Enforcement Procedures for the *Occupational Therapy Code of Ethics and Ethics Standards*

1. Introduction

The principal purposes of the *Occupational Therapy Code of Ethics and Ethics Standards* (hereinafter referred to as the *Code and Ethics Standards*) are to help protect the public and to reinforce its confidence in the occupational therapy profession rather than to resolve private business, legal, or other disputes for which there are other more appropriate forums for resolution. The Code and Ethics Standards also is an aspirational document to guide occupational therapists, occupational therapy assistants, and occupational therapy students toward appropriate professional conduct in all aspects of their diverse roles. It applies to any conduct that may affect the performance of occupational therapy as well as to behavior that an individual may do in another capacity that reflects negatively on the reputation of occupational therapy.

The *Enforcement Procedures for the Occupational Therapy Code of Ethics and Ethics Standards* (formerly the *Enforcement Procedures for the Occupational Therapy Code of Ethics*) have undergone a series of revisions by the American Occupational Therapy Association's (AOTA's) Ethics Commission (hereinafter referred to as the *EC*) since their initial adoption. This public document articulates the procedures that are followed by the EC as it carries out its duties to enforce the Code and Ethics Standards. A major goal of these *Enforcement Procedures* is to ensure objectivity and fundamental fairness to all individuals who may be parties in an ethics complaint.

The *Enforcement Procedures* are used to help ensure compliance with the Code and Ethics Standards, which represent the values and principles that members of the profession have identified as important. Acceptance of AOTA membership commits individuals to adherence to the Code and Ethics Standards and cooperation with its *Enforcement Procedures.* These are established and maintained by the EC: The EC and AOTA's Ethics Office make the *Enforcement Procedures* public and available to members of the profession, state regulatory boards, consumers, and others for their use.

The EC urges particular attention to the following issues:

1.1. Professional Responsibility, Other Processes—All occupational therapy personnel have an obligation to maintain the Code and Ethics Standards of their profession and to promote and support these Standards among their colleagues. Each AOTA member must be alert to practices that undermine these Standards and is obligated to take action that is appropriate in the circumstances. At the same time, members must carefully weigh their judgments as to potentially unethical practice to ensure that they are based on objective evaluation and not on personal bias or prejudice, inadequate information, or simply differences of professional viewpoint. It is recognized that individual occupational therapy personnel may not have the authority or ability to address or correct all situations of concern. Whenever feasible and appropriate, members should first pursue other corrective steps within the relevant institution or setting and discuss ethical concerns directly with the potential Respondent before resorting to AOTA's ethics complaint process.

1.2. Jurisdiction—The Code and Ethics Standards apply to persons who are or were AOTA members at the time of the conduct in question. Later nonrenewal or relinquishment of membership does not affect Association jurisdiction. The *Enforcement Procedures* that shall be utilized in any complaint shall be those in effect at the time the complaint is initiated.

1.3. Disciplinary Actions/Sanctions (Pursuing a Complaint)—If the EC determines that unethical conduct has occurred, it may impose sanctions, including reprimand, censure, probation (with terms), suspension, or permanent revocation of AOTA membership. In all cases, except those involving only reprimand, the Association will report the conclusions and sanctions in its official publications and also will communicate to any appropriate persons or entities. If an individual is on either the Roster of Fellows (ROF) or the Roster of Honor (ROH), the EC Chairperson (via the EC Staff Liaison) shall notify the VLDC Chairperson (and AOTA Executive Director) of their membership suspension or revocation. That individual shall have their name removed from either the ROF or the ROH and no longer has the right to use the designated credential of FAOTA or ROH during the period of suspension or permanently, in the case of revocation.

The EC Chairperson shall also notify the Chairperson of the Board for Advanced and Specialty Certification (BASC) (via Association staff liaison, in writing) of final disciplinary actions from the EC in which an individual's membership has been suspended or revoked. These individuals are not eligible to apply for or renew certification.

The potential sanctions are defined as follows:

1.3.1. Reprimand—A formal expression of disapproval of conduct communicated privately by letter from the EC Chairperson that is nondisclosable and noncommunicative to other bodies (e.g., state regulatory boards [SRBs], National Board for Certification in Occupational Therapy, ® [NBCOT®]).

1.3.2. Censure—A formal expression of disapproval that is public.

1.3.3. Probation of Membership Subject to Terms—Continued membership is conditional, depending on fulfillment of specified terms. Failure to meet terms will subject an AOTA member to any of the disciplinary actions or sanctions.

1.3.4. Suspension—Removal of AOTA membership for a specified period of time.

1.3.5. Revocation—Permanent denial of AOTA membership.

1.4. Educative Letters—If the EC determines that the alleged conduct may or may not be a true breach of the Code and Ethics Standards but in any event does not warrant any of the sanctions set forth in Section 1.3.or is not completely in keeping with the aspirational nature of the Code and Ethics Standards or within the prevailing standards of practice or good professionalism, the EC may send a letter to educate the Respondent about relevant standards of practice and/or appropriate professional behavior. In addition, a different educative letter, if appropriate, may be sent to the Complainant.

1.5. Advisory Opinions—The EC may issue general advisory opinions on ethical issues to inform and educate the AOTA membership. These opinions shall be publicized to the membership and are available in the *Reference Guide to the Occupational Therapy Code of Ethics and Ethics Standards* as well as in other locations.

1.6. Rules of Evidence—The EC proceedings shall be conducted in accordance with fundamental fairness. However, formal rules of evidence that are used in legal proceedings do not apply to these *Enforcement Procedures.* The Disciplinary Council (see Section 5) and the Appeal Panel (see Section 6) can consider any evidence that they deem appropriate and pertinent.

1.7. Confidentiality and Disclosure—The EC develops and adheres to strict rules of confidentiality in every aspect of its work. This requires that participants in the process refrain from any communication relating to the existence and subject matter of the complaint other than with those directly involved in the enforcement process. Maintaining confidentiality throughout the investigation and enforcement process of a formal ethics complaint is essential in order to ensure fairness to all parties involved. These rules of confidentiality pertain not only to the EC but also apply to others involved in the complaint process. Beginning with the EC Staff Liaison and support staff, strict rules of confidentiality are followed. These same rules of confidentiality apply to Complainants, Respondents and their attorneys, and witnesses involved with the EC's investigatory process. Due diligence must be exercised by everyone involved in the investigation to avoid compromising the confidential nature of the process. Any AOTA member who breaches these rules of confidentiality may become subject to an ethics complaint/investigatory process himself or herself. Non–AOTA members may lodge an ethics complaint against an Association member, and these individuals are still expected to adhere to the Association's confidentiality rules. The Association reserves the right to take appropriate action against non–AOTA members who violate confidentiality rules, including notification of their appropriate licensure boards.

1.7.1. Disclosure—When the EC investigates a complaint, it may request information from a variety of sources. The process of obtaining additional information is carefully executed in order to maintain confidentiality. The EC may request information from a variety of sources, including state licensing agencies, academic councils, courts, employers, and other persons and entities. It is within the EC's purview to determine what disclosures are appropriate for particular parties in order to effectively implement its investigatory obligations. Public sanctions by the EC, Disciplinary Council, or Appeal Panel will be publicized as provided in these *Enforcement Procedures*. Normally, the EC does not disclose information or documentation reviewed in the course of an investigation unless the EC determines that disclosure is necessary to obtain additional, relevant evidence or to administer the ethics process or is legally required.

Individuals who file a complaint (i.e., *Complainant*) and those who are the subject of one (i.e., *Respondent*) must not disclose to anyone outside of those involved in the complaint process their role in an ethics complaint. Disclosing this information in and of itself may jeopardize the ethics process and violate the rules of fundamental fairness by which all parties are protected. Disclosure of information related to any case under investigation by the EC is prohibited and, if done, will lead to repercussions as outlined in these *Enforcement Procedures* (see Section 2.2.3.).

2. Complaints

2.1. Interested Party Complaints

2.1.1. Complaints stating an alleged violation of the Code and Ethics Standards may originate from any individual, group, or entity within or outside AOTA. All complaints must be in writing, signed by the Complainant(s), and submitted to the EC Chairperson at the address of the Association headquarters. Complainants must complete the Formal Statement of Complaint Form at the end of this document. All complaints shall identify the person against whom the complaint is directed (the Respondent), the ethical principles that the Complainant believes have been violated, and the key facts and date(s) of the alleged ethical violations. If lawfully available, supporting documentation should be attached.

2.1.2. Within 90 days of receipt of a complaint, the EC shall make a preliminary assessment of the complaint and decide whether it presents sufficient questions as to a potential ethics violation that an investigation is warranted in accordance with Section 3. Commencing an investigation does not imply a conclusion that an ethical violation has in fact occurred or any judgment as to the ultimate sanction, if any, that may be appropriate. In the event the EC determines at the completion of an investigation that the complaint does rise to the level of an ethical violation, the EC may issue a decision as set forth in Section 4 below. In the event the EC determines that the complaint does not rise to the level of an ethical violation, the EC may direct the parties to utilize the parliamentary authority of the Association and/or other conflict resolution resources via an educative letter. This applies to all complaints including those involving AOTA elected/volunteer leadership related to their official roles.

2.2. Complaints Initiated by the EC

2.2.1. The EC itself may initiate a complaint (a *sua sponte* complaint) when it receives information from a governmental body, certification or similar body, public media, or other source indicating that a person subject to its jurisdiction may have committed acts that violate the Code and Ethics Standards. The Association will ordinarily act promptly after learning of the basis of a *sua sponte* complaint, but there is no specified time limit.

If the EC passes a motion to initiate a *sua sponte* complaint, the AOTA Staff Liaison to the EC will complete the Formal Statement of Complaint Form (at the end of this document) and will describe the nature of the factual allegations that led to the complaint and the manner in which the EC learned of the matter. The Complaint Form will be signed by the EC Chairperson on behalf of the EC. The form will be filed with the case material in the Association's Ethics Office.

2.2.2. ***De Jure* Complaints—**Where the source of a *sua sponte* complaint is the findings and conclusions of another official body, the EC classifies such *sua sponte* complaints as *de jure*. The procedure in such cases is addressed in Section 4.2.

2.2.3. The EC shall have the jurisdiction to investigate or sanction any matter or person for violations based on information learned in the course of investigating a complaint under Section 2.2.2.

2.3. Continuation of Complaint Process—If an AOTA member relinquishes membership, fails to renew membership, or fails to cooperate with the ethics investigation, the EC shall nevertheless continue to process the complaint, noting in its report the circumstances of the Respondent's action. Such actions shall not deprive the EC of jurisdiction. All correspondence related to the EC complaint process is in writing and sent by certified mail, return receipt requested. In the event that any written correspondence does not have delivery confirmation, the AOTA Ethics Office will make an attempt to search for an alternate physical or electronic address or make a second attempt to send to the original address. If the Respondent does not claim correspondence after two attempts to deliver, delivery cannot be confirmed or correspondence is returned to the Association as undeliverable, the EC shall consider that it has made good-faith effort and shall proceed with the ethics enforcement process.

3. EC Review and Investigations

3.1. Initial Action—The purpose of the preliminary review is to decide whether or not the information submitted with the complaint warrants opening the case. If in its preliminary review

of the complaint the EC determines that an investigation is not warranted, the Complainant will be so notified.

3.2. Dismissal of Complaints—The EC may at any time dismiss a complaint for any of the following reasons:

3.2.1. Lack of Jurisdiction—The EC determines that it has no jurisdiction over the Respondent (e.g., a complaint against a person who is or was not an AOTA member at the time of the alleged incident or who has never been a member).

3.2.2. Absolute Time Limit/Not Timely Filed—The EC determines that the violation of the Code and Ethics Standards is alleged to have occurred more than 7 years prior to the filing of the complaint.

3.2.3. Subject to Jurisdiction of Another Authority—The EC determines that the complaint is based on matters that are within the authority of and are more properly dealt with by another governmental or nongovernmental body, such as an SRB, NBCOT®, an Association component other than the EC, an employer, or a court (e.g., accusing a superior of sexual harassment at work, accusing someone of anticompetitive practices subject to the antitrust laws).

3.2.4. No Ethics Violation—The EC finds that the complaint, even if proven, does not state a basis for action under the Code and Ethics Standards (e.g., simply accusing someone of being unpleasant or rude on an occasion).

3.2.5. Insufficient Evidence—The EC determines that there clearly would not be sufficient factual evidence to support a finding of an ethics violation.

3.2.6. Corrected Violation—The EC determines that any violation it might find already has been or is being corrected and that this is an adequate result in the given case.

3.2.7. Other Good Cause.

3.3. Investigator (Avoidance of Conflict of Interest)—The investigator chosen shall not have a conflict of interest (i.e., shall never have had a substantial professional, personal, financial, business, or volunteer relationship with either the Complainant or the Respondent). In the event that the EC Staff Liaison has such a conflict, the EC Chairperson shall appoint an alternate investigator who has no conflict of interest.

3.4. Investigation—If an investigation is deemed warranted, the EC Chairperson shall do the following within thirty (30) days: Appoint the EC Staff Liaison at the AOTA Headquarters to investigate the complaint and notify the Respondent (by certified, return-receipt mail) that a complaint has been received and an investigation is being conducted. A copy of the complaint and supporting documentation shall be enclosed with this notification. The Complainant also will receive notification by certified, return-receipt mail that the complaint is being investigated.

3.4.1. Ordinarily, the Investigator will send questions formulated by the EC to be answered by the Complainant and/or the Respondent.

3.4.2. The Complainant shall be given thirty (30) days from receipt of the questions to respond in writing to the investigator.

3.4.3. The Respondent shall be given thirty (30) days from receipt of the questions to respond in writing to the Investigator.

3.4.4. The EC ordinarily will notify the Complainant of any substantive new evidence adverse to the Complainant's initial complaint that is discovered in the course of the ethics

investigation and allow the Complainant to respond to such adverse evidence. In such cases, the Complainant will be given a copy of such evidence and will have fourteen (14) days in which to submit a written response. If the new evidence clearly shows that there has been no ethics violation, the EC may terminate the proceeding. In addition, if the investigation includes questions for both the Respondent and the Complainant, the evidence submitted by each party in response to the investigatory questions shall be provided to the Respondent and available to the Complainant on request. The EC may request reasonable payment for copying expenses depending on the volume of material to be sent.

3.4.5. The Investigator, in consultation with the EC, may obtain evidence directly from third parties without permission from the Complainant or Respondent.

3.5. Investigation Timeline—The investigation will be completed within ninety (90) days after receipt of notification by the Respondent or his or her designee that an investigation is being conducted, unless the EC determines that special circumstances warrant additional time for the investigation. All timelines noted here can be extended for good cause at the discretion of the EC, including the EC's schedule and additional requests of the Respondent. The Respondent and the Complainant shall be notified in writing if a delay occurs or if the investigational process requires more time.

3.6. Case Files—The investigative files shall include the complaint and any documentation on which the EC relied in initiating the investigation.

3.7. Cooperation by Respondent—Every AOTA respondent has a duty to cooperate reasonably with enforcement processes for the Code and Ethics Standards. Failure of the Respondent to participate and/or cooperate with the investigative process of the EC shall not prevent continuation of the ethics process, and this behavior itself may constitute a violation of the Code and Ethics Standards.

3.8. Referral of Complaint—The EC may at any time refer a matter to NBCOT®, the SRB, or other recognized authorities for appropriate action. Despite such referral to an appropriate authority, the EC shall retain jurisdiction. EC action may be stayed for a reasonable period pending notification of a decision by that authority, at the discretion of the EC (and such delays will extend the time periods under these *Procedures*). A stay in conducting an investigation shall not constitute a waiver by the EC of jurisdiction over the matters. The EC shall provide written notice by mail (requiring signature and proof of date of receipt) to the Respondent and the Complainant of any such stay of action.

4. EC Review and Decision

4.1. Regular Complaint Process

4.1.1. Decision—If at the conclusion of the investigation the EC determines that the respondent has engaged in conduct that constitutes a breach of the Code and Ethics Standards, the EC shall notify the Respondent and Complainant by mail with signature and proof of date received. The notice shall describe in sufficient detail the conduct that constitutes a violation of the Code and Ethics Standards and indicate the sanction that is being imposed in accordance with these *Enforcement Procedures.*

4.1.2. Respondent's Response—Within 30 days of notification of the EC's decision and sanction, if any, the Respondent shall

4.1.2.1. Advise the EC Chairperson in writing that he or she accepts the EC's decision and sanction and waives any right to a Disciplinary Council hearing, or

4.1.2.2. Advise the EC Chairperson in writing that he or she accepts the EC's decision but believes the sanction is not justified or should be reduced with a rationale to support a reduced sanction.

4.1.2.3. Advise the EC Chairperson in writing that he or she contests the EC's decision and sanction and requests a hearing before the Disciplinary Council.

Failure of the Respondent to take one of these actions within the time specified will be deemed to constitute acceptance of the decision and sanction. If the Respondent requests a Disciplinary Council hearing, it will be scheduled. If the Respondent does not request a Disciplinary Council hearing but accepts the decision, the EC will notify all relevant parties and implement the sanction. Correspondence with the respondent will also indicate that public sanctions may have an impact on their ability to serve in AOTA positions, whether elected or appointed, for a designated period of time.

4.2. *De Jure* Complaint Process

4.2.1. The EC Staff Liaison will present to the EC any findings from external sources (as described above) that come to his or her attention and that may warrant *sua sponte* complaints pertaining to individuals who are or were AOTA members at the time of the alleged incident.

4.2.2. Because *de jure* complaints are based on the findings of fact or conclusions of another official body, the EC will decide whether or not to act based on such findings or conclusions and will not ordinarily initiate another investigation, absent clear and convincing evidence that such findings and conclusions were erroneous or not supported by substantial evidence. Based on the information presented by the EC Staff Liaison, the EC will determine whether the findings of the public body also are sufficient to demonstrate an egregious violation of the Code and Ethics Standards and therefore warrant taking disciplinary action.

4.2.3. If the EC decides that a breach of the Code and Ethics Standards has occurred, the EC Chairperson will notify the Respondent in writing of the violation and the disciplinary action that is being taken. Correspondence with the respondent will also indicate that public sanctions may have an impact on their ability to serve in AOTA positions, whether elected or appointed, for a designated period of time. In response to the *de jure sua sponte* decision and sanction by the EC, the Respondent may

4.2.3.1. Accept the decision of the EC (as to both the ethics violation and the sanction) based solely on the findings of fact and conclusions of the EC or the public body, or

4.2.3.2. Accept the decision that the Respondent committed unethical conduct but within thirty (30) days submit to the EC a statement setting forth the reasons why any sanction should not be imposed or reasons why the sanction should be mitigated or reduced.

4.2.3.3. Within thirty (30) days, present information showing the findings of fact of the official body relied on by the EC to impose the sanction are clearly erroneous and request reconsideration by the EC. The EC may have the option of opening an investigation or modifying the sanction in the event they find clear and

convincing evidence that the findings and the conclusions of the other body are erroneous.

4.2.4. In cases of *de jure* complaints, a Disciplinary Council hearing can later be requested (pursuant to Section 5 below) only if the Respondent has first exercised Options 4.2.3.2 or 4.2.3.3.

4.2.5. Respondents in an ethics case may utilize Options 4.2.3.2 or 4.2.3.3 (reconsideration) once in responding to the EC. Following one review of the additional information submitted by the Respondent, if the EC reaffirms its original sanction, the Respondent has the option of accepting the violation and proposed sanction or requesting a Disciplinary Council hearing. Repeated requests for reconsideration will not be accepted by the EC.

5. Disciplinary Council

5.1. Purpose—The purpose of the Disciplinary Council (hereinafter to be known as *the Council*) hearing is to provide the Respondent an opportunity to present evidence and witnesses to answer and refute the decision and/or sanction and to permit the EC Chairperson or designee to present evidence and witnesses in support of his or her decision. The Council shall consider the matters alleged in the complaint; the matters raised in defense as well as other relevant facts, ethical principles, and federal or state law, if applicable. The Council may question the parties concerned and determine ethical issues arising from the factual matters in the case even if those specific ethical issues were not raised by the Complainant. The Council also may choose to apply Principles or other language from the AOTA Code and Ethics Standards not originally identified by the EC. The Council may affirm the decision of the EC or reverse or modify it if it finds that the decision was clearly erroneous or a material departure from its written procedure.

5.2. Parties—The parties to a Council Hearing are the Respondent and the EC Chairperson.

5.3. Criteria and Process for Selection of Council Members

5.3.1. Criteria

5.3.1.1. AOTA Administrative Standard Operating Procedures (SOP) and Association Policy 2.6 shall be considered in the selection of qualified potential candidates for the Council, which shall be composed of qualified individuals and AOTA members drawn from a pool of candidates who meet the criteria outlined below. Members ideally will have some knowledge or experience in the areas of activity that are at issue in the case. They also will have experience in disciplinary hearings and/or general knowledge about ethics as demonstrated by education, presentations, and/or publications.

5.3.1.2. No conflict of interest may exist with either the Complainant or the Respondent (refer to Association Policy 1.22—Conflict of Interest for guidance).

5.3.1.3. No individual may serve on the Council who is currently a member of the EC or the AOTA Board of Directors.

5.3.1.4. No individual may serve on the Council who has previously been the subject of an ethics complaint that resulted in a public EC disciplinary action.

5.3.1.5. The public member on the Council shall have knowledge of the profession and ethical issues.

5.3.1.6. The public member shall not be an occupational therapy practitioner, educator, or researcher.

5.4. Criteria and Process for Selection of Council Chairperson

5.4.1. Criteria

5.4.1.1. Must have experience in analyzing/reviewing cases.

5.4.1.2. May be selected from the pool of candidates for the Council or a former EC member who has been off the EC for at least three (3) years.

5.4.1.3. The EC Chairperson shall not serve as the Council Chairperson.

5.4.2. Process

5.4.2.1. The Representative Assembly (RA) Speaker (in consultation with EC Staff Liaison) will select the Council Chairperson.

5.4.2.2. If the RA Speaker needs to be recused from this duty, the RA Vice Speaker will select the Council Chairperson.

5.5. Process

5.5.1. Potential candidates for the Council pool will be recruited through public postings in AOTA publications and via the electronic forums. Association leadership will be encouraged to recruit qualified candidates. Potential members of the Council shall be interviewed to ascertain the following:

a. Willingness to serve on the Council and availability for a period of three (3) years and
b. Qualifications per criteria outlined in Section 5.3.1.

5.5.2. The AOTA President and EC Staff Liaison will maintain a pool of no less than six (6) and no more than twelve (12) qualified individuals.

5.5.3. The President, with input from the EC Staff Liaison, will select from the pool the members of each Council within thirty (30) days of notification by a Respondent that a Council is being requested.

5.5.4. Each Council shall be composed of three (3) AOTA members in good standing and a public member.

5.5.5. The EC Staff Liaison will remove anyone with a potential conflict of interest in a particular case from the potential Council pool.

5.6. Notification of Parties (EC Chairperson, Complainant, Respondent, Council Members)

5.6.1. The EC Staff Liaison shall schedule a hearing date in coordination with the Council Chairperson.

5.6.2. The Council (via the EC Staff Liaison) shall notify all parties at least forty-five (45) days prior to the hearing of the date, time, and place.

5.6.3. Case material will be sent to all parties and the Council members by national delivery service or mail with signature required and/or proof of date received.

5.7. Hearing Witnesses, Materials, and Evidence

5.7.1. Within thirty (30) days of notification of the hearing, the Respondent shall submit to the Council a written response to the decision and sanction, including a detailed statement as to the reasons that he or she is appealing the decision and a list of potential witnesses (if any) with a statement indicating the subject matter they will be addressing.

5.7.2. The Complainant before the Council also will submit a list of potential witnesses (if any) to the Council with a statement indicating the subject matter they will be addressing. Only under limited circumstances may the Council consider additional material evidence from the Respondent or the Complainant not presented or available prior to the issuance of their proposed sanction. Such new or additional evidence may be considered by the Council if the Council is satisfied that the Respondent or the Complainant has demonstrated the new evidence was previously unavailable and provided it is submitted to all parties in writing no later than fifteen (15) days prior to the hearing.

5.7.3. The Council Chairperson may permit testimony by conference call (at no expense to the participant), limit participation of witnesses in order to curtail repetitive testimony, or prescribe other reasonable arrangements or limitations. The Respondent may elect to appear (at Respondent's own expense) and present testimony. If alternative technology options are available for the hearing, the Respondent, Council members, and EC Chairperson shall be so informed when the hearing arrangements are sent.

5.8. Counsel—The Respondent may be represented by legal counsel at his or her own expense. AOTA's Legal Counsel shall advise and represent the Association at the hearing. AOTA's Legal Counsel also may advise the Council regarding procedural matters to ensure fairness to all parties. All parties and the AOTA Legal Counsel (at the request of the EC or the Council) shall have the opportunity to question witnesses.

5.9. Hearing

5.9.1. The Council hearing shall be recorded by a professional transcription service or telephone recording transcribed for Council members and shall be limited to two (2) hours.

5.9.2. The Council Chairperson will conduct the hearing and does not vote.

5.9.3. Each person present shall be identified for the record, and the Council Chairperson will describe the procedures for the Council hearing. An oral affirmation of truthfulness will be requested from each participant who gives factual testimony in the Council hearing.

5.9.4. The Council Chairperson shall allow for questions.

5.9.5. The EC Chairperson shall present the ethics complaint, a summary of the evidence resulting from the investigation, and the EC decision and disciplinary action imposed against the Respondent.

5.9.6. The Respondent may present a defense to the decision and sanction after the EC presents its case.

5.9.7. Each party and/or his or her legal representative shall have the opportunity to call witnesses to present testimony and to question any witnesses including the EC Chairperson or his or her designee. The Council Chairperson shall be entitled to provide reasonable limits on the extent of any witnesses' testimony or any questioning.

5.9.8. The Council Chairperson may recess the hearing at any time.

5.9.9. The Council Chairperson shall call for final statements from each party before concluding the hearing.

5.9.10. Decisions of the Council will be by majority vote.

5.10. Disciplinary Council Decision

5.10.1. An official copy of the transcript shall be sent to each Council member, the EC Chairperson, the AOTA Legal Counsel, the EC Staff Liaison, and the Respondent and his or her counsel as soon as it is available from the transcription company.

5.10.2. The Council Chairperson shall work with the EC Staff Liaison and the AOTA Legal Counsel in preparing the text of the final decision.

5.10.3. The Council shall issue a decision in writing to the AOTA Executive Director within thirty (30) days of receiving the written transcription of the hearing (unless special circumstances warrant additional time). The Council decision shall be based on the record and evidence presented and may affirm, modify, or reverse the decision of the EC, including increasing or decreasing the level of sanction or determining that no disciplinary action is warranted.

5.11. Action, Notification, and Timeline Adjustments

5.11.1. A copy of the Council's official decision and appeal process (Section 6) is sent to the Respondent, the EC Chairperson, and other appropriate parties within fifteen (15) business days via mail (with signature and proof of date received) after notification of the AOTA Executive Director.

5.11.2. The time limits specified in the *Enforcement Procedures for the Occupational Therapy Code and Ethics Standards* may be extended by mutual consent of the Respondent, Complainant, and Council Chairperson for good cause by the Chairperson.

5.11.3. Other features of the preceding *Enforcement Procedures* may be adjusted in particular cases in light of extraordinary circumstances, consistent with fundamental fairness.

5.12. Appeal—Within thirty (30) days after notification of the Council's decision, a Respondent upon whom a sanction was imposed may appeal the decision as provided in Section 6. Within thirty (30) days after notification of the Council's decision, the EC also may appeal the decision as provided in Section 6. If no appeal is filed within that time, the AOTA Executive Director or EC Staff Liaison shall publish the decision in accordance with these procedures and make any other notifications deemed necessary.

6. Appeal Process

6.1. Appeals—Either the EC or the Respondent may appeal. Appeals shall be written, signed by the appealing party, and sent by certified mail to the AOTA Executive Director in care of the

AOTA Ethics Office. The grounds for the appeal shall be fully explained in this document. When an appeal is requested, the other party will be notified.

6.2. Grounds for Appeal—Appeals shall generally address only the issues, procedures, or sanctions that are part of the record before the Council. However, in the interest of fairness, the Appeal Panel may consider newly available evidence relating to the original complaint only under extraordinary circumstances.

6.3. Composition and Leadership of Appeal Panel—The AOTA Vice-President, Secretary, and Treasurer shall constitute the Appeal Panel. In the event of vacancies in these positions or the existence of a conflict of interest, the Vice President shall appoint replacements drawn from among the other AOTA Board of Directors members. If the entire Board has a conflict of interest, the Board Appeal process (Attachment C of EC SOP) shall be followed. The President shall not serve on the Appeal Panel. No individual may serve on the Council who has previously been the subject of an ethics complaint that resulted in a specific EC disciplinary action.

The Appeal Panel Chairperson will be selected by its members from among themselves.

6.4. Appeal Process—The AOTA Executive Director shall forward any letter of appeal to the Appeal Panel within fifteen (15) business days of receipt. Within thirty (30) days after the Appeal Panel receives the appeal, the Panel shall determine whether a hearing is warranted. If the Panel decides that a hearing is warranted, timely notice for such hearing shall be given to the parties. Participants at the hearing shall be limited to the Respondent and legal counsel (if so desired), the EC Chairperson, the Council Chairperson, the AOTA Legal Counsel, or others approved in advance by the Appeal Panel as necessary to the proceedings.

6.5. Decision

6.5.1. The Appeal Panel shall have the power to (a) affirm the decision; or (b) modify the decision; or (c) reverse or remand to the EC, but only if there were procedural errors materially prejudicial to the outcome of the proceeding or if the Council decision was against the clear weight of the evidence.

6.5.2. Within thirty (30) days after receipt of the appeal if no hearing was granted, or within thirty (30) days after receipt of the transcript if a hearing was held, the Appeal Panel shall notify the AOTA Executive Director of its decision. The AOTA Executive Director shall promptly notify the Respondent, the original Complainant, appropriate Association bodies, and any other parties deemed appropriate (e.g., SRB, NBCOT®). For Association purposes, the decision of the Appeal Panel shall be final.

7. Notifications

All notifications referred to in these *Enforcement Procedures* shall be in writing and shall be delivered by national delivery service or mail with signature and proof of date of receipt required.

8. Records and Reports

At the completion of the enforcement process, the written records and reports that state the initial basis for the complaint, material evidence, and the disposition of the complaint shall be retained in the AOTA Ethics Office for a period of five (5) years.

9. Publication

Final decisions will be publicized only after any appeal process has been completed.

10. Modification

AOTA reserves the right to (a) modify the time periods, procedures, or application of these *Enforcement Procedures* for good cause consistent with fundamental fairness in a given case and (b) modify its *Code and Ethics Standards* and/or these *Enforcement Procedures,* with such modifications to be applied only prospectively.

Adopted by the Representative Assembly 2013DecCO18 as Attachment A of the Standard Operating Procedures (SOP) of the Ethics Commission.

Reviewed by BPPC 1/04, 1/05, 9/06, 1/07, 9/09, 9/11, 9/13
Adopted by RA 4/96, 5/04, 5/05, 11/06, 4/07, 11/09, 12/13
Revised by SEC 4/98, 4/00, 1/02, 1/04, 12/04, 9/06
Revised by EC 12/06, 2/07, 8/09, 9/13

Note. The Commission on Standards and Ethics (SEC) changed to Ethics Commission (EC) in September 2005 as per Association Bylaws.

Copyright © 2014, by the American Occupational Therapy Association. To be published in the *American Journal of Occupational Therapy, 68*(Suppl. 3).

AMERICAN OCCUPATIONAL THERAPY ASSOCIATION
ETHICS COMMISSION

Formal Complaint of Alleged Violation of the Occupational Therapy Code of Ethics and Ethics Standards

If an investigation is deemed necessary, a copy of this form will be provided to the individual against whom the complaint is filed.

Date: _____

Complainant: (Information regarding individual filing the complaint)

Name: _____ Signature: _____

Address: _____ Telephone: _____

_____ E-Mail Address: _____

Respondent: (Information regarding individual against whom the complaint is directed)

Name: _____ Signature: _____

Address: _____ Telephone: _____

_____ E-Mail Address: _____

1. **Summarize** in a written attachment the **facts and circumstances, including dates and events,** which support a violation of the Code *of Ethics and Ethics Standards* and this complaint. Include steps if any, that have been taken to resolve this complaint before filing.
2. **Please sign and date all documents you have written and are submitting**. *Do not include confidential documents such as patient or employment records.*
3. **If you have filed a complaint about this same matter with any other agency (e.g. NBCOT®; SRB; academic institution; any federal, state, or local official), indicate to whom it was submitted, the approximate date(s) and resolution if known.**

I certify that the statements/information within this complaint are correct and truthful to the best of my knowledge and are submitted in good faith, not for resolution of private business, legal, or other disputes for which other appropriate forums exist.

_____

Signature

Send completed form, with accompanying documentation, **IN AN ENVELOPE MARKED *CONFIDENTIAL* to:**

Ethics Commission
American Occupational Therapy Association, Inc.
Attn: Ethics Program Manager/Ethics Office
4720 Montgomery Lane, Suite 200
Bethesda, MD 20814-3449

Office Use Only:

Membership Verified? ❑ Yes ❑ No

By: _____