

OVERVIEW OF THE MAOMT COMPLAINTS & DISCIPLINE PROCESS

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OBJECTIVE OF THE COMPLAINTS & DISCIPLINE PROCESS

MAOMT has guiding documents in place designed to hold members to high standards of professionalism in their practice and ensure that clients receive safe and effective care provided in an ethical manner, including, but not limited to:

- a) the Code of Ethics,
- b) Standards of Practice,
- c) By-laws,
- d) MAOMT membership application, and
- e) MAOMT Practice Guidelines.

The MAOMT Complaints/Discipline process:

- a) is intended to hold members accountable if the Member's conduct with a Complainant constitutes a probable breach of the high standard of care requirements in the guiding documents,
- b) is solely focused on reaching a conclusion that protects the broader public interest, and
- c) may not always yield the desired outcome for the Complainant or the Member.

STEP 1

MAOMT receives a Complaint about the conduct of a Respondent Member (Member).

STEP 2

The MAOMT Complaints Manager (CM) and Chair of the Ethics Committee will evaluate the allegation:

- for completeness and jurisdiction, and
- to determine if there is a potential risk to the broader public interest.

If the allegation **does not** pose a probable risk to the broader public interest (e.g., billing discrepancies, appointment tardiness):

- the CM and the Chair of the Ethics Committee will address the complaint in cooperation with the Member and the Complainant, and
- the Ethics Committee will not be activated.

If the allegation **has the potential to pose a probable risk** to the broader public interest, the CM and the Chair of the Ethics Committee will:

- a) create a complaint file,

- b) activate the Ethics Committee to begin the review process,
- c) determine if there is a potential for a conflict of interest with any of the Ethics Committee members,
- d) if a potential conflict of interest is identified, excuse the Committee member from this Complaint and request that the Board appoint a replacement member,
- e) to maintain the confidentiality of the complaint process and individuals involved, ensure that the Ethics Committee members complete a non-disclosure agreement, and
- f) advise the Member and the Complainant of the referral to the Ethics Committee.

STEP 3

The Ethics Committee will:

- a) contact the Complainant as needed to gather additional information specific to the allegation(s),
- b) provide the Member with the Complaint,
- c) invite the Member to submit a response to the Ethics Committee regarding the allegation(s),
- d) contact the Member as needed to gather additional information specific to the allegation(s),
- e) assess the allegation(s) to identify the relevant sections(s) of the MAOMT guiding documents that have potentially been violated,
- f) assess the level of complexity of the potential violations and determine the type of investigation required, such as:
 - can be managed with the resources of the Ethics Committee,
 - can be managed with assistance from MAOMT,
 - requires third-party assistance (i.e., the complexity requires specialty resources),
- g) provide the third-party (e.g., legal counsel, HR firm) with the information they need specific to the allegations and the MAOMT guiding documents so that they can conduct an in-depth investigation into the allegation(s) and the Member's response to the allegation(s).

Third-Party Investigation

To ensure objectivity:

- a) Any third-party involvement and investigation is conducted independent of the Ethics Committee and the MAOMT.
- b) It is standard practice for the third-party to ensure that their firm and those working on the Complaint do not have a conflict of interest with any of the parties involved in the Complaint.

The Ethics Committee:

- a) must seek Board approval to source a third-party,
- b) will identify the scope of work for the third-party and obtain quotes,
- c) will award the work to the third-party once the Board approves the scope of work and establishes a budget for the related expenses,
- d) will require that the third-party provide a thorough written report on their investigation and conclusions,
- e) once in possession of the investigation report, may identify a need for additional information and comments/recommendations from the third-party, and
- f) must go back to the Board for approval if the scope of the investigation report, or follow-up required as a result of the report, is projected to incur charges that will exceed the Board assigned budget.

STEP 4

The Ethics Committee will conduct an in-depth review of all the information, including:

- a) all the relevant MAOMT documents, including but not limited to, the Code of Ethics, Standards of Practice, By-laws, membership application, and Practice Guidelines,
- b) if applicable, a written report from a third-party investigation,
- c) details provided by the Complainant regarding the allegation(s), and
- d) details provided by the Member in response to the allegation(s). The Committee will also evaluate other considerations, including but not limited to:
 - a) the nature and gravity of the allegation(s),
 - b) any notations on the Member's internal MAOMT file, (e.g., previous complaints, recommendations, findings of a probable breach of the MAOMT guiding documents),
 - c) the number of times that the incident has occurred,
 - d) the impact of the incident on the complainant, and
 - e) the integrity of the MAOMT and its members.

STEP 5

The Ethics Committee draws one of two conclusions about whether the evidence reviewed supports a probable breach of the MAOMT guiding documents, including but not limited to:

- a) the Code of Ethics,
- b) Standards of Practice,
- c) By-laws,
- d) MAOMT membership application, and
- e) Practice Guidelines.

Conclusion One It is likely the facts, if proven at discipline, **would not** be a probable breach of the requirements in the guiding documents.

Consequences

- a) No further action is required, and the Complaint is dismissed.
- b) The Ethics Committee would inform both the Complainant and the Member of the outcome.

Conclusion Two There is evidence to support a finding that the Member's conduct with the Complainant **constitutes a probable breach** of the guiding documents.

Consequences

The Ethics Committee has two options to address a probable breach of the guiding documents.

Option 1 Identify an Informal Resolution and present to the Member for review

or

Option 2 Forward the Complaint to the Discipline Committee

OPTION ONE – INFORMAL RESOLUTION

The Informal Resolution outlines a set of terms and timelines that the Member would be required to comply with and would be tailored to address the probable violation(s).

Potential terms could include, but are not limited to:

- a) education,
- b) mentoring,
- c) chart audits,
- d) formal reprimand, which would remain on an internal MAOMT record,
- e) voluntary surrender of the Member's registration with MAOMT on a permanent basis,
- f) suspending the Member's registration with MAOMT for a stated period,
- g) posting a public censure, which typically includes the Member's name and a description of the circumstances that led to the censure,
- h) a financial penalty which is intended to help offset any out-of-pocket costs incurred to investigate the Complaint so that the entire weight of these expenses is not borne by the general MAOMT membership.

Upon reviewing the terms in the Informal Resolution, the Member can choose one of the following four options.

- Option 1** The Member can accept the terms as written
- Option 2** The Member can propose revisions to the terms
- Option 3** The Member can decline the proposed Informal Resolution in its entirety
- Option 4** The Member opts to proceed directly to the Discipline Committee

If the Member and the Ethics Committee reach an agreement on the terms in the Informal Resolution:

- a) the Member would enter into a formal Agreement with MAOMT, outlining the full details of the terms, including the effective date (which is at the discretion of the Ethics Committee and can begin immediately upon signing the Agreement), and
- b) the Ethics Committee would provide a notice to the Complainant outlining:
 - i. the decision and the reasons for the decision,
 - ii. a summary or a copy of the signed formal Agreement, and
 - iii. information about appealing the decision.

The Ethics Committee would escalate the Complaint to a Discipline Committee if the:

- a) Member and the Committee are unable to reach an agreement on the terms,
- b) Member declines the Informal Resolution in its entirety, or
- c) Member opts to have the complaint moved directly to the Discipline Committee.

Appeal

The Complainant has the right to appeal the terms of the Agreement by providing a written letter to the Complaints Manager / Ethics Committee Chair within 30 days of the date on the notice to the Complainant outlining the outcome of the complaint investigation, including the reasons for the appeal.

An Appeals Committee:

- a) would be established and consist of no less than three MAOMT Board members that are not a part of the Ethics Committee, and who do not have a conflict of interest with any of the involved parties (if sufficient members can't be identified, the Board will appoint members from either the MAOMT membership or the general public),
- b) would review all the same documentation that was gathered and reviewed by the Ethics Committee, and

- c) would provide their final decision to the Complaints Manager / Ethics Committee Chair, who will then forward the decision to both the Complainant and the Member.

Notes:

- a) *The Appeals Committee is the final step in the Complaints/Discipline process and their decision is not subject to additional investigation or further appeal by either the Complainant or the Member.*
- b) *To ensure an objective process, the Ethics Committee has no role in the deliberation of the Appeals Committee other than to provide all the documentation that was gathered during their review process, including any third-party investigation and report.*

OPTION TWO – DISCIPLINE COMMITTEE

If either the Member or the Ethics Committee decides to pursue the Discipline Committee option, the MAOMT Board would initiate the Discipline Committee process.

A Discipline Committee would be established and would:

- a) typically include three members,
- b) be the tribunal which considers the Complaint, and
- c) set a date for a hearing within a reasonable time after receiving the Complaint (typically within 120 days).

The members of a Discipline Committee would typically include a minimum of:

- a) one member of the public,
- b) one member from another discipline (e.g., athletic therapist, occupational therapist, registered nurse, medical doctor), and
- c) one member of the MAOMT who has no knowledge of the Complaint and the process to date.

MAOMT would:

- a) provide at least 30 days' notice to the Complainant and the Member about the date of the disciplinary hearing,
- b) provide public notice of the disciplinary hearing, unless the Member or MAOMT requests that the hearing be held privately and there are reasons for not holding the hearing in a public forum, and
- c) provide all the documented evidence to the Discipline Committee and the Member within a reasonable time before the hearing, including all the material gathered by the Ethics Committee during their review and if applicable, all the material provided by a third-party investigation.

Disciplinary Hearing

- a) The Member has the option of retaining legal counsel and must be provided with the entire investigation file (everything relevant that has been collected) including the investigator's report.
- b) MAOMT would retain legal counsel, which means the Association and its members would incur additional legal costs.
- c) Both the Member and MAOMT (as the prosecutor) have the option to challenge evidence (cross-examine) provided under oath by the other side and its witnesses.
- d) The Complainant would be expected to attend and provide evidence, however they aren't entitled to speak or control the proceedings.
- e) While it isn't mandatory for the Complainant to attend the hearing (either in person or virtually), it should be noted that the Complainant provides a key source of evidence, which is critical to the strength of the case and the ability to secure a conviction.

After the hearing

- a) The Discipline Committee would prepare a written decision within a reasonable period after the hearing date (usually 30 days), including reasons and any orders/penalties.
- b) The Discipline Committee would advise MAOMT, the Member and the Complainant of the decision and reasons for the decision.
- c) The Member has the right to appeal the decision, which involves filing an application in court seeking a judicial review of the Discipline Committee's decision.

The Discipline Committee may assign one or more penalties to the Member, including but not limited to:

- a) a formal reprimand that would remain on an internal record with MAOMT,
- b) suspending the Member's registration with MAOMT for a stated period,
- c) accepting, in place of the suspension, the Member's undertaking to limit their practice,
- d) imposing conditions on the Member's entitlement to practice, including conditions that they will practice under supervision, or report on specified matters to any person or committee that the Discipline Committee may determine,
- e) requiring the Member to take counselling or treatment,
- f) posting a public censure, which typically includes the Member's name and a description of the circumstances that led to the censure,
- g) terminating the Member's registration with MAOMT on a permanent basis,
- h) ordering the Member to pay all or any part of the costs incurred by MAOMT in investigating and prosecuting the Complaint, or monitoring compliance with any conditions that may be set by the Discipline Committee.

Once the appeal period (30 days) has passed:

- a) MAOMT would be required to make the decision public by posting a case summary within 60 days of the date of the decision, under disciplinary actions on the Code of Ethics and Professional Conduct page of the MAOMT website.
- b) The Complainant's name would not be identified on any public facing materials.

If the Complainant is not satisfied with the outcome of the Complaints/Discipline process, they could consider other recourses that lie outside the jurisdiction of MAOMT, such as filing a complaint with the police or filing a civil lawsuit against the Member.

OTHER IMPORTANT PRINCIPLES WHICH APPLY TO THE COMPLAINT & DISCIPLINE PROCESS

MAOMT

As an association, MAOMT:

- a) does not advocate on behalf of or take instruction from the Complainant, and
- b) has no authority to prosecute criminal charges, or to award monetary damages to the Complainant.

The Complainant

The Complainant is advised that:

- a) although there is no formal deadline for submitting a complaint, a lengthy delay may affect the process and make investigating the Complaint more difficult,
- b) they can withdraw a complaint at any time,
- c) refusal to participate in the Ethics Committee investigation/review process may result in the Complaint being dismissed or discontinued, and
- d) the Complaint, and information the Complainant provides as part of the investigation/review process, will be provided to the Member so that they can respond to the Complaint.

Legal Counsel

Legal counsel is not required to submit, investigate or respond to a Complaint, but all parties (the Complainant, the Member and MAOMT) can choose to engage legal counsel.

Conflict of Interest

All decisions related to assessing and investigating the Complaint must be reached in the absence of any outside or competing interests.

A conflict of interest may exist:

- a) where a person who is a part of the Complaints/Discipline process has a personal interest which could (in reality or perception) conflict with their obligation to fulfill their role in the best interests of MAOMT,
- b) may occur due to personal relationships with a person connected to the Complaint/Complainant, or perhaps a financial interest in the outcome.

If a potential conflict of interest is identified, it must be determined if the conflict is:

- a) Material
 - i. it could reasonably be seen to create an outside influence on the decision,
 - ii. the individual should acknowledge the conflict and recuse themselves (or withdraw) from further participation in the Complaint.
- b) Immaterial
 - i. there is no reasonable basis to conclude the person could not decide the matter objectively and independently,
 - ii. recusal is not required, but the person that has the conflict may voluntarily remove themselves from the process.

Confidentiality

Complaint investigation processes are confidential. Confidentiality is important to:

- a) protect the integrity of the investigation and decision-making process, and
- b) preserve the fairness of the proceedings for all parties.

To maintain confidentiality, the Member must not associate with or contact (e.g., in person, electronically, social media) the Complainant while the complaint process is underway.