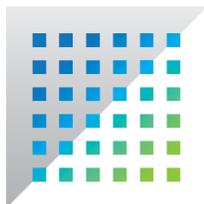


OSPG Guidance: Standards of Practice

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Issued by: 
Paul Craven, Superintendent



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of Professional Governance



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Version Control History

Version #	Date (YYY-MM-DD)	Modification	Approved by
1.0	2021-02-05	Initial version	Paul Craven, Superintendent



OSPG Guidance: Standards of Practice

Purpose:

This guidance document outlines a common understanding of the section 57 (1)(a) and (b) terminology, expectations for how the standards of professional and ethical conduct (standards of conduct) and the standards of competence can and should be expressed in bylaws, and how practice guidelines fit into the framework.

Context:

Standards of conduct and standards of competence describe observable and measurable knowledge, skills and attitudes required by professionals to provide services within the scope of the regulated profession. Standards of practice is an overarching concept used commonly to describe all the standards that professionals are expected to meet.

Part 6, Division 1 of the Professional Governance Act (PGA) pertains to standards of conduct and competence bylaws that each regulatory body must establish. Section 57(1) specifies what these standards involve, including:

- a) **Standards of professional and ethical conduct** for registrants, which may be different for different categories or subcategories of registrants;
- b) **Standards of competence** for registrants, which may be different for different categories or subcategories of registrants or different areas of practice.

Standards of Professional and Ethical Conduct:

Standards of ethical conduct, mostly expressed through a code of ethics, describe behavioural expectations for meeting moral obligations and values (e.g. upholding the values of truth, honesty and trustworthiness and safeguarding human life and welfare and the environment).

Standards of professional conduct, which may be partially expressed in a code of ethics and may also be expressed in separate bylaws or policy, describe behavioural expectations for meeting professional obligations (e.g. providing a professional standard of service to clients and employers by conducting business practices fairly, avoiding conflict of interest and respecting client/employer confidentiality).

Standards of ethical and professional conduct are somewhat universal and constant – one would expect any professional, regardless of their practice, to demonstrate universal skills including critical thinking, building and maintaining interpersonal relationships, business/project management, communication, leadership, ethical behaviour, continuing professional development, and stewardship.

Standards of Competence:

Standards of competence set out the knowledge and skills required to carry out a defined regulated practice. Competence standards may be general for the profession or specific for certain aspects of the profession and may also be expressed as technical-based standards for activities or areas of practice.



The technical knowledge base of a profession is not static – it evolves and advances over time. It may be appropriate to express general standards of competence in bylaws and technical-based standards for activities or areas of practice in practice guidelines.

Policy Intent:

Standards of conduct are generally well established through the code of ethics and other regulatory body bylaws and serve to:

- Guide the daily practice of all registrants
- Set a benchmark to establish expected conduct and test against it if needed, such as misconduct complaints
- Contribute to preserving the reputation of the profession by assuring the public of professional, accountable and ethical practice;
- Provide content for any examinations required of trainees

Not all regulatory bodies have historically established or addressed standards of competence in their bylaws. Bylaws that give force to a framework of standards of competence can be used to:

- Aid in establishing the minimum education and experience for entry into the profession;
- Guide the daily practice of all registrants;
- Enable registrants to self-assess for the purpose of continuous learning and advancing along a competency continuum;
- Set a benchmark to establish expected competence and test against it if needed, such as incompetence complaints;
- Contribute to preserving the reputation of the profession by assuring the public of competent practice;
- Provide guidance for the design and delivery of educational curricula and continuing education programs (CEP).

Standards of Good Regulation:

The OSPG Standards of Good Regulation set out standards and criteria that will be considered when assessing regulatory body performance over time. The following Standards of Good Regulation relate to standards of professional and ethical conduct and standards of competence:

- 7. The regulatory body maintains up-to-date standards of professional and ethical conduct and standards of competence**
- 8. The regulatory body provides up-to-date guidance to help registrants apply the standards; the guidance addresses emerging areas of risk and appropriately prioritizes**

Please refer to the Standards of Good Regulation document for further information about these standards.



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Background:

Transparency about conduct and competency of registrants was a key area of focus in the Professional Reliance Review.

This guidance has been informed by key policy considerations raised in discussions with regulatory bodies in October and December of 2019, as well as discussions with regulatory body legal counsels in November 2020.

Policy Direction and Implementation:

The framework for standards that all regulatory bodies should reflect in their bylaws and guidance is illustrated in the following infographic.



PGA requirements

Standards of Practice – setting, monitoring and enforcing are overarching and foundational obligations of a regulatory body (PGA s. 22 (2)(f))

Standards of Professional and Ethical Conduct
PGA s. 57(1)(a) and 57 (2)

Standards of Competence
PGA s. 57(1)(b)

Bylaws (require OSPG review for suitability and filing per s. 37-38)

Bylaws set out ‘professional and ethical conduct’ expectations as standards

- Must include a Code of Ethics with baseline ethical principles

Bylaw set out general competence expectations as standards as well as expectation for adherence to technical-based standards

- Must be clear on how technical-based standards are established and approved
- May provide flexibility for registrants to deviate from technical-based standards with written documentation

Practice guidelines* that establish standards (require Council approval)

Practice Guidelines may establish 1) technical-based standards for activities or areas of practice or 2) other enforceable competence standards for specific activities. Interim updates may be provided for through bulletins/ advisories.

Interpretive guidelines* (transparent development & approval process)

Guidelines may assist in interpreting established standards to support compliance

Enforcement (should tie to a standard not met)

Professional misconduct; conduct unbecoming a registrant; incompetent performance of duties undertaken while engaged in the registrant’s regulated practice; or breach of the bylaws (code of ethics includes obligation to ‘have regard for applicable standards’)

* Consistent terminology should be used by all Councils – guidelines may be established relating to PGA standards required through bylaws. Policies may only be established relating to operational matters about governance.



PGA Requirements:

- Section 22 of the PGA provides for the regulatory body's responsibility to set, monitor and enforce standards of practice which encompasses both conduct and competence standards that must be established under section 57 (1).

Bylaws:

- Splitting out the standards in separate bylaws is somewhat artificial to how they are expressed and understood in practice. The code of ethics required under section 57 can and does include standards that speak to ethical, professional and competent practice. For this reason, the bylaw level in the infographic is shown as a blending or continuum. Bylaws require OSPG review for suitability and filing.

Practice Guidelines:

- Practice guidelines may establish both technical-based standards and other enforceable competence standards that are not suitable to be established in bylaws. These guidelines must receive council approval.
- Given that practice guidelines are typically developed through a robust policy development process that involves subject matter experts, peer reviews, and more, council approval may focus on the robustness of the development process rather than approval of the technical content.
- To ensure a level of consistency with terminology, 'policies' should not be established relating to any PGA standards, and may only be established relating to operational matters about governance.
- Bylaws should be clear on how technical-based and other competence standards in guidelines are established and approved. Bylaws should also set out rules around use of the standards, such as when there may be flexibility for registrants to deviate from the standards and requirements for documenting their rationale any time they depart from the direction in the guideline.

Interpretive Guidelines:

- For any standards established in bylaws or practice guidelines, regulatory bodies may develop interpretive guidance to assist registrants with compliance. Interpretive guidance can be incorporated in practice guidelines or may be set out separately. Interpretive guidelines may go to council for discussion but may be approved by staff.

Enforcement:

- The consequence of breaching a standard can result in the outcome of a determination of professional misconduct, conduct unbecoming or incompetent performance of duties – which determination used is not straight forward, so the infographic shows a blending or continuum at the enforcement level. The Codes of Ethics include a requirement for registrants to 'have regard for applicable standards', which may also be a factor in the determination made for breach of a standard.



Keeping Practice Guidelines Up to Date:

- All practice guidelines are subject to further revision and amendment from time to time as the practice and supporting professional service, as well as relevant legislation and regulations, are continually evolving. Ideally the practice guidelines can be maintained once established but realistically there will be times when the documents will not be fully current. Regulatory bodies should take the following points into consideration when finalizing the bylaws in respect of competency standards and drafting associated practice guidelines:
 - Consider, in addition to the obligation to comply with established standards of practice, adding a parallel obligation to comply with any other applicable enactment. In such circumstances, to the extent of any inconsistency, the registrant would be expected to comply with current legal requirements, independently of the practice guideline, until such time as the practice guidelines are also updated.
 - This is consistent with the ethical principle in section 57(2)(c) (*have regard for the common law and any applicable enactments, federal enactments or enactments of another province*), which the codes of ethics reflect in a way that also obliges registrants to stay current in respect of such enactments.
 - Consider establishing a routine review schedule for practice guidelines listed as standards in the bylaws.
 - In there interim between new version updates, consider issuing practice bulletins or practice advisories that would accompany the practice guidelines to raise awareness to registrants about particular matters that arise. Then in the next update of the practice guideline, these bulletins or advisories can be incorporated if appropriate.