



March 18, 2019

SENT VIA EMAIL: cbrenchley@osot.on.ca

OSOT Auto Sector Team
Ontario Society of Occupational Therapists
55 Eglinton Ave. E., Suite 210
Toronto, ON M4P 1G8

Dear OSOT Auto Sector Team,

Re: Response to OSOT Auto Sector Recommendations and Queries

Thank you for your feedback provided during our December 11, 2018 meeting and your January 15, 2019 correspondence. The College greatly appreciates your suggestions and recommendations.

The College is the regulatory body that protects the public and instills confidence and trust by ensuring occupational therapists are competent, ethical and accountable. It is with this lens all feedback and recommendations are considered.

Responses to your specific queries are set out below. For ease of reference, the headings and numbering reflect your January 15, 2019 correspondence.

I. Complaint related issues in Ontario's Auto Insurance System

1. Treatment of hospital-based clients by an external, private OT

The College appreciates that for various reasons, clients, who are hospital inpatients or long-term care home residents, may wish to retain the services of an external service provider such as a private occupational therapist (OT). The College does not have a specific document or position paper that speaks to the use of external service providers. External service providers are managed according to facility-specific policies. These policies vary considerably from organization to organization and often have differing approaches to regulated versus unregulated health care providers.

When a private OT provides services to a client in a hospital or long-term care home, as with all areas of practice, the College expects the private OT will adhere to the College's Standards for Practice, including the Code of Ethics and the Essential Competencies of Practice for Occupational Therapists in Canada. In particular, the OT must ensure they communicate and collaborate effectively with other care team members and stakeholders using client-centred principles. Private OTs are expected to practise as team members with clients and other professionals, to ensure safe, competent and ethical OT service delivery.

Some considerations for when multiple OTs are treating the same client:

- Ensuring the client understands the scope of practice of each OT and who has accountability and/or authority for the OT service delivery in each situation. The OTs providing care will want to ensure there is a process for sharing necessary information with all involved, so each OT is able to make informed decisions regarding intervention.

- Understanding, by the private OT, of relevant legislation applying to client care in the specific context of the referral, such as the *Public Hospitals Act, 1990* or the *Long-Term Care Homes Act, 2007*.
- Considering liability for both the client and the private OT, as it may be very difficult to determine whether the service delivery by the private OT or the hospital-based OT contributed to any negative consequences for the client. The client will need to determine if they are comfortable proceeding with concurrent OT service delivery given any potential risks. Establishing clear communication and documentation processes will be important to ensure all stakeholders, including interprofessional team members, have access to necessary health information about the OT care plan and are aware of private OTs in case any follow-up is required.
- Ensuring the client knows how to access the health information from both providers in circumstances where the private OT maintains independent documentation.
- Understanding facility and organizational policies and expectations for practice for everything from infection control to emergency response. It may be appropriate for the private OT to proactively establish how concerns will be addressed and managed if expectations are not met. Some organizations enter into formal agreements with external service providers to clarify these expectations prior to initiation of service.

With regards to your recommendation to include treatment of hospital-based clients by a private OT as a scenario for a case study, thank you, we have noted the topic for consideration for future work by our Quality Assurance and Practice teams.

2. Electronic communications

The College acknowledges the challenges faced within the auto sector, where there are pressures to move to electronic commerce and apps. The College mandate is to ensure individuals who are in receipt of occupational therapy service are provided with safe, ethical and competent care that complies with the legislation and is consistent with the standards of practice for the profession. As a regulatory body, the College is not a subject matter expert in the secure transmission of information via electronic means.

As with all aspects of service delivery, prior to proceeding with electronic communication, OTs should ensure the privacy and confidentiality of client personal information, including personal health information, is maintained in accordance to the legislation. The Office of the Privacy Commissioner of Canada (<https://www.priv.gc.ca/en/>) and the Information and Privacy Commissioner of Ontario (<https://www.ipc.on.ca/>) have many resources on their websites to support practitioners in the safe transmission of information.

College Standards for Practice are not prescriptive and do not include recommendations for processes for the transmission of client information or a definition of a secure server. OTs work in a variety of roles in numerous practice settings and locations, and record keeping can look quite different in each scenario. As a general principle, OTs should be clear about what they will be communicating electronically and the frequency of communication. As well, OTs need to ensure they have adequate security and privacy measures in place when using electronic methods of communication.

The use of consent forms as part of the process for use of electronic communication may be of assistance, however, the written consent process does not replace the need for appropriate privacy and security mechanisms and the need to ensure the client appreciates the implications if a breach were to occur.

The College will continue to monitor current practice and expectations for electronic transmission of client information to ensure Standards are updated to reflect evolving OT practice and best serve the public interest.

3. Notation of Specified Continuing Education or Remediation Programs (SCERPs) or disciplinary action on COTO website

For all investigations initiated on or after January 1, 2017, or Decisions and Reasons issued on or after May 30, 2017, the College is required, as per the *Regulated Health Professions Act, 1991* (RHPA) and College Bylaws, to post certain additional Inquiries, Complaints and Reports Committee (ICRC) outcomes on the public register. These outcomes include:

- **Caution-in-Person:** a caution-in-person is ordered when the ICRC has a significant concern about conduct or practice that may have a direct impact on client care, safety, or the public interest if it is not addressed, and the OT appears to be amenable to or capable of improvement that can be addressed through advice.
- **Specified Continuing Education or Remedial Program (SCERP):** a SCERP is ordered when the ICRC has a significant concern about conduct or practice that may have a direct impact on client care, safety, or the public interest if it is not addressed, and the concern is remediable and can be appropriately addressed through education.
- **Undertaking (with or without restrictions):** an undertaking is a binding and enforceable agreement between an OT and the College that sets out an obligation and/or restriction that the OT is agreeable to. Undertakings are issued when the ICRC has a significant concern about conduct or practice that may have a direct impact on client care, safety, or the public interest if it is not addressed.

These outcomes are issued when the information gathered as part of the investigation reveals a moderate to high risk of harm. The College is also required to publish information relating to referrals made by the ICRC to the Discipline Committee and Fitness to Practise Committee, as well as information about the result of a disciplinary or incapacity proceeding.

If information gathered as part of the investigation reveals a low risk of harm, the ICRC may issue advice or guidance to the OT under investigation or offer the OT the opportunity to enter into a Remedial Agreement with the College. Low risk outcomes are not published on the OT's profile on the College's public register, Find an Occupational Therapist.

Public Register

The mandate of health regulators is public protection and safety. Inclusion of an identifier on the public register was implemented with the principles of transparency and the College's public protection role in mind.

Transparency helps people understand and be confident in our work and that understanding will help people make informed decisions about their health care.

The public register is a tool the public can use to obtain important information about their OT. To best assist the public, the information on the register needs to be:

- timely
- easy to find and understand; and,
- include context and explanation.

The exclamation mark clearly identifies there is important information about the OT that should be reviewed. Not clearly identifying the information may be misleading to the public and thus, not transparent.

During the public register redesign, the College reviewed several health regulators' public registers. The decision to adopt the current design was informed by the research and usability testing undertaken by the Ontario College of Pharmacists. The College appreciates not all public registers are identical, and regulators have taken different approaches to highlighting concerns or conditions about a health professional's practice. Currently, there is not a consistent approach to the design of registers across regulatory colleges.

4. Additional Questions

a) Registrar's Investigations

The RHPA provides three different initiation processes through which concerns relating to an OT's conduct, competence or capacity may be investigated by the College; namely, i) complaint investigations, ii) Registrar's Inquiries, and, iii) Registrar's Investigations.

During an investigation, concerns respecting the OT's conduct, competence or capacity, which did not form part of the complaint or report, may come to light. If any new concerns identified are sufficiently related to the complaint or report received, they may be investigated as part of that investigation. If not, the Registrar has authority to seek the ICRC's approval to launch a Registrar's Investigation into any new concerns identified.

The Registrar may also initiate inquiries. This is not something that occurs in every investigation, but it does arise at times. When the College becomes aware of potential concerns respecting an OT's conduct, competence or capacity, regardless of the source of that information and whether it was learned through another investigation, the College has an obligation to take appropriate regulatory action to ensure the public is protected. OTs are always informed when an additional process is initiated.

b) Complaint investigation completion times

The RHPA sets out a specific timeline within which a complaint investigation should be completed and a process to be followed if that 150-day timeline is not met. If either party to a complaint is dissatisfied with the length of time it takes the ICRC to investigate a complaint and render a decision, they may complain to the Health Professions Appeal and Review Board (HPARB). Upon receiving such an application, HPARB may direct that: the ICRC continue with its investigation; make recommendations to the ICRC; or, take over the investigation of the complaint. HPARB is the body charged with oversight of decisions of the ICRC relating to complaint investigations.

Investigative Delays Contextualized

The College appreciates that investigations are stressful to all parties. The College takes all reasonable steps to ensure investigations are carried out in a fair, objective, timely, and transparent manner. For complaint investigations, and in accordance with legislation, the College writes to both parties to a complaint advising of delays beyond 150 days and provides reasons for the delay. Delays may arise for reasons beyond the control of the College. Some of the most common reasons for complaint investigation delays include:

- delays in receiving clinical notes and records due to administrative processes with Health Information Custodians;

- requests by the parties to the complaint for extensions to respond to correspondence from the College respecting the complaint investigation or failure to respond, requiring additional follow up from College staff; and,
- new concerns raised by the complainant about the OT during the investigation, which the ICRC must commence investigating as part of the complaint.

Internal College operational issues may also contribute to delays. The College is committed to continuous quality improvement and has implemented strategies to further reduce the potential for delays and the resultant impact to all parties.

c) Investigation Process

OTs are never investigated without there being some information in the College's possession that gives rise to a belief based on reasonable grounds that the OT may have engaged in professional misconduct, is incompetent or may be "incapacitated". To enable the College to fulfill its function of protecting the public and to help ensure Ontarians have access to safe, competent and ethical OT care, the RHPA permits the College to investigate concerns relating to an OT's conduct, competence or capacity without the need for a complaint to be filed. OTs are always notified when a process is initiated.

d) The Context of a Complaint

Anyone can file a complaint about an OT and once filed, unless it is "frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process"¹, the ICRC has an obligation to investigate and render a decision. There is nothing preventing legal representatives from filing complaints or facilitating the filing of complaints on their clients' behalf. Provided a complaint raises a concern that falls within the ICRC's jurisdiction to investigate, the ICRC will investigate it as per their mandate.

When considering complaints received about OTs working in the auto insurance sector, the ICRC is aware that there are potential challenges inherent in the insurer examination assessment process as, by its nature, it can be perceived as adversarial. The ICRC appreciates that the conclusions of the assessor may be used by an insurer to assist with decision-making about a claimant's entitlement to benefits and that, at times, the claimant may not agree with the insurer's determination in this regard and as a result, may find fault with the assessor's report. The College is responsible for regulating the practice of occupational therapists. When complaints are received about an insurer's examination performed by an OT, the ICRC is charged with considering whether the OT met the relevant Standards of the College and of the profession when completing the insurer's examination. It is with this lens the ICRC considers these types of complaints.

5. COTO Inquiries, Complaints and Reports Committee (ICRC)

- a) The ICRC has eight members, six of whom are OTs and two of whom are public members appointed by the Lieutenant Governor of Ontario. The ICRC may sit as an entire committee or in panels. When sitting as a panel, the panel consists of one public member and three

¹ The phrase "frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process" is found in subsection 26(4) of the Code. HPARB, (in cases such as T.K. v. A.L.K., 2016 CanLII 82732), has held that the terms are legal terms describing concerns that are, for example, beyond the jurisdiction of the ICRC, have no chance of success, are brought for an improper collateral purpose, or violate the fundamental principles of justice underlying the community's sense of fair play and decency.

professional members. Public members are vetted and appointed by the government. Their role is to bring the voice of the public to College deliberations.

- b) The College's statutory committees, such as the ICRC, are composed of occupational therapists who serve on Council, occupational therapists who are not Council members, and public members appointed to Council by the Lieutenant Governor of Ontario. OTs serving on Council are elected by their peers. To stand for election, an OT must meet the eligibility requirements set out in part 5 of the College bylaws.

The College has no control over which members of the public are appointed to serve on the College's Council and in turn, statutory committees. The College's Council appoints occupational therapists who aren't members of Council to serve on statutory committees as non-Council committee members. To be appointed to act in this role, the occupational therapist must meet the eligibility requirements set out in part 12 of the College bylaws. Occupational therapists applying to serve on a College committee submit a resume, are interviewed, and, if successful, ultimately appointed by Council. To ensure there is a balanced representation, consideration for appointment includes such things as practice setting, experience, clinical/non-clinical practice, and regions of the province.

Once appointed, all statutory committee members receive comprehensive training on their role in protecting the public interest as it relates to the work of the committee to which they are appointed. Committee members are also trained to recognize and manage conflicts of interest and appearances of bias when performing the work of the committee. In addition to providing annual training, the College employs processes which support committee members to continually consider conflicts and appearances of bias, whether actual or perceived, and to recuse themselves as needed.

- c) Whether or not an ICRC member should recuse themselves from an investigation and decision-making process on the basis that they know the OT under investigation is fact-specific and will depend on various factors including the nature, length and context of the relationship. If an ICRC member does not believe they can remain objective and impartial in the making of a decision in such circumstances, then a conflict exists, and they must recuse themselves. If the member believes they can remain objective and impartial despite knowing the OT, the ICRC member will then discuss the circumstances of their knowledge of the OT with College staff and not the entire committee or panel, so that a determination can be made as to whether there is an appearance of bias. If there is an appearance of bias, the ICRC member is then recused.
- d) The College endeavours to have OTs with expertise in different practice settings serving on the ICRC. As a large percentage of complaints filed with the College pertain to OTs working in the auto-insurance sector, the College actively seeks to have an OT with professional experience practising in this sector serving on the ICRC. When recruiting ICRC members with this experience, the College seeks to retain professional members with experience on both the plaintiff and defence side, however, this is not always possible as Council's selection pool for non-Council committee appointments is limited to those who apply and meet the eligibility requirements.

II. Retiring and Retired Occupational Therapists

As noted in the section addressing publication of ICRC outcomes on the public register, the design as well as the language used on the public register was deliberately chosen to best assist the public.

“Entitled to practise” and “Not entitled to practise” clearly communicate who is able to practise and who is not. The terms “registered” “resigned” “suspended” and “revoked” still appear on the public register under the Registration History tab. The College does not have a registration status of “retired”, so the College does not publish that information.

If there are concerns with a former OT’s practise, the information is published under the Concerns and/or Conditions tab. If there are no concerns or conditions, that is also noted under the tab.

Recognition of volunteer hours prior to retirement

The College’s currency requirements are stipulated in Ontario Regulation 226/96: General made under the *Occupational Therapy Act, 1991*. The College’s Registration Committee establishes the policies pertaining to administration of the currency requirement. Registration program policies and requirements are available on the College’s website to ensure the practices are transparent, objective, impartial and fair.

Currency is a mandatory requirement for maintaining registration. An OT must complete 600 hours of service within the scope of practice of the profession in the previous three years or have successfully completed a refresher program accepted by the Registration Committee within the past 18 months.

The currency requirement is based on the rationale that occupational therapy practice knowledge continues to evolve through research and the introduction of new techniques. Practising fewer than the required number of hours of practice requires a refresher program to ensure professional competency. Currency requirements are common for many regulated health care professionals (novice or experienced) because of the many and rapid changes in health care. This requirement is intended to ensure professionals are competent and up-to-date with developments in the legislative framework and the scope, authorized acts and current evidence-based practice of the profession and are therefore able to provide safe and competent care to clients.

Currency requirements for occupational therapists are common in many jurisdictions with regulatory frameworks similar to Ontario. While requirements vary from one jurisdiction to another, the common features of such requirements are that applicants must have practised the profession for a set number of hours within a period of time.

With respect to volunteer or unpaid activity hours, as a general rule, the number of unpaid professional activity hours accepted by the College cannot exceed 25% of the OTs total hours, as those hours usually do not have the same level of accountability and responsibility as paid employment. For example, if an OT completes 100 practice hours, they may use 25 unpaid professional activity hours toward the currency requirement. Informal activities that do not have the formal, structured components of occupational therapy practice are not typically considered hours of service within the scope of practice of the profession.

Volunteering as an OT and providing occupational therapy services with no remuneration would be accepted, as would lecturing at a university. The Registrar has some discretion when approving currency hours. For unpaid activity hours to be accepted as equivalent to paid, the OT would need to demonstrate they are providing occupational therapy services as defined in the scope of practice of the profession. The services must include the formal structured components of occupational therapy practice and the OT must abide by the College Standards for Practice. The College is in the process of reviewing policies pertaining to currency and will consider your feedback back in its review.

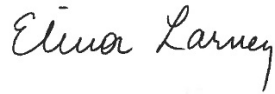
Former College registrants may communicate their education and prior work experience while being transparent that they are no longer an OT registered with the College.

Conclusion

Once again, we would like to thank you for your thoughtful and comprehensive letter. We hope our response brings clarity to the issues raised. We appreciate your recommendations and we have noted them for consideration as work progresses in different areas of the College.

As outlined, the College mandate is public protection through ensuring safe, ethical and competent care by occupational therapists that complies with the legislation and is consistent with the Standards for Practice. Keeping lines of communication open is critical, as greater understanding of each others' roles and challenges, ultimately benefits service delivery to the public. We look forward to continuing our conversations.

Yours sincerely,

A handwritten signature in cursive script that reads "Elinor Larney".

Elinor Larney, MHSc., OT Reg. (Ont.)
Registrar