

Enforcement Procedures for the *AOTA 2020 Occupational Therapy Code of Ethics*

Introduction

This public document articulates the procedures followed by the members of the Ethics Commission (EC) as they carry out duties to enforce the *American Occupational Therapy Association (AOTA) 2020 Occupational Therapy Code of Ethics* (the Code). These Enforcement Procedures help ensure compliance with the Code, objectivity, and fundamental fairness to all persons who may be parties in an ethics complaint. The Code and the Enforcement Procedures are not intended to address private business, legal, or other disputes for which there are other, more appropriate forums for resolution. Whenever feasible and appropriate, AOTA members should first pursue other corrective steps within the relevant institution or setting and discuss ethical concerns directly with persons perceived to be violating the Code before resorting to AOTA's ethics complaint process. However, the Ethics Commission (EC) will review complaints of unethical conduct that it receives.

Jurisdiction

Enforcement of the Code applies 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 AOTA jurisdiction.

Confidentiality and Disclosure

The EC develops and adheres to strict rules of confidentiality in every aspect of its work. These rules require that all participants in the enforcement process refrain from any communication relating to the existence and subject matter of the complaint other than with those directly involved in the process. The same rules of confidentiality apply to Complainants (persons who file a complaint), Respondents (those who are the subject of a complaint), their attorneys, and witnesses involved with the EC's investigatory process. Any person who breaches these rules of confidentiality may become subject to AOTA action, including notification of the appropriate licensure and certification boards.

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.

Conflict of Interest

EC members adhere to AOTA's conflict of interest policy (see Appendix A). If a conflict of interest is determined to exist, members will recuse themselves in accordance with AOTA's policies and procedures.

Enforcement Process

Step 1: Filing a Complaint

A *complaint* is a report of an alleged violation of the Code against a member of AOTA, filed in accordance with AOTA procedures as described in this document.

1.1 Complaints

Complaints stating an alleged violation of the Code may originate from any individual, group, or entity within or outside the Association. The EC itself may initiate a complaint (“self-initiated complaint”) based on information from any internal or external source indicating that a person subject to its jurisdiction may have committed acts that violate the Code.

1.2 How to File a Complaint

1.2.1 All complaints must be submitted to the Ethics Office at AOTA using the Formal Statement of Complaint Form (available on the AOTA website and from the Ethics office). Complainants must complete the form in its entirety, including

1. Complainant’s full name and contact information (anonymous submissions will not be accepted)
2. Respondent’s full name and contact information when available
3. Alleged violations of Standards of Conduct from the Code
4. Signature or e-signature
5. Supporting documentation.

1.3 When a Complaint Is Received

1.3.1 The AOTA Ethics Office staff¹ will review the complaint to ensure that it is complete and then review it to determine the following:

1. Does the complaint contain the full name and contact information, when available, of the Complainant and Respondent?
2. Did the Complainant include the Code of Ethics Standard(s) that they allege the Respondent violated?
3. Does the complaint contain evidence of a violation of the Code?
4. If the complaint is incomplete, then it shall not be considered by the EC. The Ethics Office will notify the Complainant upon receipt of a complaint that is deemed incomplete.

Step 2: Ethics Commission Review, Investigation, and Decision

2.1 Regular Complaint Process

2.1.1 Within 60 calendar days of receipt of a complaint, the EC shall review the complaint to determine whether it warrants further discussion and investigation.

2.2 Review

2.2.1 The AOTA Ethics Office staff will add the complaint to the EC meeting agenda and provide the complaint and case materials to all members of the EC for review prior to the meeting in which it will be considered.

2.2.2 At the EC meeting, the AOTA Ethics Office staff person will introduce each complaint by means

¹Unless otherwise specified, “AOTA Ethics Office staff” refers to one or more EO staff members.

of a brief summary of case materials received.

2.2.3 On the basis of their review of case materials, if any one member of the EC determines that there is reason to believe the Respondent violated the Code, a member of the EC can move to open the case for discussion. Once a motion is made for discussion, the case will be considered “open.”

2.2.4 If, upon review of the case, the EC determines that the reported conduct does not rise to the level of an ethics violation, a member of the EC can move to dismiss the complaint. The voting members of the EC will then vote on the motion. A majority vote is required for dismissal.

2.3 Dismissal of Complaints

The EC may dismiss a complaint at any time for any of the following reasons:

2.3.1 Jurisdiction—The EC determines that it has no jurisdiction over the Respondent (e.g., because the person is not or was not an Association member at the time of the alleged incident or has never been a member).

2.3.2 No Ethics Violation—The EC finds that the complaint, even if proven, does not state a basis for action under the Code (e.g., a simple complaint that someone was unpleasant or rude on a single occasion).

2.3.3 Insufficient Evidence—The EC determines that there is insufficient factual evidence available to support a finding of an ethics violation.

2.4 Investigation

2.4.1 If, upon review of the case, the EC determines that the complaint is not sufficiently thorough in identifying a Code violation, the EC can initiate an investigation before making a determination.

2.4.2 If an investigation is deemed warranted, the EC Chairperson shall do the following within thirty (30) calendar days:

1. Appoint the AOTA Ethics Office staff as the Investigator to investigate the complaint.
2. Instruct the AOTA Ethics Office to notify the Respondent by secure delivery (digital and/or courier) with delivery confirmation 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.
3. Ask the AOTA Ethics Office to notify the Complainant by secure delivery (digital and/or courier) with delivery confirmation that the complaint is being investigated.

2.4.3 The Investigator will send questions or requests for information formulated by the EC to be answered by the Complainant and/or the Respondent.

2.4.4 The Respondent and Complainant shall have thirty (30) calendar days from receipt of the notice of the investigation to respond to any EC questions or requests; they will respond in writing to the Investigator.

2.4.5 Failure of the Respondent to participate in and/or cooperate with the investigative process of the EC shall not prevent continuation of the ethics enforcement process, and this behavior itself may constitute a violation of the Code.

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

2.5 Investigation Timeline

2.5.1 The investigation will be completed within ninety (90) calendar days of the date the Respondent or their designee receives notification that an investigation is being conducted, unless the EC determines that special circumstances warrant additional time for the investigation. All timelines noted herein can be extended for good cause at the discretion of the EC, including the EC’s schedule and additional requests of the Respondent. The Investigator shall notify the Respondent and the Complainant in writing if a delay

occurs or if the investigative process requires more time.

2.6 *AOTA EC Self-Initiated Complaint Process*

2.6.1 The EC will review, using the process described in Section 2.2, any information received from internal or external sources that may warrant a complaint against an individual who is or was an Association member at the time of the alleged conduct.

2.6.2 The EC will consider the findings of fact or conclusions of another official body, such as a state regulatory board (SRB), the Occupational Therapy Advanced Certification Commission (OTACC), or the National Board for Certification in Occupational Therapy (NBCOT®). The EC will decide whether to act based on the official body's findings or conclusions and open an EC self-initiated complaint. The EC will not initiate an investigation unless there is clear and convincing evidence that the official body's findings and conclusions are erroneous or unsupported by substantial evidence. On the basis of the information provided, the EC will determine whether the findings of the official body are also sufficient to demonstrate a violation of the Code and therefore warrant taking disciplinary action.

2.7 *Decision*

2.7.1 Nondisciplinary Actions—The EC has a role in educating and guiding Association members toward appropriate professional conduct in all aspects of their diverse professional and volunteer roles. The EC may use the following options to do so:

1. *Educative Letters*: If the EC determines that the alleged conduct is not a violation of the Code, does not warrant any of the disciplinary actions set forth in Section 2.7.3, or is not completely in keeping with other standards of practice or professionalism, the EC may send a private letter to educate the Respondent and/or Complainant, if appropriate, about relevant standards of practice and/or appropriate professional behavior related to the complaint.
2. *Advisory Opinions*: The EC may issue general advisory opinions on ethical issues to inform and educate Association members. These opinions shall be disseminated to the membership via official publications of the Association.

2.7.2 Disciplinary Actions—If the EC determines that the Respondent has engaged in conduct that constitutes a violation of the Code, it may vote to impose sanctions, each of which may have related conditions or terms during the sanction, with the exception of permanent revocation.

2.7.3 Types of Disciplinary Action—Disciplinary actions may be private or publicly reported.

1. *Private Disciplinary Action*
 - a. *Reprimand*: A formal expression of disapproval of conduct, communicated privately by letter from the EC Chairperson, that is nondisclosable and not communicated to another body (e.g., SRB, NBCOT). Reprimand is not publicly reported.
2. *Publicly Reported Disciplinary Actions*: When the EC imposes a public sanction, the EC will report the sanction and Standards of Conduct that were violated in Association official publications and to any appropriate persons or entities.
 - a. *Censure*: A formal expression of disapproval that is publicly reported with an end date specified.
 - b. *Probation of Membership*: Continued Association membership is conditional and may or may not include specific terms. Probation is publicly reported with an endpoint specified. Consideration will be given on a case-by-case basis for specific membership benefits, including but not limited to service on Association committees and other volunteer opportunities.
 - c. *Suspension*: Removal of Association membership and eligibility to obtain or renew membership during a specified period. Suspension is publicly reported with an endpoint specified.

d. *Revocation*: Permanent denial of Association membership. Revocation is publicly reported.

2.7.4 AOTA Roster of Fellows and Roster of Honor—The EC Chairperson shall provide written notification to the Association body responsible for awards and recognitions of the final publicly reported disciplinary action if the Respondent is designated as a Fellow of the American Occupational Therapy Association (FAOTA) or Roster of Honor (ROH). The EC Chairperson shall direct the Association body responsible for awards and recognitions to remove the Respondent's FAOTA or ROH designation and revoke the right to use the designated credentials during the period of Probation or Suspension, or permanently in the case of Revocation.

2.7.5 AOTA Advanced Certification—The EC Chairperson shall provide written notification OTACC of the final publicly reported disciplinary action in which an individual's membership has been Suspended or Revoked.

2.7.6 Fulfillment of Specified Terms—Except for Revocation, each of the sanctions may also subject the Respondent to the fulfillment of specified terms. Failure of the Respondent to meet such terms may result in additional disciplinary actions or sanctions. Specified terms may include, but are not limited to,

1. Remedial activity applicable to the violation, with proof of satisfactory completion by a specific date
2. Corrected behavior, which is expected to be maintained.

2.7.7 Notification of the Respondent—The EC shall notify the Respondent by secure delivery (digital and/or courier) with delivery confirmation of the EC decision and sanction. The notice shall describe in sufficient detail the conduct that constitutes a violation of the Code and indicate the sanction that is being imposed in accordance with these Enforcement Procedures. Correspondence with the Respondent will also indicate that public sanctions may have an impact on their ability to serve in Association volunteer leadership positions, whether elected or appointed, for a designated period.

2.8 *Respondent's Response*

2.8.1 Respondent's Response—Within 30 calendar days of notification of the EC's decision and any sanction, the Respondent shall choose one of the following responses:

1. *Accept the Decision*: Accept the decision of the EC (as to both the Code violation and the sanction) and waive any right to an Appeal Panel hearing.
2. *Request Mitigation or Reduction of Sanction*: Accept the decision that they violated the Code but, within thirty (30) calendar days, submit a statement to the EC (with any supporting documentation) setting forth the reasons why the sanction should not be imposed or should be mitigated or reduced.
3. *Request a Hearing*: Advise the EC Chairperson in writing that they want to contest the EC's decision and sanction and request a hearing before the Appeal Panel.
4. *Decide Not to Respond*: Failure of the Respondent to take one of the above actions within the time specified will be deemed to constitute acceptance of the decision and sanction.

2.8.2 Action Following Respondent's Response

1. *Acceptance*: If the Respondent accepts the decision and sanction, the EC will notify all relevant parties and impose the sanction.
2. *Request for Mitigation or Reduction of Sanction*: If the Respondent submits a statement to the EC with reasons why a sanction should not be imposed or should be mitigated or reduced, the EC will consider the Respondent's statement at its next meeting. The EC will determine by majority vote whether to impose, dismiss, mitigate, or reduce the sanction.
3. *Request for a Hearing*: If the Respondent requests an Appeal Panel hearing, the AOTA Ethics Office staff will schedule it. Step 3 describes the Appeal Panel process.

2.9 *Referral of Complaint*

The EC may at any time refer a matter to NBCOT, the appropriate SRB, the Accreditation Council for Occupational Therapy Education, or other recognized authority for appropriate action. Even in the case of referral, , the EC shall retain its authority to investigate the complaint. At the discretion of the EC, the following may occur:

- 2.9.1 EC action may be stayed for a reasonable period pending notification of a decision by that authority.
- 2.9.2 Stays of action will extend the time periods under these Enforcement Procedures.
- 2.9.3 A stay in conducting an investigation shall not constitute a waiver by the EC of jurisdiction over the matter.
- 2.9.4 The AOTA Ethics Office will send case materials to all parties and the EC members by secure delivery (digital and/or courier) with delivery confirmation.

2.10 Case Closure

Once the EC has completed all actions, imposed any sanctions, and notified all parties and the appeal process has concluded (if applicable), the EC will vote by majority to close the case.

Step 3: Appeals Process

3.1 Purpose

The purpose of the Appeal Panel (the Panel) hearing is to provide the Respondent an opportunity to present evidence and witnesses to answer and refute the decision and/or sanction decided on by the EC and to permit the EC Chairperson or designee to present evidence and witnesses in support of the EC decision. The Panel is convened upon written request by the Respondent. The Panel shall consider the matters alleged in the complaint; the matters raised in defense; the EC decision; and other relevant facts, ethical principles, and federal or state law, if applicable. The Panel 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 Panel also may choose to apply Principles or other language from the Code not originally identified by the EC. The Panel may affirm the decision of the EC, reverse or modify it or, remand it to the EC for review if its written procedures were not followed.

- 3.1.1 The parties in the appeals process are the Respondent and the EC Chairperson.

3.2 Appeals

An appeal shall be written, signed by the Respondent, and sent by secure delivery (digital and/or courier) with delivery confirmation to the Association's Executive Director, in care of the AOTA Ethics Office. The grounds for the appeal shall be fully explained by the Respondent in this written document.

3.3 Grounds for Appeal

Appeals shall generally address only the issues, procedures, or sanctions that are part of the record before the Panel. However, in the interest of fairness, the Panel may consider newly available evidence that is directly related to the original complaint.

3.4 Criteria for Selection of the Appeal Panel

The three (3) members of the Panel (an AOTA Board member, an OT practitioner, and a public member) are selected from a pool of qualified candidates who meet the following criteria:

- 3.4.1** No conflicts of interest may exist among the Panel members, the Complainant, and the Respondent (refer to Association Policy A.13—Conflict of Interest, provided in Appendix A, for guidance).
- 3.4.2** No individual may serve on the Panel who is currently a member of the EC.
- 3.4.3** No individual may serve on the Panel who has previously been the subject of an ethics complaint that resulted in a public EC disciplinary sanction.
- 3.4.4** At least two (2) panel members must have experience in ethical analysis and decision-making processes (e.g., degree, certification, or training in ethics).
- 3.4.5** Former EC members who have been off the EC for at least three (3) years may be Panel members.
- 3.4.6** The Ethics Office will maintain a pool of qualified candidates of no fewer than six (6) persons.

3.5 Members of the Appeal Panel

The three members of the Panel shall be appointed as follows:

- 3.5.1** The Board member shall be appointed by the Board President. In the event a replacement is needed or a conflict of interest exists, the Board President shall appoint another Board member. If the entire Board has a conflict of interest, the Procedure for the Appeal Panel to Hear an Appeal Involving a Member of the Board of Directors, provided in Appendix B, shall be followed. The President and President-Elect of the Board shall not serve on the Panel.
- 3.5.2** Two Panel members will be selected by the Board President from a pool of qualified candidates who meet the criteria outlined in Section 3.4.
- 3.5.3** The Panel Chairperson will be selected by its members from among themselves.

3.6 Appeal Process

Participants in the appeal process shall be limited to the Respondent and legal counsel (if so desired), the EC Chairperson, the Association legal counsel, and others approved in advance by the Panel as necessary to the proceedings. The AOTA Ethics Office shall initiate the appeal process as follows:

3.6.1 Notification of Parties

1. The AOTA Ethics Office shall notify the EC Chairperson immediately upon receipt of a formal written appeal.
2. The Panel members shall be appointed within fifteen (15) calendar days of receipt of a formal written appeal.
3. The AOTA Ethics Office shall forward the Respondent's letter of appeal and supporting documentation to the Panel members within fifteen (15) calendar days of receipt.
4. The AOTA Ethics Office shall schedule the hearing date in coordination with the Panel Chairperson.
5. Within thirty (30) calendar days after receipt of the appeal, the AOTA Ethics Office shall give the parties notice of the hearing. The hearing date will be scheduled no less than forty-five (45) calendar days after official notice of the hearing is provided.
6. The AOTA Ethics Office will send notice of the hearing and any related documentation including case materials to all parties by secure delivery (digital and/or courier) with delivery confirmation.

3.7 Hearing Witnesses, Materials, and Evidence

Within thirty (30) calendar days of notification of the hearing, the Respondent shall submit to the Panel 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) and the subject matter they will address.

- 3.7.1** The EC Chairperson may submit a list of potential witnesses (if any) to the Panel.
- 3.7.2** In reviewing the appeal, the Panel will use only the information that the EC had available to make their decision. No new evidence shall be considered.
- 3.7.3** The hearing will be held virtually. Any requests for assistive technology necessary for accessibility shall be made in writing at least twenty-one (21) calendar days before the hearing.
- 3.7.4** The Panel Chairperson may limit the participation of witnesses to curtail repetitive testimony or prescribe other reasonable arrangements or limitations.

3.8 Counsel

3.8.1 Actions

- 1. The Respondent may be represented by legal counsel at their own expense.
- 2. Association legal counsel shall advise and represent the Association at the hearing.
- 3. Association legal counsel may also advise the Panel regarding procedural matters to ensure fairness to all parties.
- 4. All parties and the Association legal counsel shall have the opportunity to question witnesses.

3.9 Hearing

- 3.9.1** The Panel Chairperson shall conduct the hearing.
- 3.9.2** Each participant in the hearing shall be identified for the record, and the Panel Chairperson shall describe the procedures for the hearing. An oral affirmation of truthfulness will be requested from each participant who gives testimony in the hearing.
- 3.9.3** The Panel Chairperson shall allow questions.
- 3.9.4** The EC Chairperson shall present the ethics complaint, a summary of the evidence resulting from the investigation, the EC decision, and proposed disciplinary sanctions against the Respondent.
- 3.9.5** The Respondent may present a defense refuting the decision and sanction after the EC presents its case.
- 3.9.6** Each party and/or their legal counsel shall have the opportunity to call witnesses, to present testimony, and to question witnesses, including the EC Chairperson or their designee. The Panel Chairperson shall be entitled to provide reasonable limits on the extent of witnesses' testimony or any questioning, to curtail repetitive testimony, or to prescribe other reasonable arrangements or limitations.
- 3.9.7** The Panel Chairperson may recess the hearing at any time.
- 3.9.8** The Panel Chairperson shall call for final statements from each party before concluding the hearing.

3.10 Decision

- 3.10.1** The decision of the Panel shall be by majority vote.
- 3.10.2** The Panel shall have the power to (a) affirm the decision, (b) modify the decision, or (c) reverse the decision of the EC.

3.10.3 Within fifteen (15) calendar days after receipt of the letter of appeal if no hearing was granted, or within thirty (30) calendar days after the hearing concludes, the Panel shall notify the Association Executive Director of its decision in writing, with rationale. Within seven (7) calendar days, the Executive Director shall notify the Respondent, the original Complainant, the EC Chairperson, appropriate Association bodies, and any other parties deemed appropriate (e.g., SRB, NBCOT) of the decision. For Association purposes, the decision of the Panel shall be final.

3.10.4 The official record of the Appeal Panel and its decision shall be maintained by the AOTA Ethics Office for at least seven (7) years.

Step 4: Reports, Records, and Publications

4.1 Notifications

All notifications referred to in these Enforcement Procedures shall be in writing and shall be delivered by secure delivery (digital and/or courier) with delivery confirmation.

4.2 Records and Reports

The investigative case files shall include the complaint and any documentation the EC relied on in initiating the investigation. 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 by the AOTA Ethics Office for a period of at least seven (7) years.

4.3 Publication

4.3.1 Final decisions will be publicized only after any appeal process has concluded. Public sanctions will be published in official publications of the Association under the following time frames:

1. Sanctions of Censure will remain published for three (3) years.
2. Sanctions of Probation and Suspension will remain published for the duration of the sanction plus three (3) years.
3. Sanctions of Revocation will remain published indefinitely.

4.4 Modification

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

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Appendix A. Association Policy A.13—Conflict of Interest

1. A conflict of interest exists when an individual participates in Association business while having material personal, professional, business, financial, or volunteer responsibilities that could predispose or bias that individual to a particular view or goal. This could be in the execution of duties or in participation in debate or decision making.
2. All persons elected or appointed to carry out the business of the Association are responsible for their duties as defined in the governance documents. At no time shall the personal, professional, business, financial, or volunteer responsibilities outside the Association take priority over the interests of the Association in the individual's execution of the duties of the position.
3. All persons elected or appointed to carry out the business of the Association must report a possible conflict of interest to the Association governance body of which they are a member.
4. If a real or perceived conflict of interest exists, the governance body of which he or she is a member will make a determination as to whether a conflict exists and what action, if any, should be taken in light of such a conflict.
5. If another person believes a real or perceived conflict of interest exists, he or she must request a judgment from the governance body of which he or she is a member as to whether a conflict exists.
6. If a conflict is determined, the following options are available:
 - a. If the conflict is substantial (accepting employment) and can reasonably be expected to be ongoing, the individual shall resign from one of the positions, or
 - b. If the conflict is related only to a particular issue under consideration, the individual shall declare that a conflict does or may exist and then recuse himself or herself from all discussion and voting on that issue, or
 - c. Such other action as is appropriate under the circumstances.
7. AOTA volunteer representatives shall have an ongoing duty to report promptly any potential and/or actual conflicts of interests as they arise to the body to which they are a member.
8. Additional guidelines related to potential conflicts of interest may be defined in the Association's *Standard Operating Procedures*.

Reference

American Occupational Therapy Association. (2019). Policy A.13. Conflict of interest. In *Policy manual* (2019 ed.). <https://www.aota.org/-/media/Corporate/Files/AboutAOTA/Governance/2019-Policy-Manual-20190812.pdf>

Appendix B. Procedure for the Appeal Panel to Hear an Appeal Involving a Member of the Board of Directors

When an appeal of a proposed disciplinary action involves a member of the Board of Directors, an alternate Appeal Panel will be selected from former Ethics Commission (EC) members according to the criteria and procedures outlined below.

Criteria for Appeal Panel membership:

1. The Appeal Panel will be composed of 4 members: 2 Association members, 1 public member, and 1 alternate member.
2. The Appeal Panel will be composed of former EC members whose terms ended a minimum of 2 yr and no more than 10 yr from the date of the formation of the Appeal Panel; and who did not serve during the time the specific case was deliberated.
3. No former Board member may serve on the Appeal Panel.
4. Members with previous disciplinary action against them may not serve on the Appeal Panel.

The procedure will be as follows:

1. In the event of an appeal to the EC, the AOTA Ethics staff will develop a list of potential Appeal Panel members who meet the criteria for Appeal Panel membership.
2. The Appeal Panel members will be randomly selected from the list by the AOTA Ethics staff.
3. The AOTA Ethics staff shall secure a signed Consent to Serve form in compliance with Policy A.13—Conflict of Interest, from each Appeal Panel member.
4. If a conflict of interest, or potential conflict of interest, exists for any selected Appeal Panel member, the alternate member shall serve.