made but also who will be responsible for doing so. Organizations may have particular expectations for the medical reporting of clients with fitness to drive concerns, including who will take responsibility for reporting on behalf of a team if more than one team member has the authority to report. If the organization has not identified who will report a client to the MTO, the team can determine who is the best person to make the report.

Interprofessional team members can provide information to assist an occupational therapist in determining whether to make a discretionary report concerning a client's fitness to drive. In the event of a difference of opinion among interprofessional team members about reporting a particular client and where consensus cannot be achieved, the occupational therapist should consider the level of risk and determine whether to proceed with a discretionary report. If choosing to proceed, the occupational therapist should communicate to team members that the report has been made.

At times, occupational therapists may have to rely on other professionals to make a mandatory or discretionary report when the information required for reporting is outside occupational therapists' scope of practice. For example, in the case of concerns about a client's ability to drive based on an episodic condition such as a seizure disorder, it is not within an occupational therapist's scope of practice to provide the diagnosis or prognosis required for reporting. In this circumstance, the occupational therapist should confirm that the appropriate healthcare professional is aware of the circumstances and of the therapist's concerns regarding the client's fitness to drive. If another prescribed person is not involved in the client's care, the occupational therapist may consider—with the client's consent—making a referral to a healthcare provider with authority to diagnose and report.

Summary

Occupational therapists working with clients who want to drive, are currently driving, or want to return to driving have the ability to address the issue of fitness to drive and have a responsibility to take action if they observe a concern with a client in their practice. Discretionary reporting provides occupational therapists with a mechanism to report identified fitness to drive issues directly to the MTO in a timely manner, ensuring that risk of harm is minimized for their clients and members of the public.

Appendix: Legislative References

Highway Traffic Act, 1990

Medical reports

Mandatory reports

203 (1) Every prescribed person shall report to the Registrar every person who is at least 16 years old who, in the opinion of the prescribed person, has or appears to have a prescribed medical condition, functional impairment or visual impairment. 2015, c. 14, s. 55.

Discretionary reports

(2) A prescribed person may report to the Registrar a person who is at least 16 years old who, in the opinion of the prescribed person, has or appears to have a medical condition, functional impairment or visual impairment that may make it dangerous for the person to operate a motor vehicle. 2015, c. 14, s. 55.

Authority to make discretionary report prevails over duty of confidentiality

(3) The authority to make a report under subsection (2) prevails over any duty of confidentiality imposed on the prescribed person by or under any other Act or by a standard of practice or rule of professional conduct that would otherwise preclude him or her from providing the information described in that subsection to the Registrar. 2015, c. 14, s. 55.

Required to meet the person

(4) Subsections (1) and (2) only apply if the prescribed person actually met the reported person for an examination or for the provision of medical or other services, or in the circumstances prescribed by regulation. 2015, c. 14, s. 55.

Authority to make discretionary report is not a duty

(5) Subsections (2) and (3) do not impose a duty on a prescribed person to report to the Registrar. 2015, c. 14, s. 55.

General rules respecting medical reports

Contents

204 (1) A report required or authorized by section 203 must be submitted in the form and manner specified by the Registrar and must include,

- (a) the name, address and date of birth of the reported person;
- (b) the condition or impairment diagnosed or identified by the person making the report, and a brief description of the condition or impairment; and
- (c) any other information requested by the form. 2015, c. 14, s. 55.

No liability for compliance

(2) No action or other proceeding shall be brought against a prescribed person required or authorized to make a report under section 203 for making such a report or for reporting to the Registrar in good faith with the intention of reporting under that section. 2015, c. 14, s. 55.

Ontario Regulation 340/94: Drivers' Licences

14.1 (1) For the purposes of subsection 203 (1) of the Act, the following are the prescribed persons who shall report under that subsection: an optometrist, a nurse practitioner and a physician. O. Reg. 38/18, s. 3.

(2) For the purposes of subsection (1), an optometrist is prescribed only with respect to visual impairments. O. Reg. 38/18, s. 3.

(3) For the purposes of subsection 203 (1) of the Act, the following are the prescribed medical conditions, functional impairments and visual impairments that a prescribed person under subsection (1) shall report:

1. Cognitive impairment: a disorder resulting in cognitive impairment that,
 - i. affects attention, judgment and problem solving, planning and sequencing, memory, insight, reaction time or visuospatial perception, and
 - ii. results in substantial limitation of the person's ability to perform activities of daily living.
2. Sudden incapacitation: a disorder that has a moderate or high risk of sudden incapacitation, or that has resulted in sudden incapacitation and that has a moderate or high risk of recurrence.
3. Motor or sensory impairment: a condition or disorder resulting in severe motor impairment that affects co-ordination, muscle strength and control, flexibility, motor planning, touch or positional sense.
4. Visual impairment:
 - i. A best corrected visual acuity that is below 20/50 with both eyes open and examined together.
 - ii. A visual field that is less than 120 continuous degrees along the horizontal meridian, or less than 15 continuous degrees above and below fixation, or less than 60 degrees to either side of the vertical midline, including hemianopia.
 - iii. Diplopia that is within 40 degrees of fixation point (in all directions) of primary position, that cannot be corrected using prism lenses or patching.
5. Substance use disorder: a diagnosis of an uncontrolled substance use disorder, excluding caffeine and nicotine, and the person is non-compliant with treatment recommendations.
6. Psychiatric illness: a condition or disorder that currently involves acute psychosis or severe abnormalities of perception such as those present in schizophrenia or in other psychotic disorders, bipolar disorders, trauma or stressor-related disorders, dissociative disorders or neurocognitive disorders, or the person has a suicidal plan involving a vehicle or an intent to use a vehicle to harm others. O. Reg. 38/18, s. 3.

(4) A person prescribed under subsection (1) is not required under subsection 203 (1) of the Act to report a person whose impairment is, in the prescribed person's opinion, of a distinctly transient or non-recurrent nature. O. Reg. 38/18, s. 3.

(5) A person prescribed under subsection (1) is not required under subsection 203 (1) of the Act to report modest or incremental changes in ability that, in the prescribed person's opinion, are attributable to a process of natural aging, unless the cumulative effect of the changes constitutes a condition or impairment described in subsection (3). O. Reg. 38/18, s. 3.

(6) When considering whether a person has or appears to have a prescribed medical condition, functional impairment or visual impairment that is described in subsection (3), a prescribed person under subsection (1) may take into consideration,

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- (a) the *CCMTA Medical Standards for Drivers* described in subsection 14 (4); and
- (b) the document entitled *Determining Medical Fitness to Operate Motor Vehicles* (9th edition), published by the Canadian Medical Association and dated 2017, as it may be amended from time to time, that is available on the Internet through the website of the Canadian Medical Association. O. Reg. 38/18, s. 3.

14.2 For the purposes of subsection 203 (2) of the Act, the following are the prescribed persons who may report under that subsection: an occupational therapist, an optometrist, a nurse practitioner and a physician. O. Reg. 38/18, s. 3.

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