

THE COLLEGE OF OCCUPATIONAL THERAPISTS OF MANITOBA

IN THE MATTER OF: *THE OCCUPATIONAL THERAPISTS ACT, C.C.S.M. c.O5*

AND IN THE MATTER OF: A. Jeffrey Cook, an occupational therapist previously registered with The College of Occupational Therapists of Manitoba

PANEL MEMBERS: Linda Bailes, Occupational Therapist (Chair)
Andrea Auch, Occupational Therapist
Tom Paxton (Public Representative)

APPEARANCES: Counsel for the College of Occupational Therapists of Manitoba:

Vivian E. Rachlis

The Member did not attend and was unrepresented

REASONS FOR DECISION OF THE INQUIRY COMMITTEE OF THE COLLEGE OF OCCUPATIONAL THERAPISTS OF MANITOBA

Introduction

The College of Occupational Therapists of Manitoba (COTM) Code of Ethics ("the Code") recognizes that occupational therapists have obligations and responsibilities to their clients, the profession, the public, their colleagues and themselves. The mission of COTM is to protect the public by regulating, advocating and advancing safe, ethical and quality occupational therapy practice in Manitoba. The Code supports

this mission and has been developed in part as a requirement of *The Occupational Therapists Act* of Manitoba (the "Act"). A member must be willing to participate in the self-regulatory process and fulfill the requirements of COTM. If a member does not comply, the public cannot be protected and the member may be shown to be ungovernable.

It is the decision of the Panel that the Member, an occupational therapist under the provisions of the Act, and a member of COTM, whose registration has been cancelled, is guilty of professional misconduct and conduct unbecoming a member of COTM.

The charges are as follows:

- 1) The member failed to fulfill his professional, ethical and legal obligations, and failed to cooperate with regulatory processes of COTM, as required by section 13 of the Occupational Therapists Regulation M.R. 174/2005 (the "Regulation") to renew his registration with COTM at such time or times as required by COTM.
- 2) Failed to fulfill his professional and ethical obligations and failed to cooperate with the regulatory processes of COTM, as required by Unit 1, Competency 1.1 of the Essential Competencies of Practice for Occupational Therapists in Canada (the "Essential Competencies"), as adopted by COTM, and as required by Article 2.3 of the By-laws of COTM, to demonstrate a commitment to clients, the public and the profession.
- 3) Failed to fulfill his professional and ethical obligations and failed to cooperate with the regulatory processes of COTM, as required by Unit 6 of the Essential Competencies, to engage in professional development for safe, ethical and effective practice;
- 4) Failed to fulfill his professional and ethical obligations and failed to cooperate with the regulatory processes of COTM, as required Section C.6 of the Code of Ethics to regularly conduct self-assessments of practice and participate in professional development to maintain currency and competence;
- 5) Failed to fulfill his professional and ethical obligations and failed to cooperate with the regulatory processes of COTM, as required by Article 2.1 of the By-Laws of COTM, to notify COTM of any change in contact information; and
- 6) Failed to fulfill his professional obligations and failed to cooperate with the regulatory processes of COTM, as required by Article 2.2 of the By-Laws of COTM, to promptly reply to correspondence from COTM.

Hearing in the absence of the member

The member was given adequate notice of the hearing, pursuant to the Act s. 33(2) and reminded on three separate occasions, the importance of the hearing. The member was also advised to seek legal counsel and was informed of potential consequences of such a finding. The member did not respond to the correspondence, did not appear for the hearing and was not represented. Pursuant to the Act, the Panel was able to proceed with a hearing in the absence of the member or his/her agent and decide or report on the matter being heard in the same way as if the member were in attendance.

Principles regarding why the panel made its decision

The member reports having his own practice called Efficient Occupational Therapy. No formal contact information for this business could be found online. The panel reviewed the member's pattern of conduct presented in the "Documents of the COTM", (Exhibit 5).

COTM presented evidence that the member was late in submitting his registration and as a result his name was struck from the Register on three occasions, specifically in 2012, 2014 and 2015. In all three instances the member's explanation was that he failed to pay attention to details. COTM presented evidence that the PREP quizzes in 2013 and 2014 were not completed on time and the member had no explanation for not completing them. The same behavior occurred in the fall, 2015. In October of 2015, the member unsubscribed from the COTM mailing list program and did not communicate with COTM.

The member was selected as a 2015 audit and failed to complete the paper audit. To this date the member has not submitted the requested documents. On interview, he admitted to not being able to locate the required documents required for the audit. He was of the view that COTM would just ask for them at a later date and he would try and locate them at that time. He ignored all notices.

During the period of 2012-2015 COTM sent the member 7 registered letters that were not picked up. In 2015, the member was served with papers to confirm his disregard of regulatory and continuing competency requirements and was subject to an Investigation Committee matter. The member did not respond.

In 2015, a misconduct levy was assessed and paid by the member for practicing during a period following the cancellation of the registration for renewal.

The member met with COTM staff in July 2015 to review his conduct. In a meeting with the member and the Investigator held March 11, 2016, the member could not recount any details of the 2015

meeting or any information shared with him. In the Investigator Report the member offered an explanation of being avoidant but offered no rationale as to why he elects to persist in this behavior.

On the 2015 application of renewal, the member wrongfully indicated he was not currently facing a proceeding for professional misconduct.

Eventually, COTM had a process server personally serve the member with the Notice of Hearing and the documents relevant to the Hearing. Sharon Eadie, Executive Director of COTM contacted the member by telephone to ensure that he had received the material for the hearing before this Panel. The member acknowledged receipt of the material delivered by COTM and admitted to not opening the envelope. The member did not appear at this hearing.

Decision

COTM argues that the member has contravened the Act, Regulations, Code of Ethics and Essential Competencies of Practice, is guilty of professional misconduct and is shown to be ungovernable. The Panel is satisfied that the member is guilty on each of the counts set out in the Notice of Hearing.

Penalty

COTM's position on penalty should be considered in the context of the case of College of Physicians and Surgeons of Saskatchewan v Ali 2016 SKQB 42 (CanLii), specifically in relation to:

- i) If a member is not willing to be governed in a self-regulated profession, both protection of the public and its confidence in the ability of the College to supervise its members will be at issue. Similarly, the College exists to govern the profession in the public interest. In this case, when the member does not adhere to its requirements, COTM cannot fulfill its mandate to protect the public and ensure the safe and proper practice of occupational therapy. The statute empowers COTM to penalize a member for professional misconduct or for conduct unbecoming and provides a range of penalties from fines and reprimand to cancellation of the member's certificate of registration.
- ii) Members must be aware that their failure to co-operate and/or respond in a prompt and substantive fashion results in the implementation of a second investigative process to compel the member's compliance. In this case, the member has a lengthy record of failing to respond to COTM and failing to assist COTM in the completion of its investigation. The impact has been extremely disruptive to the COTM staff and caused an enormous expense to COTM.

Also, it was recognized by the College of Physicians and Surgeons case that ungovernability has been considered by self-governing bodies as an appropriate inquiry when asked to consider the most serious of penalties. Factors which inform the determination whether a member is ungovernable are decided on a case-by-case basis. A list of relevant criteria for determining ungovernability is as follows:

- a) the nature, duration and repetitive character of the misconduct;
- b) Any prior discipline history;
- c) Any character reference;
- d) The existence or lack of remorse which includes a recognition and understanding of the seriousness of the misconduct;
- e) The willingness to be governed by the Society;
- f) The member's ongoing co-operation with the Society in addressing the outstanding matters that are subject of the misconduct.

The evidence discloses that numerous attempts were made to engage the member and urge him to become responsive. The member had numerous opportunities to correct his behavior and failed to do so. The member does not appear to acknowledge the seriousness of this misconduct, in failing to cooperate and in failing to satisfy the regulatory and statutory requirements of COTM. Protection of the public is sure to be in jeopardy if a member of a self-regulating profession is not willing to be governed. The member's pattern of behavior has been repetitive and unwarranted. In an interview he admitted to being avoidant and having a pattern of avoidance. The member did not accept governance nor does he appear willing to be governed by COTM. He did not express any remorse. He has failed to accept responsibility for his conduct. In a review of the member's pattern of conduct, the panel is of the view that there is ample evidence that the member is guilty of professional misconduct, is guilty of conduct unbecoming a member and is ungovernable.

As a result, the Panel orders:

- 1) Cancellation of the member's certificate of registration.
- 2) The member shall pay a fine as a deterrent for this type of conduct, in the amount of \$5,000.00.

- 3) The member shall pay costs as sought by COTM in the amount of \$21,186.60.
- 4) COTM shall publish the member's name and the order of the panel.

DATED this 17th day of October, 2016.

Linda Bailes OT Reg (MB)
Linda Bailes, Occupational Therapist (Chair)

A. Auch OT Reg (MB)
Andrea Auch, Occupational Therapist

Tom Paxton
Tom Paxton (Public Representative)