



January 15, 2019

Elinor Larney, Registrar
Aoife Coghlan, Manager, Investigations and Resolutions
College of Occupational Therapists of Ontario
10 Bay Street, Suite 900
Toronto, Ontario
SENT BY EMAIL

Dear Elinor and Aoife,

RE: OSOT AUTO SECTOR QUERIES AND ISSUES

Thank you for conferencing in and taking our questions during our OSOT Auto Insurance Sector Team meeting on December 11, 2018. We raised a number of issues, however, with the limits of time we did not have opportunity to fully explore all issues or to address all points on the Team's agenda. This letter is intended to provide an overview of our discussion including OSOT's recommendations and it includes one additional area of concern that we did not discuss that pertains to recognition of volunteer hours. We would value your review of the issues noted below and request further clarification with respect to pertinent bylaws and/or College of Occupational Therapists of Ontario (COTO) policy or positions relating to the issues we've raised. As well, we would like to understand where COTO may have some latitude to effect change.

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

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

What is expected from a private practitioner who enters a hospital or long-term care facility or other institution in relation to:

- a. Who or whom must the OT contact, e.g. head nurse, claimant's attending nurse, the administrative office, etc.?
- b. Must the OT repeat this each time he/she enters the same facility?
- c. Must the OT get something in writing to demonstrate this contact, or simply make a chart note in his/her own file or in the facility's file or both?
- d. Does the OT have access to chart notes at a hospital or institution with client consent?

Recommendation: We understand from your comments that to follow standards an OT should ensure they are aware of and following relevant policies of the organization in which they are seeing a client. As these policies may vary from place to place and from time to time, we presume it is difficult to provide specific guidance, however, as the request for private OT services to augment limited publicly funded services may increase, we suggest that this situation might be best used in a case study during a prep module to provide clarification and to draw attention to reasonable expectations.

2) **Electronic communications**

We understand that the Record Keeping Standard directs that an OT ensure that client information to be delivered by electronic communication is delivered in a confidential and secure manner, for example, encrypted, password protected, secure network, and limit use of personal health information (data minimization principle, authenticated sources and destinations).

Given the climate in the auto insurance sector, we are experiencing increasing pressures to move to electronic commerce and/or apps, and notwithstanding that the record keeping standards speak to electronic communications, we are asking for more specific information in relation to:

- a. Emailing members of the care team about a client? Can we use the client's initials and/or claim number?
- b. Emailing the insurance company?
- c. Emailing the client at their unsecure server?
- d. Should we modify our consent forms to include consent to use email correspondence?
- e. What is the definition of a "secure server"?

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

In relation to complaints that are registered with COTO, we are concerned that, aside from those OTs whose licenses are either suspended or revoked, an OT who commits a high risk activity and one who commits a low- to-moderate risk activity are treated the same in terms of the red exclamation mark (!) placed next to their names on the website along with a description of the SCERP or disciplinary action. Both the SCERP and red exclamation mark (!) remain on the registrant's record forever which can be very damaging to the OT's ability to continue working, particularly in the auto insurance sector.

We have reviewed Bill 87 (Appendix A) and it is not readily apparent where the College is mandated to place an identifier, such as (!), next to the OT's name who has received a caution or a SCERP. Bill 87 indicates that the College must display '*a notation of every caution and matter*', however, there appears to be a wide variability with respect to interpretation as to what constitutes an appropriate notation. We are requesting that COTO consider researching

what other Colleges use in place of a red exclamation mark that may appear less alarming to the reader yet still fulfils the mandate of Bill 87. In our own review, we have noted the following:

- **College of Physiotherapists of Ontario**

While doing a search of the College of Physiotherapists of Ontario, we noted that 18 therapists had “cautions” and 51 therapists had a “discipline or fitness practice hearing” (one as recent as August 2018); however, there were no flags or notations beside their names. There were 9 PTs found under the heading “Bail conditions/charges/findings” and there were no notations next to their names whatsoever. The reader is required to click on the PT’s name and then click on their discipline history and then click onto “Read more” to find and then read the decision of the ICRC. The notation appears to be the “Read more” instruction.

- The **College of Chiropractors of Ontario** also do not use a flag of any sort to indicate a discipline infraction. They include an 8 column chart as seen in Appendix B with the necessary notation. The **College of Massage Therapists of Ontario** is quite similar to this. Refer to Appendix B.

- The **College of Audiologists and Speech Language Pathologists of Ontario** do not use a flag of any kind, but rather indicate that the member has a notation on file as seen in Appendix B.

4) **Additional Questions**

- a. Once a complaint itself has been dismissed, we understand that the College can continue to pursue the Registrant if, during their investigations, the College has identified other issues which were not part of the original complaint. How often does this occur?
- b. Based on information you provided to us, we understand that the College has 150 days (~5 mos) to respond to a complaint, but this deadline is “rarely met.” When unmet, COTO must correspond with the registrant once every 30 days to inform the registrant as to the status of the complaint. We understand from OTs who are under investigation that the longer the complaint is left unresolved, the more emotional stress is created and, in some cases, the OT finds he/she must seek psychological counseling.
 - i. Where can a Registrant file a complaint regarding the lack of COTO’s timeliness around complaints?
 - ii. Is the College audited around timeliness? If yes, for what, by whom and how often?
- c. We understand from some OTs that they are being investigated in spite of a lack of an actual complaint made to COTO. How does this occur? What level of transparency can we receive from COTO? Please explain.

- d. The context of a complaint: for example, OTs working as Insurer Examiners in the auto insurance system are particularly vulnerable to vexatious complaints made by or instigated by a plaintiff lawyer--being discredited by the College ensures that the OT will be discredited either before and/or during testimony. There is significant motivation for a plaintiff lawyer to create conflict at the most opportune time, i.e. if the OT's opinion has negatively impacted the lawyer's case; as the legal suit is moving towards settlement, court or arbitration, etc. To this end, we enquire;
- Does the College track patterns relating to specific lawyers who may send multiple complaints into COTO to discredit OTs who primarily do defense work?
 - Does the College ask consumers to identify their legal representative to further track patterns referred to above?

Recommendations: RE 3) and 4) above

While we understand the College mandate is to protect the public, we also understand that there is room for interpretation of Bill 87 to protect patients as evidenced by the way in which various Colleges deal with the same issue with different approaches. We respectfully request that COTO:

- a. seek legal advice regarding the ability to remove the SCERP and exclamation mark while a decision is being appealed to HPARB.
- b. research other Colleges with respect to how they interpret the word "notation" as per Bill 87
- c. consider treating low to moderate risk complaints with mentoring rather than a caution or SCERP
- d. make inquiries regarding the complainant's legal representation to rule out patterns whereby certain lawyers lodge a barrage of complaints to assist their legal case.

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

- a. How many OTs are on the ICRC committee vs. non-OTs?
 - i. Do the non-OTs have any rehab or medical background?
- b. We understand that Committee members are vetted by COTO via their CVs and an in-person interview. Does COTO do any social media or internet or other vetting of the prospective candidate to lend insight into positions or biases that a potential member might have?
- c. We understand that any person on the ICRC must recuse themselves if they know the individual under investigation. Please explain at what level the ICRC committee member must have knowledge of the individual.
- d. Given that the auto insurance sector is polarized (i.e. plaintiff vs. defense), we have recommended that the ICRC have a combination of OTs who have both defense and plaintiff experience. How is this currently managed? Will there be any new considerations in this regard in the future?

Recommendation: We recommend that COTO consider a balance of backgrounds of those OTs on the ICRC committee in order to bring a balanced perspective to the decision-making process. As well, we recommend that COTO complete the vetting process by doing a social media/internet search of potential candidates.

II. Retiring and Retired Occupational Therapists

1) Retired Registration listing on College Website

We understand that when OTs are no longer practising, the College identifies them on the website as “**Not entitled to practice.**” During an informal canvassing of OTs on our Team and during the OSOT Conference this year, there was general consensus that this gives the appearance that the OT did something wrong and can no longer practice. In reviewing other websites of other regulated health care professionals, we have seen a variety of ways in which to convey this message such as: retired, resigned membership.

Recommendation: We recommend “*retired, no longer practising*” which we believe is plain language and easily understood.

2) Recognition of volunteer hours prior to retirement

We understand the following:

- COTO requires OTs to demonstrate their currency to practice by requiring that they’ve worked a minimum of 600 hours in the past 3 years.
- The College acknowledges only 25% of time which is volunteer (unpaid) OT-related activity towards one’s currency hours.

With respect to volunteer hours, we conjecture that the rationale for only recognizing 25% may be related to:

- 1) COTO may believe there is insufficient accountability in a volunteer position; however, as a registered therapist, we have continued accountability to those in our volunteer circle.
- 2) COTO may believe there is less commitment to the work when done on a volunteer basis. We would argue that working in an unpaid post requires a great deal of commitment;
- 3) COTO would have a difficult time determining if any or all volunteer work is related to the profession. As a regulated professional the professional standard would require an OT to reflect their practice related volunteer work honestly and be prepared to back this up.

Why is this problematic?

Occupational therapists who are entering their senior, most experienced years have much to offer the profession and their communities via volunteer hours, whether that be by mentoring other OTs or other health care professionals; by promoting the OT profession through working with professional associations like OSOT or the Coalition of Health Care Professionals of Ontario, etc.; or by offering their time and expertise in the community. Recognition that only 25% of this time can be counted towards one's currency hours diminishes the role an OT can play in our universities, hospitals, schools and communities, and diminishes the value OTs can bring to the table ***while calling themselves an occupational therapist.***

How is volunteer work any different than pro bono work for lawyers?

Might we regard work in OT-specific volunteer activity, such as lecturing at a university or working in an OSOT practice Team or providing therapy services without remuneration, similar to pro bono work which is done by lawyers? Should that not be given equal weight to paid work?

For example, operation of OSOT including its Board and various teams is only possible through the work of volunteers. The Society does not require that volunteers be registered occupational therapists, however, it values and recognizes the volunteer work of registered and non-registered OTs equally and deems this important profession-related work. The Society would defend that this is professionally related unpaid work. The Society benefits significantly from the gifts of volunteers who may be working full-time, part-time or in semi-retirement or retirement.

How are other professions managing this?

Our Team's cursory review of the practices of other regulated health professions related to volunteer hours recognition has identified the following:

Psychology

The College of Psychologists of Ontario does not require a certain number of hours of practice per year or every 3 or 5 years in order to maintain registration eligibility; therefore volunteer practice is not an issue. When a person retires, they are still able to use their title provided they hold a retired class of certificate.

With respect to a leave of absence, a member who holds a regular class of certificate may choose to change to an inactive class of certificate.

Here is a link to our website where we describe all of the different classes of certificates offered by our College: <http://www.cpo.on.ca/WorkArea/DownloadAsset.aspx?id=1561>

You'll note that this College offers academic, inactive, and retired classes of certificate.

Members wishing to change their class of certificate must make a formal request, providing 60 days' notice and complete a form:

<http://www.cpo.on.ca/WorkArea/DownloadAsset.aspx?id=1709>

The College also has guidelines for members who wish to go back to a regular class of certificate from an inactive or retired class of certificate:

<http://www.cpo.on.ca/WorkArea/DownloadAsset.aspx?id=685>

Social work does not differentiate between paid and unpaid work; they do not have a minimum number of hours a year and for a leave of absence. They must fulfill a minimum of 25 professional development hours a year which is standard for them whether they are working or not.

Physiotherapy

Registered physiotherapists are expected to maintain a minimum of 1200 hours of practice in the previous 5 years (an average of 240 hours per year). Practice hours include paid hours of work; however, it is not necessary to have the specific job title of Physiotherapist or Physical Therapist or PT and can include practice in clinical settings, consultation, research, administration, academia or sales. Physiotherapists can claim a maximum of 30 hours of professional activity/development (e.g. volunteer activities and continuing education hours).

If a PT wants to use their title in the context of providing health care whether in a paid or volunteer capacity they must be registered with the College. Upon retirement, you can still identify yourself to new acquaintances as a physiotherapist - that likely would not be viewed as using title.

A PT who leaves practice for more than five years and wants to return, needs to be able to demonstrate to the College's Registration Committee that they have stayed current and competent. There are a variety of ways to do this. You can read more about the process using this link: <https://www.collegept.org/applicants/applying/3---steps-for-resigned-independent-practice-certificate-holders>

Recommendation:

We request that COTO reconsider the potential to recognize volunteer OT related work on par with paid practice for the purposes of maintaining currency hours. We would assert that a registered occupational therapist is held accountable to truthfully report both volunteer and paid work hours and that as a registered occupational therapist, would be held to the standards of the profession in both paid and volunteer work.

We believe that COTO has the opportunity to minimize practices that may discriminate against more experienced therapists and instead, encourage our ageing population of occupational

therapists to stay engaged in their profession, and be appreciated for their skills and valuable experience that can be engaged and shared, in a volunteer capacity, to support less experienced professionals and the community and society at large.

The OSOT Auto Insurance Sector Team is very appreciative of the time the College spent in reviewing these issues with us. We look forward to your responses.

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. Rucas". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Karen Rucas, B.Sc.O.T., OT Reg. (Ont.)
Chair of the OSOT Auto Sector Team/OSOT Government Lead

cc. Christie Brenchley, Executive Director

APPENDIX A

Bill 87: An Act to implement health measures and measures relating to seniors by enacting, amending or repealing various statutes

SCHEDULE 5 REGULATED HEALTH PROFESSIONS ACT, 1991

11 (1) Subsection 23 (2) of Schedule 2 to the Act is repealed and the following substituted:

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. Where a member is deceased, the name of the deceased member and the date upon which the member died, if known to the Registrar.
3. The name, business address and business telephone number of every health profession corporation.
4. The names of the shareholders of each health profession corporation who are members of the College.
5. Each member's class of registration and specialist status.
6. The terms, conditions and limitations that are in effect on each certificate of registration.
7. A notation of every caution that a member has received from a panel of the Inquiries, Complaints and Reports Committee under paragraph 3 of subsection 26 (1), and any specified continuing education or remedial programs required by a panel of the Inquiries, Complaints and Reports Committee using its powers under paragraph 4 of subsection 26 (1).
8. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee, until the matter has been resolved.
9. A copy of the specified allegations against a member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved.
10. Every result of a disciplinary or incapacity proceeding.
11. A notation and synopsis of any acknowledgements and undertakings in relation to matters involving allegations of professional misconduct or incompetence before the Inquiries, Complaints and Reports Committee or the Discipline Committee that a member has entered into with the College and that are in effect.

12. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.
13. A notation of every revocation or suspension of a certificate of registration.
14. A notation of every revocation or suspension of a certificate of authorization
15. Information that a panel of the Registration Committee, Discipline Committee or Fitness to Practise Committee specifies shall be included.
16. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
17. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.
18. Where the College has an inspection program established under clause 95 (1) (h) or (h.1), the outcomes of inspections conducted by the college.
19. Information that is required to be kept in the register in accordance with regulations made pursuant to clause 43 (1) (t) of the Regulated Health Professions Act, 1991. 20.

https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2017/2017-06/bill---text-41-2-en-b087ra_e.pdf

Appendix B College of Chiropractors of Ontario

The screenshot shows the website of the College of Chiropractors of Ontario (L'Ordre des Chiropraticiens de l'Ontario). The search results show one entry for 'Lam' in Toronto. The table below summarizes the data from the search results.

First Name	Last Name	Address	Chiropractic School of Graduation	Registration Class	Status	Language
John	Lam	1590 Queen St. W., Toronto, Ontario, M6R 1A8	Canadian Memorial Chiropractic College	Non-Renewal of Fees	Discipline Decision	N/A

Additional details from the screenshot: The search was for 'Lam' in Toronto. The result includes a 'View' button and a 'Search again' button. The page is powered by Helisby Drake. The system clock shows 11:22 AM on 16/12/2018.

College of Audiologists and Speech Language Pathologists of Ontario

The screenshot shows the CASLPO Public Register of Members website. The page lists several members, including their names, titles, and contact information. The following table summarizes the visible member information:

Name	Title	Address	Phone
Durkin, Lisa Catherine	Authorized to Practice	Toronto Rehabilitation Institute - University Health Network 4 EB 316_1 Elizabeth Street, Toronto, Ontario M5G 2C4, Canada	416-634-0480
Durno, Shelagh Elizabeth	Authorized to Practice	92 Isabella St., Toronto, Ontario M4Y 1N4, Canada	416-967-7325
Durocher-LeBlanc, Stephanie	Authorized to Practice	Sunnybrook-St. John's Rehab 285 Cummer Avenue, Toronto, Ontario M2M 2G1, Canada	416-266-6780
Duvage, Thanya Lakmini			

Additional details from the screenshot: The website title is 'CASLPO Public Register of Members'. The address is 2867 Ellesmere Road, Toronto, Ontario M1E 4B9, Canada. The phone number is 14162848131. The system clock shows 11:39 AM on 16/12/2018.

College of Massage Therapists of Ontario

Name	Address	City	Certification Status	Notes
Agahi	Mania	Toronto, Ontario, Canada	General Certificate	None
Aggarwal	Madhvi	Toronto, Ontario, Canada	General Certificate	None
Agustin	Mary Jane	Toronto, Ontario, Canada	General Certificate	None
Ahern	Tessa	Toronto, Ontario, Canada	General Certificate	None
Ahmad	Abdul	Toronto, Ontario, Canada	General Certificate	None
Aiken	Nita	Toronto, Ontario, Canada	General Certificate	None
Akerboom	Wendy	Toronto, Ontario, Canada	General Certificate	None
Al Alwan	Mohammed	Toronto, Ontario, Canada	General Certificate	None
Alaluf	Selim	Toronto, Ontario, Canada	Resigned	None
Alarakhia	Naheed	Toronto, Ontario, Canada	Inactive	None
Alas-Miranda	Luz	Toronto, Ontario, Canada	Inactive	None
Alaton	Salem	Toronto, Ontario, Canada	Inactive	None
Albekairi	Abdulaziz	Toronto, Ontario, Canada	Discipline Revoked	Click for Details
Albert	Shelagh	Toronto, Ontario, Canada	General Certificate	None
Alcobendas	Melanie	Toronto, Ontario, Canada	General Certificate	None
Aletras	Andy	Toronto, Ontario, Canada	Registrar Revoked	Click for Details
Alexander	Misty	Toronto, Ontario, Canada	General Certificate	None
Alexander-Cole	Karen	Toronto, Ontario, Canada	Registrar Revoked	None
Alexandre	Nuno Filipe	Toronto, Ontario, Canada	General Certificate	None
Alger	Christopher	Toronto, Ontario, Canada	Registrar Revoked	Click for Details
Alikiotis	Eleanora	Toronto, Ontario, Canada	General Certificate	None
Allovic	Janet	Toronto, Ontario, Canada	General Certificate	None
Allain	Angela	Toronto, Ontario, Canada	General Certificate	None
Allan	Amanda	Toronto, Ontario, Canada	General Certificate	None
Allan	Vonda	Toronto, Ontario, Canada	Suspended	None
Allmark	Tarilyn	Toronto, Ontario, Canada	General Certificate	None
Alovera	Abigail	Toronto, Ontario, Canada	General Certificate	None
Alpaugh	Rachel	Toronto, Ontario, Canada	Registrar Revoked	None
Alter	Jarred	Toronto, Ontario, Canada	Registrar Revoked	None
Alves	Joseph	Toronto, Ontario, Canada	General Certificate	None
Alviso	Victor Manuel	Toronto, Ontario, Canada	General Certificate	None
Ambre	Fernandine (Fern)	Toronto, Ontario, Canada	General Certificate	None
Amini-Pour	Morteza	Toronto, Ontario, Canada	General Certificate	None
Amlin	Alissa	Toronto, Ontario, Canada	Resigned	None
Ancheta	Joanne	Toronto, Ontario, Canada	Registrar Revoked	None
Anderson	Helen	Toronto, Ontario, Canada	General Certificate	None
Andrews	Tulje	Toronto, Ontario, Canada	Suspended	None