



## **PLEASE NOTE**

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This document is *not* the official version of these regulations. The regulations and the amendments printed in the [Royal Gazette](#) should be consulted to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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## CHAPTER O-1.1

### OCCUPATIONAL THERAPISTS ACT

#### STANDARDS AND DISCIPLINE REGULATIONS

Made by the Prince Edward Island Occupational Therapists Registration Board pursuant to section 6 of the *Occupational Therapists Act* R.S.P.E.I. 1988, Cap. O-1.1, after consultation with the Prince Edward Island Society of Occupational Therapists and approved by the Lieutenant Governor in Council.

- 1. In these regulations** Definitions
- (a) “Act” means the *Occupational Therapists Act* R.S.P.E.I. 1988, Cap. O-1.1; Act
- (b) “affected occupational therapist” means the occupational therapist who is complained against or is otherwise the subject of an inquiry, investigation or disciplinary process; affected occupational therapist
- (c) “Board” means the Prince Edward Island Occupational Therapists Registration Board; Board
- (d) “complainant” means a person who submits a complaint against an occupational therapist; complainant
- (e) “full investigation” means a thorough examination of a case by the Investigation Committee following a preliminary inquiry, pursuant to section 10; full investigation
- (f) “Investigation Committee” means the committee appointed under section 8; Investigation Committee
- (g) “preliminary inquiry” means initial consideration of a complaint, allegation or suspicion by the Investigation Committee pursuant to section 9 for the purpose of determining whether a full investigation is warranted; preliminary inquiry
- (h) “Registrar” means the officer appointed under subsection 5(2) of the Act; Registrar
- (i) “Registration Regulations” means the Occupational Therapists Act Registration Regulations (EC385/96); Registration Regulations
- (j) “sexual abuse or harassment” means behaviour in any sort of sexual way that is unwanted by the person toward whom it appears to be directed, whether by sexual abuse or harassment

- (i) a remark, gesture or other behaviour of a sexual nature toward the person, or by subjecting the person to a position or state of undress, which appears intended to be erotic, seductive or demeaning;
- (ii) touching in a sexual manner;
- (iii) sexual intercourse or other physical sexual relations including genital to genital, genital to anal, oral to genital, or oral to anal contact, or masturbation by or of either party or encouragement of the person to masturbate. (EC363/97)

### STANDARDS

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|-------------------------------------|--|
| Continuing professional development | <b>2.</b> An occupational therapist shall abide by the requirements of section 14 of the Registration Regulations concerning continuing professional development. (EC363/97)   |
| Acceptable practice                 | <b>3.</b> An occupational therapist shall exercise generally accepted standards of practice and procedures that are, in the judgment of the Board, consistent with a combination of <ul style="list-style-type: none"> <li>(a) the occupational therapist's professional training;</li> <li>(b) current teaching in accepted educational programs as referred to in the Registration Regulations;</li> <li>(c) current research and thinking appearing in recognized professional journals and reports; and</li> <li>(d) customary practices generally evident among peers in Canada. (EC363/97)</li> </ul>  |
| Incompetence, negligence            | <b>4.</b> The Board may find an occupational therapist guilty of professional incompetence or negligence if it concludes that a client suffered demonstrable harm or serious risk of harm which can reasonably be attributed to something the occupational therapist did or failed to do or failed to take into account, which act or omission was inconsistent with generally accepted standards of practice and procedures as described in section 3, and cannot be justified to the satisfaction of the Board. (EC363/97)   |
| Conflict of interest                | <b>5.</b> It is a conflict of interest for an occupational therapist to place herself or himself in or accept a situation which, in the Board's judgment, <ul style="list-style-type: none"> <li>(a) results, by connection with his or her practice of occupational therapy, in his or her monetary or other personal gain other than that earned directly from the provision of professional services;</li> <li>(b) results in gain for a person who refers a client to the occupational therapist as a consequence of the referral; or</li> <li>(c) puts his or her professional integrity or rendering of services at risk of being controlled or detrimentally influenced by other persons</li> </ul> |

or by factors other than his or her professional judgment of what is best for the client. (EC363/97)

**6.** Without limiting the generality of sections 15 and 16 of the Act, the Board may find an occupational therapist guilty of professional misconduct for any of the following reasons:

- (a) failing to abide by the code of ethics issued by the Canadian Association of Occupational Therapists;
- (b) failing to abide by any terms or conditions of the occupational therapist's certificate;
- (c) exceeding the lawful scope of practice, as defined by the Act and amplified by the generally accepted standards of practice as described in section 3;
- (d) purporting to have a qualification or special expertise which the occupational therapist does not in fact possess;
- (e) attempting to deal with a client's problem which the occupational therapist recognizes or should, according to his or her qualification, recognize as being beyond the scope of his or her competence or expertise;
- (f) failing to refer, or to recommend referral of, a client appropriately when the occupational therapist recognizes, or should in the Board's judgment recognize, a condition requiring the attention of another professional;
- (g) failing to inform the occupational therapist's employer of an inability to accept a certain responsibility in an area where specific additional training is required or where the occupational therapist does not feel competent to function without supervision or assistance;
- (h) assigning another occupational therapist or assistant or other person who is subject to the occupational therapist's direction the performance of an occupational therapy function in which such person is not adequately trained or competent;
- (i) permitting, in circumstances within the occupational therapist's control, an unauthorized person to perform any of the reserved professional functions of the profession except as may be provided for in law or according to generally accepted standards of practice as described in section 3;
- (j) attempting or carrying out, without previously informing and obtaining the advice of the Board, research based on methods which do not conform to the occupational therapist's training or to generally recognized contemporary custom;
- (k) failing to have and employ equipment, instruments, materials or other aids which enable the occupational therapist to render service according to an acceptable standard of current practice as described in section 3;

- (l) failing to discuss appropriately with a client the plan for the services to be given;
- (m) providing a service without obtaining proper consent where a consent is required by law;
- (n) failing to reveal or explain the exact nature of a service provided, following a client's request to do so;
- (o) failing to provide appropriate explanation, instruction or advice when assigning to a client a regimen of care or treatment, including the use of a piece of equipment, technique, device, material or substance, that is to be self-administered;
- (p) discontinuing professional services, unless
  - (i) the occupational therapist determines that the service is no longer necessary,
  - (ii) the client requests, clearly accepts or indicates by behaviour an intention that services be discontinued,
  - (iii) alternative services have been arranged, or
  - (iv) the client has had a reasonable opportunity to arrange for alternative services;
- (q) engaging in practice while ability to perform any professional act is impaired by alcohol or other drug or substance;
- (r) engaging in practice while ability to perform any professional act is significantly impaired by a condition of physical or mental ill-health;
- (s) providing or recommending service that is improper, inappropriate, unnecessary or cannot be reasonably expected to contribute to improving a client's health;
- (t) failing to co-operate with an appraisal or investigation duly authorized by the Board in accordance with the Act and regulations;
- (u) failing to comply with directions issued by the Board in accordance with the Act and regulations;
- (v) failing to carry out an undertaking given to or agreement made with the Board;
- (w) wilfully breaching or failing to carry out an agreement with or commitment to a client;
- (x) abusing a client verbally, physically or emotionally;
- (y) sexual abuse or harassment of a client, employee, colleague or other person in a practice setting;
- (z) practising under a conflict of interest;
- (aa) failing to maintain current client records;
- (bb) maintaining in records under the occupational therapist's control, signing, issuing or submitting a record, report, certificate, claim or similar document which the occupational therapist knows or should know contains false or misleading information or which,

- by omitting significant information, may give a misleading impression;
- (cc) failing, without reasonable cause, to provide a report or certificate relating to an assessment, treatment or other professional service performed by the occupational therapist within a reasonable time after a client or authorized representative has requested such document;
- (dd) giving information regarding a client's condition or services provided to the client to a person other than the client without the consent of the client or authorized representative, unless allowed or required to do so by law or for a purpose directly related to the client's care;
- (ee) disposing of client records in a manner that does not preserve confidentiality;
- (ff) failing to take reasonable steps, before ceasing practice or terminating services to a client, to ensure that, with respect to a health record for which the occupational therapist has primary responsibility,
- (i) the client is so notified and offered the opportunity to obtain a copy of the record,
  - (ii) the record is transferred to another qualified practitioner, or
  - (iii) where more than five years have passed since the completion of service to which a record refers, the record is destroyed;
- (gg) advertising that is improper or misleading in the judgment of the Board with reference to such written guidelines as may be developed;
- (hh) failing to inform a client, prior to providing service, of the nature and level of any fees to be charged to the client;
- (ii) submitting an account or charge for services that the occupational therapist knows is false or misleading;
- (jj) failing to itemize an account so that the client or other payer can clearly understand the value of the different aspects of service which were rendered;
- (kk) contravening a provision of the Act or regulations;
- (ll) contravening a federal or provincial law or municipal bylaw or rule of a facility or program in which the occupational therapist practises if the purpose of the law, bylaw or rule is to protect the health of the public or the contravention is significant to the occupational therapist's ability to practise competently;
- (mm) failing, where there are reasonable and probable grounds for suspicion, to report to the Board an incident or pattern of apparent negligence, incompetence, unsafe practice or professional misconduct on the part of another occupational therapist;

(nn) conduct or an act associated with practice which, in the judgment of the Board without any negative vote, would reasonably be regarded by the vast majority of occupational therapists as dishonourable or seriously offensive to a client. (EC363/97)

#### COMPLAINT AND INVESTIGATION

Complaint	<p><b>7.</b> (1) A complaint against an occupational therapist shall be submitted to the Registrar, and the Registrar shall</p> <p style="padding-left: 40px;">(a) inform the complainant at the outset about the nature and process of the investigation system prescribed in these regulations; and</p> <p style="padding-left: 40px;">(b) keep the complainant informed, as the complainant may request, about the progress and status of the investigation and discipline system.</p>
<i>Idem</i>	<p>(2) The Registrar shall determine the substance and to the extent immediately practicable, the background and facts of the complaint and report the matter to the Board. (EC363/97)</p>
Investigation Committee	<p><b>8.</b> (1) When the Board, on its own initiative or as a result of a complaint, determines that there is cause for examining a particular alleged incident or the practice of an occupational therapist, it shall appoint an Investigation Committee.</p>
Membership	<p>(2) The Investigation Committee shall comprise two occupational therapists and a person who is not an occupational therapist, who may or may not be members of the Board, and it may include such other persons as the Board considers necessary.</p>
Assistance	<p>(3) The Investigation Committee may engage the assistance of such other persons as the Board may authorize. (EC363/97)</p>
Preliminary inquiry	<p><b>9.</b> (1) The Investigation Committee shall conduct a preliminary inquiry to determine whether there is cause for full investigation.</p>
Discretion to inform occupational therapist	<p>(2) The Investigation Committee may or may not, as it judges most productive, inform the affected occupational therapist of the preliminary inquiry.</p>
No basis for action	<p>(3) If the Investigation Committee finds that there is not a sufficient basis for proceeding, it shall recommend to the Board that there be no further action, and the Board shall approve that conclusion or else direct the Investigation Committee to take further action. (EC363/97)</p>
Full investigation	<p><b>10.</b> If the Investigation Committee decides that there is cause for full investigation, or if directed by the Board pursuant to subsection 9(3), it shall in writing so inform the affected occupational therapist and carry</p>

out such full investigation as it considers appropriate or the Board may direct. (EC363/97)

**11.** During the full investigation, and at the discretion of the Investigation Committee also during the preliminary inquiry, the Investigation Committee shall ensure that any complainant and the affected occupational therapist are each permitted to be heard and to submit evidence. (EC363/97)

Parties to be heard

**12.** The affected occupational therapist shall if required give full co-operation to the Investigation Committee, including the provision of such records within the occupational therapist's control as may be requested. (EC363/97)

Co-operation

**13.** (1) Wherever it thinks it appropriate, the Investigation Committee shall commend to the complainant and the affected occupational therapist the alternative of mediation, that is, an effort mutually to resolve the complaint, allegation or suspicion informally without further inquiry or investigation.

Mediation  
alternative

(2) If mediation resolves the matter, the Investigation Committee shall so notify the Board in writing, and if the Board is satisfied, there need be no further action.

Resolution

(3) Where the Investigation Committee believes that the attempt at mediation is not, or is not likely to be, successful, or where the Board is not satisfied, the preliminary inquiry or full investigation shall proceed. (EC363/97)

Non-resolution

**14.** On recommendation of the Investigation Committee, at any stage of the inquiry or investigation process, if

Action pending  
outcome

(a) there appears to be overwhelming evidence of negligence, incompetence or misconduct;

(b) there is demonstrable risk to the affected occupational therapist's clients or to the general public; and

(c) the Board so decides without any negative vote,

the Board may take one or more of the following actions:

(d) make public or otherwise disclose the fact that an inquiry or investigation into the practice or conduct of the affected occupational therapist is under way;

(e) suspend or impose a condition on the certificate of the affected occupational therapist. (EC363/97)

**15.** The Investigation Committee shall not inquire jointly or inclusively into the practice or conduct of another occupational therapist because of evidence which appears during the inquiry or investigation concerning

No inclusive  
investigation

the affected occupational therapist, but instead shall if necessary conduct a separate inquiry. (EC363/97)

Committee records

**16.** (1) The Investigation Committee shall keep records of the information it gathers related to the complaint, allegation or suspicion.

Confidentiality of records

(2) The Registrar shall keep these records confidential and not give access to them to persons other than the Board, the Investigation Committee or its advisers or agents, except with the express consent of both the affected occupational therapist and the Investigation Committee.

Retention of records

(3) The completed file of an Investigation Committee inquiry, investigation and decision shall be kept for at least five years after the Board's decision on the matter, and thereafter at its discretion, but the file in a case where suspension or revocation of a certificate results shall be kept permanently.

Access to files

(4) Such completed files shall be inaccessible to anyone other than the Board or its authorized officers or agents, except by court order or with the consent of both the Board and the affected occupational therapist. (EC363/97)

Report

**17.** The Investigation Committee shall in writing report the findings of fact and conclusions of its full investigation and any recommendations to the Board, which shall provide a copy to the affected occupational therapist. (EC363/97)

Complaint dismissed

**18.** If the Board believes that the report of the Investigation Committee's investigation does not warrant proceeding further with the disciplinary process, the Board shall in writing so inform the affected occupational therapist and may, subject to the affected occupational therapist's concurrence, dismiss the matter and proceed no further on it, and the Board shall so inform the complainant. (EC363/97)

#### HEARING AND JUDGMENT

Hearing

**19.** (1) Unless the matter is dismissed in accordance with section 18, the Board shall hold a hearing to provide the affected occupational therapist with the opportunity to address the report of the Investigation Committee, and otherwise present the occupational therapist's case to the Board.

Quorum

(2) The Board shall not conduct the hearing and make its decisions under section 20 with fewer than three members present, of whom one must be a member who is not an occupational therapist.

(3) The Board shall, by ten days written notice delivered by hand or sent by registered mail to the person's last known address, inform the affected occupational therapist of the time and place of the hearing, and of the right, if the occupational therapist wishes, to be represented at the hearing by legal counsel.

Notice of hearing

(4) The Board shall make the rules under which a hearing is to be conducted, reflecting principles of natural justice, and shall inform the affected occupational therapist of the rules in advance.

Procedure

(5) A less formal, non-legalistic procedure shall be the normal approach, but if it is considered necessary, either the affected occupational therapist or the Board or both parties may be represented by legal counsel.

Legal counsel

(6) A hearing shall be closed, but the Board

Hearing closed

- (a) shall, if there is no reason to believe that it would be harmful, permit the complainant, if any, to attend and speak; and
- (b) may, if it considers it appropriate and constructive, permit other persons to attend.

(7) If the affected occupational therapist does not take the opportunity or otherwise fails, without reasonable excuse, to attend the announced hearing, the Board may nonetheless proceed with the disciplinary process. (EC363/97)

If person does not attend

**20.** The Board shall consider the report of the Investigation Committee together with such further information as has emerged from the hearing, and shall by vote determine

Judgment by Board

- (a) whether to accept the findings of fact of the Investigation Committee;
- (b) whether to accept, reject or modify the conclusions of the Investigation Committee; and
- (c) the remedial or disciplinary action, if any, to be taken. (EC363/97)

**21.** The Board shall without delay notify in writing the affected occupational therapist of its decisions, and any requirements to be undertaken by the occupational therapist, specifying the time allotted for compliance and, in the case of suspension or revocation of a certificate, informing the occupational therapist of the right to appeal under section 17 of the Act. (EC363/97)

Notification of affected occupational therapist

**22.** Subject to the appeal provisions of section 17 of the Act, the occupational therapist against whom remedial or disciplinary action is taken shall comply with the Board's directions, and if there is not

Compliance

compliance within the specified time, the Board may apply an additional requirement or penalty. (EC363/97)

Subsequent re-  
instatement

**23.** The Board may, upon the occupational therapist's subsequent application, reinstate a suspended or revoked certificate according to subsection 17(3) of the Act and according to such terms and conditions as it considers appropriate for protecting the public interest. (EC363/97)

#### REMEDIAL MEASURES AND PENALTIES

Board to determine  
remedy or penalty

**24.** Where it finds the holder of a certificate guilty of professional misconduct, incompetence, negligence or failure to abide by the prescribed standards or other requirements of the Act or regulations, the Board shall determine a measure of remedy or penalty which it considers appropriate to the nature and degree of the failure. (EC363/97)

Measures

**25.** (1) Without limiting the generality of section 24, disciplinary measures may include the following:

- (a) a reprimand, whether oral or written;
- (b) direction that the person fulfil a specified continuing professional development requirement beyond the normal annual requirements;
- (c) direction that the person complete a rehabilitative treatment program;
- (d) a term or condition imposed on the certificate, limiting the scope or independence of practice;
- (e) suspension of the certificate for a fixed period of time or until a condition has been fulfilled;
- (f) revocation of the certificate;
- (g) a combination of any of the above measures.

Costs

(2) As part of the discipline, the Board may require a person found guilty to pay the cost or part of the cost of the investigation and hearing.

Return of certificate

(3) In the case of suspension or revocation, the holder of the certificate shall return it to the Board. (EC363/97)

Criteria

**26.** (1) The criteria for the Board's assessment of the nature and severity of the penalty or remedial measure shall include:

- (a) the extent of the affected occupational therapist's awareness of the fault;
- (b) the degree of risk or harm to the client;
- (c) the potential further risk to the public;
- (d) the potential effect upon the professional service system and the public;
- (e) the likely effect upon the disciplined person's ability to earn a livelihood;

- (f) the possible deterrent effect;
- (g) any restitution or remediation voluntarily undertaken by the affected occupational therapist.

(2) Wherever possible the Board shall seek, by the disciplinary action it takes, an approach and outcome of remedy or positive improvement rather than mere penalization. (EC363/97)

*Idem*

**27.** (1) The Board shall, subject to this section and section 14, keep secret any investigation and disciplinary or remedial measures unless otherwise requested by the affected occupational therapist; however, the Board may reveal such matters in any report on its operations, so long as this is done in such a way that the parties involved cannot readily be identified.

Confidentiality

(2) Unless it has reasonable cause to believe that significant harm would result, the Board shall inform the complainant or complainants, if any, of the outcome of an investigation in at least general terms.

Inform complainant

(3) The Registrar may provide to the regulatory authority responsible for governing occupational therapy in another jurisdiction information about the outcome of a disciplinary investigation and the reasons for it.

Information to other jurisdictions

(4) In unusual cases where it appears necessary for protecting the welfare of the public, the Board may choose as part of the penalty or remedy to reveal the nature of the case and its outcome, including the identity of the person at fault, to the Minister, the PEI Society of Occupational Therapists, the Canadian Association of Occupational Therapists, employers, other health-service and human-service professionals, regulatory bodies, law enforcement officials and the courts, or the general public.

Outcome made public

(5) Where a certificate is restricted, suspended or revoked by disciplinary order, the Registrar shall without delay

Notification of employers, etc.

- (a) so notify employers, regulatory bodies and others as may be applicable in order to prevent unauthorized practice; and
- (b) report the disciplinary action and the reasons for it, and the current status of the affected occupational therapist, to any person who subsequently requests information from the register about the affected occupational therapist's entitlement to practise.

(6) When the certificate of an affected occupational therapist is reinstated, the Board shall notify all persons to whom a notice of the original action was sent, in order to restore to the occupational therapist opportunities for resuming authorized practice. (EC363/97)

Notification of reinstatement

## MISCELLANEOUS

Liability of  
committee

**28.** No action lies against the Investigation Committee, its members or persons acting in accordance with its directions for anything done in good faith with respect to its functions under these regulations. (EC363/97)

Member  
disqualified

**29.** A member of the Board or of the Investigation Committee shall withdraw from any official involvement as a member or officer in any investigation, hearing or disciplinary action of which that person is the subject or where such involvement would create a significant risk of the person's not making conclusions objectively. (EC363/97)

Statistical  
information

**30.** (1) The Board may compile and publish statistical information with regard to the volume and nature of the workforce, professional services and their use, and similar subjects related to patterns of service, need and performance, in such form that individuals are not identifiable without their consent.

*Idem*

(2) The holder of a certificate shall provide to the Registrar such information as may be requested by the Board for purposes of this section. (EC363/97)