

**CHAPTER XI. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT,
MEMBER CONDUCT POLICY AND JUDICIAL PROCEDURES****A. Disciplinary Matters.**

1. **Member Conduct Subject to Discipline.** A member may be disciplined for (1) having been found guilty of a felony, (2) having been found guilty of violating the dental practice act of a state or other jurisdiction of the United States, (3) having been discharged or dismissed from practicing dentistry with one of the federal dental services under dishonorable circumstances, (4) violating the *Bylaws*, the *Principles of Ethics and Code of Professional Conduct*, or the bylaws or code of ethics of the constituent or component of which the accused is a member, or (5) violating the *Association's Member Conduct Policy* of this Association, a constituent or a component.
2. **Disciplinary Penalties.** A member may be disciplined for any of the offenses enumerated in this *Governance Manual* as follows:
 - a. **Censure.** Censure is a disciplinary sentence expressing in writing severe criticism or disapproval of a particular type of conduct or act.
 - b. **Suspension.** Suspension means all membership privileges except continued entitlement to coverages under insurance programs are lost during the suspension period. Suspension shall be unconditional and for a specified period at the termination of which full membership privileges are automatically restored. A subsequent violation shall require a new disciplinary procedure before additional discipline may be imposed.
 - c. **Expulsion.** Expulsion, or removal from the membership rolls of this Association and any constituent or component, is an absolute discipline and may not be imposed conditionally except as otherwise provided herein.
 - d. **Probation.** Probation, to be imposed for a specified period and without loss of privileges with the exception of holding or seeking an elective or appointive office, may be administratively and conditionally imposed when circumstances warrant in lieu of a suspended disciplinary penalty. Probation shall be conditioned on good behavior. Additional reasonable conditions may be set forth in the decision for the continuation of probation. In the event that the conditions for probation are found to have been violated by the constituent that brought the original misconduct complaint, after a hearing on the probation violation charges in accordance with procedures set forth in the *ADA Procedures for Member Disciplinary Hearings and Appeals*, the original disciplinary penalty shall be automatically reinstated; except that when circumstances warrant the original disciplinary penalty may be reduced to a lesser penalty. There shall be no right of appeal from a finding that the conditions of probation have been violated.

- e. Removal from Office. If the member holds any ADA office, a disciplinary action including removal from office as a trustee, delegate, alternate delegate or elective officer for the remaining term may be imposed in addition to, or in lieu of, any of the penalties enumerated above.
3. Reminder of Obligation. In appropriate circumstances, a constituent or component or, in the case of direct members, this Association, may issue a Reminder of Obligation to a member where the member may have committed a relatively minor infraction of the *ADA Member Conduct Policy* or engaged in conduct to which the *ADA Member Conduct Policy* might apply. The same is true of the *Bylaws*, the *Principles of Ethics and Code of Professional Conduct* or the bylaws or code of ethics of a constituent or component of which the accused is a member. Such a Reminder of Obligation is not a disciplinary penalty but is a private administrative action. No record of the issuance of a Reminder of Obligation shall be placed in the member's membership records.
- B. Hearings on Charges Related to the ADA Bylaws and the Principles of Ethics and Code of Professional Conduct. Any member charged with violating the *ADA Bylaws*; ~~or the Principles of Ethics and Code of Professional Conduct~~ ~~or the Association's Member Conduct Policy~~ shall be afforded the right to a fair and impartial hearing conducted in accordance with the procedures set forth in this *Governance Manual*. For a member of a constituent, disciplinary proceedings may be instituted by either the member's component or constituent. For a direct member, disciplinary proceedings may be instituted by the Association's Council on Ethics, Bylaws and Judicial Affairs.
1. Initial Disciplinary Hearings on Charges Relating to the ADA Bylaws or the Principles of Ethics and Code of Professional Conduct. The following procedures are to be followed by a component or constituent or this Association bringing charges of *Bylaws* or ethics violations:
 - a. Notice. An organization bringing charges against a member alleging a violation of either the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct* shall issue a notice of charges that will meet the following specifications:
 - i. Charges Brought. The notice of charges will contain a detailed statement of all disciplinary charges brought against the accused member, including (a) an official certified copy of any alleged conviction or determination of guilt that is the basis for the disciplinary action, (b) description of the section(s) of the *Bylaws* or the ethical provisions alleged to have been violated, and/or (c) a description of the conduct alleged to constitute each violation.
 - ii. Time of Hearing. The notice of charges shall contain notification of the date, time and place that a hearing on the charges will be held.
 - iii. Delivery of Notice. The notice of charges shall be sent to the accused member by certified mail, return receipt requested. The notice of charges shall be addressed

to the accused member's last known address and mailed not less than twenty-one (21) days prior to the date set for the hearing.

- b. Hearing. Any member accused of violating either the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct* is entitled to a hearing before a hearing body of the entity bringing the charges.
 - i. Purpose. The purpose of a disciplinary hearing is to provide the accused member with the opportunity to present a defense to the charges brought against the member.
 - ii. Representation by Counsel. The organization bringing the charges must allow the accused member to be represented by legal counsel at any hearing convened under these procedures.
 - iii. Continuances. An accused member is entitled to one (1) hearing postponement. The postponement cannot exceed thirty (30) days. Additional requests for postponement may be granted or denied by the hearing body in its reasonable discretion.
- c. Decision. Every decision of a hearing body that imposes a penalty will be in writing. The written decision will contain the following:
 - i. Statement of Charges. The decision shall set forth a statement of the charge(s) made against the member;
 - ii. Facts and Verdict. The decision shall state the facts that support the charge(s) and the verdict arrived at by the hearing body;
 - iii. Penalty. The decision shall state the penalty imposed and, if the penalty is to be suspended during a period of probation, the length of the probationary period and any other conditions included in the probation; and
 - iv. Delivery of Decision. The decision is to be sent to the following:
 - (a) The accused member by certified mail, return receipt requested, and addressed to the accused member's last known address.
 - (b) The secretary of the accused member's component, if any;
 - (c) The secretary of the accused member's constituent, if applicable;
 - (d) The chair of the American Dental Association Council on Ethics, Bylaws and Judicial Affairs; and
 - (e) The Executive Director of this Association.
- d. Notice of Right to Appeal. Every written decision issued by a hearing body that

imposes a penalty will be accompanied by a separate notice stating that the accused member has a right to appeal the decision. The notice of right to appeal will direct the member to the section of this *Governance Manual* dealing with appeals from disciplinary decisions relating to violations of the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct*.

- e. Finality of Decision. A decision will not become final while an appeal of the decision is pending or until the thirty (30) day period for filing a notice of appeal has expired.
 - f. Non-Appeal of Decision Containing Sentence of Expulsion. If a decision includes a sentence of expulsion and a notice of appeal is not received within the thirty (30) day period within which to appeal, the accused member's constituent will notify all parties of the failure of the accused member to file an appeal. The sentence of expulsion will take effect on the date the parties receive such notice. The component and constituent shall each determine what portion of their current dues and special assessments, if any, shall be returned to the expelled member. Dues and special assessments paid to this Association will not be refunded to an expelled member.
2. Appeals from Disciplinary Decisions Relating to the ADA Bylaws and the Principles of Ethics and Code of Professional Conduct. The following procedures shall be followed in any appeal from a decision issued as a result of a disciplinary hearing on charges relating to the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct*:
- a. Right to Appeal.
 - i. Disciplinary Decision of a Component. Any member shall have the right to appeal a disciplinary decision issued by the member's component that imposes a penalty. That appeal shall be made to member's constituent by filing a notice of appeal in affidavit form with the secretary of the constituent.
 - ii. Disciplinary Decision of a Constituent. Any member or component shall have a right to appeal a disciplinary decision that is adverse to it that is issued by a constituent. That appeal shall be made to the Council on Ethics, Bylaws and Judicial Affairs of this Association by filing a notice of appeal in affidavit form with the Chair of the Council on Ethics, Bylaws and Judicial Affairs.
 - iii. Disciplinary Decision Adverse to a Direct Member. A direct member of this Association shall have the right to appeal a disciplinary decision of a hearing panel of the Council on Ethics, Bylaws and Judicial Affairs that imposes a penalty of censure, suspension, expulsion, or probation. That appeal shall be made to the full Council on Ethics, Bylaws and Judicial Affairs of this Association by filing a notice of appeal in affidavit form with the Chair of the Council on Ethics, Bylaws and Judicial Affairs. Members of the hearing panel that issued

the decision being appealed shall have no right to vote on the Council's decision in such an appeal.

- b. Time to Appeal. An appeal from any decision shall not be valid unless the appeal is filed within thirty (30) days of the date the decision appealed from was issued.
- c. Time for the Filing of Briefs on Appeal. Briefs in appeals brought under this Section must be filed in accordance with the following schedule:
 - i. Appellant's Initial Brief. If being filed, an initial brief supporting an appeal must be filed within sixty (60) days of the issue date of the decision being appealed.
 - ii. Reply Brief. If being filed, a reply brief must be filed within ninety (90) days of the issue date of the decision being appealed.
 - iii. Rejoinder Brief. If being filed, a rejoinder brief must be filed within one hundred five (105) days of the issue date of the decision being appealed.
- d. Time for Appellate Hearing. No hearing shall be held within one hundred fifty (150) days of the issue date of the decision being appealed or forty-five (45) days after the last brief in the appeal was filed, whichever is later. Omission of briefs will not alter the date for the hearing of an appeal unless otherwise agreed to by the parties and the chair of the body hearing the appeal.
- e. Conduct of Appellate Hearing. The following procedure shall be used in processing appeals:
 - i. Appellate Hearings. If the requirements of subsections a. and b. of this section relating to appeals from disciplinary decisions relating to the *ADA Bylaws* and the *Principles of Ethics and Code of Professional Conduct* are met, the party bringing the appeal shall be entitled to a hearing.
 - ii. Parties to an Appeal. The parties to an appeal are the accused member and the entity that brought the charges against the accused member. In appeals to the Council on Ethics, Bylaws and Judicial Affairs of this Association, the constituent which heard the first appeal, if any, may, at its option, participate in the appeal.
 - iii. Right to be Represented by Counsel. The parties to an appeal shall be entitled to be represented by counsel in the appeal.
 - iv. Appearance at Hearing not Required. A party to an appeal is not required to attend a hearing in an appeal brought pursuant to this section.
 - v. Option to Conduct Telephonic Hearings. Upon the request by a party and the concurrence of all other parties, the body hearing the appeal may permit one or more of the parties to an appeal to participate in the hearing remotely via telephone or other suitable means. The decision whether to allow remote

participation in an appeal hearing is discretionary with the body hearing the appeal and granting such a request can be subject to meeting reasonable terms and conditions set by the hearing body.

- vi. Hearing Notice. A body that receives a notice of appeal shall notify the constituent or component (or components) concerned or, where applicable, the hearing panel of the Council on Ethics, Bylaws and Judicial Affairs, and the accused member of the time and place of the appeal hearing. Such notice shall be sent by certified mail, return receipt requested, to the last known address of each party to the appeal. The hearing notice should be mailed not less than thirty (30) days prior to the hearing date.
- vii. Hearing Continuances. Granting of hearing continuances shall be at the discretion of the hearing body.
- viii. Prehearing Matters. All communications with a hearing body shall be in writing. All parties to the appeal shall receive copies of such communications via the same method of delivery as used with the hearing body. Prehearing requests shall be granted at the discretion of the hearing body. In appeals to this Association's Council on Ethics, Bylaws and Judicial Affairs, the Council chair has the authority to rule on requests from the parties for continuances and other prehearing procedural matters with advice from legal counsel of this Association. The Council chair may consult with the Council before rendering prehearing decisions.
- ix. Briefs. Each party to an appeal shall be entitled to submit a brief in support of the party's position. The briefs of the parties shall be submitted to the secretary of the constituent or the Chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association, as appropriate, in accordance with the prescribed briefing schedule. A copy of any brief filed in the appeal must be delivered to every other party in the appeal at the same time as the filing of the brief. The party initiating the appeal may choose to rely on the record and/or on an oral presentation and not file a brief.
- x. Record of Disciplinary Proceedings. Upon notice of an appeal, the entity that issued the decision being appealed shall provide to the body hearing the appeal and to the accused member a transcript, or an officially certified copy of the minutes, of the hearing accorded the accused member. Certified copies of any affidavits or other documents submitted as evidence to support or refute the charges against the accused member in the disciplinary hearing and any other material considered by the body issuing the decision being appealed will accompany the transcript or minutes. Where the body conducting the hearing resulting in the decision being appealed does not transcribe the hearing, the accused member, at the accused's own expense, is entitled to arrange for transcription of the hearing by a court reporter.

- xi. Appellate Jurisdiction. The body to which a decision has been appealed shall be required to review the decision appealed from to determine whether the evidence before the component, constituent or body which brought the charges against the accused member supports that decision or warrants the penalty imposed. The body hearing the appeal shall not be required to consider additional evidence unless there is a clear showing that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.
- xii. Decisions on Appeals. Every decision on appeal shall be in writing and must clearly state the conclusion of the hearing body and the reasons for that conclusion. The body hearing the appeal shall have the discretion to:
- (a) Uphold the decision of the entity that brought charges against the accused member;
 - (b) Reverse the decision of the entity that brought the charges and thereby exonerate the accused member;
 - (c) Deny an appeal where it fails to satisfy the requirements for appealing disciplinary decisions in this *Governance Manual*;
 - (d) Refer the case back to the body that brought the charges for new proceedings, if the rights of the accused member under all applicable bylaws were violated or if adopted disciplinary procedures were not followed to the detriment of the accused;
 - (e) Remand the case back to the agency that issued the charges for further proceedings when the record in the appeal is insufficient to enable the body hearing the appeal to form a conclusion concerning the correctness of the decision being appealed; or
 - (f) Modify the decision of the agency that issued the charges against the accused member by reducing the penalty imposed.
- xiii. Delivery of the Appeal Decision to the Parties. Within thirty (30) days of the date on which a written decision on appeal is approved by the entity conducting the appeal, a copy of the written decision shall be sent by certified mail, return receipt requested, to the last known address of each of the following: the accused member; the secretary of the component of which the accused is a member, if applicable; the secretary of the constituent of which the accused is a member, if applicable; the Chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association; and the Executive Director of this Association.

- C. ~~Member Conduct Hearings. The following on Charges Related to the ADA Member Conduct Policy. Any member charged with violating the ADA Member Conduct Policy shall be afforded the right to a fair and impartial hearing conducted in~~

~~accordance with the procedures will be followed set forth in this *Governance Manual*. In a matter brought against a member of a constituent by a member or employee of that same constituent or component, disciplinary proceedings may be instituted by either the member's component or constituent. In a matter brought against a direct member, or a matter brought against a member of a constituent by a member of a different constituent or an employee of this Association or a different constituent or a component of a different constituent, disciplinary proceedings may be instituted by the Association's Council on Ethics, Bylaws and Judicial Affairs in cases involving allegations of violations of the *Member Conduct Policy*.~~

~~Charges. Any member or employee of the Association:~~

1. ~~Charges. Any member of the Association or the Association's staff or a constituent or component dental society has the right to bring charges against a member alleging a violation or violations of the Association's *Member Conduct Policy*. Charges must meet the following specifications:

 - a. In Writing. The charges must be in writing;
 - b. Identify Violation. The charges must include an identification of the provision(s) of the Association's *Member Conduct Policy* alleged to have been violated;
 - c. Include Description. ~~Include~~The charges must include a detailed description of the conduct alleged to constitute the violation; and
 - d. Delivery of Charges. ~~The charges must be sent to the chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association.~~~~

~~2. Preliminary Investigation:~~

- i. ~~Selection. Upon receipt of~~If the charges are brought by a charge alleging violation of the *Member Conduct Policy*, member or employee of a constituent or component dental society against a member of that same constituent or component dental society, the Chair of the charges must be delivered to the Executive Director of the constituent, or the component society's executive director or senior-most officer. If the charges are brought by the Executive Director, they are to be delivered to the senior-most officer not named in the charges.
- ii. ~~In all other instances, the charges must be delivered to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs. If the charges involve a current or recent member of the ADA Council on Ethics, Bylaws and Judicial Affairs, the charges must be delivered to the chair of an ADA agency selected by the President.*~~

* For purposes of this Chapter, "recent" means within the preceding four (4) years.

e. Selection of Investigatory and Hearing Panels.

i. Upon the receipt of charges brought pursuant to Section C.1.d.i. of this Chapter, the constituent or component, as applicable, pursuant to its established governance policies and procedures, will ~~select~~ establish an investigatory panel ~~of and a hearing panel for, respectively, conducting a preliminary investigation of the charges and, if warranted, an initial hearing on the charges.~~ The entity establishing the panels shall also appoint a chair of each panel.

a. ~~Upon the receipt of charges brought pursuant to Section C.1.d.ii. of this Chapter, the individual receiving the charges will appoint a three (3) member investigatory panel, one of whom will be named chair, from the~~ members of the Council-

ii. ~~Ineligible Council Member. The on Ethics, Bylaws and Judicial Affairs or the agency selected by the ADA President pursuant to Section C.1.d.ii. of this Chapter. The individual receiving the charges will also appoint a hearing panel composed of three (3) different members of the Council member from the Trustee District of the member accused of violating the Member Conduct Policy is ineligible to on Ethics, Bylaws and Judicial Affairs or the agency selected by the ADA President pursuant to Section C.1.d.ii. of this Chapter, one of whom will be named chair. The investigatory panel and the hearing panel will, respectively, conduct a preliminary investigation of the charges and, if warranted, an initial hearing on the charges. Any council or agency member from the trustee district of the member against whom the charges have been made will not~~ serve on the investigatory panel-~~or the hearing panel.~~

~~3.2.~~ Preliminary Investigation. The investigatory panel will conduct a preliminary investigation of the charges alleged ~~and,~~ determine whether the allegations made in the charges ~~sufficiently~~ state a cognizable violation of the *Member Conduct Policy*, ~~and issue a notice of determination that will meet the following specifications:~~

4. ~~Notice of Determination of Investigatory Panel.~~

- a. No Violation. If, upon preliminary investigation, the investigatory panel determines that the charges do not ~~sufficiently~~ state a cognizable violation of the *Member Conduct Policy*, the Association member or Association, constituent or component employee-staff member bringing the charges will be advised in writing of the investigatory panel's determination. The investigatory panel's decision will be final and without right of appeal, thereby terminating the disciplinary proceeding.
- b. Possible Violation. If the investigatory panel determines that the ~~charge~~ does charges do sufficiently state a cognizable violation of the *Member Conduct Policy*, the charging individual and accused member shall be notified in writing. The notice of determination of a possible violation of the Member Conduct Policy

shall conform to the following ~~specifications~~specification:

- i. Specification of Charges. The notice of determination of a possible violation ~~shall~~will provide a specification of the charges ~~brought~~alleged against the accused member;
- ii. Hearing Notice. The notice of determination of a possible violation shall specify the time and place of an initial hearing on the charges brought against the accused member, to be determined in consultation with the chair of the Hearing Panel;
- iii. Manner of Delivery. The notice of determination of a possible violation ~~shall~~will be sent via ~~certified mail, return receipt requested, a nationally recognized overnight delivery service~~ to the last known addresses of the charging individual, ~~and the accused member~~ and the chair and members of the Hearing Panel; and
- iv. Time of Notice Mailing Delivery. The notice of determination of a possible violation ~~shall~~must be ~~mailed~~delivered not less than twenty-one (21) days prior to the date set for the hearing.

~~5.—~~Initial Hearing. In the event of ~~finding the issuance of a notice of determination~~ of a possible violation ~~of the Member Conduct Policy~~, the accused member shall be entitled to a hearing before ~~a panel of three (3) members of the Council on Ethics, Bylaws and Judicial Affairs~~.

~~6.3.~~ Hearing Panel Make Up. ~~Members of the investigatory panel that investigated the allegations against the accused member and the Council member from the accused's trustee district are ineligible to sit on the hearing panel.~~ appointed pursuant to Section C.1.e.i. or ii. of this Chapter.

- a. Purpose. The purpose of the hearing is to provide the accused member with an opportunity to present a defense to the charges brought against them.
- b. Representation by Counsel. The accused member is entitled to be represented by legal counsel at the member conduct hearing.
- c. Continuances. An accused member is entitled to one (1) hearing postponement. The postponement cannot exceed thirty (30) days. Additional requests for postponement may be granted or denied at the discretion of the chair of the ~~Council on Ethics, Bylaws and Judicial Affairs~~hearing panel, who may but need not consult with ~~the the Council or~~remainder of the hearing panel on the request.
- d. Decision-Conduct of Hearing. ~~The hearing will proceed with a presentation of the charges by the charging individual, including any evidence supporting the allegations making up the charges. Upon the conclusion of the charging~~

individual's presentation, the accused member may present their defense, including any evidence tending to refute the allegations of the charges. Upon the conclusion of the accused member's presentation, the charging individual may present a rejoinder presentation limited to matters brought up during the accused member's presentation.

- i. Hearing via Video Conference. The preferred mode for the conduct of an initial hearing is a video conference. At least fourteen (14) days prior to the date set for the hearing, any party may request, in a writing directed to the hearing panel chair, that the hearing be conducted in person. Any opposition to that request will be made in writing to the hearing panel chair within three (3) days of receipt of the request. A ruling on the request will thereafter be made by the hearing panel chair following consultation with the members of the hearing panel.
- ii. Testimonial Evidence. Any testimonial evidence proffered by the charging individual or the accused member is to be presented via written witness statements, copies of which will be provided to the other party and the hearing panel at least seven (7) days prior to the commencement of the hearing. Any person submitting testimony via witness statement will be made available for cross examination on any matters raised in the witness statement. Should a witness not be available for cross-examination, that witness's statement will be ruled out of order and will not be considered in deciding the matter.

7.4. Decision. Following the rejoinder presentation by the charging individual, the hearing panel shall go into a closed session consisting of the hearing panel and necessary staff supporting the panel. During the closed session, which may be adjourned and reconvened as needed, the hearing panel shall review the presentations of the parties and any evidence presented and reach a decision on the charges. Any member conduct hearing panel decision shall conform to the following specifications:

- a. Requirement of Written Decision. Every decision of a member conduct hearing panel will be in writing. The written decision will state:
 - i. The charges lodged against the member;
 - ii. The relevant facts;
 - iii. The verdict arrived at by the hearing body; and
 - iv. If applicable, the ~~The~~ penalty imposed or recommended and, ~~i-and, iff~~ the penalty is to be suspended during a period of probation, the length of the probationary period and any other conditions included in the probation. ~~-and any other conditions included in the probation.~~
- b. Mailing of Decision. Every hearing panel decision must be sent, ~~by certified mail,~~

~~return receipt requested via nationally recognized overnight courier~~, within ten (10) days of the written decision being approved by the hearing panel, to the last known address of each of the following:

- i. The accused member;
- ii. The charging individual;
- iii. The secretary of the accused member's component, if any;
- iv. The secretary of the accused member's constituent, ~~if applicable~~;
- v. The ~~Chair~~ chair of the ~~American Dental Association~~ ADA Council on Ethics, Bylaws and Judicial Affairs;
- vi. The Executive Director of this Association; and, if applicable
- vii. The Election Commission of the Association.

~~8.5.~~ Notice of Right to Appeal—A Decision Adverse to the Accused Member. Should the hearing panel decision sustain the charges against the accused member, a written notice to the accused member informing ~~the accused member~~ them of their right to appeal the decision of the hearing panel must accompany the copies of the decision sent pursuant to these procedures.

~~9.6.~~ Finality of Decision. A decision dismissing charges brought under the ADA Member Conduct Policy is a final decision without the right of appeal. For a decision adverse to the accused member, a decision will not become final while an appeal of the decision is pending or until the thirty (30) day period for filing notice of appeal has expired.

~~10.7.~~ Non-Appeal of Decision Containing Sentence of Expulsion. If a decision includes a sentence of expulsion and no notice of appeal is received within the thirty (30) day period within which to appeal, the ~~Council on Ethics, Bylaws and Judicial Affairs~~ chair of the hearing panel shall notify all parties, ~~the Association~~ and, ~~if appropriate,~~ the accused member's constituent and, if appropriate, component, of the failure of the accused member to file an appeal. The sentence of expulsion will take effect on the date the notice of non-appeal is received. The disciplined member's component and constituent shall each determine what portion of their current dues and special assessments, if any, shall be returned to the expelled member. Dues and special assessments paid to this Association will not be refunded to an expelled member.

D. Appeals of Decision Finding Violations of the ADA Member Conduct Appeals Policy. The following procedures shall be followed in any appeal from a decision issued as a result of a member conduct hearing pursuant to the procedures in this *Governance Manual*:

1. Right to Appeal. Any member shall have the right to appeal a disciplinary decision

issued by a member conduct hearing panel that imposes a penalty ~~to the full Council on Ethics, Bylaws and Judicial Affairs by filing an appeal in affidavit form with the chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association.~~

2a. Appeals from a Component Hearing Panel Decision. An appeal from a decision of a component hearing panel is to a constituent appeal panel formed pursuant to the constituent's established governance policies and procedures.

b. Appeals from a Constituent Hearing or Appeal Panel Decision. An appeal from a decision of a constituent hearing or appeal panel is to the full Council on Ethics, Bylaws and Judicial Affairs, except that the member of the Council from the Trustee District in which the constituent that conducted the hearing is located is recused from participating in the appeal.

c. Appeals from Council Hearing Panel Decision. An appeal from a decision of a hearing panel of the ADA Council on Ethics, Bylaws and Judicial Affairs is to the full Council, except that members that participated in the investigatory or hearing panels in the matter and the Council member from the Trustee District of the accused member are recused from participating in the appeal.

d. Appeals in Matters Involving a Current or Recent Member of the ADA Council on Ethics, Bylaws and Judicial Affairs. An appeal of a decision in a matter involving a current or recent member of the ADA Council on Ethics, Bylaws and Judicial Affairs is to a member conduct appeal panel of the agency selected by the ADA President to investigate the allegations of the *Member Conduct Policy* complaint pursuant to Section C.1.e.ii. of this Chapter.

e. Time to Appeal and Form of Notice. An appeal from any member conduct decision under the procedures of this *Governance Manual* will not be valid unless the appeal is filed within thirty (30) days of the date the decision appealed from was issued. The appeal is to be commenced by the filing of a notice of appeal in affidavit form with the chair of the member conduct appeal panel of the constituent if the appeal is from a decision issued by a constituent hearing panel or to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs if the appeal is from a decision issued by a hearing panel of that Council, or the chair of the appeal panel of the agency that held the initial hearing in the matter.

32. Time for Filing Briefs on Appeal. Briefs in member conduct appeals brought under the procedures of this *Governance Manual* are not mandatory, but are optional for each party. If briefs are to be filed, they will be filed according to the following schedule:

a. Appellant's Initial Brief. If being filed, an initial brief supporting an appeal must be filed within sixty (60) days after the date the decision being appealed was issued.

b. Reply Brief. If being filed, a reply brief supporting the decision appealed from must be filed by the Association member or ~~staff member~~employee who lodged the

member conduct complaint within ninety (90) days after the decision being appealed was issued.

- c. Rejoinder Brief. If being filed, a rejoinder brief supporting an appeal must be filed within one hundred five (105) days after the date the decision being appealed was issued. ~~Any rejoinder brief shall be limited to matters raised in the reply brief.~~

~~43.~~ Time for Appellate Hearing. No hearing on an appeal will be held within one hundred fifty (150) days of the date the decision appealed from was issued or forty-five (45) days after the last brief in the appeal was filed, whichever is later. Omission of briefs will not alter the hearing date unless otherwise agreed to by the parties and the chair of the body hearing the appeal.

~~54.~~ Conduct of Appellate Hearing. The accused member shall be entitled to a hearing on an appeal, provided that such appeal meets the requirements of this section of the *Governance Manual*. The appeal hearing shall be conducted in accordance with the following parameters:

- a. Council Members Hearing the Appeal. Members of the investigatory and hearing panels involved in the action being appealed ~~are recused from participating on the appeal panel and will not take part in deciding the appeal and. Moreover, no member from the accused member's Trustee District will participate on the appeal panel or take part in deciding the appeal.~~ If the appeal is to the ADA Council on Ethics, Bylaws and Judicial Affairs, the Council representative from the accused member's Trustee District ~~shall be recused from and will not take part in the appeal hearing or in deciding the appeal.~~
- b. Parties to the Appeal. In any appeal of a decision under the *Member Conduct Policy*, the parties to such an appeal shall be the accused member and the ~~Association member or the Association staff member individual~~ who ~~brought filed~~ the charges ~~alleging a violation of the Member Conduct Policy.~~
- c. Representation by Counsel. In any appeal, the accused member is entitled to be represented by legal counsel.
- d. Attendance at Hearing. A party need not appear for the appeal to be heard ~~by the Council on Ethics, Bylaws and Judicial Affairs.~~
- e. Option to Conduct Telephonic Hearing-Video Conference Hearings. Absent extraordinary circumstances, appeal hearings will be conducted via video conference. Upon ~~the request by and with a showing of extraordinary circumstances, any party and the concurrence of all other parties, the Council on Ethics, Bylaws and Judicial Affairs may permit one or more of the parties to an appeal to participate in request that~~ the hearing ~~remotely via telephone or other suitable means. The decision whether to allow remote participation in an~~ be conducted in person. Such a request may be granted or denied by the appeal ~~hearing is discretionary with the~~

- ~~Council panel, in its sole and absolute discretion, and the granting of~~ such a request can be subject to meeting reasonable terms and conditions ~~that may be~~ set by the ~~Council appeal panel including, without limitation, that the expenses incurred as a result of an in-person meeting be paid by the party making the request.~~
- f. Hearing Notice. ~~The Council on Ethics, Bylaws and Judicial Affairs shall~~~~The appeal panel will~~ notify the accused member; the ~~Association member or Association staff member individual~~ bringing the charges; the secretary of the accused member's component, if applicable; and the secretary of the accused member's constituent, if applicable, of the time and place of the appeal hearing. The hearing notice will be sent ~~by certified mail, return receipt requested~~~~via a nationally recognized overnight delivery service,~~ to the last known addresses of the parties to the appeal and the other entities receiving notice. The notice of hearing is to be ~~mailed sent~~ not less than thirty (30) days prior to the hearing date ~~of the appeal.~~
- g. Hearing Continuances. The granting of continuances ~~shall~~~~will~~ be at the ~~sole~~ discretion of the ~~Chair chair~~ of the ~~Council on Ethics, Bylaws and Judicial Affairs appeal panel.~~
- h. Prehearing Matters. All prehearing communications will be in writing and a copy of each communication shall be sent to every other party in the same manner sent to the ~~Council on Ethics, Bylaws and Judicial Affairs chair of the appeal panel.~~ Prehearing requests ~~shall~~~~may~~ be granted at the discretion of the ~~cChair chair~~ of the ~~Council on Ethics, Bylaws and Judicial Affairs appeal panel.~~ The ~~Council Chair chair~~ has the authority to rule on requests from the parties for continuances and other prehearing procedural matters with advice from legal counsel ~~of this Association.~~ The ~~Council Chair chair~~ may ~~but need not~~, consult with the ~~Council other members of the appeal panel~~ before rendering prehearing decisions.
- i. Briefs. ~~Each~~~~if any~~ party ~~to an appeal shall be entitled~~~~wishes~~ to submit a brief in support of ~~the party's~~~~their~~ position. ~~The briefs of,~~ the ~~parties shall~~~~brief will~~ be submitted to the ~~Chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association appeal panel chair~~ in accordance with the prescribed briefing schedule. A copy of each brief filed in an appeal must be delivered to the opposing party in the appeal at the same time as the filing of the brief. ~~The~~~~Any~~ party ~~initiating to~~ the appeal may choose to rely on the record and/or an oral presentation and not file a brief.
- j. Record of Hearing. Upon receiving a notice of an appeal, the hearing panel ~~of the Council on Ethics, Bylaws and Judicial Affairs~~ that presided over the initial hearing shall furnish a transcript or ~~an officially certified a true and correct~~ copy of the minutes of the hearing being appealed to the ~~Council on Ethics, Bylaws and Judicial Affairs and appeal panel and~~ the parties to the appeal. The transcript or minutes shall be accompanied by ~~certified true and correct~~ copies of any affidavits or other documents submitted as evidence ~~to support the charges against the~~

~~accused member or submitted by the accused as part of the accused's defense. If the initial hearing panel did not provide for transcription of the hearing, any party shall be entitled to arrange for the services of a court reporter to transcribe the hearing.~~

- k. Appellate Jurisdiction. The ~~Council on Ethics, Bylaws and Judicial Affairs~~appeal panel is required to review the decision appealed from to determine whether the evidence before the hearing panel supports ~~that~~the decision or warrants the penalty ~~(ies) or penalties~~ imposed. The ~~Council on Ethics, Bylaws and Judicial Affairs shall~~appeal panel is not ~~be~~ required to consider additional evidence unless there is a clear showing that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.

65. ~~Decision~~Decisions on Appeals.

- a. Appeals~~Appeal Decisions~~ not Involving Recommended Probation, Suspension, Expulsion and/or Removal of a Trustee or Elective Officer.
- i. Written Decision. ~~In any~~Any appeal decision that does not involve the recommended probation, suspension, expulsion and/or removal from office of a trustee or elective officer, ~~the decision of the Council on Ethics, Bylaws and Judicial Affairs shall~~ must be reduced to writing. The decision must clearly state the conclusion of the ~~Council~~appeal panel and the reasons for reaching that conclusion.
- ii. Permissible Penalties~~Action on the Appeal~~. The ~~Council shall~~appeal panel will have the discretion to:
- (a) Uphold the decision of the hearing panel;
 - (b) Reverse the decision of the hearing panel and thereby exonerate the accused member;
 - (c) Deny an appeal that fails to satisfy the requirements of the procedures for appeals of ~~Member Conduct~~ Policy decisions contained in this *Governance Manual*;
 - (d) Refer the case back to the hearing panel for new proceedings, if the rights enumerated under all applicable policies and procedures were not accorded the accused;
 - (e) Remand the case back to the ~~member conduct~~ hearing panel for further proceedings when the appellate record is insufficient in the opinion of the ~~Council on Ethics, Bylaws and Judicial Affairs~~appeal panel to enable ~~the~~ the appeal panel to render a decision; or
 - (f) Modify the decision of the hearing panel by reducing the penalty

imposed.

- iii. Final Appeal of a Constituent Appeal Panel Decision. The decision of ~~the Council on Ethics, Bylaws and Judicial Affairs~~ a constituent appeal panel in an appeal not involving a recommended probation, suspension, expulsion and/or removal of a trustee or elective officer ~~shall~~ may be appealed to the ADA Council on Ethics, Bylaws and Judicial Affairs. Any such appeal will be conducted in accordance with Section D. of this Chapter XI. of the Governance Manual. Any Member Conduct Policy appeal decision of the ADA Council on Ethics, Bylaws and Judicial Affairs in such cases will be final and non-appealable.
- iv. Finality of a Decision of an Appeal Panel of the ADA Council on Ethics, Bylaws and Judicial Affairs. In appeals of decisions of a hearing panel of the ADA Council on Ethics, Bylaws and Judicial Affairs not involving a recommended probation, suspension, expulsion and/or removal of a trustee or elective officer, the decision of the appeal panel of the ADA Council on Ethics, Bylaws and Judicial Affairs will be final and non-appealable.
- iv. Delivery of the Appeal Decision to the Parties. Within thirty (30) days of the date on which a final decision on appeal is ~~approved by the Council on Ethics, Bylaws and Judicial Affairs, a copy of the written decision shall be sent by certified mail, return receipt requested, issued, the appeal panel that issued the final decision will send a copy of the decision via a nationally recognized overnight delivery service~~ to the last known address of each of the following: the accused member; the Association member or Association, ~~constituent or component employee-staff member~~ bringing the Member Conduct Policy charges; the secretary of the component of which the accused is a member, if applicable; the secretary of the constituent of which the accused is a member, if applicable; the Election Commission of the Association; and the ADA Executive Director ~~of this Association~~.
- b. Appeals Involving Recommended Probation, Suspension, Expulsion and/or Removal of a Trustee or Elective Officer.
 - i. Written Decision. In any appeal that involves the recommended probation, suspension, expulsion or removal of a trustee or elective officer, the decision ~~of the Council on Ethics, Bylaws and Judicial Affairs shall~~ must be reduced to writing. The decision must clearly state the conclusion of the ~~Council~~ appeal panel and the reasons for reaching that conclusion.
 - ii. Permissible Penalties. The ~~Council shall~~ appeal panel will have the discretion to:
 - (a) Recommend upholding the decision of the hearing panel;

- (b) Reverse the recommended decision of the hearing panel and thereby exonerate the accused member;
 - (c) Recommend denial of an appeal that fails to satisfy the requirements of the member conduct hearing procedures of this *Governance Manual*;
 - (d) Refer the case back to the hearing panel for new proceedings, if the rights enumerated under all applicable procedures were not accorded the accused;
 - (e) Remand the case back to the hearing panel for further proceedings when the appellate record is insufficient ~~in the opinion of the Council on Ethics, Bylaws and Judicial Affairs to enable it~~ to enable the appeal panel to render a decision; or
 - (f) Modify the decision of the hearing panel by reducing the penalty imposed, except in cases in which the reduced penalty is probation, suspension and/or removal from office, where the ~~Council's~~ appeal panel's decision shall be a recommendation.
- iii. ~~Final Appeal of a Constituent Appeal Panel Decision.~~ Final Appeal of a Constituent Appeal Panel Decision. The decision of ~~the Council on Ethics, Bylaws and Judicial Affairs shall be final and non-appealable only in cases where the Council's decision does not result in the recommendation of a sentence of a constituent appeal panel in an appeal involving a trustee or elective officer that recommends~~ probation, suspension, expulsion and/or removal from office.
- ~~of aiv. Delivery of the Appeal Decision in Cases not Involving Recommended Probation, Suspension, Expulsion and/or Removal from Office.~~ Delivery of the Appeal Decision in Cases not Involving Recommended Probation, Suspension, Expulsion and/or Removal from Office. Within thirty (30) days of the date on which a final decision that does not recommend probation, suspension, expulsion and/or removal from office is approved by the Council on Ethics, Bylaws and Judicial Affairs, a copy of the decision shall be sent by certified mail, return receipt requested, to the last known address of each of the following: the accused trustee or elective officer; the Association member or Association staff member preferring charges; the secretary of the component of which the trustee is a member, if applicable; the secretary of the constituent of which the trustee or elective officer is a member, if applicable; ~~the Election Commission and the Executive Director~~ may be appealed to the ADA Council on Ethics, Bylaws and Judicial Affairs. Any such appeal will be conducted in accordance with Section D. of this ~~Association Chapter XI.~~ of the Governance Manual.
- viv. Delivery of the Appeal Decision in Cases Involving Recommended Probation, Suspension, Expulsion and/or Removal from Office. Within thirty

(30) days of the date on which a decision that recommends probation, suspension, expulsion and/or removal from office of a trustee or elective officer is approved by the ADA Council on Ethics, Bylaws and Judicial Affairs, a copy thereof shall be sent ~~by certified mail, return receipt requested, by a nationally recognized overnight delivery service~~ to the last known address of each of the following: the accused trustee or elective officer; the Association member or Association staff member preferring charges; the Election Commission; the secretary of the component of which the trustee or elective officer is a member, if applicable; the secretary of the constituent of which the trustee or elective officer is a member, if applicable; and the ADA Executive Director ~~of this Association~~.

- vi. Right to Respond. When an appeal decision of the ADA Council on Ethics, Bylaws and Judicial Affairs recommends that a trustee or elective official be sentenced to probation, expulsion, suspension and/or removal from office, that trustee or elected official has the right to respond in writing to the decision and recommendation. The response of the trustee or elective official must be delivered to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs within thirty (30) days from the date the decision and recommendation was issued. ~~The~~

vi. Delivery of Decision and Response to the Applicable House of Delegates.

(a) For decisions that include a recommended penalty to a trustee or elected official of a constituent, the chair of the Council on Ethics, Bylaws and Judicial Affairs will forward the decision and ~~recommendation, along recommended penalty, together~~ with any response received from the trustee or elected official, to the Speaker of the House of Delegates, ~~the Election Commission for that constituent~~ and the Association's constituent's Executive Director.

(b) For decisions that include a recommended penalty to a trustee or elected official of the ADA, the chair of the Council on Ethics, Bylaws and Judicial Affairs will forward the decision and recommended penalty, together with any response received from the trustee or elected official, to the Speaker of the ADA House of Delegates, the ADA Election Commission and the Association's Executive Director.

- vii. Consideration of Decision by House of Delegates. Any decision that recommends probation, suspension, expulsion and/or removal from office of a trustee or elective officer shall be considered by the House of Delegates.

viii. Consideration of Recommended Probation, Suspension, Expulsion and/or Removal from Office of Trustees or Elective Officers by House of

~~Delegates.~~ The House of Delegates shall decide whether to accept or reject any ~~recommendation of a recommended~~ sentence of probation, suspension, expulsion and/or removal from office ~~made pursuant to the provisions of this section of the Governance Manual~~ against Trustees or Elected Officers of this Association. Delegates and alternate delegates who participated in any portion of the procedures that resulted in ~~such recommendation~~ the decision and recommended penalty shall be recused from deliberations ~~under this section of whether the recommended penalty should be approved by the House of Delegates.~~ A two-thirds (2/3) affirmative vote of the delegates present and voting is required to impose a disciplinary ~~sentence~~ penalty of expulsion from membership or removal from office, suspension or probation.

- E. Enforcement of Sentences. After all appeals are exhausted or after the time for filing an appeal has expired, a sentence of censure, suspension, expulsion and/or removal from office meted out to any member by decisions rendered pursuant to the procedures in this *Governance Manual*, including those instances when the disciplined member has been placed on probation, shall be enforced by such individual's component and constituent, if such exist, and this Association.
- F. Non-Compliance. In the event of a failure of technical compliance with the procedural requirements contained in this *Governance Manual*, the entity hearing the appeal shall determine the effect of such non-compliance.
- G. Reminders of Obligation. Because Reminders of Obligation are private administrative actions and not disciplinary penalties, copies of such Reminders of Obligation shall only be kept by the ~~Council on Ethics, Bylaws and Judicial Affairs~~ issuing panel for a period of six (6) months after issuance following which such copies shall be destroyed.

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CHAPTER XI. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT, MEMBER CONDUCT POLICY AND JUDICIAL PROCEDURES

A. Disciplinary Matters.

1. Member Conduct Subject to Discipline. A member may be disciplined for (1) having been found guilty of a felony, (2) having been found guilty of violating the dental practice act of a state or other jurisdiction of the United States, (3) having been discharged or dismissed from practicing dentistry with one of the federal dental services under dishonorable circumstances, (4) violating the *Bylaws*, the *Principles of Ethics and Code of Professional Conduct*, or the bylaws or code of ethics of the constituent or component of which the accused is a member, or (5) violating the *Member Conduct Policy* of this Association, a constituent or a component.
2. Disciplinary Penalties. A member may be disciplined for any of the offenses enumerated in this *Governance Manual* as follows:
 - a. Censure. Censure is a disciplinary sentence expressing in writing severe criticism or disapproval of a particular type of conduct or act.
 - b. Suspension. Suspension means all membership privileges except continued entitlement to coverages under insurance programs are lost during the suspension period. Suspension shall be unconditional and for a specified period at the termination of which full membership privileges are automatically restored. A subsequent violation shall require a new disciplinary procedure before additional discipline may be imposed.
 - c. Expulsion. Expulsion, or removal from the membership rolls of this Association and any constituent or component, is an absolute discipline and may not be imposed conditionally except as otherwise provided herein.
 - d. Probation. Probation, to be imposed for a specified period and without loss of privileges with the exception of holding or seeking an elective or appointive office, may be administratively and conditionally imposed when circumstances warrant in lieu of a suspended disciplinary penalty. Probation shall be conditioned on good behavior. Additional reasonable conditions may be set forth in the decision for the continuation of probation. In the event that the conditions for probation are found to have been violated by the constituent that brought the original misconduct complaint, after a hearing on the probation violation charges in accordance with procedures set forth in the *ADA Procedures for Member Disciplinary Hearings and Appeals*, the original disciplinary penalty shall be automatically reinstated; except that when circumstances warrant the original disciplinary penalty may be reduced to a lesser penalty. There shall be no right of appeal from a finding that the conditions of probation have been violated.
 - e. Removal from Office. If the member holds any ADA office, a disciplinary action

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including removal from office as a trustee, delegate, alternate delegate or elective officer for the remaining term may be imposed in addition to, or in lieu of, any of the penalties enumerated above.

3. Reminder of Obligation. In appropriate circumstances, a constituent or component or, in the case of direct members, this Association, may issue a Reminder of Obligation to a member where the member may have committed a relatively minor infraction of the *ADA Member Conduct Policy* or engaged in conduct to which the *ADA Member Conduct Policy* might apply. The same is true of the *Bylaws*, the *Principles of Ethics and Code of Professional Conduct* or the bylaws or code of ethics of a constituent or component of which the accused is a member. Such a Reminder of Obligation is not a disciplinary penalty but is a private administrative action. No record of the issuance of a Reminder of Obligation shall be placed in the member's membership records.
- B. Hearings on Charges Related to the ADA Bylaws and the Principles of Ethics and Code of Professional Conduct. Any member charged with violating the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct* shall be afforded the right to a fair and impartial hearing conducted in accordance with the procedures set forth in this *Governance Manual*. For a member of a constituent, disciplinary proceedings may be instituted by either the member's component or constituent. For a direct member, disciplinary proceedings may be instituted by the Association's Council on Ethics, Bylaws and Judicial Affairs.
1. Initial Disciplinary Hearings on Charges Relating to the ADA Bylaws or the Principles of Ethics and Code of Professional Conduct. The following procedures are to be followed by a component or constituent or this Association bringing charges of *Bylaws* or ethics violations:
 - a. Notice. An organization bringing charges against a member alleging a violation of either the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct* shall issue a notice of charges that will meet the following specifications:
 - i. Charges Brought. The notice of charges will contain a detailed statement of all disciplinary charges brought against the accused member, including (a) an official certified copy of any alleged conviction or determination of guilt that is the basis for the disciplinary action, (b) description of the section(s) of the *Bylaws* or the ethical provisions alleged to have been violated, and/or (c) a description of the conduct alleged to constitute each violation.
 - ii. Time of Hearing. The notice of charges shall contain notification of the date, time and place that a hearing on the charges will be held.
 - iii. Delivery of Notice. The notice of charges shall be sent to the accused member by certified mail, return receipt requested. The notice of charges shall be addressed to the accused member's last known address and mailed not less than twenty-

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one (21) days prior to the date set for the hearing.

- b. Hearing. Any member accused of violating either the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct* is entitled to a hearing before a hearing body of the entity bringing the charges.
 - i. Purpose. The purpose of a disciplinary hearing is to provide the accused member with the opportunity to present a defense to the charges brought against the member.
 - ii. Representation by Counsel. The organization bringing the charges must allow the accused member to be represented by legal counsel at any hearing convened under these procedures.
 - iii. Continuances. An accused member is entitled to one (1) hearing postponement. The postponement cannot exceed thirty (30) days. Additional requests for postponement may be granted or denied by the hearing body in its reasonable discretion.
- c. Decision. Every decision of a hearing body that imposes a penalty will be in writing. The written decision will contain the following:
 - i. Statement of Charges. The decision shall set forth a statement of the charge(s) made against the member;
 - ii. Facts and Verdict. The decision shall state the facts that support the charge(s) and the verdict arrived at by the hearing body;
 - iii. Penalty. The decision shall state the penalty imposed and, if the penalty is to be suspended during a period of probation, the length of the probationary period and any other conditions included in the probation; and
 - iv. Delivery of Decision. The decision is to be sent to the following:
 - (a) The accused member by certified mail, return receipt requested, and addressed to the accused member's last known address.
 - (b) The secretary of the accused member's component, if any;
 - (c) The secretary of the accused member's constituent, if applicable;
 - (d) The chair of the American Dental Association Council on Ethics, Bylaws and Judicial Affairs; and
 - (e) The Executive Director of this Association.
- d. Notice of Right to Appeal. Every written decision issued by a hearing body that imposes a penalty will be accompanied by a separate notice stating that the

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accused member has a right to appeal the decision. The notice of right to appeal will direct the member to the section of this *Governance Manual* dealing with appeals from disciplinary decisions relating to violations of the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct*.

- e. Finality of Decision. A decision will not become final while an appeal of the decision is pending or until the thirty (30) day period for filing a notice of appeal has expired.
 - f. Non-Appeal of Decision Containing Sentence of Expulsion. If a decision includes a sentence of expulsion and a notice of appeal is not received within the thirty (30) day period within which to appeal, the accused member's constituent will notify all parties of the failure of the accused member to file an appeal. The sentence of expulsion will take effect on the date the parties receive such notice. The component and constituent shall each determine what portion of their current dues and special assessments, if any, shall be returned to the expelled member. Dues and special assessments paid to this Association will not be refunded to an expelled member.
2. Appeals from Disciplinary Decisions Relating to the ADA Bylaws and the Principles of Ethics and Code of Professional Conduct. The following procedures shall be followed in any appeal from a decision issued as a result of a disciplinary hearing on charges relating to the *ADA Bylaws* or the *Principles of Ethics and Code of Professional Conduct*:
- a. Right to Appeal.
 - i. Disciplinary Decision of a Component. Any member shall have the right to appeal a disciplinary decision issued by the member's component that imposes a penalty. That appeal shall be made to member's constituent by filing a notice of appeal in affidavit form with the secretary of the constituent.
 - ii. Disciplinary Decision of a Constituent. Any member or component shall have a right to appeal a disciplinary decision that is adverse to it that is issued by a constituent. That appeal shall be made to the Council on Ethics, Bylaws and Judicial Affairs of this Association by filing a notice of appeal in affidavit form with the Chair of the Council on Ethics, Bylaws and Judicial Affairs.
 - iii. Disciplinary Decision Adverse to a Direct Member. A direct member of this Association shall have the right to appeal a disciplinary decision of a hearing panel of the Council on Ethics, Bylaws and Judicial Affairs that imposes a penalty of censure, suspension, expulsion, or probation. That appeal shall be made to the full Council on Ethics, Bylaws and Judicial Affairs of this Association by filing a notice of appeal in affidavit form with the Chair of the Council on Ethics, Bylaws and Judicial Affairs. Members of the hearing panel that issued the decision being appealed shall have no right to vote on the Council's decision

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in such an appeal.

- b. Time to Appeal. An appeal from any decision shall not be valid unless the appeal is filed within thirty (30) days of the date the decision appealed from was issued.
- c. Time for the Filing of Briefs on Appeal. Briefs in appeals brought under this Section must be filed in accordance with the following schedule:
 - i. Appellant's Initial Brief. If being filed, an initial brief supporting an appeal must be filed within sixty (60) days of the issue date of the decision being appealed.
 - ii. Reply Brief. If being filed, a reply brief must be filed within ninety (90) days of the issue date of the decision being appealed.
 - iii. Rejoinder Brief. If being filed, a rejoinder brief must be filed within one hundred five (105) days of the issue date of the decision being appealed.
- d. Time for Appellate Hearing. No hearing shall be held within one hundred fifty (150) days of the issue date of the decision being appealed or forty-five (45) days after the last brief in the appeal was filed, whichever is later. Omission of briefs will not alter the date for the hearing of an appeal unless otherwise agreed to by the parties and the chair of the body hearing the appeal.
- e. Conduct of Appellate Hearing. The following procedure shall be used in processing appeals:
 - i. Appellate Hearings. If the requirements of subsections a. and b. of this section relating to appeals from disciplinary decisions relating to the *ADA Bylaws* and the *Principles of Ethics and Code of Professional Conduct* are met, the party bringing the appeal shall be entitled to a hearing.
 - ii. Parties to an Appeal. The parties to an appeal are the accused member and the entity that brought the charges against the accused member. In appeals to the Council on Ethics, Bylaws and Judicial Affairs of this Association, the constituent which heard the first appeal, if any, may, at its option, participate in the appeal.
 - iii. Right to be Represented by Counsel. The parties to an appeal shall be entitled to be represented by counsel in the appeal.
 - iv. Appearance at Hearing not Required. A party to an appeal is not required to attend a hearing in an appeal brought pursuant to this section.
 - v. Option to Conduct Telephonic Hearings. Upon the request by a party and the concurrence of all other parties, the body hearing the appeal may permit one or more of the parties to an appeal to participate in the hearing remotely via telephone or other suitable means. The decision whether to allow remote participation in an appeal hearing is discretionary with the body hearing the

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appeal and granting such a request can be subject to meeting reasonable terms and conditions set by the hearing body.

- vi. Hearing Notice. A body that receives a notice of appeal shall notify the constituent or component (or components) concerned or, where applicable, the hearing panel of the Council on Ethics, Bylaws and Judicial Affairs, and the accused member of the time and place of the appeal hearing. Such notice shall be sent by certified mail, return receipt requested, to the last known address of each party to the appeal. The hearing notice should be mailed not less than thirty (30) days prior to the hearing date.
- vii. Hearing Continuances. Granting of hearing continuances shall be at the discretion of the hearing body.
- viii. Prehearing Matters. All communications with a hearing body shall be in writing. All parties to the appeal shall receive copies of such communications via the same method of delivery as used with the hearing body. Prehearing requests shall be granted at the discretion of the hearing body. In appeals to this Association's Council on Ethics, Bylaws and Judicial Affairs, the Council chair has the authority to rule on requests from the parties for continuances and other prehearing procedural matters with advice from legal counsel of this Association. The Council chair may consult with the Council before rendering prehearing decisions.
- ix. Briefs. Each party to an appeal shall be entitled to submit a brief in support of the party's position. The briefs of the parties shall be submitted to the secretary of the constituent or the Chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association, as appropriate, in accordance with the prescribed briefing schedule. A copy of any brief filed in the appeal must be delivered to every other party in the appeal at the same time as the filing of the brief. The party initiating the appeal may choose to rely on the record and/or on an oral presentation and not file a brief.
- x. Record of Disciplinary Proceedings. Upon notice of an appeal, the entity that issued the decision being appealed shall provide to the body hearing the appeal and to the accused member a transcript, or an officially certified copy of the minutes, of the hearing accorded the accused member. Certified copies of any affidavits or other documents submitted as evidence to support or refute the charges against the accused member in the disciplinary hearing and any other material considered by the body issuing the decision being appealed will accompany the transcript or minutes. Where the body conducting the hearing resulting in the decision being appealed does not transcribe the hearing, the accused member, at the accused's own expense, is entitled to arrange for transcription of the hearing by a court reporter.

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- xi. Appellate Jurisdiction. The body to which a decision has been appealed shall be required to review the decision appealed from to determine whether the evidence before the component, constituent or body which brought the charges against the accused member supports that decision or warrants the penalty imposed. The body hearing the appeal shall not be required to consider additional evidence unless there is a clear showing that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.
 - xii. Decisions on Appeals. Every decision on appeal shall be in writing and must clearly state the conclusion of the hearing body and the reasons for that conclusion. The body hearing the appeal shall have the discretion to:
 - (a) Uphold the decision of the entity that brought charges against the accused member;
 - (b) Reverse the decision of the entity that brought the charges and thereby exonerate the accused member;
 - (c) Deny an appeal where it fails to satisfy the requirements for appealing disciplinary decisions in this *Governance Manual*;
 - (d) Refer the case back to the body that brought the charges for new proceedings, if the rights of the accused member under all applicable bylaws were violated or if adopted disciplinary procedures were not followed to the detriment of the accused;
 - (e) Remand the case back to the agency that issued the charges for further proceedings when the record in the appeal is insufficient to enable the body hearing the appeal to form a conclusion concerning the correctness of the decision being appealed; or
 - (f) Modify the decision of the agency that issued the charges against the accused member by reducing the penalty imposed.
 - xiii. Delivery of the Appeal Decision to the Parties. Within thirty (30) days of the date on which a written decision on appeal is approved by the entity conducting the appeal, a copy of the written decision shall be sent by certified mail, return receipt requested, to the last known address of each of the following: the accused member; the secretary of the component of which the accused is a member, if applicable; the secretary of the constituent of which the accused is a member, if applicable; the Chair of the Council on Ethics, Bylaws and Judicial Affairs of this Association; and the Executive Director of this Association.
- C. Hearings on Charges Related to the ADA Member Conduct Policy. Any member charged with violating the *ADA Member Conduct Policy* shall be afforded the right to a fair and impartial hearing conducted in accordance with the procedures set

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forth in this *Governance Manual*. In a matter brought against a member of a constituent by a member or employee of that same constituent or component, disciplinary proceedings may be instituted by either the member's component or constituent. In a matter brought against a direct member, or a matter brought against a member of a constituent by a member of a different constituent or an employee of this Association or a different constituent or a component of a different constituent, disciplinary proceedings may be instituted by the Association's Council on Ethics, Bylaws and Judicial Affairs.

1. Charges. Any member or employee of the Association or a constituent or component dental society has the right to bring charges against a member alleging a violation or violations of the Association's *Member Conduct Policy*. Charges must meet the following specifications:
 - a. In Writing. The charges must be in writing;
 - b. Identify Violation. The charges must include an identification of the provision(s) of the Association's *Member Conduct Policy* alleged to have been violated;
 - c. Include Description. The charges must include a detailed description of the conduct alleged to constitute the violation; and
 - d. Delivery of Charges.
 - i. If the charges are brought by a member or employee of a constituent or component dental society against a member of that same constituent or component dental society, the charges must be delivered to the Executive Director of the constituent, or the component society's executive director or senior-most officer. If the charges are brought by the Executive Director, they are to be delivered to the senior-most officer not named in the charges.
 - ii. In all other instances, the charges must be delivered to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs. If the charges involve a current or recent member of the ADA Council on Ethics, Bylaws and Judicial Affairs, the charges must be delivered to the chair of an ADA agency selected by the President.*
 - e. Selection of Investigatory and Hearing Panels.
 - i. Upon the receipt of charges brought pursuant to Section C.1.d.i. of this Chapter, the constituent or component, as applicable, pursuant to its established governance policies and procedures, will establish an investigatory panel and a hearing panel for, respectively, conducting a preliminary investigation of the charges and, if warranted, an initial hearing on the charges.

* For purposes of this Chapter, "recent" means within the preceding four (4) years.

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The entity establishing the panels shall also appoint a chair of each panel.

- ii. Upon the receipt of charges brought pursuant to Section C.1.d.ii. of this Chapter, the individual receiving the charges will appoint a three (3) member investigatory panel, one of whom will be named chair, from the members of the Council on Ethics, Bylaws and Judicial Affairs or the agency selected by the ADA President pursuant to Section C.1.d.ii. of this Chapter. The individual receiving the charges will also appoint a hearing panel composed of three (3) different members of the Council on Ethics, Bylaws and Judicial Affairs or the agency selected by the ADA President pursuant to Section C.1.d.ii. of this Chapter, one of whom will be named chair. The investigatory panel and the hearing panel will, respectively, conduct a preliminary investigation of the charges and, if warranted, an initial hearing on the charges. Any council or agency member from the trustee district of the member against whom the charges have been made will not serve on the investigatory panel or the hearing panel.
2. Preliminary Investigation. The investigatory panel will conduct a preliminary investigation of the charges alleged, determine whether the allegations made in the charges state a cognizable violation of the *Member Conduct Policy*, and issue a notice of determination that will meet the following specifications:
- a. No Violation. If, upon preliminary investigation, the investigatory panel determines that the charges do not state a cognizable violation of the *Member Conduct Policy*, the Association member or Association, constituent or component employee bringing the charges will be advised in writing of the investigatory panel's determination. The investigatory panel's decision will be final and without right of appeal, thereby terminating the disciplinary proceeding.
 - b. Possible Violation. If the investigatory panel determines that the charges do sufficiently state a cognizable violation of the *Member Conduct Policy*, the charging individual and accused member shall be notified in writing. The notice of determination of a possible violation of the *Member Conduct Policy* shall conform to the following specification:
 - i. Specification of Charges. The notice of determination of a possible violation will provide a specification of the charges alleged against the accused member;
 - ii. Hearing Notice. The notice of determination of a possible violation shall specify the time and place of an initial hearing on the charges brought against the accused member, to be determined in consultation with the chair of the Hearing Panel;
 - iii. Manner of Delivery. The notice of determination of a possible violation will be sent via a nationally recognized overnight delivery service to the last known

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addresses of the charging individual, the accused member and the chair and members of the Hearing Panel; and

- iv. Time of Notice Delivery. The notice of determination of a possible violation must be delivered not less than twenty-one (21) days prior to the date set for the hearing.
3. Initial Hearing. In the event of the issuance of a notice of determination of a possible violation, the accused member shall be entitled to a hearing before the hearing panel appointed pursuant to Section C.1.e.i. or ii. of this Chapter.
 - a. Purpose. The purpose of the hearing is to provide the accused member with an opportunity to present a defense to the charges brought against them.
 - b. Representation by Counsel. The accused member is entitled to be represented by legal counsel at the member conduct hearing.
 - c. Continuances. An accused member is entitled to one (1) hearing postponement. The postponement cannot exceed thirty (30) days. Additional requests for postponement may be granted or denied at the discretion of the chair of the hearing panel, who may but need not consult with the remainder of the hearing panel on the request.
 - d. Conduct of Hearing. The hearing will proceed with a presentation of the charges by the charging individual, including any evidence supporting the allegations making up the charges. Upon the conclusion of the charging individual's presentation, the accused member may present their defense, including any evidence tending to refute the allegations of the charges. Upon the conclusion of the accused member's presentation, the charging individual may present a rejoinder presentation limited to matters brought up during the accused member's presentation.
 - i. Hearing via Video Conference. The preferred mode for the conduct of an initial hearing is a video conference. At least fourteen (14) days prior to the date set for the hearing, any party may request, in a writing directed to the hearing panel chair, that the hearing be conducted in person. Any opposition to that request will be made in writing to the hearing panel chair within three (3) days of receipt of the request. A ruling on the request will thereafter be made by the hearing panel chair following consultation with the members of the hearing panel.
 - ii. Testimonial Evidence. Any testimonial evidence proffered by the charging individual or the accused member is to be presented via written witness statements, copies of which will be provided to the other party and the hearing panel at least seven (7) days prior to the commencement of the hearing. Any person submitting testimony via witness statement will be made available for

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cross examination on any matters raised in the witness statement. Should a witness not be available for cross-examination, that witness's statement will be ruled out of order and will not be considered in deciding the matter.

4. Decision. Following the rejoinder presentation by the charging individual, the hearing panel shall go into a closed session consisting of the hearing panel and necessary staff supporting the panel. During the closed session, which may be adjourned and reconvened as needed, the hearing panel shall review the presentations of the parties and any evidence presented and reach a decision on the charges. Any member conduct hearing panel decision shall conform to the following specifications:
 - a. Requirement of Written Decision. Every decision of a member conduct hearing panel will be in writing. The written decision will state:
 - i. The charges lodged against the member;
 - ii. The relevant facts;
 - iii. The verdict arrived at by the hearing body; and
 - iv. If applicable, the penalty imposed or recommended and, if the penalty is to be suspended during a period of probation, the length of the probationary period and any other conditions included in the probation.
 - b. Mailing of Decision. Every hearing panel decision must be sent via nationally recognized overnight courier, within ten (10) days of the written decision being approved by the hearing panel, to the last known address of each of the following:
 - i. The accused member;
 - ii. The charging individual;
 - iii. The secretary of the accused member's component, if any;
 - iv. The secretary of the accused member's constituent;
 - v. The chair of the ADA Council on Ethics, Bylaws and Judicial Affairs;
 - vi. The Executive Director of this Association; and, if applicable
 - vii. The Election Commission of the Association.
5. Notice of Right to Appeal Decision Adverse to the Accused Member. Should the hearing panel decision sustain the charges against the accused member, a written notice to the accused member informing them of their right to appeal the decision of the hearing panel must accompany the copies of the decision sent pursuant to these procedures.

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6. Finality of Decision. A decision dismissing charges brought under the ADA Member Conduct Policy is a final decision without the right of appeal. For a decision adverse to the accused member, a decision will not become final while an appeal of the decision is pending or until the thirty (30) day period for filing notice of appeal has expired.
 7. Non-Appeal of Decision Containing Sentence of Expulsion. If a decision includes a sentence of expulsion and no notice of appeal is received within the thirty (30) day period within which to appeal, the chair of the hearing panel shall notify all parties, the Association and, if appropriate, the accused member's constituent and component, of the failure of the accused member to file an appeal. The sentence of expulsion will take effect on the date the notice of non-appeal is received. The disciplined member's component and constituent shall each determine what portion of their current dues and special assessments, if any, shall be returned to the expelled member. Dues and special assessments paid to this Association will not be refunded to an expelled member.
- D. Appeals of Decision Finding Violations of the ADA Member Conduct Policy. The following procedures shall be followed in any appeal from a decision issued as a result of a member conduct hearing pursuant to the procedures in this *Governance Manual*:
1. Right to Appeal. Any member shall have the right to appeal a disciplinary decision issued by a member conduct hearing panel that imposes a penalty.
 - a. Appeals from a Component Hearing Panel Decision. An appeal from a decision of a component hearing panel is to a constituent appeal panel formed pursuant to the constituent's established governance policies and procedures.
 - b. Appeals from a Constituent Hearing or Appeal Panel Decision. An appeal from a decision of a constituent hearing or appeal panel is to the full Council on Ethics, Bylaws and Judicial Affairs, except that the member of the Council from the Trustee District in which the constituent that conducted the hearing is located is recused from participating in the appeal.
 - c. Appeals from Council Hearing Panel Decision. An appeal from a decision of a hearing panel of the ADA Council on Ethics, Bylaws and Judicial Affairs is to the full Council, except that members that participated in the investigatory or hearing panels in the matter and the Council member from the Trustee District of the accused member are recused from participating in the appeal.
 - d. Appeals in Matters Involving a Current or Recent Member of the ADA Council on Ethics, Bylaws and Judicial Affairs. An appeal of a decision in a matter involving a current or recent member of the ADA Council on Ethics, Bylaws and Judicial Affairs is to a member conduct appeal panel of the agency selected by the ADA President to investigate the allegations of the *Member Conduct Policy* complaint pursuant to Section C.1.e.ii. of this Chapter.

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- e. Time to Appeal and Form of Notice. An appeal from any member conduct decision under the procedures of this *Governance Manual* will not be valid unless the appeal is filed within thirty (30) days of the date the decision appealed from was issued. The appeal is to be commenced by the filing of a notice of appeal in affidavit form with the chair of the member conduct appeal panel of the constituent if the appeal is from a decision issued by a constituent hearing panel or to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs if the appeal is from a decision issued by a hearing panel of that Council, or the chair of the appeal panel of the agency that held the initial hearing in the matter.
2. Time for Filing Briefs on Appeal. Briefs in member conduct appeals brought under the procedures of this *Governance Manual* are not mandatory, but are optional for each party. If briefs are to be filed, they will be filed according to the following schedule:
 - a. Appellant's Initial Brief. If being filed, an initial brief supporting an appeal must be filed within sixty (60) days after the date the decision being appealed was issued.
 - b. Reply Brief. If being filed, a reply brief supporting the decision appealed from must be filed by the Association member or employee who lodged the member conduct complaint within ninety (90) days after the decision being appealed was issued.
 - c. Rejoinder Brief. If being filed, a rejoinder brief supporting an appeal must be filed within one hundred five (105) days after the date the decision being appealed was issued. Any rejoinder brief shall be limited to matters raised in the reply brief.
3. Time for Appellate Hearing. No hearing on an appeal will be held within one hundred fifty (150) days of the date the decision appealed from was issued or forty-five (45) days after the last brief in the appeal was filed, whichever is later. Omission of briefs will not alter the hearing date unless otherwise agreed to by the parties and the chair of the body hearing the appeal.
4. Conduct of Appellate Hearing. The accused member shall be entitled to a hearing on an appeal, provided that such appeal meets the requirements of this section of the *Governance Manual*. The appeal hearing shall be conducted in accordance with the following parameters:
 - a. Members Hearing the Appeal. Members of the investigatory and hearing panels involved in the action being appealed are recused from participating on the appeal panel and will not take part in deciding the appeal. Moreover, no member from the accused member's Trustee District will participate on the appeal panel or take part in deciding the appeal. If the appeal is to the ADA Council on Ethics, Bylaws and Judicial Affairs, the Council representative from the accused member's Trustee District will not take part in the appeal hearing or in deciding the appeal.
 - b. Parties to the Appeal. In any appeal of a decision under the *Member Conduct Policy*, the parties to such an appeal shall be the accused member and the

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individual who filed the charges alleging a violation of the *Member Conduct Policy*.

- c. Representation by Counsel. In any appeal, the accused member is entitled to be represented by legal counsel.
- d. Attendance at Hearing. A party need not appear for the appeal to be heard.
- e. Video Conference Hearings. Absent extraordinary circumstances, appeal hearings will be conducted via video conference. Upon request and with a showing of extraordinary circumstances, any party may request that the hearing be conducted in person. Such a request may be granted or denied by the appeal panel, in its sole and absolute discretion, and the granting of such a request can be subject to meeting reasonable terms and conditions that may be set by the appeal panel including, without limitation, that the expenses incurred as a result of an in-person meeting be paid by the party making the request.
- f. Hearing Notice. The appeal panel will notify the accused member; the individual bringing the charges; the secretary of the accused member's component, if applicable; and the secretary of the accused member's constituent, if applicable, of the time and place of the appeal hearing. The hearing notice will be sent via a nationally recognized overnight delivery service, to the last known addresses of the parties to the appeal and the other entities receiving notice. The notice of hearing is to be sent not less than thirty (30) days prior to the hearing date of the appeal.
- g. Hearing Continuances. The granting of continuances will be at the sole discretion of the chair of the appeal panel.
- h. Prehearing Matters. All prehearing communications will be in writing and a copy of each communication shall be sent to every other party in the same manner sent to the chair of the appeal panel. Prehearing requests may be granted at the discretion of the chair of the appeal panel. The chair has the authority to rule on requests from the parties for continuances and other prehearing procedural matters with advice from legal counsel. The chair may, but need not, consult with the other members of the appeal panel before rendering prehearing decisions.
- i. Briefs. If any party wishes to submit a brief in support of their position, the brief will be submitted to the appeal panel chair in accordance with the prescribed briefing schedule. A copy of each brief filed in an appeal must be delivered to the opposing party in the appeal at the same time as the filing of the brief. Any party to the appeal may choose to rely on the record and/or an oral presentation and not file a brief.
- j. Record of Hearing. Upon receiving a notice of an appeal, the hearing panel that presided over the initial hearing shall furnish a transcript or a true and correct copy of the minutes of the hearing being appealed to the appeal panel and the parties to the appeal. The transcript or minutes shall be accompanied by true and

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correct copies of any affidavits or other documents submitted as evidence in the initial hearing.

- k. Appellate Jurisdiction. The appeal panel is required to review the decision appealed from to determine whether the evidence before the hearing panel supports the decision or warrants the penalty or penalties imposed. The appeal panel is not required to consider additional evidence unless there is a clear showing that a party to the appeal will be unreasonably harmed by failure to consider the additional evidence.

5. Decisions on Appeals.

- a. Appeal Decisions not Involving Recommended Probation, Suspension, Expulsion and/or Removal of a Trustee or Elective Officer.
 - i. Written Decision. Any appeal decision that does not involve the recommended probation, suspension, expulsion and/or removal from office of a trustee or elective officer must be reduced to writing. The decision must clearly state the conclusion of the appeal panel and the reasons for reaching that conclusion.
 - ii. Permissible Action on the Appeal. The appeal panel will have the discretion to:
 - (a) Uphold the decision of the hearing panel;
 - (b) Reverse the decision of the hearing panel and thereby exonerate the accused member;
 - (c) Deny an appeal that fails to satisfy the requirements of the procedures for appeals of *Member Conduct Policy* decisions contained in this *Governance Manual*;
 - (d) Refer the case back to the hearing panel for new proceedings, if the rights enumerated under all applicable policies and procedures were not accorded the accused;
 - (e) Remand the case back to the hearing panel for further proceedings when the appellate record is insufficient in the opinion of the appeal panel to enable the appeal panel to render a decision; or
 - (f) Modify the decision of the hearing panel by reducing the penalty imposed.
 - iii. Appeal of a Constituent Appeal Panel Decision. The decision of a constituent appeal panel in an appeal not involving a recommended probation, suspension, expulsion and/or removal of a trustee or elective

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officer may be appealed to the ADA Council on Ethics, Bylaws and Judicial Affairs. Any such appeal will be conducted in accordance with Section D. of this Chapter XI. of the *Governance Manual*. Any *Member Conduct Policy* appeal decision of the ADA Council on Ethics, Bylaws and Judicial Affairs in such cases will be final and non-appealable.

- iv. Finality of a Decision of an Appeal Panel of the ADA Council on Ethics, Bylaws and Judicial Affairs. In appeals of decisions of a hearing panel of the ADA Council on Ethics, Bylaws and Judicial Affairs not involving a recommended probation, suspension, expulsion and/or removal of a trustee or elective officer, the decision of the appeal panel of the ADA Council on Ethics, Bylaws and Judicial Affairs will be final and non-appealable.
 - iv. Delivery of the Appeal Decision to the Parties. Within thirty (30) days of the date on which a final decision on appeal is issued, the appeal panel that issued the final decision will send a copy of the decision via a nationally recognized overnight delivery service to the last known address of each of the following: the accused member; the Association member or Association, constituent or component employee bringing the *Member Conduct Policy* charges; the secretary of the component of which the accused is a member, if applicable; the secretary of the constituent of which the accused is a member, if applicable; the Election Commission of the Association; and the ADA Executive Director.
- b. Appeals Involving Recommended Probation, Suspension, Expulsion and/or Removal of a Trustee or Elective Officer.
- i. Written Decision. In any appeal that involves the recommended probation, suspension, expulsion or removal of a trustee or elective officer, the decision must be reduced to writing. The decision must clearly state the conclusion of the appeal panel and the reasons for reaching that conclusion.
 - ii. Permissible Penalties. The appeal panel will have the discretion to:
 - (a) Recommend upholding the decision of the hearing panel;
 - (b) Reverse the recommended decision of the hearing panel and thereby exonerate the accused member;
 - (c) Recommend denial of an appeal that fails to satisfy the requirements of the member conduct hearing procedures of this *Governance Manual*;
 - (d) Refer the case back to the hearing panel for new proceedings, if the rights enumerated under all applicable procedures were not accorded the accused;

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- (e) Remand the case back to the hearing panel for further proceedings when the appellate record is insufficient to enable the appeal panel to render a decision; or
 - (f) Modify the decision of the hearing panel by reducing the penalty imposed, except in cases in which the reduced penalty is probation, suspension and/or removal from office, where the appeal panel's decision shall be a recommendation.
- iii. Appeal of a Constituent Appeal Panel Decision. The decision of a constituent appeal panel in an appeal involving a trustee or elective officer that recommends probation, suspension, expulsion or removal of a trustee or elective officer may be appealed to the ADA Council on Ethics, Bylaws and Judicial Affairs. Any such appeal will be conducted in accordance with Section D. of this Chapter XI. of the *Governance Manual*.
- iv. Delivery of the Appeal Decision in Cases Involving Recommended Probation, Suspension, Expulsion and/or Removal from Office. Within thirty (30) days of the date on which a decision that recommends probation, suspension, expulsion and/or removal from office of a trustee or elective officer is approved by the ADA Council on Ethics, Bylaws and Judicial Affairs, a copy thereof shall be sent by a nationally recognized overnight delivery service to the last known address of each of the following: the accused trustee or elective officer; the Association member or Association staff member preferring charges; the Election Commission; the secretary of the component of which the trustee or elective officer is a member, if applicable; the secretary of the constituent of which the trustee or elective officer is a member, if applicable; and the ADA Executive Director.
- v. Right to Respond. When an appeal decision of the ADA Council on Ethics, Bylaws and Judicial Affairs recommends that a trustee or elective official be sentenced to probation, expulsion, suspension and/or removal from office, that trustee or elected official has the right to respond in writing to the decision and recommendation. The response of the trustee or elective official must be delivered to the chair of the ADA Council on Ethics, Bylaws and Judicial Affairs within thirty (30) days from the date the decision and recommendation was issued.
- vi. Delivery of Decision and Response to the Applicable House of Delegates.
 - (a) For decisions that include a recommended penalty to a trustee or elected official of a constituent, the chair of the Council on Ethics, Bylaws and Judicial Affairs will forward the decision and recommended penalty, together with any response received from the trustee or elected official, to the Speaker of the House of Delegates for that constituent

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and the constituent's Executive Director.

- (b) For decisions that include a recommended penalty to a trustee or elected official of the ADA, the chair of the Council on Ethics, Bylaws and Judicial Affairs will forward the decision and recommended penalty, together with any response received from the trustee or elected official, to the Speaker of the ADA House of Delegates, the ADA Election Commission and the Association's Executive Director.
- vii. Consideration of Decision by House of Delegates. Any decision that recommends probation, suspension, expulsion and/or removal from office of a trustee or elective officer shall be considered by the House of Delegates. The House of Delegates shall decide whether to accept or reject any recommended sentence of probation, suspension, expulsion and/or removal from office against Trustees or Elected Officers of this Association. Delegates and alternate delegates who participated in any portion of the procedures that resulted in the decision and recommended penalty shall be recused from deliberations of whether the recommended penalty should be approved by the House of Delegates. A two-thirds (2/3) affirmative vote of the delegates present and voting is required to impose a disciplinary penalty of expulsion from membership or removal from office, suspension or probation.
- E. Enforcement of Sentences. After all appeals are exhausted or after the time for filing an appeal has expired, a sentence of censure, suspension, expulsion and/or removal from office meted out to any member by decisions rendered pursuant to the procedures in this *Governance Manual*, including those instances when the disciplined member has been placed on probation, shall be enforced by such individual's component and constituent, if such exist, and this Association.
- F. Non-Compliance. In the event of a failure of technical compliance with the procedural requirements contained in this *Governance Manual*, the entity hearing the appeal shall determine the effect of such non-compliance.
- G. Reminders of Obligation. Because Reminders of Obligation are private administrative actions and not disciplinary penalties, copies of such Reminders of Obligation shall only be kept by the issuing panel for a period of six (6) months after issuance following which such copies shall be destroyed.

PROPOSED BYLAWS AMENDMENTS

ADA BYLAWS

CHAPTER II • CONSTITUENTS AND COMPONENTS

* * *

Section 50. CODE OF ETHICS. A constituent or component may adopt a code of ethics governing the professional conduct of its members in addition to the *Principles of Ethics and Code of Professional Conduct* of this Association. Such a code of ethics shall not be in conflict with, or limit, the *Principles of Ethics and Code of Professional Conduct* of this Association.

Section 60. MEMBER CONDUCT. A constituent or component may adopt a code of conduct governing the organizational conduct of its members in addition to the Member Conduct Policy of this Association. Such a code of conduct shall not be in conflict with, or limit, the Member Conduct Policy of this Association.

Section 70. RIGHT OF HEARING AND APPEAL. Disputes arising between constituents or between a constituent and one or more of its components may be referred to the Council on Ethics, Bylaws and Judicial Affairs of this Association for hearing and decision pursuant to the procedures set forth in the Governance Manual even though a disciplinary penalty is not involved.

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CHAPTER XI • PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT, MEMBER CONDUCT POLICY AND JUDICIAL PROCEDURES

Section 10. PROFESSIONAL AND ORGANIZATIONAL CONDUCT:

A. MEMBERS: The professional conduct of a member of this Association shall be governed by the *Principles of Ethics and Code of Professional Conduct* of this Association and by the codes of ethics of the constituents and components within whose jurisdiction the member practices, or conducts or participates in other professional dental activities. The organizational conduct of a member of this Association shall be governed by the Member Conduct Policy of the Association and by the codes of conduct of the constituents and components within whose jurisdiction the member practices, or conducts or participates in other professional dental activities.

B. TRANSFERS OF MEMBERSHIP: A member who is unsuccessful in transferring membership from one constituent to another shall be entitled to a hearing, the conduct of which will be subject to the judicial procedures contained in the Governance Manual.

Section 20. DISCIPLINE OF MEMBERS: A member may be disciplined in accordance with the procedures set forth in the Governance Manual for (1) having been found guilty of a felony, (2) having been found guilty of violating the dental practice act of a state or other jurisdiction of the United States, (3) having been discharged or dismissed from practicing dentistry with one of the federal dental services under dishonorable circumstances, (4) violating the Bylaws, the Principles of Ethics and Code of Professional Conduct, or the bylaws or code of ethics of the constituent or component of which the accused is a member, ~~or~~ (5) violating the Member Conduct Policy of the Association, or (6) violating the code of conduct of a constituent or component.

PROPOSED GOVERNANCE MANUAL CHAPTER II AMENDMENTS

CHAPTER II. CONSTITUENTS AND COMPONENTS

* * *

C. Components.

* * *

2. Powers. A component shall have the power to:
 - a. Select its active, life and retired members in accordance with and subject to the provisions of Chapter II of the *Bylaws* and this *Governance Manual*.
 - b. Discipline any of its members in accordance with and subject to the provisions of Chapter XI. of the *Bylaws* and this *Governance Manual*.
 - c. Establish committees, councils and commissions of the component; to designate their powers and duties; and to adopt reasonable eligibility requirements for service thereon.
 - d. Adopt a code of ethics not in conflict with the *Principles of Ethics 336 and Code of Professional Conduct* of this Association or code of ethics of its constituent.
 - e. Adopt an organizational code of conduct not in conflict with the *Member Conduct Policy* of this Association or code of conduct of its constituent.

PROPOSED MEMBER CONDUCT POLICY AMENDMENTS

PROPOSED REVISIONS TO ADA MEMBER CONDUCT POLICY (*Trans.2011:530; 2020:335*)

1. Members' discussions, ~~social media activities, communications and or interactions with other dentists, dentist members, Association officers, trustees and staff~~ that refer or relate to, reflect on or represent dentist(s) or the profession of dentistry, should be respectful and free of demeaning, derogatory, profane, offensive or defamatory language.
2. Members, at meetings of the American Dental Association and constituent and component society meetings, and at all other times when serving in the capacity of an ADA, constituent or component society representative, will act in good faith, with honesty and integrity, and conduct themselves in a professional and respectful manner.
3. ~~Discussions and communications relating to modes of practicing dentistry~~ Members should be courteous, and professional, and members should be respectful of the practice choices of their colleagues when discussing or communicating about dental practice modalities.
- 3-4. Members should abide by and respect the decisions and policies of the Association and the constituent and component dental societies. Any criticism or challenges to existing ~~Association~~ policies or decisions shall be undertaken in a professional manner.
- 4-5. Members have an obligation to be informed about and use Association and constituent and component dental society policies for communication and dispute resolution.
- 5-6. Members are expected to comply with all applicable laws and regulations, including but not limited to antitrust laws and regulations and statutory and common law fiduciary obligations.
- 6-7. Members must respect and protect the intellectual property rights of the Association and the constituent and component dental societies, including any trademarks, logos, and copyrights.
- 7-8. Members must not use Association or constituent or component dental society membership directories, on-line member listings, or attendee records from Association-sponsored conferences or CE courses for personal or commercial gain, such as selling products or services, prospecting, or creating directories or databases for these purposes.
- 8-9. Members must treat all confidential information furnished by the Association and the constituent and component dental societies as such and must not reproduce materials without the Association's written approval.
- 9-10. Members must not violate the attorney-client privilege or the confidentiality of executive sessions conducted at any level within the Association.
- 10-11. Members must fully disclose conflicts, or potential conflicts, of interest and make every effort to avoid the appearance of conflicts of interest.