

ADA GUIDELINES FOR PEER-REVIEW

DENTISTRY'S DISPUTE RESOLUTION PROGRAM

2017

ADA American Dental Association®
America's leading advocate for oral health

ETHICAL FOUNDATION OF PEER REVIEW

Dentistry holds a special position of trust within society. This position is fostered by the profession's commitment to high ethical standards of professional conduct, which have the benefit of the patient as their primary goal. Peer review serves the public and profession by providing an alternate means of achieving resolution of disputes between patients and dentists. The following sections from the ADA *Principles of Ethics and Code of Professional Conduct* provide the ethical foundation for peer review.

Section 3-PRINCIPLE: BENEFICENCE ("do good"). The dentist has a duty to promote the patient's welfare.

This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.

Section 3.B. GOVERNMENT OF A PROFESSION.

Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

BACKGROUND AND DISCLAIMER

This manual was prepared by the Council on Dental Benefit Programs of the American Dental Association to assist the many constituent and component dental societies in their development of an effective and efficient peer review process. This manual should not be considered as legal or professional advice, or as creating a standard for the peer review process. Rather, each dental society must consult with its own legal counsel to assure that its peer review program complies with applicable law, bylaw provisions and insurance protection. This is particularly true with respect to sample forms contained in this Manual, which have **not** been reviewed with respect to state laws. The Association hopes that peer review committees will follow similar procedures to achieve consistency within the mechanism.

The ADA has made every effort to make these materials useful and informative. However, the law varies from jurisdiction to jurisdiction, and it sometimes changes more rapidly than these materials. For that reason, the Association makes no representations or warranties of any kind about the completeness, accuracy, or any other quality of these materials or any updates, and **expressly disclaims all warranties, including all implied warranties (including any warranty as to merchantability and fitness for a particular use)**. To the extent we have included links to any website, the ADA intends no endorsement of their content and implies no affiliation with the organizations that provide their content. Nor does the Association make any representations or warranties about the information provided on those sites, which the Association does not control in any way.

The information contained in this Manual is a compilation of many fine peer review programs throughout the country and incorporates all of the policies and procedures for peer review that have been approved by the House of Delegates of the American Dental Association.

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PREFACE

The dental profession has assumed both a special obligation to the patients it serves and a responsibility to itself to maintain its high standards and professional integrity. No activity in organized dentistry demands as much of a commitment to this obligation and responsibility as peer review.

Peer review challenges the individual committee member's sense of fairness and objectivity, sound judgment and clinical skills. It also demands a commitment from the dental society to act with efficiency, expediency and responsiveness. Most important, however, peer review provides the most tangible opportunity for the dental profession to demonstrate its overriding concern: the provision of quality dental care to the patient.

A successful peer review process imposes established and consistently applied standards of procedure and practice that engender the respect of the dental community, public trust and the willingness of third party payers, patients and others, to use it.

INTRODUCTION

The American Dental Association developed this manual primarily for two reasons: to suggest types of policies and procedures that can be adopted and implemented to help ensure the systems' success; and to encourage a reasonable degree of consistency and uniformity of procedure among the component societies within a state, as well as among states.

A successful peer review process is efficient, expeditious, and is perceived to be unbiased and credible. Its success can be undermined through inconsistent, arbitrary procedures and policies.

Consumer health care awareness, the dental benefit marketplace, and the dental practice environment have changed considerably since organized dentistry first recognized the need for, and benefits of, patient grievance committees. The ability of dental societies to recognize and respond to the varied demands imposed on individual dentists and the dental profession has evolved into a sophisticated and effective process.

The Association first established policy on peer review in 1970 with the adoption of the statement on Dental Society Review Committees. That statement outlined the purpose and functions of review committees and clearly specified that such committees were to be established for prepayment programs. Other committees, such as patient grievance, patient relations, or patient counseling, dealt with disputes between patients and dentists.

Since 1970, other policies have been adopted that gave peer review committees the right to review radiographs and other treatment records (1971); encouraged third parties to use the peer review process (1972); urged constituent societies to seek statutory exemption from civil damage liability for peer review committee members (1973); acknowledged the prerogative and duty of the dental profession to conduct all necessary review of dental services through its established mechanisms, including peer review (1975); supported the combining of responsibilities for grievance and peer review committees under the auspices of a single "peer review committee" (1977); urged constituent societies to cooperate in the resolution of inter-jurisdictional cases (1979); amended the Bylaws definition of member in good standing to include, among other things, cooperation with dental society peer review bodies (1980); urged constituent societies to change or otherwise modify their peer review systems in accordance with the Association's provisions (1981).

In 1987, policies on peer review were revised to reflect the current practices in peer review and the changing nature of the various relationships that exist in the delivery of dental care.

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All insurance carriers, service corporations, alternative benefit plans and government programs were urged to use the dental profession's established peer review process to address issues or disputes concerning dental treatment.

The majority of the remaining peer review policies were modified where necessary and incorporated into a statement, Guidelines on the Structure, Functions and Limitations of the Peer Review Process. That statement was revised and adopted in 1992 by the ADA House of Delegates. It appears in [Appendix A](#).

As policy addressing the various dimensions of the peer review process was adopted, the Council on Dental Benefit Programs sought to assist and support the efforts of constituent and component dental societies in peer review. Informational material and assistance programs have provided valuable resources in training new committee appointees, the conduct of peer review, administrative procedures, and the promotion of peer review to those within the dental community and those with a role in dental treatment.

This manual represents the most recent ADA effort to encourage peer review by providing a useful resource to those actively involved in the peer review process. The appendices include samples of forms and letters and other items important for peer review. Also, to facilitate the process for the peer review committee chair and dental society staff, a [Quick Reference Procedure Outline](#) is located later in the manual.

We note that this is not the last word on peer review. Experience at the constituent and component levels, coupled with legislative and regulatory developments, will shape the evolution of peer review in the future.

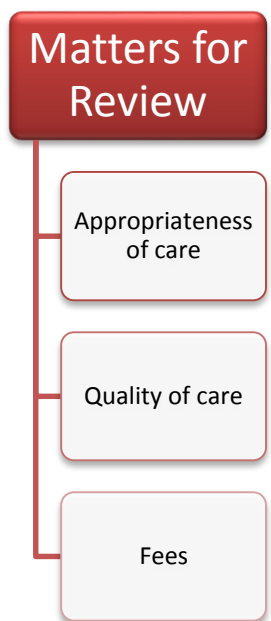
PARTICIPANTS IN THE PEER REVIEW PROCESS

The process of peer review in organized dentistry provides a means for resolving differences of opinion between a dentist and patient or between a dentist and a third party, such as an insurance carrier, a dental service corporation, an administrator of a health and welfare trust, an alternative benefit plan, a government agency, or an employer who has implemented a self-funded and self-administered dental plan.

The peer review process is managed and administered cooperatively by constituent and component dental societies, and is available to the public, the dental profession and third parties. Because a dental society has a responsibility to both the public and the dental profession, dentists who are not members of the constituent and component societies should have access to the peer review process and, when possible, should be notified of this opportunity.

MATTERS FOR REVIEW

Peer review committees review matters concerning, but not limited to, appropriateness of care, quality of care, and sometimes, when acting in an advisory capacity, fees. The committee acts on appropriate request, usually from a patient, a dentist, or an insurance carrier.



Appropriateness of Care

Appropriateness of care can be defined as the professional acceptability of planned or completed diagnostic evaluation and treatments, to include the necessity and consistency with patient complaint or diagnosis.

Quality of Care

Quality of care concerns an evaluation of the treatment provided using the standards that generally prevail within the professional community by those who routinely perform the treatment in question.

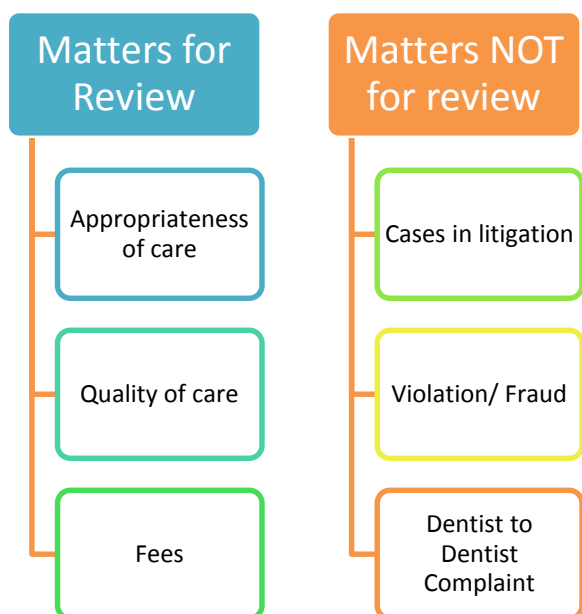
Fees

Fees are the third general category for possible review. The committee may determine from the evidence made available to it, whether the fee in question is the dentist's usual fee for a given procedure. If the fee charged appears not to be the dentist's usual fee, the committee may determine whether the fee is reasonable, concerning the degree of difficulty or complexity of the dental procedure employed. Peer review committees must exercise great care in handling cases involving fees, to avoid violating federal and state antitrust laws. The Federal Trade Commission issued an advisory opinion on the

review of fees by peer review committees. The complete text of the opinion is found in [Appendix B](#) and is more fully discussed in this manual in the subsection titled “Fee Review and Antitrust Law,” under “Legal and Liability Issues.”

MATTERS NOT WITHIN THE PURVIEW OF PEER REVIEW

The peer review process is not designed to handle every type of situation or problem that may arise between patients, dentists, and third parties.



Cases in Litigation

It is not within the authority of the committee to review cases in litigation. Therefore, a case is ineligible for consideration by a peer review committee if an involved party has initiated formal litigation proceedings concerning any aspect of the dental services under review. A case is determined to be formally in litigation when a party in a dispute files a complaint instituting a civil action in court. A patient consultation with an attorney should not be automatically interpreted to mean that the case is in litigation and therefore ineligible for review.

The one exception involves cases in which a dentist has initiated litigation against a patient for the collection of fees. In such cases, a component society should be able to exercise discretion in determining whether peer review would be beneficial. The

benefits to the patient inherent in peer review are not necessarily lost merely because the dentist has initiated legal action for the collection of fees.

Dentist to Dentist Complaints

The current peer review system is not intended to handle a complaint initiated by one dentist against another. Such complaints are likely to be adversarial in nature, so consideration should be given to the referral of these complaints. If the peer review process were to open a case on the basis of an evaluation or allegation of one dentist regarding the treatment rendered by the other, a patient examination or evaluation would have to be completed by yet another dentist. The peer review committee would then have to make a decision based on the patient evaluation. In brief, patient cooperation would be required. If this in fact can be obtained, there would appear to be no reason not to pursue the matter as a patient initiated complaint. This approach coincides with the obligation of the dentist to inform the patient of the status of his or her oral health. Having done this, the dentist has done all that is required except in cases of gross or continual faulty treatment.

In such cases, societies should follow the Association's recommendations, which state that "... request(s) submitted by a dentist for review of treatment by another dentist should be channeled to that agency which the constituent society has determined should review allegations of gross or continual faulty treatment by a dentist. This could be the judicial committee or committee on ethics, or some combination thereof. It could also be the state board of dentistry." The key phrase is "Which the constituent society has determined..."

Judicial committees are most familiar with this type of proceeding and should have the necessary procedural structure to handle them. They should be given the specific authority or jurisdiction over such matters. If they have not, referral to the state board may be the best course. Referral to a committee on ethics would be appropriate only if procedures have been established for the committee to handle this type of complaint. The scope of authority of an ethics committee depends entirely on the defined function in a particular state.

Alleged Fraud or Violation of State Dental Practice Act

Peer review chairs, committee members and dental society staff should be sensitive to the actual issues raised in a complaint submitted for review. Many times a case that appears clear-cut on its face may have ramifications beyond the peer review process. Such a situation may occur when a case involves possible fraud or violation of the state dental practice act.

Review of cases involving alleged or suspected fraud (e.g., billing for work not done, falsifying treatment dates, etc.) is not within the purview of peer review committees. These cases should be reported to the constituent society for possible referral to the state board of dentistry or other appropriate authority.

Suspected violations of the state dental practice act may become evident in the course of the committee's review. These types of cases, when identified, should also be referred to the constituent society. Depending on the nature of the case, the committee may be permitted to proceed with the review, or review of the case may be terminated for possible referral to the state board of dentistry or other appropriate authority. Depending on the nature of the case, the committee may be permitted to proceed with the review if it concerns a matter of the quality or appropriateness of care that will not be addressed by the state board of dentistry. If the state board is addressing the same issue that peer review would address, peer review should terminate the case, allowing it to be fully addressed by the state board. In general, the specific concerns of peer review are different from those of the state boards of dentistry, but they may often overlap in some areas. State dental societies are urged to utilize communication and working relationships with state dental boards to effectively and efficiently resolve patient's complaints about oral health care.

THE PEER REVIEW COMMITTEE

The peer review committee should be a permanent committee of the dental society with appropriate status and ties to other related committees. It can be formed as a freestanding committee or, alternatively, a subcommittee of the body within the society that concerns itself with dental care programs. In some states, the peer review and ethics committees operate under a single organizational umbrella.

Committee Composition

The committee membership should be composed primarily of general practitioners who have the qualifications and experience to render a considered opinion as to the dental standards of the community. Terms on the committee should be staggered to ensure continuity of experience. The appointment of a layperson to serve on the peer review committee is encouraged.

The committee should have specialists as resources who can be appointed if the dentist being reviewed is a specialist and requests a committee composed of like specialists. The committee should inform all specialists under review of this option, but the decision whether to grant such a request is within the sound discretion of the chair and may depend on the complexity of the case, among other factors. If the committee feels the need for additional expertise, other members may be appointed on an ad hoc basis.

Serving on a peer review committee is both challenging and demanding. It is a commitment that requires a great sense of ethical responsibility to the public and the dental profession. It requires a willingness to make an investment of time. These individuals believe strongly in the worth of peer review and are committed to the success of the process. Choice of peer review committee members should be based on their ability to be:

- unbiased
- even-tempered
- objective
- level-headed
- a good listener
- caring

An individual who serves on a constituent society body responsible for hearing appeals should be excluded from serving on a component committee because of the potential conflict of interest. Similarly, individuals who have an interest in the outcome of the case that might cloud their impartial judgment should be excluded. Whenever possible, component society officers should also refrain from participation.

Committee Size

The size of the committee should reflect the geographic area covered, the dental population of the component and the caseload. To ensure continuity, members should serve staggered terms of three to five years. Ideally, committees should have at least

five members; however, factors such as the limitations of the dental society and the flexibility required to meet community needs should be considered when deciding committee size. For instance, in communities where there are few practicing dentists, it may be difficult to maintain a larger committee. In such cases a smaller body may be appropriate, but consideration should be given to bringing in dentists from other components for the committee review to ensure impartiality.

Lay Representative

As mentioned above, the committee should try to include a layperson who is trusted and well respected in his or her community. Although this individual may have no prior knowledge of the peer review process, and no familiarity with clinical dentistry, a layperson lends credibility to the committee proceedings by monitoring peer review procedures and representing the interest of the public. It is not a requirement that a layperson have expertise in any particular field to serve on a peer review committee. When utilizing laypersons in the peer review process, it is recommended that these individuals serve on a routine basis, if possible, rather than participating only in selected peer review cases. State law may grant limited liability protection to individuals serving on peer review committees; it is recommended that dental societies review applicable laws to determine whether such protection would extend to a lay member, and confirm that the society's liability insurance coverage would apply to both lay and professional peer review committee members.

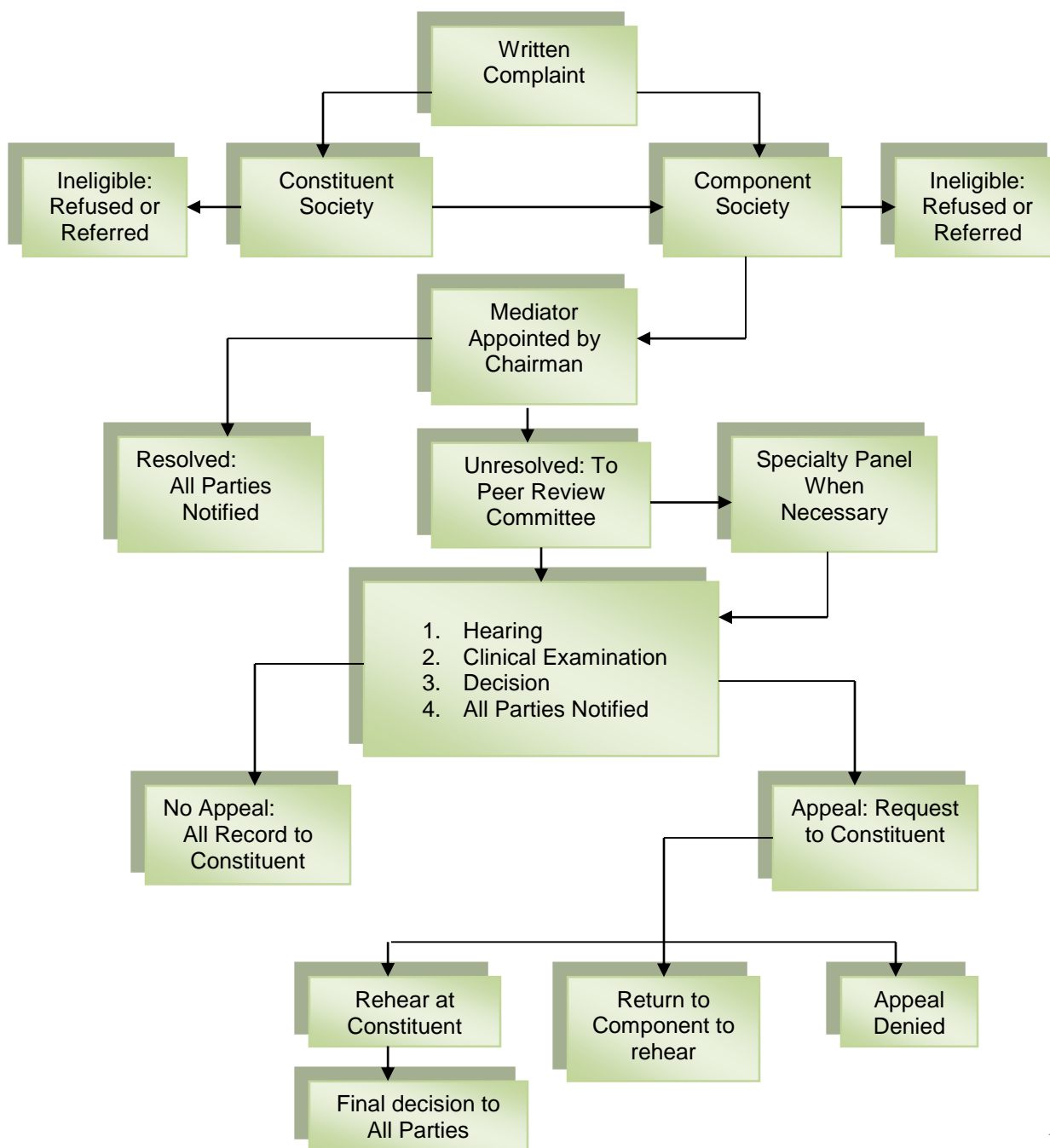
Specialists

As mentioned above, the committee should also have specialists as resources who can be appointed on an ad hoc basis. This is especially important if the dentist being reviewed is a specialist and requests a committee composed of like specialists, or if the committee feels the need for additional expertise. The methods for selecting specialists to serve vary from society to society. Some constituent societies predetermine individual specialists to serve; in other instances the specialty organizations themselves are called upon to suggest who should participate. Regardless of how they are chosen, any additional members appointed on an ad hoc basis should have the same status, for the particular case, as do permanent members of the peer review committee. They should also have the same general qualifications to serve on the committee as the other members, including freedom from bias.

Prior to the review, any of the involved parties may ask to know the names of the committee members reviewing the case and may also submit a properly documented request that the chair dismiss a committee member for cause. The chair, with the advice of the committee, should be empowered to accept or reject this request, giving the reasons for such action.

PEER REVIEW PROCESS

The following framework for a peer review process may be adapted to serve the needs of various dental societies. The appendices contain sample letters and forms that illustrate administration of the review process, arranged in the order they would normally be used. Each dental society should review this sample process and the sample forms with its attorney and make any changes needed to conform these documents to applicable federal, state, or local law or conditions. [Appendix C](#) contains a sample peer review process checklist for the peer review chair. The use of a checklist, with all the notations made on a timely basis, is encouraged.



QUICK REFERENCE PROCEDURE OUTLINE

- 1) The constituent or component society receives the written complaint.
 - a) The constituent peer review chair and/or staff reviews the complaint for appropriateness
 - i. If appropriate for peer review, the constituent refers the complaint to the component. When the component receives the complaint, it is processed by the component peer-review committee chair (referred to as “chair” in this section).
 - ii. If not appropriate for peer review, request is denied and the initiator is so notified (complaint may be referred to the appropriate dental society committee or outside agency.)
- 2) The component chair appoints a mediator, who contacts all parties within 10 days.
- 3) When mediation is successful, the complaint is resolved
 - a) The mediator submits a written report to the chair.
 - b) The chair notifies all parties of the resolution (this should be completed within 30 days of receipt of complaint.)
- 4) When mediation is unsuccessful, the complaint is not resolved and the case may proceed to clinical peer review.
 - a) The mediator submits a written report to the chair.
 - b) The chair sends the Peer Review Request Form with its cover letter to all parties.
- 5) Chair organizes a committee to review the case
 - a) The chair selects three or four committee members for the review (it is suggested that committee members be selected on a rotating basis.)
 - b) If a specialist is being reviewed, the chair may appoint a committee of like specialists when requested and appropriate.
- 6) The chair schedules the review and/or examination.
 - a) The chair contacts all parties to obtain a mutually agreed date and time for the clinical review.
 - b) The chair notifies all parties by mail of the date, time and place of the hearing/examination
 - c) Each of the committee members independently perform a clinical examination at this time.
 - d) The committee reviews all documents and then interviews each party to the dispute separately.
 - e) The committee deliberates in closed session
- 7) The chair notifies all parties of the decision through a written letter and informs them that they have the right to appeal within 30 days.
 - a) When monies are being returned as part of the decision, the chair should send a release form with the above letter.
- 8) When there is no appeal, the chair should send all records and documents to the constituent society office for filing (all dental records initially obtained from the dentist are returned to the dentist.)
- 9) When there is an appeal, the chair sends the appeal form to the constituent society.

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- a) The Constituent peer-review Committee chair reviews the request and may take one of the following actions:
 - a) Deny the appeal if there is no basis (the appellant is notified that the decision of the component is upheld and that the case is closed).
 - b) Refer the appeal back to the component for cause with the request that the case be reheard to correct the deficiencies.
 - c) Rehear the case at the constituent level using the same basic peer review procedures as outlined above.
- 10) The Constituent peer-review Committee chair notifies all parties of the decision, and that the decision of this peer review panel is final through a written letter.

REQUEST FOR PEER-REVIEW

A request for peer review often starts out as a telephone contact to the dental society office. Even though these telephone contacts aren't formal complaints, the dental society should log these calls, so that a more accurate report of peer review activities may be prepared at year's end.

The Request for Review

Any party wishing to initiate peer review should be required to make the request in writing to appropriate constituent or component societies. Whenever a constituent or component society receives an initial complaint from a patient about a dentist, even by phone, the society should send a response letter to the patient.

The purpose of the response letter is to acknowledge the patient's complaint. It should be accompanied by the official request for mediation form, which the patient can use to officially document the complaint, and a form authorizing the dental practice to use and disclose information about the patient for purposes of mediation and peer review. It is also recommended that the pamphlet "Dentistry's Dispute Resolution Program: A Peer Review Process" accompany the mediation request form¹ and its cover letter.

Third-party payers, in their request for initiation of peer review, must document that the dentist's office has been contacted for clarification of clerical and/or reporting problems. In matters of professional judgment or contract interpretation, third-party payers must document that the carrier's dental consultant has personally contacted the dentist for additional information and clarification.

Screening

Peer review chairs, committee members and dental society staff should be sensitive to the actual issues raised in the complaint. The peer-review committee chair and/or designated staff should make the determination, at the outset, that the request deals with an area over which the committee has jurisdiction. Another factor that should be used in this screening process is the time elapsed between the dental treatment and the filing of the complaint. A long time span could alter the clinical conditions and cloud accurate detailing of the procedures performed. While statutes of limitations are not binding on peer review committees, many constituents have used these laws as guidelines for the time period in which peer review cases will be accepted.

¹ In 1990, under an interim agreement with HHS, the Association revised the dental society "Mediation Request Form," which is submitted by a patient to the dental society, so that the form does not constitute a written demand for payment and so, by itself, does not trigger a reporting requirement to the National Practitioner Data Bank. See 45 C.F.R. Part 60, Section 60.3 "Definitions," *medical malpractice action or claim*, and pages 30-31 of the *NPDB Guidebook*, available at <http://www.npdb-hipdb.hrsa.gov/resources/NPDBGuidebook.pdf>. For more information on the National Practitioner Data Bank, see visit <http://www.npdb-hipdb.hrsa.gov/index.jsp>.

Acknowledgement

Once it has been established that the complaint is eligible for peer review, it is recommended that a copy of the completed request for mediation form be sent to the other party with a request for their side of the story. This practice of obtaining written statements from all parties can be very helpful to the mediator. A patient's request for mediation form must be accompanied by an authorization form signed by the patient that complies with applicable state and federal law (such as HIPAA) authoring the dentist to use and disclose the patient's health information for purposes of mediation. If more than one dentist is involved, then the patient should sign (1) a separate authorization form for each dentist, (2) an authorization form listing all of the dentists, or (3) an authorization form that lists categories of persons who may use and disclose the patient's information for purpose of the mediation (e.g., "all dental and medical sources" or "any health plan, dentist, physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, or other health care provider that has provided payment, treatment or services to me or on my behalf"). The patient must receive a copy of the authorization form. Dentists and other health care providers must not use or disclose any patient information for mediation purposes unless any appropriate patient authorization has been obtained and has not been revoked. Under HIPAA, a patient may revoke an authorization at any time, but the revocation does not affect patient information used or disclosed prior to the revocation. The sample HIPAA authorization form in Appendix D directs the patient to send notice of revocation to the dental society. The dental society would in turn need to notify the appropriate dentists and other health care providers of the revocation.

The mediator and peer review committee must not review any case without any necessary patient authorization to access the treatment records. The authorization must comply with HIPAA, if applicable, and with applicable state law, such as state law that is more stringent than HIPAA. State law may provide additional protection for certain categories of sensitive health information, such as information related to a mental health condition, alcoholism or substance abuse, or infection status (such as HIV). For example, state law may require the patient to specifically authorize disclosure of such sensitive information by so indicating on the authorization form.

Although dentists transmitting patient information in connection with peer review may be covered by HIPAA, Peer Review Committees generally are not HIPAA covered entities or business associates. However, Peer Review Committees must comply with applicable privacy and data security laws when handling patient information. . For example, the Federal Trade Commission ("FTC") has taken the position that failure to have reasonable and appropriate data security in place to protect personal information may be an unfair trade practice in violation of the FTC Act, and that failure to adhere to privacy promises may be a deceptive trade practice in violation of the FTC Act. State law may require specific security safeguards to protect sensitive data, including secure disposal of sensitive data, and may require breach notification in the event of unauthorized acquisition of certain kinds of personal information. At least one state requires breach notification if "medical information" is breached, defining "medical information" to mean "any information regarding an individual's medical history, mental

or physical condition, or medical treatment or diagnosis by a healthcare professional, including such information provided to a website or mobile application.”

A state or local dental society would be prudent to consider how sensitive peer review information, such as a patient’s dental records, are maintained, transmitted, and, when appropriate, disposed of, and take steps to protect the information from authorized access in compliance with applicable laws.

For example, appropriate encryption can help protect patient confidentiality and avoid breaches when patient information is transmitted electronically. For information on the kinds of encryption that can be used to “secure” protected health information under the HIPAA Breach Notification Rule, visit Office for Civil Rights, “Breach Notification Rule,” at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html> and click on “Unsecured Protected Health Information and Guidance.” A dental society may adopt a rule requiring any computer used for peer review to be protected by appropriate encryption, and any patient information transmitted electronically to be encrypted in transit.

Other examples of safeguards that can help protect the privacy of peer review records include keeping paper records securely locked, securely disposing of unneeded copies of paper records (for example, using a cross-cut shredder), protecting electronic records in storage and in transit through appropriate encryption (see above), limiting access to authorized individuals through appropriate authentication (e.g., usernames and strong passwords), and using appropriate anti-virus and anti-malware software and keeping the software up to date.

[Appendix D](#) contains the following sample forms and letters.

1. Response Letter from Society to Patient
2. Patient Request for Mediation Form
3. HIPAA Authorization Form
4. Letter to Other Involved Party to Solicit Information

MEDIATION

If a constituent dental society includes mediation in its peer-review program, mediation is the initial step in peer review and is one of the most important steps in the peer review process. Properly conducted, this process can reestablish communication and trust so as to resolve problems expeditiously.

When a request for review is received, the peer review chair appoints one committee member to act as the mediator. The chair balances several competing priorities in assigning the responsibility of mediation. Mediation requires special skills that are often acquired through experience coupled with personal aptitude. An individual who serves as the mediator may thus be a unique member of the peer review program who benefits the parties in a case and the program itself. In some instances, such an individual may

wish to continue serving as the peer review program's mediator. In other instances, such an individual may wish to have a respite from doing mediation because virtually all peer review cases are first attempted through mediation, giving mediators a relatively greater burden of work. Also, other peer review committee members may wish to develop mediation skill and experience and the peer review program needs to have a cadre of skilled mediators. These priorities require continual attention and balance.

Mediation is a method for resolving conflicts between people, and is used during the first phase of the dental peer review process. During mediation, the disputing parties, with the assistance of a mediator, identify disputed issues, discuss alternative ways to resolve the issues, and reach a settlement that is satisfactory to both parties. If mediation is successful, cases are concluded at that stage and do not need to proceed on to peer review. Statistics reported by constituent dental societies to the American Dental Association's biennial Peer Review Reporting System Survey indicate that mediation resolves more than half of the cases initiated in the peer review system. Thus, mediation is often effective in resolving dental disputes. Some constituent dental societies have made mediation and peer review mandatory, while others have made it voluntary.

Mediation is distinct from arbitration. Mediation generally involves a single mediator, whereas arbitration may involve a panel that makes the decision in settling a dispute. Mediation is generally non-binding, whereas the decision in arbitration is generally final and binding on the parties. Arbitration generally proceeds under a set of formal rules and procedures that do not necessarily apply to mediation; for example, arbitration may involve formal testimony and presentation of evidence.

The crux of the mediator's work is to help the parties think through the issues and generate ideas for resolving the dispute. The mediator initially gathers information about the dispute. The mediator asks each party to explain what the dispute is about in his or her own terms and hears each party's initial position on the matter. Although the mediator may find there is dissonance in the two versions of the events, it is not always necessary to resolve them. It is more important to begin finding out what needs each party wants to satisfy in resolving the dispute--what each party hopes to get out of resolving the dispute.

There are different models for conducting mediation, but a common, key feature in all of them is that decision-making rests with the two parties in the dispute, not with the mediator. The two parties generate options for settling the dispute, and agree upon a resolution that is acceptable to both of them. The mediator is a neutral facilitator, helping the parties identify their interests in the issues at hand and prompting them to think through the issues and explore alternatives for resolving the dispute. The mediator's goal is to help the parties make a mutually agreeable decision. The mediator

is not there to convince the parties to accept his decision or to convince them of his opinion on what is fair or best.

An important benefit of the parties making the decision on how to resolve the case is that both parties may come away from the process with a feeling that the decision is fair. This can be achieved as each party in mediation gains knowledge of not only the other party's position, but also why the other party holds that position. They gain insight into the interests at stake in the dispute. Thus, the parties can begin to address their interests rather than their initial positions or demands. Such understanding can generate more mutually agreeable options and hence, a greater sense of fairness. This can lead to a resolution that benefits both parties.

Another advantage of mediation is that it provides both parties with more privacy than other avenues for settling a dispute. If either party has information that must remain private, this can be built into the mediation process; an example is the details of business operations. Additionally, mediation fosters a more positive relationship between the parties because it requires that they cooperate. This can be especially beneficial in dental disputes where the dentist and patient may want to continue the dentist-patient relationship or where both parties have an interest in terminating the relationship amicably.

To be effective, a mediator must:

- Help each party define his or her specific demands and requests.
- Identify those demands and requests that can and cannot be addressed in the mediation process.
- Clarify areas in which the parties agree and those in which they differ.
- Facilitate parties in creating options.
- Encourage each party to make some concessions in order to achieve some gains.

In addition, the mediator must use good listening and communication skills and should:

- Allow the parties to tell their stories without interruption
- Ask for information or clarification by using open-ended questions, rather than interrogation-like "why" questions or questions that require a yes or no answer. Poorly worded questions may sound accusatory and must be avoided.

A checklist available at the link below provides a step by step guide to mediation.

http://www.ada.org/sections/professionalResources/pdfs/Peer_Review_Mediation_Checklist.pdf

The mediator's neutrality is fundamental to the mediation process. It is essential for establishing rapport and trust with both parties and to assure, as much as possible, that

the mediator can assist the parties in reaching a resolution that is mutually beneficial. In order to be neutral, the mediator should not have had a prior relationship with either of the parties, and should not have a special interest or stake in the outcome of the dispute. If the mediator feels he or she cannot be neutral, the mediator should contact the peer review chairman and withdraw as the mediator.

The mediator should make his or her neutrality explicit to both parties in the case. Since the mediator is a dentist, the patient in the case may fear that the mediator will support his or her dental colleagues. Alternatively, some patients view the dental society as the patient advocate and may expect the mediator to serve as his or her advocate. The dentist in the case may also doubt the mediator's neutrality because he or she may feel the mediator is a competitor. Alternatively, the dentist in the case may expect the mediator to support his or her position because they are dental colleagues. The mediator must be sensitive to these fears and expectations, and explicitly tell both parties that he or she is neutral.

To explain his neutrality, the mediator might make the following sample statement to each party:

My name is _____. I have been asked to serve as the mediator in the dispute between you and _____. Before explaining how mediation will be conducted, I would like to first say that I have not met or worked with either of you. I mention this so you will know that I do not have a stake in the outcome of the case. I would like to ask if you know me or have heard of me in any context (If either of the parties says they know of the mediator, the mediator should ask the party if this would present a problem. If not, the mediator can proceed with the case. If the party says it will be problematic, another mediator should be assigned to the case.)

If the mediator knows one or the other party, the mediator should say so, and (if it will not affect the mediator's ability to be impartial) say that it will not affect his ability to be impartial. The mediator should then check with the parties to see if it will present a problem for them. The importance of explicitly talking about neutrality cannot be overstated.

Neutrality can be difficult in geographic areas with few dentists. Some states have dealt with this by using a mediator from a neighboring district or state.

Another issue is the confidentiality of the case. The mediator should assure both parties that, with limited exceptions, information gathered during the case generally will not be discussed with anyone outside of the peer review committee. An example of an exception to confidentiality would be if the mediator were to become aware of any

danger to either of the parties or a legal, ethical or quality of care issue were to require that the case be submitted to another agency or authority.

After the mediator explains his or her neutrality and the confidentiality of the process, the mediator provides both parties with a clear explanation of the ground rules of mediation. Ground rules may include something such as the parties having contact with each other only through the mediator or in the presence of the mediator. The mediator may also briefly explain to the parties that he or she will not serve as a judge or arbiter. The mediator may explain that both parties will hear the concerns of the other and that it will be up to both parties to suggest alternative resolutions to the dispute until both parties agree to a resolution that is mutually acceptable.

Mediation in non-dental organizations is commonly done in face-to-face meetings with the mediator and both parties involved in the case. The mediator may conduct the mediation by meeting alternately with the parties together (called “joint talk” or “cross talk”) then with each party separately (called “caucusing”). In some cases, the mediator may “shuttle” between the two separate parties in the dispute, who are each in separate rooms. The ‘shuttling’ between two sides in the dispute tends to occur when the mediation is done between attorneys representing the parties in the dispute.

Dental disputes, however, are commonly mediated via the telephone by dentists who volunteer their time to act as mediators. Both parties speak through the mediator and do not speak with each other directly. This is akin to the “shuttle” type of mediation in that the mediator is the conveyor of information between the two parties and has control of the information that flows between the two parties. Mediation via telephone saves time, costs and the inconvenience of traveling to a location for mediation. However, using the telephone can place pressure on the mediator to expedite the mediation process and achieve a resolution as quickly as possible. The impersonal exchange of information between the two parties makes it more difficult for the parties to develop empathy for each other, to reestablish a trusting relationship and to act as a partnership for resolving the dispute. The telephone, then, presents some constraints in encouraging the two parties to take the time necessary to progress through a process of identifying their underlying interests and examining alternative resolutions. The mediator, in such circumstances, may have to be more active and direct in encouraging each party to identify his or her interests and to examine alternative resolutions.

In cases where the dentist and patient may wish to maintain their relationship, where the stakes are high, or where the issue is extremely important to both parties, the mediator may offer the parties an opportunity to have a face-to-face mediation.

There is frequently more to a dispute than what appears on its surface. Although parties in a dispute may express what appears to be a clear cut demand, such as a fee refund, there may be important interests underlying that demand. The interests in a

dispute refer to the psychological, physical, and economic needs of parties in a dispute. Such interests can range from intangible desires, such as respect, to tangible needs such as economic well-being. These interests underlie most disputes and the initial demand or position of each party represents a way of satisfying his or her interests.

In a dentist-patient relationship, the dentist and the patient both have interests which they expect the relationship to satisfy. The dentist has an interest, for example, in being paid for his or her work; the dentist may also have other, less tangible, needs, such as being respected; gaining a sense of competence, mastery or professional integrity; and establishing or maintaining intra-professional relationships. Any of these needs can be threatened by a dispute with a patient. The patient has an interest in the relief of pain, restoration of oral health, optimal functioning and receiving benefits from the fee being charged. The patient, like the dentist, also has less tangible needs; for example, the patient may need to feel understood or to be respected. Everything that each party does in the dentist-patient relationship is motivated by these interests and needs. These needs and interests also motivate the demands that each party makes, or the position that each party takes in the dispute.

For example, the patient's position may be that the treatment provided was the wrong treatment and so he or she wants a refund. The dentist's position may be that the treatment was appropriate for the problem the patient presented and he or she will not give the patient a refund. Although each party's demand or position in the conflict appears to be about a fee refund, there can be more basic interests that underlie the conflict and motivate each of the party's positions. The patient's interests may be relief from pain, fear that the pain cannot be relieved and limited resources to pay for additional or alternate treatments. The dentist's interest may be to maintain his or her self-image as a competent dentist, being reimbursed for treatment provided, and a fear that the dispute will lead to a lawsuit or other liability risk. The fundamental dispute between the dentist and patient is not about their initial positions in the dispute, but about the needs, concerns and fears that confront them in the dispute.

The parties in the dispute may share some interests in common as well as have separate interests; each party will also regard some interests as more important than others. Both parties, for example, may have an interest in economic well-being. The dentist may also have an interest in the integrity of his or her reputation in the community, and an interest in conserving his or her time. The patient may also have an interest in economic well-being, as well as an interest in gaining optimal oral functioning. Even though both parties share an interest in economic well-being, one of the parties may set a higher priority on it.

Although the underlying interests of each of the parties are key to finding a mutually satisfying resolution, the interests are not always immediately clear. The parties in a case explicitly tell the mediator their positions in the dispute, but may not articulate their

interests and, in some instances, may not even be consciously aware of their underlying interests.

The mediator encourages and prompts the parties to move from negotiating their positions to negotiating to meet their underlying interests. The mediator helps the parties identify their underlying interests in the dispute and urges them to think about solutions to the dispute that would satisfy those interests. Successful mediation is a process of give and take. It requires that the two parties in the dispute be willing to think about not only their own interests and concerns in the dispute, but the interests and concerns of the other party. That is the only way the two parties can think of alternative ways (generate options) to resolve the dispute so both parties may benefit. If both parties benefit in the settlement, it is more likely that they will agree to the settlement and the mediation will be successful.

The following are some ways in which the mediator can assist the parties in identifying their needs and interests:

- Ask each party what he or she hopes to get or achieve by their demand or position.
- Ask each party why the dispute is important to him or her.
- Check out any hunches you may have inferred from what the individual has said. If it sounds like the individual has implied that, for example, respect or physical comfort are underlying interests, ask the individual if this is what they want to achieve in resolving the dispute.
- Ask why the party would not agree to the other party's demands.

Along with the facts of the dispute, the parties in a dispute bring their emotions, values, backgrounds and perspectives. Through these human characteristics most people have the ability to understand both sides of a dispute, have empathy for "others," have a sense of justice and fairness, and cooperate with others. Additionally, these characteristics color people's perceptions of other peoples' motives, their interpretation of what is said to them, their fears, and the threats that a conflict presents. If the patient says that he or she is unhappy with the outcome of care, the dentist can interpret this as tantamount to being an incompetent dentist or a "bad" dentist. The patient may not, in fact, have said the dentist is incompetent or may not even feel the dentist is incompetent. Nonetheless, the dentist's perception of being accused may be very firm and may be the basis of his or her very firm position in the dispute. Similarly, a patient who is surprised by the fee for a given treatment may then feel the dentist is primarily interested in making large profits, and may proceed to question the necessity of the care that he or she received. The mediator must deal with both the perceptions people have and the substance of the dispute.

Because perceptions can appear irrational and stubborn, it is tempting to ignore perceptions and focus on establishing the truth or the facts underlying a dispute. Thus, in the foregoing example, the mediator might focus on whether or not the patient was told the fee in advance of receiving the treatment. This may help the mediator come to his or her own conclusions about who is right and who is wrong and what the resolution should be, but it rarely convinces either of the parties to move away from their perceptions and to find a mutually agreeable solution. To the individual, his or her perceptions are reality. Also, the mediator's attempts to diligently discern the truth can lead to a misinterpretation of the mediator's effort. The individual can feel accused of purposely misrepresenting the facts and will react to that with anger and intransigence, and a general downward spiral of the mediation can occur. For this reason, the mediator should hear the parties' perceptions and assist the parties in dealing with perceptions as well as help them deal with the substantive issues in a case. The challenge is to deal with perceptions as well as substantive matters. Thus, although it is helpful to establish, for both of the parties, whether or not the patient was quoted the fee before proceeding with treatment, the more important fact the mediator must discuss, with both parties, is the patient's perception that a high fee indicates that the care provided was probably unnecessary.

Apart from emotions, people have different personalities and so they react differently to conflict. In confronting a conflict, some people are more cooperative, while others are more assertive. Most people are some combination of both. The circumstances of the dispute can also play a role in the reactions to the dispute. For example, the power balance between the two parties may be different, with one party having more power. Other examples are the amount of time the parties have to settle the dispute, the importance of the issue, and the interest the parties have in maintaining the relationship.

If the parties have difficulty moving away from their positions and generating other options, the mediator can challenge the parties' positions, but should do so without attacking the individual. Also, the mediator can ask each party to describe how the problem appears to the opposite party and how they would feel if he or she was in the other party's shoes. This encourages each party to realize that they are dealing with another person who has interests in the outcome of the case. It discourages unrealistic demands or positions.

Sometimes the interests of the parties may seem to irreconcilably clash. The patient may be convinced that the care was inappropriate, while the dentist insists it was appropriate and the two parties cannot reconcile this issue. When the parties seem to get stuck on principles, fairness or the "right" thing to do, it may be helpful to ask them to consider what the average person might say about the issue or what an expert might say. If possible, the mediator could provide the patient or dentist with information that might be helpful to them in making a decision.

When parties seem unwilling to offer possible resolutions, the mediator can ask what the best alternative would be if an agreement is not reached in mediation. For example, alternatives might be to proceed to peer review where the committee makes the decision; another option might be to have no solution at all. In some cases, the alternative could be a lawsuit or to submit a complaint to the state dental board. These are not intended to be a threat to either of the parties and should not be offered as a threat. They are realistic options that both parties should consider.

Mediation does not always succeed. Sometimes, the parties cannot or will not participate in mediation, either refusing at the outset or later derailing the process. In other cases, the parties may not be able to reach a mutually satisfying agreement, even though they have participated cooperatively. In such cases the mediator may terminate mediation and the parties are given the option of proceeding to peer review. In rare cases, the mediator may become aware that the clinical care in the case involves a serious question about the quality of care or a serious ethical issue. In those circumstances, the mediator may terminate mediation and the case may be referred to an ethics committee, state board of dentistry or other agency.

An important factor in the mediation process is the timeliness of the mediator's follow up. It is imperative that complaints be acted upon promptly--preferably within 10 days of receipt of the request. Using the above skills, the mediator should contact all parties and try to resolve the problem.

Mediation is concluded when the parties have reached an agreement that is mutually satisfactory or when the parties have decided that they cannot reach an agreement. As mentioned previously, the mediator may also terminate the mediation if either party is in danger or if the mediator becomes aware of serious ethical or quality of care issues.

In concluding mediation, the mediator prepares a written report to the chair of the peer review committee who then notifies all parties in writing of the agreement. Both parties generally sign an agreement that specifies the terms agreed to in mediation. If the constituent/component dental society will be monitoring the follow-up on the agreement, this might also be specified in the signed agreement. If the agreement involves an exchange of money, a release and satisfaction of claims form should be signed by all parties, in order to release all parties from further liability or other claims related to the mediated dispute (see [Appendix I](#) for a sample release and satisfaction of claims form.)

[Appendix E](#) contains the following sample letters:

1. Report of Mediation
2. Agreement Letter to the Dentist and Patient After Successful Mediation

If mediation was unsuccessful, the case may proceed to clinical peer review. The mediator submits a general report on the case to the peer review committee chairman.

The report generally describes the nature of the dispute and the fact that agreement on the matter was not reached. In order to provide an unbiased peer review, it is inadvisable for the mediator to serve on the peer review committee for the case.

When mediation is unsuccessful, the mediator notifies all parties by letter that the dispute may proceed to clinical review by the peer review committee. The letter is accompanied by an agreement for submission of the case to peer review. These documents explain the process in lay language. The disputing parties must sign the agreement to give the committee permission to conduct a clinical examination. This agreement secures agreement to cooperate and to abide by the decision of the peer review committee in instances when binding arbitration is used to resolve disputes.

The request for letter and agreement should be accompanied by an authorization form signed by the patient that complies with applicable state and federal law (such as HIPAA), authorizing the dentist to use and disclose the patient's health information for purposes of peer review. If more than one dentist is involved, the patient should sign either (1) a separate authorization form for each dentist, (2) an authorization form listing all of the dentists, or (3) an authorization form that lists categories of persons who may use and disclose the patient's information for purpose of the peer review (e.g., "all dental and medical sources" or "any health plan, dentist, physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, or other health care provider that has provided payment, treatment or services to me or on my behalf"). The authorization must comply with HIPAA and applicable state law, including state law that is more stringent than HIPAA. State law may provide additional protection for certain categories of sensitive health information, such as information related to a mental health condition, alcoholism or substance abuse, or infection status (such as HIV). For example, state law may require the patient to specifically authorize disclosure of such sensitive information by so indicating on the authorization form.

The patient must receive a copy of the authorization form. Dentists and other health care providers must not use or disclose any patient information for peer review purposes unless appropriate patient authorization has been obtained and has not been revoked. The peer review committee must not review any case without the patient's authorization to access the treatment records.

[Appendix F](#) contains the following sample letters:

1. Letter to Dentist and Patient When Mediation is Unsuccessful
2. Agreement for Submission of Case to Peer Review (Sample only. Must be verified against state laws.)

CLINICAL PEER REVIEW

If mediation is unsuccessful, the parties may request clinical peer review. Generally, peer review is conducted by the appropriate component dental society, and appeals are conducted by the constituent dental society. While there may be exceptions, the following description refers to usual roles of the component and constituent societies in the peer review process.

Structuring the Committee

If mediation is unsuccessful and the parties request clinical peer review, the chair appoints a minimum of three members of the committee to review the case. The mediator should not be included on the committee because he or she may be called upon to report prior efforts in resolving the case.

If the peer review committee feels that additional expertise is needed in a specific case, it can request that one or more specialists or other appropriate individuals be appointed to serve on an ad hoc basis. Any additional members appointed on an ad hoc basis should have the same status, for that particular case, as do permanent members of the committee. Note that if a lay representative is included, then a lay representative should be part of all committees rather than including them on an ad hoc basis in individual cases.

Review of a Specialist

If the dentist being reviewed is a specialist, he or she may request that the chair appoint to the committee up to three like specialists. This request is directed to the chair, who should consider whether fairness requires granting this request. The complexity of the procedure at issue will have a bearing on this decision. The chair should have available resources for identifying specialists willing and qualified to serve on a committee. In some instances, the constituent society may have identified specialists to serve in this capacity; in others, the specialty organization may have established a procedure to identify individuals to serve.

With respect to review of cases involving treatment in specialty areas, most peer review committees follow the underlying principle that there is one standard of care, regardless of whether a general dentist or specialist provides the care.

Conducting the Review and Clinical Examination

Committee review of a case is initiated with the mediator's written report. After this report has been reviewed, the committee interviews each party to the case separately in closed session.

If the committee decides that a clinical examination is necessary, the patient must give formal written informed consent for the examination and authorize the disclosure of information from the examination, if he or she has not already done so prior to the review (see [Appendix F](#)). If the patient refuses to submit to an examination or to authorize the disclosure, the review is terminated with a written explanation of the reason for termination sent to all parties involved (see the termination letter in [Appendix G](#)).

The dentist is also notified by mail that an examination will be conducted. State law may determine whether attorneys may participate and whether verbatim transcripts or report of the proceedings should be made during the clinical examination and the committee review. It is imperative that each examiner conduct an independent examination and that each examiner not compare notes with any of the other examiners until he or she has had the chance to make an independent decision prior to reconvening the committee. It is very important that the examiner not discuss any findings or other aspects of the patient's oral condition with the patient. This information will be appropriately communicated in the committee's written report.

[Appendix H](#) contains the following sample letters.

1. Letter to all parties to acknowledge mutually agreed time and place of hearing
2. Worksheet for clinical examination

The Committee's Decision and Report

After review of the documentation and completion of the interview, the committee, in closed session, considers the information it has gathered and forms its decision. A majority vote constitutes the decision of the committee. A written minority opinion should be permitted and may be included with the final report.

The peer review report is an internal document of the committee and should not be sent out to any of the involved parties. Its use is to help the committee reach a consensus and conclusion that can be put into letter form. Sharing the report with others could compromise any confidentiality protection that may be afforded by state law (under the laws of some states, certain documents created during peer review may be inadmissible in certain subsequent lawsuits). The report should be marked "confidential" and should clearly indicate that it consists of peer review proceedings.

The committee should notify all parties in writing of its decision and recommendations. The information provided should be specific about the issues raised in the review process and should exclude extraneous or unnecessary comments and personal opinion regarding the case. The letter should include an explanation of the right to appeal to the constituent peer review committee and specify the timeframe for requesting an appeal (generally 30 days from the receipt of notification). If the Committee's decision involves an exchange of money, a release and satisfaction of

claims form should be provided to be signed by all parties prior to payment in order to release all parties from further liability or other claims.

The primary duty of peer review is to evaluate the complaint. However, if in the course of the review of the complaint it is noted that there is an aspect of the patient's condition that is detrimental to the patient's health, the committee should advise the patient and urge him or her to seek necessary care. The component society may assist the patient in finding a healthcare provider, if requested.

[Appendix I](#) contains the following samples:

1. Report of the peer-review committee
2. Concluding letter on the committee's recommendations
3. Release and satisfaction of claims form
4. Option to Appeal Letter

The committee's decision and recommendation should be conveyed to all parties as promptly as possible, and certainly within ten days of the clinical examination or the committee review. All copies of documents and records obtained during the review process, including the final report, must be kept confidential and should be forwarded to the constituent society's executive offices for proper keeping. All clinical records, including patient charts, radiographs and models, should be returned to the dentist from whom they were received.

It is very important that the entire review process be completed within 60-90 days of the initiation of the review.

THE APPEAL PROCESS

The request for an appeal should be sent in writing to the constituent society's peer review committee or other appropriately designated body. The basis for the appeal should be stated in the request and may include:

1. The matter was not an appropriate subject for peer review
2. Members of the peer review committee were not qualified to decide the case.
3. Proper procedures were not followed in the process.
4. Additional information has become available which was not considered by the deciding committee, either because it was not available at the time of the committee's review, or because for some good cause it was not presented to the committee.
5. The decision of the committee appears contrary to the information presented.

When properly requested by the parties, the chair of the constituent peer review committee initiates a review of the appeal. The constituent committee considers all facts in the case and determines from the written request what further action is necessary. The committee may:

1. Decide that an appeal is unwarranted and the component decision stands.
2. Send the case back to the component committee for further review if the initial review is considered inadequate or incomplete.
3. Agree to hear the appealed case.

When a constituent committee reviews a case, it follows the same basic procedures used by the component committee to notify the parties involved of its decision.

A decision of the constituent committee is final within the peer review context.

[Appendix J](#) contains the following sample letters.

1. Letter requesting an appeal
2. Appeal request form
3. Confirmation letter to a party requesting an appeal

COMMITTEE JURISDICTION AND INTER-JURISDICTIONAL CASES

A peer review case is the responsibility of the component society where the services in question were performed, even if the treating dentist no longer practices in the locality where the original treatment was provided.

Occasionally a request for peer review may involve a situation where the service in question was performed within the jurisdiction of one component society, and the patient resides in an area within the jurisdiction of another component society.

Cases involving more than one component or constituent society require special consideration and cooperation between dental societies and peer review committees. Certain guidelines should be followed so that the case is correctly reviewed and is completed in a timely manner. These are:

- **Primary jurisdiction:** When a request is received by the dental society office, a determination should be made about which dental society has primary jurisdiction and which dental society will be asked to cooperate.
- **Communication:** The request for review and supporting documentation, as well as all subsequent communication, should be forwarded to the headquarters of the dental society or societies involved. If reasonable, the dental society may consider encouraging the patient to return to the component society where treatment was originally performed.
- **Related arrangements:** Appropriate procedures should be established to arrange for clinical examination of the patient, if necessary, in the area where the patient resides, as well as arrangements for obtaining information from, or consulting with, any of the involved parties.
- **Time considerations:** Inter-jurisdictional cases should be given priority attention. The reports of decisions and/or recommendations should be made within 120 days of the initiation of the review.
- **Final report:** The final report should be provided to all involved dental societies. It should be specific and limited to the problem and the concerns that have been raised. The report should be kept confidential and should not include any editorial comment.
- **Appeals:** Appeals should be directed to the constituent society whose component has primary jurisdiction. All constituent committees should be prepared to review cases that have been appealed based on one of the following criteria: questions of procedure; new information that was not available at the time of review; or the validity of the original decision. Decisions of the appeal committee are not subject to further review by the constituent or component society.

REFERRAL TO ETHICS AND JUDICIAL COMMITTEES

In some states, a member dentist's failure to comply with the recommendations of peer review can result in disciplinary action by a duly authorized ethics or judicial committee if the dental society has established peer review compliance as an ethical or bylaw requirement. Constituent and component societies have such authority pursuant to ADA *Bylaws*, Chapter I. MEMBERSHIP, Section 30. "DEFINITION OF GOOD STANDING," "which states in relevant part:

Section 30. DEFINITION OF "IN GOOD STANDING." A member of this Association whose dues and any special assessment for the current year have been paid shall be in good standing. To remain in good standing, a member may be required under the bylaws of the member's constituent or component society, to meet standards of continuing education, pay any special assessment, cooperate with peer review bodies or committees on ethics, or attend, if a newly admitted active member, a stated number of membership meetings between the date of admission and the completion of the first calendar year of active membership. If under a disciplinary sentence of suspension, such member shall be designated as "in good standing temporarily under suspension" until the disciplinary sentence has terminated. (Emphasis added)

Before any member can be disciplined, the ADA *Bylaws* provide that the accused is entitled to a hearing, conducted in accordance with the procedures set forth in Chapter XII, Section 20. Where the basis for the disciplinary action concerns peer review, it is likely that the hearing panel will look to ensure the peer review committee and the peer review appellate body followed all of its established procedures in convening and conducting the review before imposing a disciplinary penalty.

CHARGES AND COSTS FOR PEER REVIEW

Access to the peer review process should be made available to patients, members, and third parties, as well as non-member dentists. Making peer review more readily available, however, may require additional administrative resources. To compensate for such additional administrative costs, it may be appropriate to charge a fee for the use of the peer review process (e.g., by third parties and non-members.) This fee could reflect an estimate of the pro rata administrative costs; any fee, whether or not in excess of that amount, should be charged only after consultation with legal counsel.

Consideration must be given to the amount because an unreasonable fee may discourage individuals from using the process. It would also be a detriment to the intent and purpose of the peer review system.

RELEASE AND CONSENT FORMS

If the final recommendation in a peer review case specifies an exchange of money, the return of money, or the forgiveness of a debt, and the disputing parties accept the recommendation, a written release form should be signed. In general, a release form provides that the patient releases the dentist from any further liability upon payment, refund, or forgiveness of the amount. The release form should be signed triplicate, one copy for the patient, one for the dentist, and one for the constituent society record files.

Before a particular form is adopted for use, however, it is essential that the dental society's legal counsel review the content of the form. The requirements for a legally binding release of liability vary from state to state. A sample a release form is found in [Appendix I](#).

When a recommendation is not accepted by one of the parties, both the release form signed by the agreeing party and the concluding letter is sent to the dissenting party with the request for reconsideration of reply of intent within 30 days. If there is no response within that period of time, the case is closed and all parties are so advised by letter.

BINDING ARBITRATION

Peer review generally serves as a voluntary and informal process to resolve problems and disputes. However, it may also provide for a more formal approach whereby a signed agreement is used to bind the disputing parties in advance to the recommendations of the peer review committee.

An arbitration agreement is a legally binding contract between two or more parties to submit their dispute to an impartial third party. A contract to enter into an arbitration agreement is only enforceable if it meets the requirements of state law. Most state law is to the effect that signing such an agreement relinquishes any right to initiate legal action. Noncompliance with the peer review decision in light of this agreement may constitute a breach of contract.

Most state courts give a good deal of deference to an arbitrator's decision and will enforce it even though it is clear that a court proceeding would have resulted in a different decision. However, courts will examine the arbitration hearing for basic fairness or procedural due process. Therefore, if a constituent society desires to implement use of a binding arbitration agreement, state statutes and court decisions must be examined to assure that there is no conflict between the established peer review process and state law requirements. Areas that deserve special attention include the right of the parties to have legal counsel at the hearing, the method of choosing arbitrators (the peer review panel), and the relief which can be afforded. At a minimum, the parties should be fully apprised of these aspects of the peer review procedure before signing the arbitration agreement.

It is very important that before a binding arbitration agreement, or similar approach, is used in the peer review process, all agreement forms be revised by legal counsel for compliance with applicable law. Use of binding arbitration to resolve fee disputes may, depending on the facts, violate Federal Trade Commission or other regulations. A sample of such an agreement is found in [Appendix K](#).

LEGAL AND LIABILITY ISSUES

The Nature of Peer Review

Dental society peer review² is traditionally an informal process through which problems or disputes can be resolved by mediation or committee review. It is neither a court of law nor a punitive action hearing.

For peer review to be effective, it must follow rules to ensure that the process is conducted in an impartial and consistent manner. Cases must be handled efficiently and competently, and above all, the committee must be perceived as fair. A peer review committee is responsible for investigating the complaint; conducting the review; defining the roles, rights, and obligations of all parties; and, when possible, determining an appropriate resolution to the conflict.

Peer review committees co-exist with courts of law because they are acting in the interest of the public. They also offer a unique opportunity for recourse because practitioners have the expertise to evaluate the care provided by members of their own profession. Additionally, resolution of claims through peer review proceedings avoids further overcrowding of court dockets and high costs associated with litigation.

The following discussion provides an overview of some of the legal implications of peer review. This information should be reviewed with a qualified attorney for issues that are specific to your state law and local situation.

General Legal Considerations

The peer review process poses certain inherent legal risks that need to be understood by the dental society as an organization and those members and staff who perform the committee functions. These risks are clearly manageable by structuring the program to comply with applicable laws and by maintaining appropriate liability insurance coverage. In this way, in the rare situation in which a lawsuit is filed, the position of the dental society and the committee members should be defensible and the defense covered by insurance.

Many states provide limited protection through immunity statutes for peer review activity that is conducted in good faith. Although lawsuits involving dental society peer review have been rare, this does not guarantee that a lawsuit will not be filed, and such a lawsuit could present potential financial problems for a dental society that fails to carry

² The term “dental peer review” is used in this section to describe organized dentistry’s dispute resolution system for dentists, patients and third parties. Certain dental practice acts may provide for utilizing a society’s peer review system as an extension of the dental board for fact finding purposes. Such structures could present economic issues similar to the [Patrick](#) decision discussed later in this section and are not within the scope of this section.

adequate liability insurance coverage. Therefore, each society must review its coverage carefully.

As an extreme example: assume that a peer review committee decides to refer a case that it in good faith believes involve a violation of the dental practice act to the state board of dental examiners. The dentist appeals that decision to the state peer review committee, which upholds the decision. The case is referred to the state board of dental examiners. In response, the charged dentist is incensed and retains an attorney. The dentist then sues the constituent and component dental societies and each member of the component peer review committee.

Even if the lawsuit was unfounded and there was protection under an immunity statute, the lawsuit would still need to be defended and the court would need to be satisfied that the immunity statute offered protection in the particular case. All parties must protect themselves with liability insurance against this risk, albeit extremely rare, because the expenses for all parties involved could be significant.

Potential Bases for Suit Under State Law

There are several possible causes of action that could be brought against members of peer review committees and the dental society itself. For example, a plaintiff could allege that a statement made by or to a member of the committee is defamatory (that is, injurious to a person's reputation). The state's immunity statute may provide protection for actions taken without malice, and may apply to statements made within peer review meetings, but the possibility of such allegations underscores the importance of acting reasonably and in good faith and carrying adequate liability insurance coverage.

The law recognizes the right of dentists and other professionals to practice their profession free from malicious interference by others. State statutes may require a plaintiff to allege malice in this type of action; however state statutes providing immunity for actions without regard to malice would not prevent these suits from being brought against peer review committee members or the dental society.

Another possible cause of action is intentional interference with a business relationship. While proof of malice may not be required in this type of action, the dentist would need to show that the committee or society interfered for an improper purpose or used improper means to effect its interference, with the result of significant monetary loss to the dentist. The likelihood of a dentist prevailing in this type of action may be remote unless intentional interference and actual damages were proven.

The best defense against such allegations is for the society to assure that the peer review committee members understand their responsibilities, that peer review proceedings are conducted fairly and in good faith, and that care is taken to avoid

inflammatory or derogatory statements in the course of the proceedings. Also, the findings of the peer review committee should be strictly limited to the parties involved.

Immunity for Peer Review Activity

State laws vary considerably on this subject. Many states afford limited statutory protection from civil liability for actions taken in good faith by a dental society peer review committee. However, some state statutes may protect only the individual members of the committee but may not extend their protection to the society as an organization. Immunity may only extend to committee members who are dentists or providers of dental benefits, and may not extend to lay members of the committee. Immunity may apply to actions taken and remarks made during peer review proceedings, but not to actions or remarks that take place outside those proceedings. In addition, state law would normally not provide immunity from liability under federal law, including federal antitrust laws.

While it is difficult to generalize, state statutes generally require dentists to act within the scope of their reviewing duties in order to qualify for liability protection. Also, peer review must be performed in good faith without malice, and a reasonable effort must be made to ascertain the truth of the facts on which the decision is based.

Because state immunity laws vary considerably, each dental society should consult a qualified attorney concerning the protection afforded by applicable state laws.

The federal Health Care Quality Improvement Act of 1986 provides limited immunity from certain state and federal laws to “professional review bodies” taking “professional review action,” provided certain standards are met. However, this act has limited application to dental society peer review, as discussed more fully in Other Federal Statutes, below.

Confidentiality for Peer Review Records

Many states have laws protecting the confidentiality of peer review records and proceedings. For example, state law may provide that persons in attendance at peer review committee meetings may not be required to testify as to what transpired in the meeting, and that peer review committee reports may be privileged and inadmissible in certain subsequent lawsuits. The intent of such laws is to preclude the disclosure of peer review information in judicial proceedings, such as a lawsuit between the patient and the dentist, since this would be contrary to the purpose of peer review as a non-adversarial system of dispute resolution.

Past experience in some states has demonstrated the limitations that may be inherent in such statutes. For example, the statute may not prevent a state licensing board from subpoenaing peer review records if administrative proceedings are not specifically mentioned in the statute. In another instance, a federal district court held that state law providing confidentiality did not prevent a federal court from subpoenaing records in a federal antitrust action.

Because these laws vary considerably from one state to the next, each dental society should consult a qualified attorney concerning the protection afforded by applicable state laws.

Sample state legislation, providing immunity from liability for peer review activity and confidentiality for peer review records and proceedings, is contained in [Appendix L](#). A dental society must review the issue of state law protection for peer review activity with a qualified attorney before the society makes any attempt to urge the state legislature to amend existing statutes or enact new laws.

HIPAA and Data Security

A dentist who is a HIPAA covered entity must have a patient's written authorization (using a HIPAA-compliant authorization form) before using or disclosing the patient's protected health information (PHI) if the use or disclosure is not required or permitted by HIPAA. In general, PHI includes electronic, hard copy, and oral information about an individual's health, treatment, or payment for health care, including demographic information. A patient who is requesting mediation or peer review should be required by the appropriate dental society to sign an authorization to permit the dentist to use and disclose the patient's PHI for peer review purposes. The patient must receive a copy of the authorization. If more than one dentist is involved, the patient should sign (1) a separate authorization form for each dentist, (2) an authorization form listing all of the dentists, or (3) an authorization form that lists categories of persons who may use and disclose the patient's information for purpose of the mediation (e.g., "all dental and medical sources" or "any health plan, dentist, physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, or other health care provider that has provided payment, treatment or services to me or on my behalf"). The authorization form should comply with both HIPAA and with applicable state law. The patient must receive a copy of the authorization form. Dentists and other health care providers must not use or disclose any patient information that was not authorized to be disclosed, and should disclose only the minimum amount of information necessary for the purpose of mediation or peer review. The mediator and peer review committee should not review any case without the patient's authorization to access the treatment records. The authorization must comply applicable federal law, such as HIPAA, and applicable state law, including state law that is more stringent than HIPAA. State law may provide additional protection for certain categories of sensitive health information, such as

information related to a mental health condition, alcoholism or substance abuse, or infection status (such as HIV). For example, state law may require the patient to specifically authorize disclosure of such sensitive information by so indicating on the authorization form. For more information about HIPAA, see "[Other Federal Statutes](#)".

Dental society mediators and peer review committee members may have access to sensitive personally identifiable information ("PII") that may be protected under state and/or federal law. The definition of PII varies from state to state, but some common examples include social security numbers, credit card numbers, driver's license numbers, and certain account information. In some states, additional information, such as medical information and health plan numbers, may be considered PII. The laws that apply to PII vary from jurisdiction to jurisdiction. Applicable state law may require organizations that handle PII to provide notification to individuals in the event of unauthorized access to their PII, such as a data breach. Some states require procedures to protect PII, such as using secure disposal methods when it is appropriate to dispose of PII or materials containing PII (such as electronic media). Dental societies should consult qualified counsel to determine which categories of information are protected under applicable data security laws, and which actions are required with respect to that data.

Justifiable Criticism

Adverse comments by professionals regarding treatment provided by other professionals can be a catalyst for litigation. Peer review committees are occasionally faced with the problem of disparaging remarks and the question of the proper manner in which a dentist should apprise a patient of the quality of prior treatment.

The *ADA Principles of Ethics and Code of Professional Conduct* ("Code") while permitting justifiable criticism, disapproves of disparaging remarks as follows:

Code, 4.C. Justifiable Criticism

Dentists shall be obliged to report to the appropriate reviewing agency, as determined by the local component or constituent society, instances of gross and continual faulty treatment by other dentists. Patients should be informed of their present oral health status without disparaging comment about prior services. Dentists issuing a public statement with respect to the profession shall have a reasonable basis to believe that the comments made are true.

An advisory opinion issued by the ADA council on Ethics, Bylaws and Judicial Affairs interpreting section 4.C reads as follows:

ADVISORY OPINION

Code, 4.C.1. Meaning of Justifiable

A dentist's duty to the public imposes a responsibility to report instances of gross or continual faulty treatment. However, the heading of this section is "Justifiable Criticism." Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are justifiable. For example, a difference of opinion as to preferred treatment should not be communicated to the patient in a manner that would imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. Therefore, this section is phrased to address the discretion of dentists and advises against disparaging statements against another dentist. However, it should be noted that, where comments are made which are obviously not supportable and therefore unjustified, such comments could be the basis for the institution of a disciplinary proceeding against the dentist making such statements.

Federal Antitrust Liability

The question of federal antitrust liability must also be considered. A 1988 United States Supreme Court decision (*Patrick v. Burget*) held that state immunity statutes do not immunize peer review activities from federal antitrust scrutiny.

Application of the Supreme Court's *Patrick* decision to dentistry cannot be made without placing the decision in its proper context. The case involved peer review in a hospital setting. This is significant because of the potential economic impact of what was at stake in the proceeding: loss of hospital privileges. Also, the case presented an egregious set of facts. The peer review committee involved members of a clinic where Dr. Patrick worked before he opened an independent surgical practice in competition with the clinic. The peer review was commenced at the request of one of the clinic's surgeons. The chair of the peer review committee was a doctor who had earlier filed a complaint against Dr. Patrick with the state medical board. The committee refused to allow Dr. Patrick to question the members about potential personal bias against him. Based on this record, the court had no difficulty finding substantial evidence that the defendants had acted in bad faith in the peer review process.

The jury found that Dr. Patrick had suffered damages in the amount of \$650,000 as a result of his loss of hospital privileges. Since this was an antitrust case, the law provided that the damages were trebled, resulting in a judgment in Dr. Patrick's favor of \$1,950,000. The law also entitled Dr. Patrick to reimbursement of his attorney's fees and court costs from the defendants.

A similar judgment may be unlikely in a case involving a dental society peer review because it would typically lack the economic impact on the practitioner that is present in medical or hospital peer review. The ultimate penalty in dental peer review might be loss of membership in the dental society, which lacks the economic impact of the loss of hospital privileges. Although the *Patrick* case should serve as a common sense

warning of obvious dangers to be avoided in the peer review process, it need not be viewed as creating unmanageable risk when peer review is conducted properly.

To analyze the exposure of dental society peer review under the federal antitrust laws, it is necessary to determine what type of peer review a society conducts. Generally, there are three types:

1. Mandatory - all member dentists must participate in peer review and abide by the decision of the peer review panel.
2. Participatory - all members are required to participate in peer review, but compliance with the decision is optional.
3. Optional - cooperation with the peer review panel and compliance with any order or recommendations is voluntary.

Peer review of professional fees is an especially sensitive issue. Accordingly, the subject is treated separately below.

Antitrust laws prohibit activity that hinders the competitive process. They are concerned with the process of competition, not the protection of individual competitors. In the context of the *Patrick* case it can easily be seen how the elimination of a competitor in a restricted market harmed the competitive process. It is more difficult to see how dental peer review would have such an effect, since it is unlikely to prevent continued practice and competition by the subject dentist.

Moreover, the vast majority of disputes brought to peer review cannot be determined without an assessment of the quality of care provided. This assessment of quality provides the dental patient or third party with information on the dental treatment. Under antitrust theory, the provision of information is generally looked upon as procompetitive because it makes the competitive process more efficient.

Peer review activity, even if it involves the issue of a specific fee, typically would not affect the price or availability of services to the general public. Therefore, while it might harm a particular competitor, it is difficult to envision, except in perhaps an extremely sparsely populated area, how peer review could affect the process of competition. As shown in *Patrick*, antitrust cases are fact-specific. It is therefore difficult to generalize circumstances under which a case could be formulated or liability be present. However, keeping this in mind, it is hard to envision how a process that is completely voluntary could result in a "restraint" of trade.

There is, perhaps, some degree of greater risk where participation, but not compliance, is required. However, one would think that even in this circumstance, liability would only arise where there were repeated cases against an individual dentist or dental practice which were not commenced in good faith. Therefore, in the instance of participatory peer review (voluntary compliance) or purely voluntary peer review, there should be

ample warning flags to alert the society before the threshold of antitrust liability is crossed.

This leaves mandatory peer review. (This is perhaps a misnomer. It could be contended that even 'mandatory' peer review is voluntary, since there is always the option of not joining the society which requires peer review participation.) Again, however, it is very difficult to imagine a dentist or a group of dentists financing expensive antitrust litigation over issues commonly treated in peer review.

There are, obviously, issues in dentistry that are fraught with potential legal conflict. Some current examples are: professional advertising, dental amalgam, denturists and other mid-level providers, whitening, and TMJ treatment. Any case implicating these kinds of issues should be carefully scrutinized, regardless of the voluntary or mandatory nature of the proceeding, to assure that the society and the peer review panel do not inadvertently get into sensitive areas. When present, care should be taken to assure that the proceeding is restricted to the quality of care provided in the situation presented, and not extended to control the activities or practice of a larger group of dentists or some other group.

In summary, large antitrust judgments against dental societies or individual peer review committee members are unlikely if due process is given and the focus of the hearing is a determination of the quality of care.

Fee Review and Antitrust Law

Peer review committees must exercise great care in reviewing cases involving fees, for fear of violating antitrust laws. The U.S. Supreme Court held in *Union Labor Life Insurance Co. v. Pireno* (1982) that peer review committees that aid insurers in evaluating claims are not exempt from antitrust scrutiny. The ruling resulted from a case involving an insurance company's use of a professional chiropractic association's peer review committee to determine the company's responsibility for "reasonable" charges for "necessary" chiropractic services. While it held that such activity was subject to review under the antitrust laws, the Court also pointed out that this did not mean that such activity necessarily violated the law. Therefore, if a dental society elects to become involved in fee issues, these issues must be considered under parameters designed to assure that the process is lawful.

Fortunately, in 1982, the ADA obtained an advisory opinion from the Federal Trade Commission establishing guidelines for resolving cases concerning fees. This opinion is set forth in full in [Appendix B](#). It should be carefully reviewed in its entirety with a qualified attorney before any review of fees is undertaken. In summary, the opinion offers the following guidelines regarding the review of fees:

1. Peer review of fees should be conducted as a means of resolving specific fee disputes---not as a process for the collective sanctioning of fee levels of particular practices.
2. A committee's decision should be based upon the facts and circumstances of the particular case, not upon similar cases and decisions.
3. The difficulty and complexity of a procedure should be evaluated by the committee members on the basis of their own knowledge and judgment.
4. To the extent that any reference is made to external factors or benchmarks, such as relative value scales, these sources should be limited to those that are independent of constituent or component societies.
5. Dissemination of decisions should be limited only to that necessary for appellate or administrative purposes.
6. Dental societies should not collect information on fees, or conduct surveys relating to fee schedules.
7. Very importantly, both the doctor and the patient must voluntarily agree to review of fees.

Antitrust violations resulting in charges of restraint of competition can be avoided by peer review. However, peer review committees are not immune from such scrutiny and special care must be taken with all cases involving disputed fees.

Insurance Coverage

The subject of insurance coverage is a specialty of the law unto itself. There are literally thousands of cases concerning whether a particular loss or claim was covered under an insurance policy.

This does not make for exact answers. However, two general principles can be stated. First, if an insurance company is contacted with a request to clarify whether a particular circumstance is covered under a policy, the normal response of the company is to clarify by excluding coverage, in the absence of an additional premium. Secondly, the courts universally hold that any ambiguity in the policy is construed against the insurance company, since the function of the insurance company is to insure, and because the insurance company drafted the contract or policy. Therefore, a dental society should consult a qualified attorney and its insurance agent concerning the advisability of seeking further clarification from the insurance company if the language of the policy appears to cover a particular situation.

Insurance companies frequently resist paying antitrust judgments. They do this on several grounds. First, most policies specifically exclude coverage for willful or criminal acts. Violation of the antitrust laws can be a crime. It can also be a civil wrong. It would be a very complex issue to determine whether civil violation of the antitrust laws was "willful." Moreover, the complexity of the issue is compounded by the fact that civil damages in antitrust law are trebled against the defendants. The purpose of treble damages in antitrust cases is to dissuade persons from violating the antitrust laws by adding this additional civil penalty. Insurance companies maintain that to insure against violations of the antitrust laws is contrary to public policy.

The comments made below regarding certain aspects of insurance policies are limited to coverage for peer review committee activity. Also, very importantly, the comments as to coverage are for discussion only and are not a legal opinion. Policy language changes from year to year. Endorsements can be added or dropped which change the underlying policy. Identical language can result in different coverage because of differences in state law. Therefore, your reliance for coverage should be based upon the independent analysis of your policy by your lawyer and insurance agent. Additionally, there may be other coverages in these policies that counterbalance the limitations on peer review coverage. The dental society with its attorney and insurance agent should do a complete review of available policies.

Society Coverage

Insurance coverage which would protect a society and the volunteers serving on the society's peer review and other committees is generally referred to as "errors and omissions" or "directors and officers" liability policies. The insurance policies for such coverage are generally entitled "non-profit organizational/association professional liability insurance" or "association professional liability insurance policy," or similar titles.

One policy of this type has a willful violation of criminal statute exclusion. However, this policy would appear to provide defense costs to a society and the members in civil antitrust suits resulting from peer review or disciplinary proceedings.

Other insurance policies may also provide for defense costs, either with or without the limitation that the insured is found not guilty. Because substantive antitrust violations are easily avoided in properly conducted peer review, this defense coverage is important. It protects against the specious, ill-founded antitrust allegations, which are the real hazard. Some societies have chosen to contribute the equivalent of an insurance premium into a sinking fund, essentially becoming self-insured against this type of suit. Thus, the society has a contingency fund that would be available for defense costs for the society and its members.

Individual Dental Malpractice Policies

As is the case with policies for associations, individual dental malpractice policies also differ in their coverages. However, most, if not all specifically exclude actual or alleged involvement in any antitrust violation or restraint of trade. Even defense costs are usually not covered.

OTHER FEDERAL STATUTES

Health Care Quality Improvement Act

In 1986, federal legislation was signed enacting Public Law 99-660, the Health Care Quality Improvement Act of 1986 (Act). The intent of the Act was to encourage greater efforts in professional peer review and to restrict the ability of incompetent practitioners to move from state to state without discovery of previous substandard performance or unprofessional conduct. To accomplish this, the Act directed the establishment of the National Practitioner Data Bank and provided immunity for professional review actions that meet certain criteria.

National Practitioner Data Bank

The National Practitioner Data Bank (NPDB) is an information clearinghouse that collects information related to the professional competence and conduct of physicians, dentists and, in some cases, other health care practitioners, and releases it to eligible entities. The NPDB web site can be accessed online at <https://www.npdb.hrsa.gov/>

The NPDB is primarily an alert or flagging system whose principal purpose is to facilitate a more comprehensive review of professional credentials by state licensing boards, hospitals and other health care entities. Data received from the NPDB is designed to be used in combination with information from other sources in making determinations on granting clinical privileges or in employment, affiliation or licensure decisions.

The NPDB collects information from a number of sources. For example, state licensing boards must report to the NPDB certain disciplinary actions they take related to professional competence or conduct. Hospitals and other eligible entities must report adverse actions involving clinical privileges that relate to professional competence or conduct. The NPDB also collects reports of certain medical malpractice payments made for the benefit of health care practitioners.

Professional societies that engage in formal professional review activity must report any professional review action that adversely affects the practitioner's membership in the

society—if the action is based on the member’s professional competence or conduct which affects or could adversely affect the health or welfare of a patient.

Most dental society peer review actions do not adversely affect the dentist’s membership in the dental society. However, in some states, where participation in peer review is mandatory, failure to cooperate with peer review bodies may result in referral to the society’s ethics or judicial committee for possible disciplinary action. If the referral results in an adverse action affecting membership, that action *might* be reportable to the NPDB, depending on a number of factors. These factors are beyond the scope of this discussion, but dental societies are encouraged to consult their attorneys about any NPDB reporting obligations, including those related to their ethics or judicial committees.

Of more concern to dental society peer review committees is the NPDB category of medical malpractice payments. Depending on the facts and circumstances of the case, a fee refund resulting from peer review could be a medical malpractice payment, reportable to the NPDB by the dental society or the dentist, whoever makes the payment.

A “medical malpractice payment,” as interpreted by the U.S. Department of Health and Human Services (HHS) is: (1) any exchange of money; (2) by an entity; (3) for or for the benefit of a health care practitioner; (4) resulting from a written claim or demand for payment; and (5) based on the provision of, or failure to provide, health care services. Each of these elements must be present in order for a reporting obligation to exist.

For example, a fee waiver is not a medical malpractice payment. Neither is simply redoing the work, since no payment of money is involved. An oral request for payment does not result in a medical malpractice payment, since the claim or demand must be in writing. A written complaint about the quality of the dentist’s work that does not ask for a fee refund is not a claim or demand for payment.

The American Dental Association obtained an interpretation of NPDB reporting requirements as they relate to dental society peer review. In 1990, under an interim agreement with HHS, the Association revised the dental society “Mediation Request Form,” which is submitted by a patient to the dental society, so that the form does not constitute a written demand for payment and so, by itself, does not trigger a reporting requirement. The memo from the Association to the constituent societies announcing this agreement is contained in [Appendix M](#). The revised Mediation Request Form can be found in [Appendix D](#).

Although the interim agreement also called for the use of dental society escrow funds to handle fee refunds, it is important to note that at least one official with the agency responsible for administering the NPDB (Health Resources and Services

Administration, or HRSA) has taken the position that the mere fact that payment is made from an escrow fund does not exempt the transaction from NPDB reporting requirements (see [Appendix M](#)). According to a letter from this official to a local dental society:

The source of the money paid into the escrow account determines reportability if that money subsequently is refunded to the patient. If the money refunded to the patient from the escrow account was paid into it by a business entity (e.g., a professional corporation composed of a sole practitioner), for the benefit of a practitioner, the payment *is* reportable. However, if the refund was paid into the escrow account from the personal funds of an individual practitioner, it is *not* reportable.

The Association succeeded through litigation in limiting the scope of the reporting requirement to *entities* that make medical malpractice payments. The original regulation implementing the NPDB required reporting by each *person or entity* that made a payment. This meant that individual dentists would have been required to report medical malpractice payments they made from their individual accounts.

In 1993, the U.S. Court of Appeals for the District of Columbia Circuit agreed with the Association that Congress did not intend to encompass an individual dentist as an “entity” that must report medical malpractice payments to the NPDB (*American Dental Association v. Shalala*). HHS subsequently revised the regulation to distinguish between payments made by a professional corporation or other business entity comprised of a sole practitioner (reportable, if all other criteria are met) and payments made by an individual practitioner (not reportable).

As the discussion above indicates, compliance with the NPDB reporting requirements depends on an understanding of the technical definitions used in the Act as they apply to the facts and circumstances of the particular case. Failure to report as required by the Act may result in a civil penalty of up to \$11,000. Dental societies should, therefore, consult their legal counsel to determine their reporting obligations, if any, to the NPDB. Legal counsel will also be able to advise the dental society on how to structure its peer review process to minimize any reporting requirements.

Immunity for Professional Review Actions

The Health Care Quality Improvement Act of 1986 may grant limited immunity to certain professional associations for specific peer review activities. However, the statute really addresses hospital peer review and shows a definite lack of appreciation for the procedures in dental peer review. In addition, activities with respect to enforcement of certain ethical canons such as advertising that are not related directly to quality of care are specifically excluded.

It is unfortunate that this federal legislation, while it encompasses dentistry, was drafted to address the jury decision in the *Patrick* case and generally applies to hospital rather than dental society peer review. Hospital peer review is concerned primarily with privileges, which can have a significant economic effect on the individual. Dental peer review is essentially a dispute resolution system, which seeks to avoid the complexity of the courts. In law, where a decision has the potential to have a significant ramification, economic or otherwise, procedural safeguards tend to increase. The Health Care Quality Improvement Act of 1986 is no exception. It devotes much attention to procedural safeguards in the peer review proceeding, so that the peer resulting review process approaches a court case in complexity. This is probably a recognition by the drafters of this legislation of the large dollar issues involved in hospital privilege cases and their belief that this required extensive safeguards.

The Act does not require that all these safeguards be present for immunity to exist. It permits "such other procedures as are fair." 42 U.S.C. Sec.11112 (a) (3). While the Act presumes that due process is afforded by a peer review proceeding, it goes on to provide a list, which, if met, conclusively establishes that the hearing is adequate. However, a question arises under this type of draftsmanship whether **not** providing one or more of the listed items weakens or rebuts the presumption. Such questions will probably be resolved by court cases. Thus the extent of the immunity actually granted depends on litigation.

The Act provides that "notice" of the action is conclusively presumed to be adequate if the subject of the hearing is informed of certain information, such as:

1. The reasons for the action;
2. The right to request a hearing;
3. A summary of rights;
4. The place, time and date of the hearing; and
5. The witnesses expected to testify before the Peer Review Committee at the hearing.

The "hearing" is conclusively presumed to be adequate if it meets certain requirements, such as:

1. It is before an arbitrator, hearing officer or panel of individuals not in direct competition with the subject;
2. The subject is permitted to be represented by an attorney or other person of his or her choice;
3. The subject has a right to a record of the proceedings;
4. The subject is permitted to cross-examine witnesses;
5. The subject can present evidence;

6. The subject can submit a written statement at the hearings; and,
7. The subject has a right to a written decision from the panel.

Because dental peer review is designed to avoid the complexity of litigation, most dental peer review falls short of meeting these elements listed by the Act for a "conclusive presumption." Generally, the dentist has only the right to be informed of the time, place and date of the hearing, the reasons for the peer review proceeding, the right to submit evidence and the right to a written decision. There is an innate right to an unbiased panel, but whether this requires persons not in "direct competition" is an open question. Determining who is, and who is not, in direct competition is a complex issue itself. Depending on applicable state law, the parties dental peer review may or may not have the right to be represented by an attorney, to cross-examine witnesses or to a record of the proceedings in dental peer review.

Moreover, in addition to the due process requirements, the Act provides immunity only for actions taken in the belief that they are in the interest of quality care, that affect clinical privileges or membership, and that are based on the competence or professional conduct of an individual practitioner that adversely affects (or could affect) the health or welfare of a patient or patients.

Also, very importantly, the Act does not provide immunity from antitrust damages for actions brought by state attorneys general or by federal law enforcement agencies. Nor does it apply to actions for damages for violations of federal civil rights law. It also does not address actions for injunctions by individuals which do not seek damages and liability for the successful plaintiff's lawyer's fees and costs in injunction cases. These can be significant.

Therefore, before a dental society peer review committee relies on the immunity provisions of the Health Care Quality Improvement Act, it should obtain an opinion from a qualified attorney that these provisions apply to the specific peer review activities carried on by the committee.

Health Insurance Portability and Accountability Act of 1996 ("HIPAA")

Under the "administrative simplification" provisions of HIPAA, dental practices that are "covered entities" must comply with federal regulations that require specific electronic data security safeguards as well as policies and procedures involving health information privacy and breach notification. A dental practice is a covered entity if it conducts certain transactions in electronic form, such as claims and inquiries regarding enrollment or authorization. A dental practice is also a covered entity if such transactions are conducted on the dental practice's behalf (for example, by a billing company). Covered entities must document compliance with HIPAA, and must retain HIPAA documents for the period of time specified in the regulations.

HIPAA protects a category of information called protected health information (“PHI”), which generally includes electronic, hard copy, and oral information relating to a patient’s health, health care, and payment for health care. A covered entity must obtain a patient’s written authorization before using or disclosing PHI in a manner not permitted or required by HIPAA. The authorization must include certain specified information.

Before a dentist provides a mediator or peer review committee with any information about a patient, the dentist should be sure he or she has the patient’s written authorization in a form that complies with applicable law, such as HIPAA and applicable state law. State law may provide additional protection for certain categories of sensitive health information, such as information related to a mental health condition, alcoholism or substance abuse, or infection status (such as HIV). For example, state law may require the patient to specifically authorize disclosure of such sensitive information by so indicating on the authorization form.

The society that the patient has asked for peer review may have the patient sign an authorization form, which the society then provides to the dentist as part of the request for records. If the society does not provide the authorization form, the dentist should obtain any necessary authorization from the patient before releasing records. If more than one dentist is involved in a mediation or peer review matter, the patient should sign either (1) a separate authorization form for each dentist, (2) an authorization form listing all of the dentists, or (3) an authorization form that lists categories of persons who may use and disclose the patient’s information for purpose of the peer review (e.g., “all dental and medical sources” or “any health plan, dentist, physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, or other health care provider that has provided payment, treatment or services to me or on my behalf”).

The dentist should retain the original patient authorization and the state and local societies should each receive a copy. HIPAA requires that the patient receive a copy of any authorization form than he or she signs.

Under HIPAA, a patient has the right to revoke authorization at any time. While the revocation would not affect disclosures made prior to revocation, if a patient revokes an authorization signed in connection with mediation or peer review, the dentist should make no further disclosures of that patient’s PHI.

A sample HIPAA authorization form is included in [Appendix D](#).

OTHER RELATED CONSIDERATIONS IN PEER REVIEW

The Role of the Referring Dentist

Questions have been raised concerning the role of a treating dentist who refers a patient to another specialist or practitioner, later to discover that the patient has initiated a complaint against the dentist to whom he or she was referred.

If a patient has initiated a peer review complaint against a second treating dentist, the referring dentist is generally not involved as a direct party to the peer review case. Based on the review process and the determination of the committee, however, the original dentist may be asked to provide the committee with the appropriate records indicating patient diagnosis and reasons for referral to the second treating dentist. This information could be used to assess how clearly the diagnosis and proposed treatment had been communicated to the second treating dentist and any subsequent communications between the two practitioners. In sum, the committee should have discretion to seek direct participation of the referring dentist when it will assist the committee in making the most appropriate decision based on the information presented.

Before the referring dentist uses or discloses the patient's information, including dental records, radiographs, and spoken information, the referring dentist should obtain any necessary patient authorization or consent in compliance with state and federal law, such as HIPAA.

Peer Review Involving Multi-Dentist Practices

Dentistry is a profession in transition and it is more so evident in the types of dental practices. A profession that has traditionally been practiced in a solo-practice setting is now evolving to see more dentists practicing in a multi-dentist practice. Dentists today own their practices, are employed as salaried employees of a corporation, are an associate or a partner in multi-dentist practice, or even practice as independent contractors. **Regardless of the employment situation of a dentist, the treating dentist is always responsible for the quality of care rendered to the patient.**

If the peer-review process resulted in a determination of a refund to the patient, the treating dentist should be cautioned that any funds paid to a patient as a result of peer-review will be deemed reportable to the NPDB if it were paid for by a business entity including the corporate entity (professional corporation) employing the dentist. Also important to note is that the source of the money determines reportability. If the money originated from the corporate entity and that money was subsequently refunded to the patient by the dentist, the payment is reportable. See section on NPDB as well as [Appendix M](#).

Repeated Adverse Decisions Against the Same Practitioner

The peer review committee, through the review process, may become aware of possible continual faulty treatment patterns by a practitioner. As such, the peer review process assumes an obligation to the public and the profession.

Many states have established criteria for handling repeat adverse peer review decisions against the same dentist. Since the peer review process has no disciplinary authority and cannot impose any type of sanctions, nor can it make any determinations about possible violations of the state dental practice act, concerns regarding continual faulty treatment, or a single very serious case, should be referred out of the peer review process.

The criteria that are currently used in many states specify the number of repeat adverse decisions within a designated period of time, such as three adverse decisions within a two-year period, or a single case of gross mistreatment. Based on such criteria, then, it becomes the responsibility of the constituent dental society to take appropriate action.

Serious cases, whether they involve repeat adverse decisions or a single case of gross mistreatment, will most likely be handled by referring the problem to the state board of dentistry. This body, then, can assume its responsibility to investigate the circumstances. For less serious cases, some dental societies have implemented requirements for remedial education for the dentist.

All constituent dental societies are encouraged to develop criteria for handling repeat adverse decisions, and to vest their component societies with the obligation to comply with such criteria. Any guidelines that are developed for handling repeat adverse decisions must recognize and respect the confidentiality of the peer review process; any referral that is made should not be accompanied by confidential information obtained in the review process.

While there may be concerns attendant to developing an approach to handling these types of situations, the potential risks to the dental society of not having such a process in place far outweigh any possible justification for not implementing such procedures. Apart from any legal and liability risks, the public's perception of the dental profession would be seriously compromised should the peer review process knowingly neglect its responsibility to protect the safety and health care interest of the patient.

Peer Review and Alternative Benefit Programs

A peer review committee should conduct its review and make its recommendation as it would for any case, irrespective of the payment mechanism involved. It may be that, having made a determination as to appropriateness of care, the particular contractual

provisions which bind the benefit plan, patient and/or dentist do not lend themselves to a simple and satisfactory solution. Nevertheless, the peer review committee's decision concerning the standard of care provided is an important public service and must be determined within the context of providing quality dental care.

Recruitment and Retention of Peer Review Committee Members

In the development of an effective program to recruit and retain peer review committee members, or to enhance a program already in place, the following ideas should be considered:

Use of role models

Individuals who have served on peer review committees for a long period of time (more than five years) and have a breadth of expertise and knowledge of the process can serve as role models in the recruitment of committee members. A respected dental colleague, in this capacity, is the ideal individual to attest to the benefits of peer review. A cadre of these seasoned committee members should be asked to appear at component or constituent society meetings to share their experiences and discuss the value of serving on a peer review committee.

Education of the membership

Dental societies should educate their members about the peer review process, in order to: 1) assist those who may be a party to the peer review case; and 2) provide information to members interested in serving on a peer review committee.

Constituent or component societies that hold periodic meetings of peer review committee members, and constituent societies that plan to hold a peer review assistance program sponsored by the American Dental Association, may want to include practicing dentists who are interested in getting involved in peer review. Also, newsletters and other regular forms of communication can be used to educate and motivate potential committee members.

Development of information packet

It should be the state dental society's responsibility to develop informational material on the peer review process and the duties and responsibilities of committee members, and to make this information available to dentists in the community who may be asked to serve on a committee. This will ensure consistency and accuracy in the information about peer review as it exists in the state.

Preventing "burnout"

The key to retaining valuable peer review committee members is to recognize their other commitments and limitations as practicing dentists. For example, no single committee member should be repeatedly, and disproportionately, requested to serve as a mediator. Similarly, assignments to serve in the review of cases should be rotated equally among committee members.

Attention to these considerations by the committee chair will avoid feelings of frustration, over-commitment and burnout among committee members.

An Ounce of Prevention for the Practitioner

Peer review can achieve many positive outcomes--not the least of which is its potential to effect improvements in dental practice management. Such improvements not only enhance the dentist-patient relationship, but also may help obviate the need for peer review. Good patient communication and careful record keeping are the cornerstones of a sound relationship between a dentist and his or her patients.

Patient communication

Consumer interest in the quality of health care, including dentistry, has become an important issue in contemporary American life. Patients are more sensitive to the question of quality health care, and the correlation between quality and cost. The patient's perception of quality can be enhanced through effective communication by the dentist regarding all facets of treatment. Good communication includes:

- Educating the patient about treatment alternatives and their implications;
- Encouraging the patient's participation in treatment decisions;
- Making sure that the patient's expectations for the treatment are realistic;
- Making sure all questions are answered;
- Explaining costs and obtaining agreement prior to treatment
- Soothing anxieties regarding treatment or possible treatment failure;
- Addressing psychological attitudes toward health care;
- Providing a caring response to the patient as a person.

Even the best dental treatment can be seriously undermined through lack of good communication with the patient--possibly leaving the patient frustrated or resentful. Patients who have become dissatisfied for whatever reason are more likely to have complaints and seek recourse through various means, including the peer review process.

Record keeping

Well-kept records not only support the clinical aspects of the treatment, but the dentist/patient relationship as well. They become invaluable in answering patient

questions as well as addressing any concerns or complaints. They are also an essential resource should a dispute come before a peer review committee.

In addition to clinical notations about the actual treatment, other comments concerning patient questions, resolution of problems, suggested alternative treatment plans, and satisfactory remarks made by the patient can be important in substantiating the care provided. Once an entry is made in the patient's record, it becomes documented evidence of what has transpired.

Peer review committees must also keep careful records. A form was developed for use by component dental societies (peer review committees) to track individual peer review cases. The information on the form parallels the information requested in the Council on Dental Benefit Program's Annual National Peer Review Reporting System survey. This form, then, provides an easy method to monitor the status of a peer review case and facilitates the collection of important data by the constituent society and the Association. The form is made available to dental societies upon request.

EPILOGUE

Skill and expertise in serving as a peer review committee member can only be gained through experience. Dental societies can, however, prepare dentists for committee membership through an organized training program. The American Dental Association offers a special peer review assistance program which may be helpful to dental societies in their peer review efforts. This program as well as other information and assistance in peer review, is available upon request from the Council on Dental Care Programs.

APPENDIX A: AMERICAN DENTAL ASSOCIATION POLICIES ON PEER REVIEW

The following pages contain American Dental Association policies regarding peer review.

Guidelines on the Structure, Functions and Limitations of the Peer Review Process (1992:37, 603)

The function of a peer review committee is to review matters regarding the appropriateness of care and/or quality of treatment. Peer review committees also may, acting in an advisory capacity, provide for the appropriate review of fees.

Dental societies should establish peer review committees, which provide for the review of differences of opinion between a dentist and a patient, or a dentist and a third-party agency. Third-party agencies may include insurance carriers, dental service corporations, dentist consultant, administrators of health and welfare trusts, alternative benefit plans, government agencies, and employers who have implemented self-funded and self-administered dental plans.

Requests submitted by a dentist for review of treatment rendered by another dentist should be channeled to that agency which the constituent or component society has determined should review allegations of gross or continual faulty treatment by a dentist. This could be the judicial committee or committee on ethics, or some combination thereof. It could also be the state board of dentistry.

In all instances, the peer review committee should carry out its responsibilities within a reasonable period of time that makes its efforts effective.

To guide dental societies in establishing peer review committees, consideration of the following principles is recommended:

Directives

1. The constituent society is responsible for establishing peer review committees.
2. The committee membership should be composed primarily of general practitioners who have the qualifications and experience to render a considered opinion as to the dental standards of the community.
3. The committee should consider problems submitted by patients, dentists and third-party agencies.
4. The committee will not review any case without access to the treatment records.

5. The committee is not vested with disciplinary authority, but should provide recommendations for remedial action where appropriate.
6. The committee should utilize standard procedures and forms in obtaining data required for adequate evaluation.
7. Constituent dental societies should develop standardized review criteria for use by peer review committees during the clinical examination stage of the peer review process.
8. The committee may not consider cases in litigation.
9. The committee should have a clearly outlined process for dealing with repeat adverse decisions against a practitioner and for handling requests for appeal.
10. Constituent societies should have appropriate liability insurance to protect all members of peer review committees, as well as the societies sponsoring the peer review activity.
11. Constituent societies should have appropriate statutory protection for immunity from liability for all members of peer review committees, the societies sponsoring the peer review activity and for confidentiality of records.

Recommendations

1. Review of problems involving practicing dentists who are not members of the dental society is encouraged.
2. The committee should establish a policy that parties appearing before it do not have the right to be represented by an attorney.³
3. Information on the purpose, function and availability of the peer review process should be communicated to dental society members, the public and other interested agencies.

The following guidelines are suggested to assist dental societies in implementing the foregoing principles.

³ Note that the laws of certain states now require that parties to peer review have the right to be accompanied by an attorney.

Organization: The peer review committee should be a permanent committee of the dental society with appropriate status and liaison with related committees. It could be a freestanding committee, or subcommittee of the Committee, or Council on Dental Care Programs or other body charged with the responsibility for managing issues regarding dental benefit plans.

Composition: The committee membership should be composed primarily of general practitioners who have the qualifications and experience to render a considered opinion as to the dental standards of the community. Terms on the committee should be staggered to ensure continuity of experience. The appointment of a layperson to serve on the peer review committee is encouraged.

The committee should have specialists as resources who can be appointed if the dentist being reviewed is a specialist and requests a committee composed of like specialists. If the committee feels the need for additional expertise, other members may be appointed on an ad hoc basis.

Submission Procedures: All requests for peer review will be submitted in writing, accompanied by supporting records and other appropriate consent forms and pertinent information, to the constituent or component dental society. All parties to a peer review case should be asked to agree in writing to abide by the peer review committee's recommendation.

In cases involving a third-party payer, the payer should first have made an attempt to contact the dental office for clarification on a clerical or claim reporting problem, or to have had its dental consultant contact the dentist on issues involving professional judgment or contract interpretation.

The payer should notify the patient of a delay in payment of a claim, with further explanation that the case has been submitted for review.

Constituent dental societies are urged to cooperate in every appropriate way to resolve peer review cases in which the parties involved reside in different states or in different jurisdictions within the same state.

Mediation: The component peer review committee chair should appoint a committee member to serve as mediator. All contacts made by the mediator should be carefully documented. The mediator submits a written report to the chair stating only the facts of the case. The mediator will advise whether mediation was successful.

Review Panel: The committee chair will appoint a minimum of three members to review the case. Panel members should have the opportunity to evaluate the specifics of the case, individually conduct a clinical examination if necessary, and make final

recommendations to the committee chair reflecting the collective opinion of the panel members.

Communications and Record Keeping: The chairperson of the committee shall report the decision and recommendations to all parties within 60-90 days from initiation of the review. While original documents and records should be returned, copies of all documents and records obtained during the review process, including the decision and any recommendations, must remain confidential and should be immediately forwarded to the constituent society executive offices. An attorney should be consulted to determine individual state provisions for retention of case records.

Appeal Mechanism: Within 30 days of receipt of a component dental society's peer review committee decision, all parties have the right to appeal, in writing, to the constituent dental society peer review committee, which generally serves as the appellate body. An appeal can only be considered if it is shown that (a) proper procedure was not followed, (b) information previously unavailable at the time of review has become available or (c) the decision was perceived to have been contrary to any evidence and testimony presented. The decision of the appellate body is final within the peer review context.

Considerations for Peer Review and Dental Plans: The quality of the dental treatment provided under dental plans is the logical concern of the dental profession and questions regarding that quality are within the purview of the peer review process.

Review of the dental treatment provided under a dental plan should include a determination that the services were performed and that the treatment was appropriate and rendered in a satisfactory manner.

In the course of peer review function, specific deficiencies or problems prevalent in a particular plan may become evident. General information regarding the administrative or other aspects of the plan should be communicated, as appropriate, to the constituent society body vested with the responsibility for monitoring dental benefit plans.

Disputes Concerning Dental Treatment Provided Under Dental Benefits Programs (1992:600)

Resolved, that disputes concerning dental treatment provided under dental benefits programs be referred to the treating dentist's constituent dental society peer review process, and be it further

Resolved, that in those states where peer review is not available, the review should be conducted by the peer review committee based in the third-party payer's and/or the dentist consultant's state of record.

Use of Peer Review Process by Patients and Third-Party Payers (1990:534)

Resolved, that patients and third-party payers be encouraged to use the dental profession's peer review process to address issues or disputes concerning dental treatment provided under dental benefits programs, and be it further

Resolved, that the Council on Dental Care Programs work with third-party payers, plan purchasers, benefits consultants and government agencies to include the following paragraph in the "claim appeals" section of the Summary Plan Description provided to dental benefits plan subscribers:

State and local dental societies provide an impartial means of dispute resolution regarding your dental treatment. This process, called peer review, may be available to you in addition to the (insert name of benefit plan or benefit administrator) appeal process. For more information about peer review, contact your local dental society.

Resolved, that Resolution 79H-1987 (Trans.1987:502), Utilization of Peer Review Process, be rescinded.

Dentist Participation in Peer Review Organizations (PROs) (1987:501)

Resolved, that the Association encourage the constituent dental societies to take action to assure full and equitable participation of dentists as members of the Peer Review Organizations in their respective areas and as members of their governing boards as long as dental services are being reviewed, and be it further

Resolved, that existing policy on dentist participation in Professional Standards Review Organizations, Resolutions 21-1974-H (trans. 1974:636) and 95H-1978 (Trans. 1978:499), be rescinded.

Constituent Society Peer Review Mechanisms (1981:573)

Resolved, that constituent dental societies be urged to effect all necessary changes in their peer review systems to establish those systems in accordance with the provisions of the Association's peer review procedure manual.

APPENDIX B: FEDERAL TRADE COMMISSION ADVISORY OPINION ON PEER REVIEW OF DENTAL FEES

The attached advisory opinion was issued by The Federal Trade Commission in 1982 in response to the intent of the Iowa Dental Association and its component peer review committees to undertake the review of fee questions and fee-related disputes. The opinion clearly outlines the parameters of fee review activity that would not be in violation of the antitrust laws.

The appropriate review of fee-related disputes is a valid responsibility of the peer review process and the majority of constituent dental societies conduct such review. However, because the exchange of fee information at the constituent society level can have implications under the antitrust laws, peer review fee issues should be handled in strict accordance with the terms of the FTC's letter.

It must also be stressed that a member should be given the option of not to participate in peer review of fees and fee issues.

All constituent and component dental society peer review committees are urged to carefully review this advisory opinion and to fully understand the parameters defined in it. Any questions should be discussed with the dental society's attorney.

Federal Trade Commission

Peter M. Sfikas, Esq.
200 East Randolph
Suite 7300
Peterson, Ross, Schloerb & Seidel
Chicago, Illinois 60601

April 8, 1982

Dear Mr. Sfikas,

This is in response to your request for an advisory opinion concerning a proposed program for peer review of dental fees by the Iowa Dental Association ("IDA" or "Association") and its component district dental societies.

It is the Commission's understanding that IDA wishes to institute a peer review program to aid the cost containment efforts of third-party payors⁴ and assist patients in the resolution of fee-related disputes with dentists. Under the proposed IDA peer review program, a patient, a third party payer or a dentist involved in a particular fee dispute may request a determination by a peer review panel of an IDA component district dental society as to the appropriateness of the fee charged in that particular case.

Participation in the program will purely voluntary (with no proceeding held unless each of the disputants agrees to participate)⁵ and all determinations will be purely advisory in nature. Furthermore, the decision of each peer review panel will not be disseminated beyond the patient, third party payer, and dentist involved in the case. Similarly, distribution of decisions internally will be limited to the dissemination required to perform appellate and administrative functions, and the Association will neither collect information on dental fees nor conduct survey relating to such fees.

Based on its understanding of the fee peer review program as it is outlined above and further detailed in your submissions, it is the Commission's opinion that operation of the program could not, in and of itself, be violative of Section 5 of the Federal Trade Commission Act.

The Commission is of the view, however, that great care must continually be taken in carrying out the program to assure that its purpose remains legitimate and that it does not produce significant anti competitive effects and thereby run afoul of the antitrust laws⁶. Proffered guidance given under the auspices of a major professional society can readily become coercive if the voluntary and advisory nature of the program is not perceived and sustained by all participants. Likewise, joint action relating to fees can readily threaten independent pricing, if determinations about particular past prices become generalized in future fee or reimbursement decisions.

IDA should avoid antitrust risk, therefore, by vigilantly safeguarding the voluntary and advisory nature of the fee peer review process, and the limited scope of each proceeding, to prevent a lessening of price competition or innovation and to avoid unlawful coercion.

Competition will be best protected if all concerned parties view fee peer review as a means of mediating specific fee disputes, rather than a process for the collective sanctioning of fee levels or particular practices. The Commission believes that limited

⁴ Third-party payors (also called "third-party providers" in IDA's submissions) are entities—such as insurance companies, service companies, or employers—who reimburse patients for all or part of the cost of dental care, or make direct payments to dentists on behalf of patients for such services

⁵ Thus, when a dispute is between a third-party payor and a dentist, both the third-party payor and the dentist must agree to participate in the particular proceeding. Likewise, when the dispute is between a patient and his or her dentist, both the patient and dentist must agree to participate for the peer review process to be utilized

⁶ The Supreme Court will clarify in a pending case the extent to which peer review is within the antitrust exemption for the "business of insurance" under the McCarran-Ferguson Act, 15 U.S.C S1011 et seq. *Pireno v. New York State Chiropractic Association*, 650 F.2d 387 (2d Cir. 1981), cert. granted, U.S. (Sup. Ct. Nos. 81-389-390 Nov. 16, 1981). It therefore does not seem warranted for the Commission to offer its own advice to IDA on this issue at this time.

dissemination of fee decisions by the peer review panels is crucial if the program is to serve as a mediation service, rather than a means to facilitate price fixing or coercion. Serious antitrust concerns would therefore arise if IDA, district societies, Association members, or the disputants involved in a particular peer review proceeding allowed panel decisions to become widely known.

Of equal importance, the difficulty and complexity of a procedure should be evaluated based on the individual expertise and judgment of the panel members. To the extent that any reference is made to external factors or benchmarks, such as relative value scales, consideration should be limited to fee information not sponsored or sanctioned by the Association or a component dental society. Likewise, peer review of fees would be subject to antitrust challenge if it were used either to discipline dentists who engage in advertising or other forms of competition or to discourage innovative practices not officially approved or widely used within the professional community. The Association should take no steps to discipline either panelists who do not follow IDA's policies or member dentists who decline to utilize the peer review process or accept its guidance.

To prevent unlawful coercion of third-party payors, IDA should make it clear that the Association is neither conferring preferred status on insurers and other companies that participate in the program and accept panel recommendations, nor urging member dentists to avoid or pressure companies that fail to participate in the program and acquiesce in panel recommendations. Furthermore, antitrust concern would be triggered if a fee schedule or reimbursement program is sufficient or reasonable—the likelihood that the program would have anticompetitive effects would be minimized if it only determines the appropriateness of a particular dental fee charged in a particular case. Likewise, the fee review program may not be used to pressure third-party payers into accepting or standardizing particular definitions of what is a "usual" or "customary" fee. When a dispute involves one of those terms, antitrust risk would be reduced if the panel takes the third-party payer's definition as given.

Furthermore, a dentist-patient dispute needs to be handled with special care when a third-party is involved. A third-party payer independently establishes its own general-contractual criteria and standards for reimbursement and is often able to make an independent appraisal of the overall fairness of the peer review process and of individual peer review decisions. A patient bringing a claim to the program will have no previously established criteria or payment formula and will usually be unable to make such appraisals. And, unlike the third-party payers, the patient may not have the financial ability or incentive to defend his or her position in court if dissatisfied with peer review determination. Where no insurance contract or prior fee agreement between dentist and patient exists, IDA should be particularly careful not to let the peer review process be used to set or sanction "reasonable" or "customary" fee levels for general use by members. Also, it is most important that the patient be made aware of the voluntary and advisory nature of the process and, if he or she chooses to participate, be given a fair hearing. IDA must specifically advise patients that peer review

determinations are based on the experience and judgment of the individual panel members and do not represent formal adjudications, based on a formula, that the patient is bound to accept. IDA might also consider adding safeguards that will help assure that dentist-patient disputes are resolved in an even-handed manner. Though not required, having local consumer organizations help select "consumer representatives" to be added to panels hearing such disputes might be one such safeguard. Alternatively, local government representatives or consumer organizations might supply IDA or their district dental society with a list of knowledgeable "consumer advisors" to assist a patient who chooses to participate in fee peer review.

Lastly, the Commission maintains the right to reconsider the questions involved or to rescind or revoke its opinion in accordance with Section 1.3(b) of the Rules of Practice in the event that implementation of the peer review program results in anticompetitive effects, should the purposes of the program *no* long remain legitimate, or should the public interest otherwise so require.⁷

By direction of the Commission.

Carol M. Thomas
Secretary

⁷ This Advisory Opinion, like all those issued by the Commission, is limited to the proposed conduct described in the petition being considered. It does not, of course, constitute approval for the specific operations of any particular peer review program that may be or become the subject of litigation before the Commission or any court.

APPENDIX C: PEER REVIEW PROCESS CHECKLIST FOR THE PEER REVIEW CHAIR

Sample Peer-review process checklist

Basic information	Case number	
	Date complaint received	
Mediation	Complaint	
	Dentist(s) or other party identified in complaint	
	Type of complaint	Carrier and contact person
	Appropriateness of treatment Quality of care Fees Other	Company Contact Person
Clinical review	Mediator appointed	Written notification to parties sent
	Name Date of appointment Mediator's report submitted to chair Date submitted	Patient Dentist Carrier Others: Specify Patient signed authorization(s) to use/disclose health information
Conclusion	Written agreement abiding by committee decision signed (incase of binding arbitration) Patient Dentist Other Clinical exam necessary Release form signed Exam scheduled Exam conducted	Provide to committee Mediator's report Interview with patient Interview with dentist Interview with others Committee decision and Report Report received Date Patient signed authorization(s) to use/disclose health information
	Concluding letters sent Patient Dentist (s) Carrier Other If appropriate, written release forms received Patient Dentist Other	Acceptance of recommendations Patient Dentist Carrier Other Records & documents sent to constituent society Date
Appeal	Request for appeal	If yes, appeal forwarded to constituent society
I	Date	Date

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APPENDIX D: INITIAL PATIENT RESPONSE LETTER, MEDIATION REQUEST FORM, AND AUTHORIZATION FORM

Sample Response Letter from Society to Patient
CONFIDENTIAL

Date

Name

Address

City, State Zip

Dear _____,

Thank you for your request for mediation by the _____ Dental Society peer review committee.

The enclosed mediation form must be filled out in its entirety and signed for the process to proceed. We have also enclosed the pamphlet "Peer Review in Focus: Dentistry's Dispute resolution Program" which fully explains the process. We request that you read it fully.

Should you have any questions, you may contact me at _____.

Sincerely,

Peer Review Chair

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Sample Patient Request for Mediation Form

CONFIDENTIAL

Upon receipt of this completed form, a mediator will be assigned and will contact you within ____ days to discuss your request and help resolve the issue. While a refund of any charges you may have paid is one of the options that may be recommended by the mediator, a request for a refund should **not** be made in writing or on this form.

Patient Information:

Date _____ Case # _____
 Name _____ Phone # (____) _____
 Address _____
 City _____ State _____ Zip _____

Name of Dentist:

Name _____ Phone # (____) _____
 Address _____
 City _____ State _____ Zip _____
 Date of Last Appointment _____

Please Describe the Problem(s) Specific to the Dental Treatment Received: Please print or type

Thank you for addressing your concerns to the _____ Dental Society.

Please provide below a phone number and the best time of day when the mediator will be able to contact you. If you have any questions in the meantime, please do not hesitate to contact the _____ Dental Society, (____) _____.

Day Phone (____) _____ Time: _____

Night Phone (____) _____ Time: _____

ADA GUIDELINES FOR PEER-REVIEW

In order that a complete review is performed, please sign a copy of the attached authorization for the release to this committee, of any dental records or information by the dentist and anyone who has examined you previously.

By signing this form, you give your permission for the committee to perform one or more clinical examinations if necessary.

Signature

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Sample HIPAA Authorization Form

HIPAA VALID AUTHORIZATION FOR USE AND DISCLOSURE
OF PROTECTED HEALTH INFORMATION

YOU MAY REFUSE TO SIGN THIS AUTHORIZATION

Patient:

Name _____ Phone # (_____) _____
Address _____
City _____ State _____ Zip _____

Dentist:

Name _____ Phone # (_____) _____
Address _____
City _____ State _____ Zip _____

I, _____, am requesting mediation, peer review and/or peer review appeal relating to treatment provided to me by Dentist.

On this date: _____, I hereby authorize Dentist and all other dental and medical sources to use and disclose any and all records or information about my dental and medical history, condition, and treatment, including but not limited to my complete health record, and payment for treatment (collectively, "My Health Information"), in any form or format, including but not limited to hard copy, electronic and oral information, radiographs, and photographs, that may be relevant to treatment provided to me by Dentist, to the ***[insert names of local and state dental societies]*** and their employees and volunteers, including any appointed mediator, peer review committee members, specialty panel members, and any other individuals whose review of the authorized information is necessary or appropriate to the mediation, peer review, and/or peer review appeal process.

Purpose for Disclosure: At the request of the individual, for purposes of mediation, peer review, and any peer review appeal.

I understand that information disclosed pursuant to this authorization may be subject to redisclosure by the recipient and may no longer be protected by HIPAA Privacy regulations.

I understand that I may revoke this authorization at any time by sending written notice to:

***[insert name and address of local dental society], and
[insert name and address of state dental society].***

I understand that this authorization remains effective until Dentist or other dental or medical source is in actual receipt of a signed revocation or until the records retention period required under federal and state law has expired and the records have been destroyed. I understand that any revocation will not affect any use or disclosure permitted by the authorization while it was in effect, and that information about my right to revoke may also be in the Notice of Privacy Practices of Dentist or other dental or medical source.

I understand that I may refuse to sign this authorization, and that my refusal to sign in no way affects my treatment, payment, enrollment in a health plan, or eligibility for benefits. However, if I refuse to sign or revoke this authorization, I may not be able to participate in mediation, peer review, and/or appeal.

I hereby release, hold harmless, and agree to indemnify Dentist, any other dental or medical source that I have hereby authorized to use or disclose my Health Information, ***[insert names of local and state dental societies]***, and their employees, members, volunteers, contractors, and agents, for any and all legal responsibility or liability (including but not limited to negligence) arising out of or occurring under this authorization and the use and/or disclosure of information to the extent indicated and authorized herein.

A copy of this signed, dated Authorization shall be effective as the original.

I understand that I may refuse to sign this authorization. I have been given an opportunity to ask questions, and I have received a copy of the signed authorization.

Signature of patient or patient's personal representative:

Date: _____

If personal representative – Print Name: _____

Relationship to Patient: _____

For office use only: Copy of signed authorization provided to the individual:

Date: _____ Initials: _____

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Sample Letter to the Other Involved Party to Solicit Information

CONFIDENTIAL

Date

Name

Address

City, State Zip

Dear Dr. _____,

This is to advise you that a request for mediation has been filed with _____ Peer Review Committee. A copy of that request and a copy of the patient's authorization to use and disclose health information are enclosed.

This request has been assigned to a member of the committee. It would be helpful if you could state your side of this problem on the bottom of this letter and return it within 3 days to the committee.

For your information, a copy of the ADA publication "Dentistry's Dispute Resolution Program: A Peer Review Process" is enclosed. It will explain the peer review process.

Should you have any questions, you may contact me at _____.

Sincerely,

Peer Review Chair

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APPENDIX E: REPORT OF MEDIATION AND AGREEMENT LETTER AFTER SUCCESSFUL MEDIATION

Sample Report of Mediation

CONFIDENTIAL

Initiating party:

Name _____
Address _____
Phone _____

Other party (ies) involved:

Name _____
Address _____
Phone _____

Contacts made (correspondence, letters & telephone conversations)

1. Date _____
Person contacted _____
Summary of discussion: _____

2. Date _____
Person contacted _____
Summary of discussion: _____

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Sample Agreement Letter to the Dentist and Patient After Successful Mediation

CONFIDENTIAL

Date

Name

Address

City, State Zip

RE: Dr. _____

Ms. _____

Dear Ms. _____:

The Peer Review Committee of the _____ Dental Society has investigated your complaint dated _____, with the following results. Both you and Dr. _____ have agreed to:

The _____ Dental Society's Peer Review Committee therefore considers the matter closed. Thank you for your cooperation, and for using the peer review mechanism.

Sincerely,

_____ D.D.S.

Chair

Peer Review Committee

cc: (all involved parties)

Note: When money is being returned to resolve the problem the following sentence should be added before the last paragraph:

Dr. _____ has agreed to return \$ _____ upon return of a properly executed Release and Satisfaction of Claims Form which is enclosed. (Please return within 5 days.)

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APPENDIX F: UNSUCCESSFUL MEDIATION AND SUBMISSION OF THE CASE TO PEER REVIEW

Sample Letter to the Dentist and Patient When Mediation is Unsuccessful

CONFIDENTIAL

Date

Name

Address

City, State, Zip

Dear _____:

All attempts by the mediator of the _____ Dental Society's Peer Review Committee to resolve your problem have been unsuccessful. In an effort to bring this problem to an equitable conclusion, the following procedures will occur if all parties agree:

1. A panel of at least three dentist members of the peer review committee will conduct a) a clinical examination if necessary and b) a hearing, to obtain all the facts and c) make a decision.
2. A lay member of the committee may be present at the hearing. ***[if applicable]***.
3. The decision may be appealed for just cause to the State Peer Review Committee.

All parties are asked to sign the enclosed "Agreement for Submission of Case to Peer Review" form. The initiator of the complaint must sign this form for the review to proceed. This must be returned within ten days or the review will be terminated.

Sincerely,

Peer Review Chair D.D.S.

Enclosure: Agreement for Submission of Case to Peer Review form

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Sample Agreement for Submission of the Case to Peer Review

CONFIDENTIAL

1. This agreement is made by the following parties:

Patient
Name
Address
Telephone

Dentist
Name
Address
Telephone

Third Party
Name
Address
Telephone

2. The parties understand that peer review is a voluntary program designed to identify the facts of a particular case, to facilitate communications between the parties, and to make recommendations as to:

- The necessity of dental care
- The appropriateness of diagnosis or treatment
- The need for additional treatment, whether performed by the original dentist or another dentist
- The responsibility for payment for completed or additional treatment
- The refund of fees paid
- Whether the fee charged was appropriate.

3. The parties agree to submit the case outlined below to the peer review process of the _____Dental Society. They understand and agree that their proceeding will be conducted according to the rules of the _____Dental Society. They also acknowledge receiving and reading the publication "Dentistry's Dispute Resolution Program: A Peer Review Process"

4. The party seeking peer review is _____ (insert name). The following is a statement of the case submitted by the party seeking the peer review:

-
-
-
5. It is understood and agreed that by agreeing to this peer review, the responding parties are making no comment or admission concerning the statements set forth above in paragraph 4.
 6. The parties understand that the Peer Review Panel and its staff must review all dental and insurance records pertaining to this case in order to determine its facts. Therefore, the patient agrees to sign an authorization form granting permission for release of these records to the Peer Review Panel.
 7. The parties also understand that, should the Peer Review Panel decide that a dental examination is necessary, they will ask the patient to attend such an examination at a mutually agreeable time and place. Therefore, if the Panel requests a dental examination, the patient agrees to permit the examination by dentists designated by the Panel.
 8. All parties agree that they will cooperate fully with the Peer Review Panel to assist them in reaching a decision. They also agree that they will abide by the recommendations of the Peer Review Process, including appeals. The grounds for appeal are:
 1. Procedural error;
 2. New evidence;
 3. Perception of decision contrary to evidence.

The decision of the appellate body is final within the peer review context.

9. The proceedings of the Peer Review Panel are kept strictly confidential in order to facilitate communications that help to resolve this case. That includes statements of the parties and any witnesses; information and material presented during the proceedings; and any findings, recommendations evaluations, examinations, opinions or other actions of the Panel, its members, consultants and staff. The parties agree that if this case becomes the subject of civil litigation, Panel members, consultants and staff shall not be asked to testify, nor shall proceedings and records of the Panel be subject to subpoena.

Signifying their acceptance of this agreement for submission of their case to peer review, the parties have signed this agreement on the day and year indicated.

Date

Patient

Date

Dentist

Date

Third Party

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APPENDIX G: TERMINATION LETTER AND LETTER ON THE TIME AND PLACE OF THE HEARING

Sample Termination Letter

CONFIDENTIAL

Date

Name

Address

City, State Zip

Dear _____:

The peer review committee of the _____ Dental Society has decided to terminate any additional action on your mediation request date _____, for the following reasons.

- 1.
- 2.
- 3.

Should you have any additional questions, you can contact me at _____.

Sincerely,

Peer Review Chair

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**APPENDIX H: ACKNOWLEDGEMENT LETTER AND CLINICAL EXAMINATION
WORKSHEET**

Sample Letter to All Parties to Acknowledge the Mutually Agreed Time and Place of the
Hearing

Date

Name

Address

City, State Zip

Dear _____:

Pursuant to your request for Peer Review dated _____, the peer review committee has scheduled the review and/or examination to take place on _____, 20____, at o'clock am/pm (circle one), at the following location:

_____.

All parties have previously agreed to this time and place.

Should you have any questions or desire additional information, you may contact me at

_____.

Sincerely,

_____ D.D.S.

Peer Review Chair

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Sample Worksheet for Clinical Examination

CONFIDENTIAL

Date

Component

Case #

Patient

Dentist

Carrier (or other third party)

Initiator of review

X-rays taken

Complaints (specific areas)

1. _____ 2. _____ 3. _____ 4.

Examination findings

Areas of complaint

1. _____ 2. _____ 3. _____ 4.

Please complete back side

Health of patient

Tissue

Bone

Caries

Dental attitude

Other:

Please complete back side

X-ray findings & data:

Comments of examiner:

Conclusion of examiner:

Recommendations of examiner:

(Please print name)

Signature

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APPENDIX I: REPORT OF THE PEER REVIEW COMMITTEE

Sample Report of the Peer Review Committee

Note: This is an internal document of the committee used to reach a consensus and conclusion. It should not be sent to any party.

CONFIDENTIAL REPORT OF PEER REVIEW PROCEEDINGS

Date
Component
Case number
Patient
Dentist
Others

Brief outline of problem:

Committee members conducting the review:

Clinical findings:

Conclusions:

Recommendations:

Peer Review Chair

Please use the back if necessary

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Sample Concluding Letter on the Committee's Recommendations

CONFIDENTIAL

Date
Name
Address
City, State Zip

Dear _____:

The Peer Review Committee of the _____Dental Society met on (date) to consider your complaint against Dr. _____. Both you and Dr. _____ met with the committee.

In summary, you complained that the bridge placed by Dr. ___was made incorrectly and that you now have decay in that area.

The committee recommends that the bridge be replaced. And, since you do not wish to return to Dr. _____ for treatment, it is further recommended that Dr. _____reimburse you in full the fee you paid for the bridge (\$____).

Dr. _____ is asked to send me a check made out to you in the amount specified above. You are asked to sign all copies of the enclosed release forms, which will release Dr. _____ from any further liability in the matter. Return all copies of the release forms to me. I will forward

Dr. _____'s check to you along with one of the release forms. The second goes to Dr. _____. The third is kept on file.

You have the right to appeal this decision to the Peer Review Committee of (constituent society), (address), (city, state, zip). The request for appeal must be made within thirty days of your receipt of this report.

Thank you for your cooperation.

Signature of Committee Chair

cc: Dr. _____
Chair
_____ Dental Society Peer Review

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Sample Release Form

NOTE: This release may or may not satisfy applicable state law. It is imperative that parties relying on this form consult with their counsel to modify this release as necessary to comply with applicable law.

RELEASE

I, _____ (hereinafter the patient) for the sum of dollars (\$_____) paid to me on this date by _____ [name of dentist and/or professional corporation], the receipt of which is hereby acknowledged, fully release _____ [name of dentist], _____ [dentist's professional corporation or business entity, if any], [his, her, its, and/or their] partners, associates, staff, employees and agents, and _____ [name of released party's insurer] (hereinafter the released party or parties) from any liability or claims of whatever nature, known or unknown, including, without limitation, claims for personal injury and disability, pain, suffering, mental anguish, loss of income and

_____ arising from dental treatment provided to me by released party or parties, including without limitation: _____

_____ [describe treatment dates, procedures, surgeries (if any), complications (if any), and dates of those complications].

[Optional paragraph]: I understand that this release shall bind me and my heirs, legal representatives and assigns, and that it shall inure to the benefit of the released party or parties, and to [his, her its and/or their] heirs, legal representatives, successors and assigns.

I understand that the receipt of this payment constitutes a final and full release and settlement of any claim I might have against the released party or parties. I also understand that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released by whom liability is expressly denied. I have read this release, understand the terms used in it and their legal significance, and have executed it voluntarily.

CAUTION: THIS IS A RELEASE - READ BEFORE SIGNING

(patient) _____
(witness) _____
(date) _____

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Sample Optional Appeal Letter
(To All Involved Parties)

Date

Name

Address

City, State Zip

Dear _____:

The Peer Review Committee of the _____ Dental Society
has completed its review of the case involving
_____.

Enclosed please find the recommendations and findings of the Committee. I remind
you of your right of appeal to the (Statewide Council on Peer Review.)

Your appeal must be based on one or more of the following:

1. Procedural error;
2. New evidence;
3. Perception of decision contrary to evidence.

An appeal must be made within thirty (30) days of your receipt of this report to the
_____ Dental Society (insert address).

Thank you for using the _____ Dental Society Peer Review
Mechanism.

Sincerely,

_____ D.D.S.

Chair

Peer Review Committee

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APPENDIX J: LETTER TO PARTY REQUESTING AN APPEAL

Sample Letter for party wishing to request an appeal

Date

Name of party requesting appeal

Address

City, State Zip

Dear _____:

The _____ Dental Association (Statewide Council on Peer Review) received your request for appeal of the findings of the _____ District Dental Society Peer Review Committee in the case involving Dr. _____.

Please fill out the enclosed (Statewide Council on Peer Review) Appeal Request Form and return it within thirty (30) days. Your appeal must be based on one or more of the following:

1. Procedural error;
2. New evidence;
3. Perception of decision contrary to evidence.

If the enclosed form has not been received by the _____ Executive Office within thirty (30) days, your right to appeal will be terminated.

Sincerely,

_____ D.D.S.

Chair
Council on Peer Review

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SAMPLE Appeal Request Form (State Dental Association)

CONFIDENTIAL

Please type or print legibly

Initiator of appeal

_____ Phone # (____)_____

Address _____

City _____ State _____ Zip _____

Appeal of the decision of the _____ Peer Review Committee
(Local Dental Society)

Involved parties:

Name _____ Phone # (____)_____

Address _____

City _____ State _____ Zip _____

Name _____ Phone # (____)_____

Address _____

City _____ State _____ Zip _____

Your Appeal must be based on one or more of the following:

1. Procedural error;
2. New evidence;
3. Perception of decision contrary to evidence.

Please explain the basis of your request for appeal (be specific):

_____ No request for relief should be included on this form. While a refund of the charges you have paid is one of the options that may be recommended by the committee, a request for a refund should not be made in writing or on this form.

To the best of my knowledge the above information is true.

_____ Date: _____

Signature

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Sample Confirmation Letter to Party Requesting an Appeal

CONFIDENTIAL

Date

Name

Address

City, State Zip

Dear _____:

The _____ Dental Association Statewide Peer Review Committee has received your request for appeal of the findings for the _____ Dental Society Peer Review Committee in the case involving _____.

Your appeal will be reviewed at the next meeting of the Statewide Peer Review Committee on _____.

Sincerely,

Chair

Statewide Peer Review Committee

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APPENDIX K: BINDING ARBITRATION

Sample Binding Arbitration Form

Note: This form is only a sample, and only for those states where statutory arbitration exists. Any such form, or similar agreement or approach, must be carefully reviewed by legal counsel for compliance with state law.

CONFIDENTIAL

This form must be returned within thirty (30) days.

Date _____ Case # _____ Name _____ Phone # () _____ Address _____
City _____ State _____ Zip _____

Review initiated against

Name _____ Phone# () _____ Address _____ City _____ State _____ Zip _____

I hereby agree to submit the matter which is in dispute to the _____ Dental Society Peer Review Committee.

I understand that this agreement constitutes an arbitration contract under (**) and that by entering into this agreement and submitting this dispute to Peer Review, I am voluntarily and knowingly waiving my right to have this dispute settled by a court of law.

I understand that this reviewing committee will be composed of three dentists from the dental district in which the dispute arose; that there may be one lay person on the committee and I will, in the absence of proof to the contrary, consider them to be impartial for the purpose of arbitration. I also understand that no party to the dispute will be entitled to have legal counsel present at any hearing conducted by the reviewing committee.

Any monetary awards recommended by the local peer review committee shall be limited to the amount charged by the dentist for the service in question by refund or payment of such amount or the elimination of liability for such amount.

I understand that the decision rendered by the peer review committee is binding upon me and enforceable under (**). I further understand that I may appeal this decision to the State Subcouncil on Peer Review for just cause, and that the decision by that body is final.

Signature

I do not choose to accept binding arbitration

******(Specify state statute or other reference to state law)

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APPENDIX L: SAMPLES OF STATE LEGISLATION

Several samples of legislation can be found in the pages that follow. The first sample legislation has been drafted as an example of the language that may be used in state statutes for peer review activities.

Sections 1, 2 and 3 authorize the establishment of peer review committees, grant immunity from the liability for committee members, and protect the confidentiality of peer review proceedings from discovery, respectively.

The second example speaks solely to immunity from liability and confidentiality in brief and concise statutory language.

All constituent dental societies are strongly urged to promote adequate statutory protection for their peer review activities. The dental society's attorney should be consulted before any effort is made to seek enactment of such statutes or amendment of existing statutes.

SAMPLE 1

Section 1: Peer review committees

A society or an association of persons licensed to practice dentistry pursuant to (citation to dental practice act) whose membership includes not less than one-(third/half) of the persons licensed to practice dentistry pursuant to (citation to dental practice act) residing in this state, or any component organization of such society or association, may establish one or more peer review committees pursuant to this section for the purpose of determining the relevancy of a dentist's usual fees or treatment procedures to the terms of a contract, or of assessing the quality of services rendered.

Section 2: Immunity from liability

- a. Any society or association which has established a peer review committee pursuant to section 1 of this Act, any member of such committee, any staff member of such society or association assisting such peer review committee, and any witness or consultant appearing before or presenting information to such peer review committee, shall be immune from liability in any civil or criminal action sought by a licensee who is the subject of a peer review investigation or proceeding conducted by such a committee, if such a society or association, committee member, staff person, witness or consultant acts in good faith within the scope of the function of such committee; has made a reasonable effort to obtain the facts of the matter as to which the society or association or he or she acts; and acts in the reasonable belief that the action taken is warranted by the facts.

- b. Any entity, organization or person acting without malice in making any report or other information available to such peer review committee or who assists in the origination, investigation or preparation of such information, or assists such committee in carrying out any of its duties or functions, shall be immune from civil or criminal liability for any such actions.

Section 3: Confidentiality of records

Any communications or information relating to peer review committee investigations or proceedings as provided in sections 1 and 2 of this Act, and the proceedings and records of the peer review committee related thereto, shall be held in confidence and shall not be subject to discovery or introduced into evidence in any civil action or administrative proceeding against a dentist arising out of matters which are the subject of evaluation and review by the peer review committee. No person who was in attendance at a meeting of the peer review committee shall be permitted or required to testify in any such civil action or administrative proceeding as to any evidence or other matters produced or presented during such meeting of the peer review committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof or consultants thereto. However, information, documents, or records otherwise available from original sources are not to be constructed as immune from discovery or use in any such action or proceeding merely because they were presented during proceedings of the peer review committee, and any documents or records which have been presented to the peer review committee by any witness shall be returned to the witness, if requested by him or her or if ordered to be produced by a court of competent jurisdiction in any action, with copies thereof to be retained by the peer review committee at its discretion. Any person who testifies before the peer review committee cannot be asked about his or her testimony before the peer review committee or opinions formed by him or her as a result of such hearings.

SAMPLE 2

Immunity from liability and confidentiality of records

No member of a dental peer review committee of a state or local dental society shall be deemed liable for damages to any person for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in reasonable belief that such action or recommendation is warranted by the facts known to him or her after reasonable effort to obtain the facts of the matter as to which such action is taken or recommendation is made.

The dental peer review committee and its records shall be exempt from discovery proceedings.

APPENDIX M: REPORTABILITY OF PEER REVIEW REFUNDS TO THE NATIONAL PRACTITIONER DATA BANK

The letters in this appendix relate to the question of whether, and under what circumstances, a refund made to a patient as a result of a peer review proceeding might be reportable as a “medical malpractice payment” to the National Practitioner Data Bank. See the section on Legal & Liability Issues: Other Federal Statutes: National Practitioner Data Bank for discussion of this issue.

Date: August 15, 1990

To: Constituent Society Peer Review Chairpersons

From: Dr. Stuart B. Fountain, Chairman, Council on Dental Care Programs

Subject: National Practitioner Data Bank Implementation of Interim Agreement

The purpose of this communication is to clarify the interim agreement relative to the National Practitioner Data Bank (Data Bank) and to help you implement the changes. As you will see from the attached copy of the letter sent by the Health Resources and Services Administration (HRSA) to our Washington office, the agreement is divided into two parts:

- The Association has revised the dental society “Mediation Request Form,” pages 59-60 of the Association’s manual Peer Review in Focus, so that the form will no longer represent a “medical malpractice action or claim” as defined in the Data Bank regulations. This form is to be completed by the patient and submitted to the dental society.
- Dental Societies should now require a dentist who agrees to refund fees as a result of dental society peer review to make such payments in the form of a check directly to the dental society. The dental society will place the check in an “escrow” (see page 2, paragraph #3) account and held until payment is to be made to the patient or another dentist for work redone.

In accordance with the interim agreement, the Council recommends that state dental societies consider taking the following actions:

1. The mediation request form has been revised and is now entitled “Patient Request for Mediation,” a copy of which is attached. This form specifically advises patients not to request a refund in writing or on the form. The form contains no questions that would encourage the patient to make a written request for a refund of fees. In order to preserve the peer review system, it will be necessary to use this form.

Example:

When a patient calls the state or local dental society to request a peer review, do not ask the patient to write a letter detailing the problem. Instead, consider taking the patient's name and address and informing him/her that the society will send a "Patient Request for Mediation" form immediately.

2. There may be an instance when the patient ignores the advice contained on the form and makes a written request for a refund of fees. In such event, the dental society can either provide a new form for the patient to complete, or can explain to the patient that the society will be unable to process the mediation request. Otherwise, refunds made in response to such written request will be reportable to the data bank.

Example:

You might encourage the patient to complete a new form being direct about the reason and trying to keep the matter within the peer review process.

3. The escrow account has prompted many questions from state society leadership and staff. The Association does not interpret HRSA's directive to mean that a formal escrow account should be established to comply with the fiduciary responsibilities outlined in state laws. Rather, based on our discussions with HRSA, we believe it means that the money to be returned by a dentist to a patient be handled through the state dental society with a separate bank account to be used solely for this purpose.

Example:

Establish a separate checking account to be used solely for receiving monies from dentists to be forwarded to patients or to the re-treating dentists. If a peer review decision favors the patient, the peer review chairperson would inform the dentist that he/she should make his/her check payable to the state dental society. The dental society then would draw a check on the separate account made payable to the patient or to the re-treating dentist up to the amount of the original dentist's fee.

4. According to the Data Bank guidelines, dentists who receive written requests for refunds or other monetary payments are required to report any such payment made directly to patients or a new treating dentist.

Example:

Where appropriate, dental societies should suggest to members that they consider referring any dissatisfied patients to dental society peer review for resolution, after a full discussion with the dentist about the data bank.

5. Clearly, there is a problem with peer review cases initiated prior to September 1, 1990 that will not be settled until after September 1, 1990. Any cases in process where the patient, in writing, has requested a refund of fees should be dealt with immediately.

Example:

In some cases, you may be able to transfer the appropriate information to a "Patient Request for Mediation" form and send it to the patient for signature. A simple cover letter to the patient explaining compliance with new federal regulations required that the new form become a part of the peer review records should suffice. If the patient already has made a written request for a refund as a part of peer review, HRSA's interpretation of the law is that any refunds made in response to a written claim after the September 1 start-up date are reportable.

HRSA has acknowledged that this interim agreement represents a short-term solution to the problems that Data Bank has created for the profession. The agency has indicated a willingness to cooperate in finding long-range solutions after the Data Bank becomes operational on September 1, 1990. In the meantime, the interim agreement will exempt dental society peer review if handled in accordance with HRSA's requirements. The Association will, of course, continue to work with pertinent government agencies to achieve a more acceptable and permanent solution.

The Division of Legal Affairs is continuing to research possible causes of action that might be filed against HRSA in a lawsuit relating to this problem. We will keep you posted in that regard, but we would like to reiterate the potential downside to filing a lawsuit at the present time. We believe the Congressional sponsors of the data bank legislation, together with the data bank staff, would be very reluctant to work with the Association toward an amendment to the statute or regulations if a lawsuit were filed. There is still an opportunity at the present time to work with these groups for an amendment that would resolve the problem. In addition, there is the possibility that a court ruling might be more unfavorable than the interim agreement from HRSA. Litigation certainly has not been ruled out, but timing of any litigation is critical and should not be pursued until the other avenues have been exhausted.

Many state societies have expressed a preference for informing their component societies of the changes that they will institute in order to comply with the interim agreement. Therefore, this memorandum is being sent only to the state dental society peer review chairpersons with copies to the state dental society presidents and executive directors. If, however, you would like Council's assistance in disseminating this information to component societies, please contact the Council office immediately.

If you have any questions regarding the Data Bank, please call the Chicago office, Tom Conway, extension 2752.

We urge you to seek advice from your attorneys in the implementation of these new procedures, in order to protect your peer review program and the members who participate in it.

Mr. Leonard Wheat
Director of Government Relations
American Dental Association
1111 14th Street, N.W.
Suite 1200
Washington, D.C. 20005

Dear Mr. Wheat:

I found the meeting with you and Ms. Carole Frings on May 9 regarding the National Practitioner Data Bank quite useful. I appreciate the follow-up information you provided about the dental peer review process.

As you know, the Data Bank Executive Committee met on May 22 to discuss Data Bank progress and issues. During the meeting Ms. Frings raised the American Dental Association's (ADA) concern about reporting to the Data Bank (as a malpractice payment) a cash refund agreed to by a dentist as part of an informal dental society peer review mediation process. I believe we were able to resolve the issue to the satisfaction of the ADA and the Executive Committee and want to restate our understanding of the two actions to be taken by the ADA.

The ADA will revise the dental society "Mediation Request Form," submitted by a patient to the dental society, so that the form will no longer constitute a medical malpractice action or claim as defined in the Data Bank regulations at 45 CFR Part 60. Second, the ADA will require a dentist who agrees to a cash refund as a result of a dental society mediation process to refund the fee for the dental service to the dental society. The dental society will hold the refund in "escrow" until the patient has the dental service redone by another dentist, or alternatively, upon the request of the patient, the dental society will send the refund to the patient.

We are aware that this solution does not directly address the ADA's concern that a cash refund made by a dentist as part of a dental society peer review process not be required to be reported to the Data Bank. A long range solution would be to set a floor below which malpractice payments of a certain dollar level would not be required to be reported to the Data Bank. As required by the Congress, we plan to do a study on the reporting of "small" malpractice payments to the Data Bank approximately one year following its opening. A somewhat shorter-term solution would be the possibility of amending the regulations.

I trust we have restated accurately the actions to be taken by the ADA on this issue. If your understanding is different, please contact me (443-5794) or Stan Bastacky, D.M.D., (443-2300) of the Division of Quality Assurance and Liability Management

immediately. I appreciate the concern of the ADA on this issue and look forward to continued cooperation between the ADA and the Bureau of Health Professions.

Sincerely,

Fitzhugh Mullan, M.D.
Director

Laurance Jerrold, D.D.S., J.D.
New York County Dental Society
6 East 43rd Street
New York, New York 10017

Dear Doctor Jerrold:

This is in response to your letter of March 29 to the Division of Quality Assurance concerning the New York County Dental Society procedures and their applicability to the National Practitioner Data Bank (NPDB) reporting requirements for medical malpractice payments. Your questions were reviewed by the Health Resources and Services Administration (HRSA) Office of the General Counsel and I hope the following information will clarify the issues you presented.

1. Does HRSA consider this “agreement” a “writing” for the purposes of fulfilling the writing requirements for the reporting statute?

Yes. The Health Care Quality Improvement Act of 1986, the statute governing the NPDB, requires each entity making a payment in settlement of, or satisfaction of a judgment in, a medical malpractice action or claim to report such payment (42 USC 11131(a)). A “medical malpractice action or claim” is defined under the statute at 11151(7) as “a written claim or demand for payment based on a health care provider’s furnishing (or failure to furnish) health care services...” Your “Agreement to Submit to Peer Review” is a written claim or demand for payment (a refund of fees paid is a “payment”) based on a dentist’s provision or failure to provide dental care.

2. Does HRSA consider this a written request for “return of fees (payment of money)” related to the provision of professional services such that the reporting requirements would be triggered if a refund were to be given a patient?

Yes. A refund is considered a “payment.” However, it is only reportable if it is made by an entity (including an incorporated sole practitioner) for the benefit of a health care practitioner. Refunds (or other payments) made by an individual practitioner out of his or her personal funds do not trigger the reporting requirement. Please also note that, under the NPDB regulations at 45 CFR 60.7(a), a waiver of outstanding fees or debt is not a payment and, therefore, is not reportable.

3. Does HRSA consider the NYCDS to be a medical malpractice payer?

Yes. The NYCDS is an entity which makes payment in settlement or partial settlement of a medical malpractice action or claim and, therefore, is required

under 42 USC 11131(a) to report such payments. There is no statutory requirement that the payment be from the reporting entity's own funds.

4. Is the incident reportable if the Doctor gives a personal check as opposed to a business check?

As explained in response to Question #2 above, the source of the money paid into the escrow account determines reportability if that money subsequently is refunded to the patient. If the money refunded to the patient from the escrow account was paid into it by a business entity (e.g., a professional corporation composed of a sole practitioner), for the benefit of a practitioner, the payment is reportable. However, if the refund was paid into the escrow account from the personal funds of an individual practitioner, it is not reportable.

I hope this information is helpful. Please do not hesitate to contact me again should you require further clarification.

Sincerely,

Vivian Chen, Sc. D., M.S.W.
Associate Director for Policy
Division of Quality Assurance

FREQUENTLY ASKED QUESTIONS

1. If peer review records are confidential, why must they be retained when the case is over? The state may have a mandatory business records retention law. "Business records" may, depending on the state's definition, include peer review records. In that case the peer review records must be kept at least as long as the statute requires. Also, the fact that the records are not subject to discovery (under a state law making them confidential) in some proceedings doesn't mean they're exempt in all. Again, state law determines this. Finally, the dental society might want to produce the records to defend itself against legal action brought by the patient or dentist. For example, the dentist might sue the society for defamation. Generally, the society would want to consult the statute of limitations for such actions before discarding the records. Sensitive records, such as a patient's dental records, should be protected by reasonable and appropriate security safeguards throughout the retention period, in compliance with applicable law. When retention is no longer required, disposing of sensitive records securely can help protect individuals and prevent breaches. Some states may have data disposal laws requiring that sensitive records be disposed of securely. The society might wish to ask a qualified attorney and the company that insures its peer review activities for help in thinking through these issues.

2. Can a dentist (or patient) opt not to submit to peer review after an unsuccessful mediation? The answer is different, depending on whether it's the dentist or the patient who refuses to proceed. Peer review can occur only if both parties agree to it. That's reflected in the fact that they do not sign the agreement to submit the case to peer review until mediation is over. The patient certainly has a choice at that point to opt out, since the society cannot--as a legal and practical matter--compel the patient to undergo an examination (which is an integral part of the peer review process.) The situation is different if it's the dentist who refuses to proceed to peer review. The answer then depends on whether the state has a mandatory/participatory or optional peer review system. If the state has a mandatory participation system, the dentist cannot opt out of peer review following mediation without facing possible disciplinary action by the dental society. If the state does not have a mandatory system, the dentist--as well as the patient--is free to decide whether to proceed to peer review.

3. What divides a quality of care issue (suitable for peer review) from an ethical issue (which is a matter for the ethics/judicial committee)? They can be

indistinguishable. For example, providing unnecessary care raises concerns about quality. It is also a potential ethics violation under the *American Dental Association Principles of Ethics and Code of Professional Responsibility*. As a practical matter, the way the dental society handles the complaint will depend on who filed the complaint and what they are requesting. For example, if a patient files a complaint requesting the dentist to waive a balance due, then it goes to peer review. The patient won't be content with an ethics hearing, since that won't give the patient his/her remedy. If it's another dentist who filed the complaint, then it goes to ethics, since the peer review committee cannot review a case without the patient's involvement. But the two are not mutually exclusive. Some societies have criteria for referring cases involving multiple peer review decisions against the same dentist or one quite serious case. Often these are referred to the state dental board, but some societies may refer them to their ethics panels.

4. If a patient signed a release letter and the dentist reimbursed the patient money as the result of a peer review decision, what legal impact or significance would the letter have if the patient turned around and filed a law suit anyway? A patient who signs a release relinquishes his or her claim and right to file a law suit over the matter covered by the terms of the release. The patient would not be required to sign the release until the amount in question was established, i.e., after the peer review committee had issued its recommendation. An exact figure is important to make the release binding.

5. Should the dental society use the peer review system to settle disputes between a dentist and third party payer over multiple claims? Multiple claims disputes usually question the dentist's practice pattern or practice profile rather than the care provided in a single case. The peer review committee would consider whether the practice profile has been accurately assessed (is valid) and whether the practice profile deviates from the norms of practice in the given community (whether it deviates from the quality or appropriateness of care provided by other dentists in that community.) Settling disputes over multiple claims may require more time, special expertise, and liability risk than would be used in settling a dispute over a single claim. The peer review committee's decision could result in the third party payer denying the claims or dropping the dentist from its panel of providers, or in having the dentist refund money to the third party payer.

Therefore, the dental society should independently make a decision to adjudicate multiple claims after considering the following factors:

- The availability of constituent and component resources, such as volunteers' time and ability to analyze statistical utilization data
- The possible need for obtaining expanded liability coverage
- The potential need for legal hold harmless provisions in the agreements with the third party payer.

6. One of the required elements of reportability (to the NPDB) is that the payment be made in response to a written demand for payment. Must the written demand state a specific sum? No. The statute uses the word "payment." The agency has explained that that means a demand for monetary payment, not payment in-kind. Other than that, it's enough if the person asks for money or reimbursement.
7. If an insurance company reimburses a practitioner for a "medical malpractice payment" the practitioner made, is that reportable? Yes, it is reportable by the insurer. The agency states in the guide to the NPDB that an insurance company that reimburses a practitioner for such a payment must report it to the Data Bank, as long as the patient submitted the demand in writing.

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Information about data privacy and security laws is available at:

Federal Trade Commission:

Small Business Computer Security Basics

<https://www.ftc.gov/tips-advice/business-center/guidance/small-business-computer-security-basics>

National Conference of State Legislators (<http://www.ncsl.org/>):

Security Breach Notification Laws

<http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx>

Data Disposal Laws

<http://www.ncsl.org/research/telecommunications-and-information-technology/data-disposal-laws.aspx>

Office for Civil Rights, U.S. Department of Health and Human Services:

Health Information Privacy

<https://www.hhs.gov/hipaa/index.html/>

FAQ: *May a covered entity use or disclose a patient's entire medical record based on the patient's signed authorization?*

<https://www.hhs.gov/hipaa/for-professionals/faq/471/may-a-covered-entity-use-or-disclose-a-patients-entire-medical-record-based-on-the-patients-authorized-signature/index.html>

FAQ: *Does the Privacy Rule permit a covered entity to use or disclose protected health information pursuant to an authorization form that was prepared by a third party?*

<https://www.hhs.gov/hipaa/for-professionals/faq/472/does-hipaa-permit-a-covered-entity-to-use-or-disclose-protected-health-information/index.html>

FAQ: *May a valid authorization list categories of persons who may use or disclose protected health information, without naming specific individuals or entities?*

<https://www.hhs.gov/hipaa/for-professionals/faq/473/may-a-valid-authorization-list-categories-of-persons-who-may-use-protected-information/index.html>

FAQ: *Can an individual revoke his or her authorization?*

<https://www.hhs.gov/hipaa/for-professionals/faq/474/can-an-individual-revoke-his-or-her-authorization/index.html>

FAQ: *Is a copy, facsimile, or electronically transmitted version of a signed authorization valid under the Privacy Rule?*

<https://www.hhs.gov/hipaa/for-professionals/faq/475/is-a-copy-of-a-signed-authorization-valid/index.html>

FAQ: *Must an authorization include an expiration date?*

<https://www.hhs.gov/hipaa/for-professionals/faq/476/must-an-authorization-include-an-expiration-date/index.html>

FAQ: *May a covered entity disclose protected health information specified in an authorization, even if that information was created after the authorization was signed?*

<https://www.hhs.gov/hipaa/for-professionals/faq/477/may-a-covered-entity-disclose-protected-health-information-specified-in-an-authorization/index.html>

FAQ: *Does the Privacy Rule require that an authorization be notarized or include a witness signature?*

<https://www.hhs.gov/hipaa/for-professionals/faq/478/does-the-privacy-rule-require-an-authorization-be-notarized/index.html>

FAQ: *Can an authorization be used together with other written instructions from the intended recipient of the information?*

<https://www.hhs.gov/hipaa/for-professionals/faq/479/can-an-authorization-be-used-together-with-other-written-instructions/index.html>