



PEER REVIEW MANUAL

November 2008 (Revised May 2015)

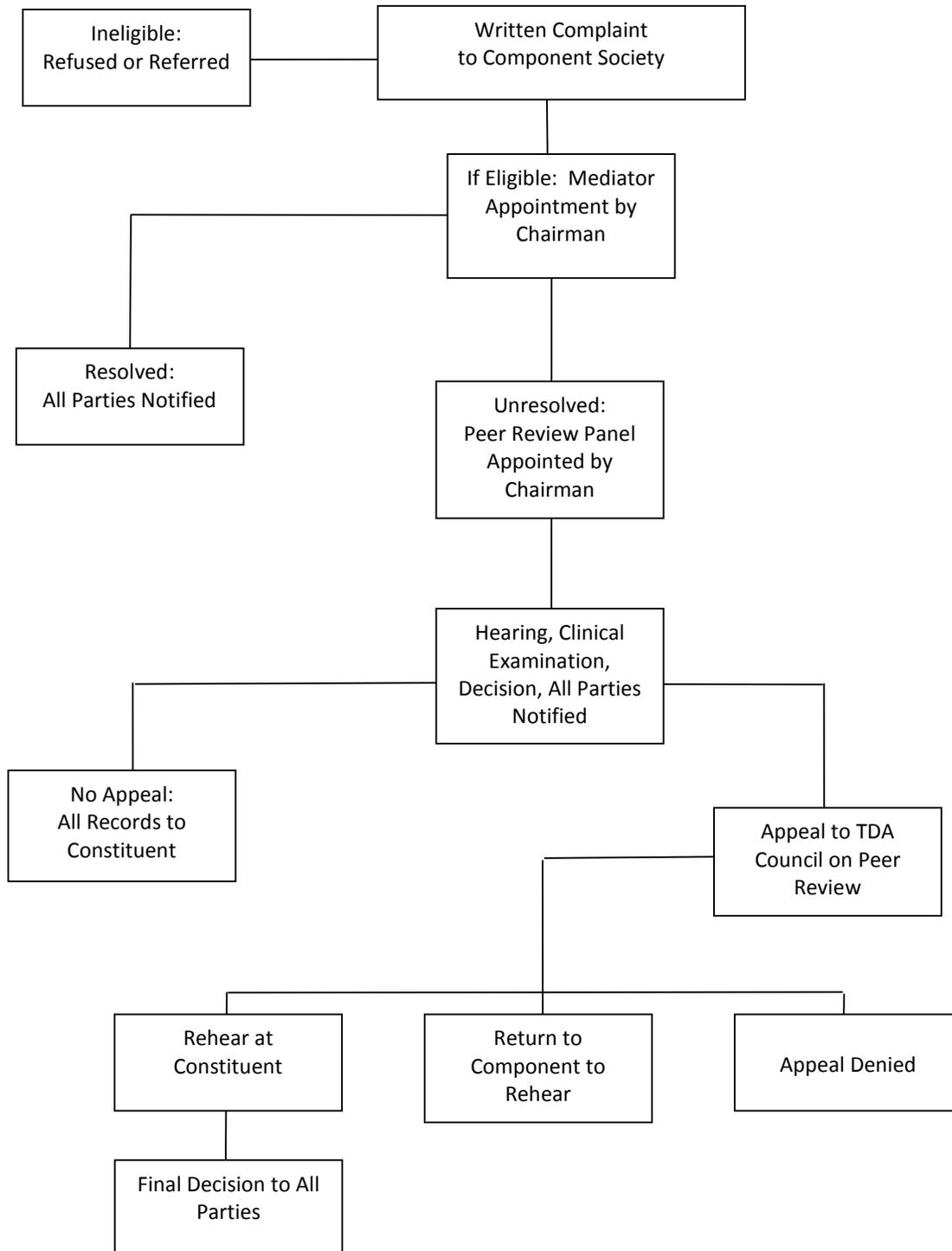
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**PEER REVIEW FLOW CHART
CASES RECEIVED BY COMPONENT SOCIETY¹**



¹ Nothing in this flow chart replaces or supersedes the procedures set forth in the TDA Peer Review Manual. The TDA Peer Review Manual shall govern in the event of a conflict between the flow chart and the manual.

I. OVERVIEW OF PEER REVIEW

A. Peer Review in Texas

This manual was prepared by the Council on Peer Review of the Texas Dental Association (“TDA”) to help component peer review committees in developing and implementing an effective, efficient, and uniform peer review process. This manual sets the standard for this process. The goal of the TDA is that all component peer review committees follow these procedures to achieve a consistency in the peer review process across the state.

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

The peer review process relies upon the individual committee member's sense of fairness and objectivity, sound judgment, and clinical skills and requires a commitment from the dental society for efficiency, expediency, and responsiveness. Peer review provides a tangible opportunity for the dental profession to demonstrate its overriding concern for providing quality dental care to the patient.

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

B. The Nature of Peer Review

Peer review is an informal process through which problems or disputes can be resolved at the component level by mediation or panel review. It is neither a court of law nor a punitive action hearing. For peer review to be effective, it must follow guidelines to ensure that the process is conducted in an impartial and consistent manner, and the parties must cooperate and participate in the process. Cases must be handled efficiently and competently, and, above all, the peer review committee must be fair. A peer review committee is responsible for: (1) investigating the complaint; (2) reviewing the case; (3) defining the roles, rights, and obligations of all parties; and, (4) when possible, determining an appropriate resolution to the matters at issue. Peer review committees are not courts at law but do act in the interest of the public and offer a unique opportunity for recourse because practitioners have the expertise to evaluate the care provided by members of their own profession. Additionally, resolution of claims through the peer review process avoids further overcrowding of court dockets and the high costs associated with litigation and, in general, is a more efficient means of resolving disputes within the scope of peer review.

C. Participants in the Peer Review Process

The peer review process in organized dentistry provides a means for resolving differences of opinion in connection with dental treatment between a dentist and a patient or between a dentist

and a third party payor.

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

D. Cooperation in the Peer Review Process

TDA member dentists, by virtue of their membership, are required to comply with all reasonable requests and decisions of the peer review committee. Retired members are given the same consideration as active members. As stated in the TDA Principles of Ethics and Code of Professional Conduct:

7. COOPERATION WITH DULY CONSTITUTED COMMITTEES

IT IS THE DUTY OF THE MEMBER TO COMPLY WITH THE REASONABLE REQUESTS OF A DULY CONSTITUTED COMMITTEE, COUNCIL OR OTHER BODY OF HIS COMPONENT SOCIETY OR OF THIS ASSOCIATION NECESSARY OR CONVENIENT TO ENABLE SUCH A BODY TO PERFORM ITS FUNCTIONS AND TO ABIDE BY THE DECISIONS OF SUCH BODY. IN THE EVENT A MEMBER IS EMPLOYED BY ANOTHER DENTIST, OR BY AN ENTITY ENGAGED IN THE PRACTICE OF DENTISTRY, IT SHALL BE THE DUTY OF THE MEMBER TO PROVIDE SATISFACTORY WRITTEN ASSURANCE FROM THE EMPLOYER THAT THE EMPLOYED DENTIST WILL BE ABLE TO MEET THIS DUTY OF COMPLIANCE. ANY VIOLATION OF THIS DUTY CONSTITUTES UNETHICAL CONDUCT.

TDA Code of Professional Conduct, ¶7, p. 9. If a member fails to comply with a reasonable request of the peer review committee in connection with a peer review matter, then the committee may terminate the peer review process and may file a formal complaint with the component judicial committee or the TDA Council on Ethics and Judicial Affairs. If a formal judicial complaint is filed, then the paragraph referenced above should be included in and/or cited in the written complaint along with a description of the peer review committee's or council's request and the member's response, if any, to the request. Notwithstanding the above, the peer review committee has the discretion to continue the peer review process if it feels it is in the best interest of the patient.

Other parties, including the initiating party, are also expected to cooperate in the process. If a party to the peer review process does not cooperate and refuses to comply with the reasonable requests of the peer review committee (e.g., if a patient does not provide copies of relevant documents to the committee, refuses to consent to an examination, and/or refuses to confer with the mediator), then the case may be closed. If a party to the peer review process is abusive or threatening to any participant in the peer review process, including any member of the committee, and the party continues to be abusive and/or threatening after written notice of the behavior has been provided to the party by the peer review committee chairman, then the case may be closed. If a dentist is abusive or threatening to any participant in the peer review process, and the abusive and/or threatening behavior does not cease after written notice of the behavior has been provided to the dentist by the peer review committee chairman, then the case may be closed and the matter may

be referred to the component judicial committee or the TDA Council on Ethics and Judicial Affairs, as permitted, for the dentist's non-compliance. If a case is closed or terminated for abusive or threatening behavior or for any other permissible reason prior to a resolution by the parties or decision of the peer review committee, then the peer review committee chairman will notify the parties that the case has been closed for the reason of non-compliance by sending a [Termination Letter](#).¹

II. PREVENTATIVE MEASURES FOR THE PRACTITIONER

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

A. Patient Communications

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

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

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

B. Record Keeping

It is important for a dentist to keep detailed, legible records of the care and treatment provided to his/her patients not only to support the clinical aspects of treatment but also to maintain the dentist-patient relationship, as well. Dental records are invaluable in answering patient questions, as well as addressing concerns or complaints. In the event of a dispute, dental records made on or about

¹ See [App. 16](#).

the time of treatment enable an outside party, such as a peer review committee, e.g., an opportunity to review the treatment and care at issue without having to rely on the dentist's or the patient's memory alone. In addition to clinical notations about the actual treatment, other comments concerning patient questions, resolution of problems, suggested alternative treatment plans, and satisfactory remarks made by the patient can be important in evaluating the treatment or care provided.

III. THE SCOPE OF PEER REVIEW

A. Matters that are Within the Scope of Peer Review

The peer review system is considered by the TDA to be an equitable alternative to legal proceedings but is limited to handling only certain kinds of cases. In order for a case to be accepted for peer review, it must: (1) fall within at least one of the following areas: (a) quality of treatment; (b) appropriateness of care; (c) fees; and/or (d) utilization; **and** (2) be made within the time limitations set forth below.

1. Quality of Treatment

Quality of treatment concerns a functional and/or an aesthetic evaluation of the treatment provided using the standards that generally prevail within the profession by those who routinely perform the treatment in question.

2. Appropriateness of Care

Appropriateness of care can be defined as the professional acceptability of planned or completed treatments, including the necessity and consistency of the planned or completed treatment with diagnosis. An evaluation of the appropriateness of care is, by necessity, a subjective evaluation to determine whether treatment is, or was, necessary. Treatment is defined as including examination, diagnosis, and treatment planning in addition to clinical service.

3. Fees

The committee may determine from the information made available to it whether the fee in question is the dentist's usual fee for a given procedure. If the fee charged appears not to be the dentist's usual fee, then the committee can determine whether the fee is reasonable considering the degree of difficulty or complexity of the dental procedure employed. An example of such a case would be a dentist billing an insured patient a higher fee than that of a non-insured patient. Peer review committees must exercise great care in handling cases involving fees to avoid violating federal antitrust laws. An opinion from a United States Supreme Court case offers the following guidelines regarding the review of fees:

- Peer review of fees should be conducted as a means of resolving specific fee disputes – not as a process for the collective sanctioning of fee levels of particular practices.
- A committee's decision should be based upon the facts and circumstances of the

- particular case, not upon similar cases and decisions.
- The difficulty and complexity of a procedure should be evaluated by the committee members on the basis of their own knowledge.
- No reference may be made to external factors or benchmarks, such as relative value scales. These sources should never be utilized.
- Dissemination of decisions should be limited only to that necessary for appellate or administrative purposes.
- Dental societies should not collect information on fees or conduct surveys relating to fee schedules.

The complete text of the FTC advisory opinion may be found in the ADA Peer Review Manual.

4. Utilization

Cases submitted for utilization review result from differences of opinion between dentists and third party carriers regarding the appropriateness of care, treatment, or fees. Utilization cases can only be submitted by a member dentist or an insurance carrier where both parties agree to the review. Utilization cases cannot involve a non-member dentist.

5. Time Limitations

Since excessive passage of time alters clinical conditions and makes recollection of details and procedures difficult, the following time limitations must be met in order for a case to be considered by peer review. The written complaint must be received within three (3) years from the last date of the treatment and/or services at issue in the complaint, or within one year from the date the complainant discovered or became aware of the alleged problem(s), whichever occurs first. An exception in this instance would be if, upon recognition of the problem, the complainant returned for correction of the problem to the dentist against whom the complaint is filed. Under those circumstances, the longest amount of time that could transpire would be one year between the last date of treatment and receipt of the complaint at the component level.

In situations where cases exceed the time limitation by just a few days, the time limitation will be based on the date the patient first contacted the component, provided that the completed [Mediation Request Form](#)² was returned within 30 business days of the date the request was date-stamped by the component.

B. Matters that Are Outside the Scope of Peer Review

The peer review process was not designed to handle every type of situation or problem that may arise between patients, dentists, and third parties. Peer review committees will only handle complaints that fall within one of the four categories identified above and that are made within the time limitations provided herein. Matters that do not fall within one of these categories and/or that are not made within the time limitations provided herein may not be handled through peer review. A non-exhaustive list of matters that do not fall within the scope of peer review are set forth immediately below.

² See [App. 2](#).

1. Texas State Board of Dental Examiners (TSBDE) Investigation

It is not within the authority of the peer review process to review cases that are also being formally investigated by the TSBDE. A case is considered as being formally investigated if the patient has submitted a complaint to the TSBDE Enforcement Division and the complaint has been accepted and assigned a case number. If the peer review committee learns of a pending or closed case involving a dentist, the committee shall attempt to determine whether the case involves the same issues or subject matter as the peer review case. If the committee determines that the pending or closed case is substantially the same as the peer review case, the peer review case will be closed upon the approval of the member.

If the peer review process has been initiated and the patient submits a complaint to the TSBDE before or during the peer review process and is proceeding with its investigation, then the case will no longer be within the scope of peer review and will be closed upon the approval of the member.

It is also not within the authority of the peer review committee to review cases that have been formally investigated by the TSBDE and no violations were found.

It should be noted that the peer review process in no way dissuades patients from utilizing the TSBDE complaint process. The above provisions are included so that member dentists do not have to participate in both processes if the issues being considered are the same. The above provisions do not bar a patient from utilizing the TSBDE complaint process after they have completed the peer review process.

2. Cases in Litigation/Parties Represented by Counsel

It is not within the authority of the peer review committee to review cases in litigation. Therefore, a case is ineligible for consideration by a peer review committee if an involved party initiated litigation concerning any aspect of the dental service(s) and/or treatment at issue in peer review. **A case is determined to be formally in litigation when a complaint or petition is filed with a Court.** A consultation with an attorney does not mean that the case is in litigation and ineligible for review. A party to the peer review process may retain counsel in connection with the matters at issue in peer review as long as counsel does not: (a) represent the party at any hearing, examination, meeting, or other proceeding in the peer review setting; and/or (b) participate in any conversation, interview, communication, hearing, examination, meeting, or other proceeding in the peer review setting. Even if a party is represented by counsel, all communications concerning peer review will be made to the party directly and not to his/her counsel.

Notwithstanding the above, a dentist may participate in peer review even if he/she has initiated litigation against a patient for the collection of fees. In such cases, a component peer review committee should be able to exercise discretion in determining whether peer review would be beneficial. The patient benefits inherent in peer review are not necessarily withdrawn merely because the dentist has initiated legal action for the collection of fees.

3. Dentist-to-Dentist Complaints

The current peer review system is not intended to handle a complaint initiated by one dentist against another. Requests submitted by a dentist for review of treatment by another dentist should

be channeled to the component judicial committee. Judicial committees have the necessary procedural structure to handle dentist-to-dentist complaints and have been given the specific authority or jurisdiction over such complaints.

4. Alleged Fraud and Other Violations of the Dental Practice Act

It is the responsibility of peer review committees to refer cases involving alleged fraud or apparent violations of the Texas Dental Practice Act to the TDA Council on Ethics and Judicial Affairs through the component judicial committee for possible referral to the Texas State Board of Dental Examiners. Peer review committee chairmen, committee members, and dental society staff should be sensitive to the actual issues raised in a complaint submitted for review. Many times a case that appears clear-cut on its face may in fact be difficult or involve unusual circumstances. All complaints received by the component peer review committee that allege ethical violations or professional misconduct (other than complaints involving quality of treatment and/or appropriateness of care complaints) will be forwarded to the TDA Council on Ethics and Judicial Affairs through the component judicial committee.

5. Violations of the Principles of Ethics

On occasion, a peer review committee will receive a complaint involving apparent unethical or unprofessional conduct. Violations of the Principles of Ethics and Code of Professional Conduct are beyond the authority of peer review committees and should be referred to the component judicial committee as appropriate.

6. Repeated Complaints Against the Same Practitioner

The peer review committee, through the review process, may be made privy to situations that may indicate continual faulty treatment patterns or gross mistreatment, e.g. As such, the peer review process assumes a very special obligation to the public and the profession.

The TDA has established criteria for handling repeated complaints against the same dentist or certain serious cases. Since peer review has no disciplinary authority and cannot impose any type of sanctions or make any determinations about possible violations of the Texas Dental Practice Act, concerns regarding continual faulty treatment, or one very serious case, should be referred out of the peer review process. Specifically, three completed patient complaints against the same dentist within a two-year period of time, a single case of gross mistreatment, or cases involving alleged fraud or billing irregularities must be referred by a component peer review committee to the TDA Council on Ethics and Judicial Affairs through the component judicial committee or as otherwise permitted, after the peer review case has been closed.

7. Deceased Dentists

Peer review cannot handle complaints against dentists who are deceased. Deceased dentists no longer hold a license with the Texas State Board of Dental Examiners and are no longer members of the TDA or ADA.

C. Limit of Recovery

In cases of a patient complaint against a dentist, **the maximum amount that may be refunded by a dentist is the total fee for services paid to that dentist by the patient, insurance carrier, and/or other third party payor for the treatment and/or services at issue.** However, **during mediation**, the parties may agree to a refund that exceeds the amounts paid to the dentist for the treatment and/or services at issue if and only if (1) all parties to the peer review complaint agree to such payment and (2) such payment is not otherwise prohibited by law. The parties may not agree to any refund in excess of the amounts paid to the dentist for the treatment and/or services at issue **after** the mediation process has concluded.

IV.

THE PEER REVIEW COMMITTEE

The peer review committee must be a permanent committee of the dental society with appropriate status and ties to other related committees.

A. Committee Composition

The peer review committee should be composed of licensed dentists, primarily general practitioners, who have the qualifications and experience to render a considered decision as to the dental standards of the community and whose opinions will be accepted by the parties involved. Since peer review committee members will be evaluating treatment rendered by their colleagues, committee members should be elected by the general membership of the society. Specific criteria that may be considered for the nomination and election of members to peer review committees include a specific number of years in practice or the number of years in practice in a particular community.

A dentist who serves on a component judicial committee or the TDA Council on Peer Review should be excluded from serving on a peer review committee because of the potential conflict of interest during the appeal process. Whenever possible, component society officers should also refrain from participation.

B. Committee Size

The size of the committee should reflect the geographic area covered, the dental population of the component, and the case load. To the extent possible, the members of the committee should come from different areas of the district to enable the committee to manage cases more efficiently. To ensure continuity, members should serve staggered terms of three to five years. Ideally, committees should have at least five members, who are located in different areas of the district; however, community needs or dental society limitations may dictate otherwise. For example, in communities where there are few practicing dentists, it may be difficult to maintain a larger committee. In such cases, a smaller body could satisfy the situation but consideration should be given to bringing in dentists from other components for the committee review to insure impartiality.

The committee should also have as resources specialists who can be appointed on an ad hoc basis.

This is especially important if: (1) the dentist being reviewed is a specialist; (2) the dentist being reviewed requests a committee composed of like specialists; and/or (3) if the committee feels that additional expertise is warranted under the facts of a particular case. Any additional members appointed on an ad hoc basis should have the same status as do permanent members of the peer review committee for that particular case to the extent permitted. Prior to the review, any of the involved parties may ask to know the names of the committee members reviewing the case and may also submit a properly documented request for the chairman to dismiss a committee member for cause. The chairman, with the advice of the committee, has the authority to accept or reject the request.

C. The Chairman

The chairman of the peer review committee is charged with running the committee in an effective, timely and thorough manner. Among other things, the chairman will:

- Continue case number system from the prior chairman. (Never start over!)
- Complete or Ensure the Completion of the [Peer Review Checklist](#)³
- Be in charge of all correspondence sent to the patient, dentist, and third parties.
- Assign the mediator
- Follow-up on the mediation process
- Assign the peer review panel
- Make sure that all reports and correspondence to the dentist, the patient, and/or the TDA are completed on time
- Appoint specialists as ad hoc members, as appropriate
- Provide a complete case file to the TDA Council on Peer Review in cases that are appealed. A complete case file includes the dental and other records received by the peer review committee in connection with the case, including x-rays, the [Mediation Request Form](#),⁴ the [Treating Dentist Reply Form](#),⁵ the [Mediation Report](#),⁶ the [Peer Review Agreement Form](#),⁷ the [Peer Review Panel Report](#),⁸ the [Concluding Letters](#),⁹ the [Peer Review Appeal Request Form](#),¹⁰ and any other information considered by the mediator, the peer review committee, and/or the peer review panel.
- Pass all cases to the next chairman at the end of his/her term
- Annually complete and submit the case review forms to TDA
- Destroy all case files greater than five years old

D. Role of Component Executive Directors and Staff

Component society executive directors and staff can be invaluable resources in the peer review process in serving as sources of information for patients and dentists and in helping to file reports

³ See [App. 1.](#)

⁴ See [App. 2.](#)

⁵ See [App. 3a](#) & [3b.](#)

⁶ See [App. 4.](#)

⁷ See [App. 5.](#)

⁸ See [App. 8.](#)

⁹ See [App. 20a](#) & [20b.](#)

¹⁰ See [App. 10.](#)

and correspondence in an efficient and timely manner. However, they must not be put in a position of mediating cases between patients and dentists. This would not be in accordance with TDA's peer review policy.

E. Role of Referral and Other Dentists

Questions have been raised concerning the role of a treating dentist who refers a patient to another specialist or practitioner only later to discover that the patient has initiated a complaint against the dentist to whom he or she was referred. If a patient has initiated a peer review complaint against the dentist to whom the patient was referred (i.e., the treating dentist), then the referring dentist is generally not involved as a direct party to the peer review case. Based on the review process and the determination of the committee, however, the referring dentist may be asked to provide the committee with the appropriate records indicating patient diagnosis and reasons for referral to the treating dentist. This information could be used to assess how clearly the diagnosis and proposed treatment had been communicated to the treating dentist and any subsequent communications between the two practitioners. Similarly, other dentists who provided treatment to, and/or consulted with, the patient may be able to provide important information to the peer review process as long as such information is relevant to the matters made subject of the peer review complaint. The peer review committee has the discretion to confer with, and/or review the records of, other dentists involved in the patient's care when such information may be relevant to the matters made subject of the patient's complaint. The [Mediation Request Form](#)¹¹ and the [Treating Dentist Reply Form](#)¹² represent good sources of information for evaluating the matters at issue in the complaint. The peer review committee should review these forms and the information contained therein and (1) conduct interviews of the dentists or other persons involved in the patient's care as warranted by the circumstances of the complaint and/or (2) request records from those dentists or other persons to the extent such records were not provided by a party to the proceeding.

F. Recruitment and Retention of Committee Members

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

- Unbiased
- Even-tempered
- Objective
- Level-headed
- A good listener
- Caring
- Respected by the membership
- Experienced with at least 7 years experience (to the extent possible)

¹¹ See [App. 2](#).

¹² See [App. 3a](#) & [3b](#).

G. Education of the Committee

Component peer review committee members are mandated to attend a TDA Peer Review Training Session before they are eligible to handle cases. Component peer review committee members are encouraged to attend a peer review training session on an annual basis for updates and changes to the Peer Review Manual. Other component members who are interested in learning more about peer review are also welcome at these training sessions.

H. Use of Role Models

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

I. Education of the Membership

Dental societies should educate their members about the peer review process to assist those who may be a party to a peer review case and to provide information to members interested in serving on a peer review committee. TDA staff and TDA Council on Peer Review members may be invited to speak on peer review at component dental society meetings. Also, newsletters and other regular forms of communications can be used to educate and motivate potential committee members.

J. Preventing Burnout

The key to retaining valuable peer review committee members is to recognize their other commitments and limitations as practicing dentists. For example, no single committee member should be repeatedly or disproportionately requested to serve as a mediator. Similarly, assignments to serve in the review of cases should be rotated equally among committee members. Attention to these considerations by the committee chairman will avoid feelings of frustration, over-commitment, and burnout among committee members.

V.

THE PEER REVIEW PROCESS

The Appendix contains forms and sample letters that will help in the administration of the peer review process.

A. The Initiation of Peer Review – Mediation Request Form

A request for peer review usually begins with a letter or telephone contact from a patient to the dental society office. Even though telephone contacts are not formal complaints, these calls should be logged so that a more accurate report of peer review activities may be prepared at year's end and/or to determine the timeliness of the complaint. All parties wishing to initiate peer review must make a **written** request to the appropriate component society. After the written request is received by the dental society, the dental society office or peer review committee sends both the [Letter to](#)

[Patient – Initial Response](#)¹³ letter and [Mediation Request Form](#)¹⁴ to the patient (if applicable) **within 10 business days** of the initial contact to the extent possible. The [Mediation Request Form](#)¹⁵ completed by the initiating party should be accompanied by supporting documents and other pertinent information relating to the dental care and/or treatment at issue in the complaint. The peer review committee notifies the patient once it has received the completed [Mediation Request Form](#)¹⁶ by sending the [Letter to Patient – Notice of Receipt of Complaint](#)¹⁷ letter.

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

B. Complaint Reviewed for Appropriateness and Jurisdiction

1. Appropriateness

Once the chairman receives the completed [Mediation Request Form](#),¹⁸ he/she reviews the complaint for appropriateness (i.e., whether the complaint relates to quality of treatment, appropriateness of care, fees, or utilization and was made within the time limitations provided). If a complaint is not appropriate for peer review, then the request for peer review is denied and the initiating party is so notified. The complaint is referred to the component judicial committee if it appears to involve a violation of the Texas Dental Practice Act or the Principles of Ethics or as otherwise appropriate.

2. Jurisdiction/Interjurisdiction

As a general matter, a peer review case is the responsibility of the component society where the service and/or treatment at issue was performed even if the treating dentist no longer practices in the locality where the original treatment was provided. Occasionally, a request for peer review may involve a situation where the service in question was performed within the jurisdiction of one component society and the patient resides in an area within the jurisdiction of another component society. Cases involving more than one component or constituent society require special consideration and cooperation between dental societies and peer review committees. Certain guidelines should be followed so that the case is correctly reviewed and is completed in a timely manner. The guidelines are as follows:

a. Primary Jurisdiction

When a request for peer review is received by the peer review committee, a determination should

¹³ See [App. 11a](#). If a carrier initiates the peer review process, then the Letter to Carrier – Initial Response letter should be used. See [App. 11b](#).

¹⁴ See [App. 2](#).

¹⁵ See [App. 2](#).

¹⁶ See [App. 2](#).

¹⁷ See [App. 12a](#) & [12b](#).

¹⁸ See [App. 2](#).

be made about which dental society has primary jurisdiction and which dental society will be asked to cooperate. Primary jurisdiction is based on the location where the treatment and/or services at issue was/were provided.

b. Non-Primary Jurisdiction

If a peer review complaint is received by a component society other than the component society where the treatment and/or services at issue was/were provided, then copies of the request for peer review and supporting documentation, as well as all subsequent communications, should be forwarded to the component society with primary jurisdiction. If it is reasonable to do so, then the component society that received the complaint may encourage the patient to return to the component society with primary jurisdiction (i.e., where the treatment and/or services at issue was/were provided).

c. Related Arrangements

Appropriate procedures should be established to arrange for a clinical examination of the patient, if necessary, in the area where the patient resides, as well as arrangements for obtaining information from, or consulting with, any of the involved parties.

C. Participation from the Responding Party

1. Letter to Dentist – Initial Letter and Treating Dentist Reply Form

Once the committee has received the [Mediation Request Form](#)¹⁹ from the patient and the chairman has determined that the complaint is **eligible** for peer review, the chairman sends the [Letter to Dentist – Initial Letter](#)²⁰ and [Treating Dentist Reply Form](#)²¹ to the dentist against whom the complaint was made.

The dentist is required to return the completed [Treating Dentist Reply Form](#)²² to the chairman or peer review committee **within 20 business days**. The dentist must submit all supporting documentation and records to the peer review committee. Documents and records must be legible and readable. If the documents and/or records are not legible and readable, then the dentist must have them transcribed or typewritten to accompany the copies of the documents and/or records. Once the peer review committee receives the completed [Treating Dentist Reply Form](#),²³ the chairman appoints one of the peer review committee members to serve as the mediator in the case and the mediation process begins.

2. Charges/Costs for Peer Review

Non-members and/or third parties who utilize the peer review process are required to pay a reasonable amount to defray the administrative costs of peer review. The current suggested

¹⁹ See [App. 2](#).

²⁰ See [App. 13a](#) & [13b](#).

²¹ See [App. 3a](#) & [3b](#).

²² See [App. 3a](#) & [3b](#).

²³ See [App. 3a](#) & [3b](#).

minimum amount is \$250.00. The amount charged shall not exceed the equivalent of tripartite dues. It should be noted that, even if a non-member or third party is required to pay an amount equal to tripartite dues, the non-member or third party shall **not** become a member of the TDA, as a result of such payment.

D. Mediation Process

Mediation is the initial step in peer review and is one of the most important steps in the peer review process. Properly conducted, mediation can reestablish communication and trust necessary to resolve the problems at issue as expeditiously as possible. Nationally, 70 percent or more of peer review cases are resolved in this manner.

1. Appointment of a Mediator

The chairman appoints one member of the peer review committee to serve as the mediator in the case after he/she receives the completed [Mediation Request Form](#)²⁴ from the initiating party and completed [Treating Dentist Reply Form](#)²⁵ from the dentist. Mediators should be appointed on a rotating basis so as not to overburden any one committee member. The appointment may be made by telephone or by sending the [Letter to Mediator – Assignment of File](#).²⁶ The mediator should contact all parties to the complaint **within 10 business days**. The chairman must monitor the progress of the cases and, if mediation appears to be overdue, he/she should contact the mediator by telephone or by sending the [Letter to Mediator – Status Inquiry](#).²⁷

To be effective in his/her role as mediator, the mediator must:

- Be a catalyst to create a positive atmosphere that will prevent further polarization
- Be an educator to help the parties focus on their needs
- Review the materials provided and interview the parties
- Be a translator to explain offers of solutions
- Be a facilitator to do whatever is necessary and appropriate to keep the process alive until a solution can be found

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

- Have a mindset that is neutral.
- Allow the parties to tell their stories without interruption
- Ask for information or clarification by using open ended questions, rather than interrogation-like why questions or questions that require a yes or no answer.
- Avoid asking poorly worded questions that may sound accusatory.
- Ask the parties to suggest solutions.
- Avoid imposing values on either party.

The goal of the mediator is to open the line of communication between the parties to the complaint

²⁴ See [App. 2](#).

²⁵ See [App. 3a](#) & [3b](#).

²⁶ See [App. 14](#).

²⁷ See [App. 15](#).

and to resolve the conflict to the satisfaction of both parties.

2. The Mediation

The mediation process begins with the appointment of the mediator by the chairman and involves a review of the (a) completed [Mediation Request Form](#)²⁸ by the initiating party and the completed [Treating Dentist Reply Form](#)²⁹ and (b) interviews by the mediator. No clinical examination is performed during the mediation process and no evaluation of the dental treatment or care is made by the mediator. Both parties must realize that the role of the mediator is to facilitate a compromise and not to sit in judgment of what has transpired between the parties. Using the above skills, the mediator should conduct the necessary interviews in an attempt to gather information and try to resolve the matters made subject of the complaint. The mediator must **carefully document** all of his/her contacts in the [Mediation Report](#).³⁰

When mediation is successful, the mediator submits the completed [Mediation Report](#)³¹ to the chairman, who then notifies all parties of the agreement in writing by sending a [Letter to Initiating Party – Successful Mediation](#)³² letter and [Letter to Dentist – Successful Mediation](#)³³ letter. If a refund is requested of the dentist, then the [Release](#)³⁴ shall also be sent to the initiating party along with the [Letter to Initiating Party – Successful Mediation](#)³⁵ letter.

When mediation is unsuccessful, the mediator also submits the completed [Mediation Report](#)³⁶ to the chairman. All parties are notified that review by the peer review panel is necessary by sending the [Letter to Initiating Party – Unsuccessful Mediation](#)³⁷ letter and [Letter to Dentist – Unsuccessful Mediation](#)³⁸ letter and asking both parties to fill out and return the [Peer Review Agreement Form](#).³⁹ [The Peer Review Agreement Form](#)⁴⁰ must be returned to the chairman **within 20 business days**. All parties are contacted to obtain a mutually agreed date and time for the panel review. The parties are notified in writing of the date, time, and place of the meeting/examination by sending the [Notice of Time and Place of Hearing](#).⁴¹

E. The Panel Process

Peer review provides a process for parties to agree to initially submit their dispute to the peer review committee and abide by the decisions of that committee, subject to the right of appeal to

²⁸ See [App. 2](#).

²⁹ See [App. 3a](#) & [3b](#).

³⁰ See [App. 4](#).

³¹ See [App. 4](#).

³² See [App. 17a](#). It should be noted that only during the mediation phase may a dentist offer to refund to the patient an amount greater than the amount he/she paid for the treatment or services at issue.

³³ See [App. 17b](#).

³⁴ See [App. 6](#).

³⁵ See [App. 17a](#).

³⁶ See [App. 4](#).

³⁷ See [App. 18a](#).

³⁸ See [App. 18b](#).

³⁹ See [App. 5](#).

⁴⁰ See [App. 5](#).

⁴¹ See [App. 19](#).

the TDA Council on Peer Review. If the parties are unable to resolve the matters between them through mediation, then the matter is submitted to a panel composed of peer review committee members and/or persons appointed to serve on the panel on an ad hoc basis.

1. The Peer Review Panel

If a complaint is not resolved through mediation, then the chairman appoints a minimum of three members of the committee to serve on the peer review panel to review the case. The mediator should not be included on the panel but he/she may be called upon to report prior efforts in resolving the case.

2. Specialist Review

If the dentist being reviewed is a specialist, then he/she may request that the chairman appoint a committee of one or more specialists. The chairman should consider whether fairness requires granting this request based on the complexity of the treatment, service, and/or procedure at issue and the resources available, among other things. In some instances, the chairman may deny a request for a specialist appointment if a specialist is unavailable and/or will not aid in the evaluation of the matters at issue, among other reasons. The discretion of whether to appoint a specialist to serve on the peer review panel on an ad hoc basis rests with the chairman. Any additional members appointed on an ad hoc basis have the same status as permanent members of the committee for that particular case to the extent permitted by the Bylaws or other applicable authority.

3. Panel Review and Clinical Examination

The peer review panel begins its review of a case with the [Mediation Report](#).⁴² After the report has been reviewed, the panel may interview each party to the case **separately** in closed session. The panel also has the prerogative to interview dentists or other persons identified in the [Mediation Request Form](#)⁴³ or the [Treating Dentist Reply Form](#)⁴⁴ who treated the patient either prior to or following the dental treatment in question if the panel feels that such persons may have information relevant to the matters made subject of the complaint. The panel may also interview the mediator. If the panel feels that a clinical examination is necessary, then each member of the peer review panel may examine the patient during the hearing. The panel should be sure that the patient consented to the examination in writing in the [Mediation Request Form](#)⁴⁵ and/or the [Peer Review Agreement Form](#).⁴⁶ If the patient failed to consent to the examination in either of these forms, then the **patient's written consent must be obtained prior to the examination**. If patient refuses to consent in writing to the examination and the panel feels that the examination is necessary for its evaluation of the case, then case will be closed.

The patient should be examined by only one member of the panel at a time. The examiner should be careful not to offer any information regarding the dental treatment in question to the patient. The patient should be advised that all parties to the complaint will be notified of the panel's decision

⁴² See [App. 4](#).

⁴³ See [App. 2](#).

⁴⁴ See [App. 3a](#) & [3b](#).

⁴⁵ See [App. 2](#).

⁴⁶ See [App. 5](#).

within 20 business days following the hearing and/or examination. Attorneys should not be present and no verbatim transcripts or report of the proceedings should be made during the clinical examination or the panel review. It is imperative that each examiner conduct an independent examination and fill out the [Worksheet for Clinical Examination](#).⁴⁷ If an examination of the patient is performed by the panel, then the dentist will be notified of same by mail.

It is important that any findings or other aspects of the patient's oral condition not be discussed outside of the panel. This information will be appropriately communicated in the committee's written report. If it becomes necessary to discontinue peer review (e.g., if the patient refuses to consent to an examination by the peer review panel), then the chairman advises the initiator of the complaint that any additional action on the request will be terminated by sending a [Termination Letter](#).⁴⁸

F. The Peer Review Committee's Decision and Report

1. The Decision and Report

After reviewing the information and completing the interviews and examination, if any, each panel member independently completes the [Worksheet for Clinical Examination](#).⁴⁹ After the peer review committee chairman or acting chair receives the [Worksheet for Clinical Examination](#)⁵⁰ from each panel member, the panel considers the information it has gathered in closed session. The panel may not discuss its findings or any aspect of the patient's oral health outside of its closed session meeting. **After considering the information presented, the panel forms its decision, which may not be based on, but must be irrespective of, the payment mechanism of the treatment or care at issue** (eg: insurance benefit). A majority vote constitutes the decision of the panel. The panel forms its decision by using the [Peer Review Panel Report](#),⁵¹ which is an internal document of the committee and should not be sent out to any of the parties involved. The report is used to help the panel reach a consensus and conclusion that can be put into a letter format. The peer review committee chairman notifies each party in writing on component stationery of the panel's decision as promptly as possible after the clinical examination and/or panel review in a [Concluding Letter](#)⁵² and provides each party with a copy of the [Peer Review Appeal Request Form](#).⁵³

The [Concluding Letters](#)⁵⁴ shall relate the conclusions of the panel but should not enumerate the reasons for which it reached those conclusions. If money is awarded to the patient for subsequent dental treatment to be performed, e.g., then the [Concluding Letters](#)⁵⁵ should be specific with regard to the teeth and dental procedures involved. If there is any aspect of the patient's condition that is detrimental to his or her health, then the patient should be so advised and urged to seek necessary care. [The Concluding Letters](#)⁵⁶ must include an explanation of the right to appeal to the

⁴⁷ See [App. 7](#).

⁴⁸ See [App. 16](#).

⁴⁹ See [App. 7](#).

⁵⁰ See [App. 7](#).

⁵¹ See [App. 8](#).

⁵² See [App. 20a](#) & [20b](#).

⁵³ See [App. 10](#).

⁵⁴ See [App. 20a](#) & [20b](#).

⁵⁵ See [App. 20a](#) & [20b](#).

⁵⁶ See [App. 20a](#) & [20b](#).

TDA Council on Peer Review and the necessary bases for appeal.

2. The Release

If the final decision in a peer review case specifies an exchange of money, then a [Release](#)⁵⁷ shall be sent to the patient for his/her notarized signature along with the [Concluding Letter](#).⁵⁸ The [Release](#)⁵⁹ must be (a) signed by the party releasing the dentist in triplicate (one copy for the patient, one copy for the dentist, and one copy for the TDA's record files) and (b) returned to the component society office or chairman within the time period provided. If money is to be refunded by the dentist to the patient, then the dentist must send the requested refund (a check made payable to the patient), to the component society office or to the peer review chairman within the time period provided. The check will not be released to the patient unless and until a signed and notarized [Release](#)⁶⁰ is received from the patient within the time provided. Refund checks should not be held for longer than **30 business days**.

3. Non-Compliance

If the initiating party or any non-member party does not comply with the decision of peer review **within 20 business days**, and no appeal is sought within the time period provided, then the case is closed and all parties are so advised in writing. If the dentist does not comply with the decision of peer review **within 20 business days** and no appeal is sought within the time period provided, then the case may be referred to the component judicial committee or the TDA Council on Ethics and Judicial Affairs, as appropriate, for possible disciplinary action against the dentist for his/her alleged non-compliance.

4. Records

All original records, including patient charts, radiographs, and models, should be returned to the person from whom the original documents and/or records came. **The component peer review committee must provide a copy of the completed case to the TDA central office and fill out the Individual Peer Review Case Form: National Reporting System.**⁶¹ All copies of documents and records obtained during the review process, including the final decision, must be kept confidential and should be held by the component peer review committee for a period of at least three years.

G. Appeals

1. Grounds for Appeal and Time Limitations

Any party to a peer review case can appeal the decision of the peer review panel **within 20 business days** of the peer review panel's decision; however, the appeal must be based on one or more of the following grounds: (a) proper procedure was not followed in the process; (b) additional information has become available which, either because it was not available at the time of the

⁵⁷ See [App. 6](#).

⁵⁸ See [App. 20a](#) & [20b](#).

⁵⁹ See [App. 6](#).

⁶⁰ See [App. 6](#).

⁶¹ See [App. 9](#).

component's review and/or for some good cause was not presented, was not considered by the component peer review committee; and/or (c) the decision of the peer review committee appears contrary to the information presented.

2. Process of Requesting an Appeal

If the peer review committee receives the completed [Peer Review Appeal Request Form](#)⁶² from a party requesting an appeal **within 20 business days**, then the peer review committee chairman: (a) notifies the party requesting the appeal of its receipt of the form by sending [the Letter to Appealing Party – Receipt of Request for Appeal](#);⁶³ (b) notifies the non-appealing party of the appealing party's request for appeal by sending the [Letter to Non-Appealing Party – Receipt of Request for Appeal](#);⁶⁴ and forwards a copy of the completed [Peer Review Appeal Request Form](#)⁶⁵ and a copy of the entire case file to the TDA Council on Peer Review for its review and consideration.

VI.

TDA COUNCIL ON PEER REVIEW APPEAL PROCEDURES

When a peer review case is appealed from the component peer review committee to the Council, the peer review committee chairman is responsible for providing a copy of the complete case file to the TDA Council on Peer Review. A complete case file includes the dental and other records and information received by the peer review committee in connection with the case, **including x-rays**, the [Mediation Request Form](#),⁶⁶ the [Treating Dentist Reply Form](#),⁶⁷ the [Mediation Report](#),⁶⁸ the [Peer Review Agreement Form](#),⁶⁹ the [Peer Review Panel Report](#),⁷⁰ the [Concluding Letters](#),⁷¹ the [Peer Review Appeal Request Form](#),⁷² and any other information considered by the mediator, the peer review committee, and/or the peer review panel.

The TDA Council on Peer Review considers all of the information in the case file and determines from the written request what further action is necessary. When the TDA Council on Peer Review receives a request for an appeal, it has three options for handling the appeal:

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

⁶² See [App. 10](#).

⁶³ See [App. 21a](#).

⁶⁴ See [App. 21b](#).

⁶⁵ See [App. 10](#).

⁶⁶ See [App. 2](#).

⁶⁷ See [App. 3a](#) & [3b](#).

⁶⁸ See [App. 4](#).

⁶⁹ See [App. 5](#).

⁷⁰ See [App. 8](#).

⁷¹ See [App. 20a](#) & [20b](#).

⁷² See [App. 10](#).

If the TDA Council on Peer Review decides that an appeal is unwarranted and that the component peer review committee’s decision stands, then it notifies the parties of its decision by sending the [Decision to Affirm Component Without Hearing](#)⁷³ letter to each of the parties.

If the TDA Council on Peer Review determines that the initial review was inadequate or incomplete, **then the case must be referred back to the component peer review committee so the component peer review committee can further its review of the case**, which may include obtaining and reviewing additional records or information made subject of the appeal. If a case is referred back to the component peer review committee, then the peer review committee must notify the parties of its decision after it has completed its review of the case. The component peer review committee may request assistance from the TDA Council on Peer Review in furthering its review of the file. If such assistance is requested, then the TDA Council on Peer Review shall provide such assistance. After the component peer review completes its further review of the case, then it shall notify the parties by sending the [Letter to Appealing Party – Concluding Letter after Referral](#)⁷⁴ letter and [Letter to Non-Appealing Party – Concluding Letter after Referral](#)⁷⁵ letter.

If the TDA Council on Peer Review agrees to hear the appealed case, then it notifies the parties of its decision by sending the [Decision to Hear Case on Appeal](#)⁷⁶ letter to each of the parties. If the TDA Council on Peer Review decides to hear an appealed case, then it may appoint ad hoc consultants or Council members to examine and evaluate appeal patients to the extent otherwise permitted. The TDA Council on Peer Review shall use the same basic procedures used by the component peer review committee in notifying the parties involved of its decision. **The decision of the TDA Council on Peer Review is final within the peer review context.**

VII.

PEER REVIEW CONFIDENTIALITY, IMMUNITY, & LIABILITY PROTECTION

A. Peer Review Confidentiality

1. Confidentiality of Peer Review Records and Communications

Chapter 261 of the Texas Occupations Code (“Chapter 261”) relates to the confidentiality and immunity afforded to the peer review committee and the peer review process. A “dental peer review committee” is defined in Chapter 261 as: “a peer review, judicial, or grievance committee of a dental association authorized to evaluate the quality of dental services or the competence of dentists. The term includes a member, employee, assistant, investigator, attorney, or other agent serving the committee.” TEX. OCC. CODE §261.001(2).

As a general matter, peer review records and communications may not be obtained through discovery or by subpoena. Section 261.054, titled “Committee’s Evidentiary Privilege,” provides, in relevant part:

- (a) Unless disclosure is required or authorized by law, records or determinations

⁷³ See [App. 22](#).

⁷⁴ See [App. 25a](#).

⁷⁵ See [App. 25b](#).

⁷⁶ See [App. 23](#).

of or communications to a dental peer review committee are not subject to subpoena or discovery and are not admissible as evidence in a civil judicial or administrative proceeding unless the committee executes in writing a waiver of the confidentiality privilege.

- (b) The evidentiary privilege created by this chapter may be invoked by any person in any civil judicial or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the dental peer review committee.
- (c) If a dental peer review committee or a person participating in peer review named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the person's defense or in a claim or suited under Section 261.102, the plaintiff in the proceeding may disclose the records or determinations of a peer review committee or communications made to a peer review committee in rebuttal to information supplied by the defendant.

TEX. OCC. CODE §261.054.

Similarly, the proceedings and records relating to peer review are generally confidential. Section 261.051, titled "Confidentiality of Proceedings," provides, in relevant part:

- (a) Except as otherwise provided by this chapter:
 - (1) a dental peer review committee's proceedings and records are confidential; and
 - (2) a communication made to a dental peer review committee are privileged.

TEX. OCC. CODE §261.051.

2. The Board May Subpoena Peer Review Records and Information

Although peer review documents and information generally are not discoverable, they may be obtained by subpoena **from the board**.⁷⁷ See TEX. OCC. CODE §§261.055(a) & (b). In the event a peer review committee receives a board subpoena for peer review documents and information, a peer review committee is obligated to produce the requested items lest the committee or its members be subjected to disciplinary action. See TEX. OCC. CODE §261.055(c) (a "[f]ailure to comply with a board subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing agency"). However, a disclosure of peer review documents or information in response to a subpoena does not waive the privilege established by Chapter 261.

3. Limited Disclosure of Peer Review Records and Information

Further, Chapter 261 authorizes the disclosure of certain peer review communications and records without waiving the confidentiality afforded to those communications and documents. Specifically, Chapter 261 provides that peer review communications and records **may be disclosed** to: **"(1) another dental peer review committee; (2) an appropriate state or federal agency; (3) a national accreditation body; or (4) the registration or licensing entity in any state."** TEX. OCC. CODE §261.052. Further, a peer review committee may disclose "peer review committee information pertinent to the

⁷⁷ Although the statute does not define the term "**board**," the term would presumably include the Texas State Board of Dental Examiners.

matter under review” to the affected dentist and/or may cooperate with law enforcement agencies concerning criminal investigations, e.g., without waiving the confidentiality of the information. See TEX. OCC. CODE §§261.053(a) & 261.054(e).

B. Peer Review Immunity

1. Immunity of Peer Review Committee Members from Suit

Peer review committee members generally enjoy immunity from being sued in connection with their role in the peer review process in the absence of fraud, conspiracy, or malice. Section 261.101 provides:

- (a) In the absence of fraud, conspiracy, or malice, a dental peer review committee is not subject to a suit for damages arising from investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a dentist who is a member of a dental association or another dentist, a dental patient, or a third party requesting the committee’s services.
- (b) The purpose of this section is to protect a dental peer review committee from being harassed and threatened with legal action in performing official duties.

TEX. OCC. CODE §261.101. Section 261.102 further provides:

A cause of action does not accrue against a member, agent, or employee of a dental peer review committee for an act, statement, determination, or recommendation made or an act reported, without malice, in the course of peer review under this chapter.

TEX. OCC. CODE §261.102.

2. Immunity of Other Persons Involved in Peer Review from Suit

Chapter 261 also affords immunity to certain other persons involved in the peer review process. Specifically, Section 261.103 provides:

A **person** is immune from civil liability if:

- (1) the person reports or furnishes information to a dental peer review committee or the board in good faith;
- (2) the person:
 - (A) is a member, employee, or agent of the board, of a dental peer review committee, or of a dental organization committee or a dental organization who takes an action or makes a recommendation within the scope of the functions of a peer review program; and
 - (B) acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the person; or
- (3) the person, including a health care entity or dental peer review committee, without malice participates in a dental peer review activity or furnishes a record,

information, or assistance to a dental peer review committee or the board.

TEX. OCC. CODE §261.103 (emphasis added).

3. Liability for Failure to Comply with Policies and Procedures

As is evident from the statutes cited above, persons who participate in the peer review process generally are immune from liability with regard to their participation in peer review. **However, if a person is able to show that the peer review committee did not comply with its own policies and procedures with regard to a particular peer review complaint, then the person may be able to show that the peer review committee, e.g., acted in bad faith and/or with malice.** In such a case, the peer review committee may not be insulated from liability. It is, therefore, important for each person involved in the peer review process to comply with the guidelines set forth in this manual when handling a peer review complaint and/or participating in the peer review process.

4. Counterclaims for Frivolous and Bad Faith Suits

If a peer review committee member or other person involved in the peer review process is sued as a result of the his/her participation in peer review, then he/she may assert a counterclaim to recover his/her defense costs if the suit was frivolous or brought in bad faith. Specifically, Section 261.104 provides:

A dental peer review committee, a person participating in peer review, or any other person named as a defendant in a civil action filed as a result of participation in peer review may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorneys' fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined:

- (1) to be frivolous; or
- (2) to have been brought in bad faith.

TEX. OCC. CODE §261.104.

In light of the above, each person who participates in the peer review process should be familiar with Chapter 261 and the immunities and confidentiality provisions provided therein.

A. Liability Protection

The TDA provides liability insurance coverage for all its officers and committees, including component peer review committees. In order to be covered under this insurance policy, the component peer review committee must follow the TDA peer review process set forth in this manual. **Failure to follow proper peer review procedure may invalidate liability coverage under the TDA insurance policy.** The TDA insurance policy has a deductible, which will be paid by the TDA, the component society, or both as determined by the TDA Board of Directors. Specific information regarding the terms and conditions of the TDA liability insurance policy may be obtained from the TDA central office.

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE D. DENTISTRY

CHAPTER 261. CONFIDENTIALITY AND IMMUNITY OF DENTAL PEER
REVIEW COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS. In this chapter:

(1) "Dental association" means an organization that is composed of members who are dentists and incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described by Section 501(c) of the Internal Revenue Code of 1986.

(2) "Dental peer review committee" means a peer review, judicial, or grievance committee of a dental association authorized to evaluate the quality of dental services or the competence of dentists. The term includes a member, employee, assistant, investigator, attorney, or other agent serving the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

Sec. 261.051. CONFIDENTIALITY OF PROCEEDINGS. (a)
Except as otherwise provided by this chapter:

(1) a dental peer review committee's proceedings and records are confidential; and

(2) communications made to a dental peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings or records of or the communications made to a

dental peer review committee are relevant to an anticompetitive action or an action brought under federal civil rights provisions (42 U.S.C. Section 1983), the proceedings, records, or communications are not confidential to the extent they are relevant to the action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.052. DISCLOSURE OF INFORMATION.

Communications made to a dental peer review committee and the records and proceedings of the committee may be disclosed to:

- (1) another dental peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or
- (4) the registration or licensing entity in any

state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.053. DISCLOSURE TO AFFECTED DENTIST. (a)

Disclosure to the affected dentist of confidential peer review committee information pertinent to the matter under review does not waive the confidentiality provisions of this chapter.

(b) If a dental peer review committee takes action that may result in censure or a license suspension, restriction, limitation, or revocation by the board or in the denial of membership or privileges in a health care entity, the committee shall give the affected dentist:

- (1) a written copy of the recommendation of the committee; and
- (2) a copy of the final decision, including a statement of the basis for the decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.054. COMMITTEE'S EVIDENTIARY PRIVILEGE. (a)

Unless disclosure is required or authorized by law, records or determinations of or communications to a dental peer review committee are not subject to subpoena or discovery and are not admissible as evidence in a civil judicial or administrative proceeding unless the committee executes in writing a waiver of the confidentiality privilege.

(b) The evidentiary privilege created by this chapter may be invoked by any person in any civil judicial or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected dental peer review committee.

(c) If a dental peer review committee or a person participating in peer review named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the person's defense or in a claim or suit under Section 261.104, the plaintiff in the proceeding may disclose the records or determinations of a peer review committee or communications made to a peer review committee in rebuttal to information supplied by the defendant.

(d) A person seeking access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a dental peer review committee who provides access to privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived a privilege established under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.055. COMPLIANCE WITH BOARD SUBPOENAS. (a) A person, including the governing body and medical staff of a health care entity, shall comply with a subpoena for a document or information issued by the board as authorized by

law.

(b) The disclosure of a document or information under a board subpoena does not constitute a waiver of the privilege established under this chapter.

(c) Failure to comply with a board subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CIVIL LIABILITY

Sec. 261.101. COMMITTEE IMMUNITY FROM SUIT. (a) In the absence of fraud, conspiracy, or malice, a dental peer review committee is not subject to a suit for damages arising from investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a dentist who is a member of a dental association or another dentist, a dental patient, or a third party requesting the committee's services.

(b) The purpose of this section is to protect a dental peer review committee from being harassed and threatened with legal action in performing official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.102. COMMITTEE PARTICIPANTS' IMMUNITY FROM SUIT. A cause of action does not accrue against a member, agent, or employee of a dental peer review committee for an act, statement, determination, or recommendation made or an act reported, without malice, in the course of peer review under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.103. IMMUNITY FROM SUIT. A person is immune

from civil liability if:

(1) the person reports or furnishes information to a dental peer review committee or the board in good faith;

(2) the person:

(A) is a member, employee, or agent of the board, of a dental peer review committee, or of a dental organization committee or a dental organization who takes an action or makes a recommendation within the scope of the functions of a peer review program; and

(B) acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the person; or

(3) the person, including a health care entity or dental peer review committee, without malice participates in a dental peer review activity or furnishes a record, information, or assistance to a dental peer review committee or the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.104. COUNTERCLAIM FOR FRIVOLOUS SUIT. A dental peer review committee, a person participating in peer review, or any other person named as a defendant in a civil action filed as a result of participation in peer review may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined:

(1) to be frivolous; or

(2) to have been brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

TDA Principles of Ethics and Code of Professional Conduct (May 2015)

I. PREAMBLE.

The dental profession was founded on a set of relationships, which created personal obligations requiring the development of a body of ethical statements to which the dental profession, in a changing society, has long and voluntarily subscribed. As a member of this profession, a dentist must recognize these relationships and responsibilities not only to the patients, but also, to society, to colleagues, to self, to other health professionals, to the profession and to the art and science of dentistry. The following fundamental tenets, which establish the Principles of Ethics and Code of Professional Conduct adopted by the Texas Dental Association, are standards by which dentists should determine the propriety of their conduct in addressing these relationships and responsibilities.

We, therefore, dedicate ourselves and pledge our commitment to these principles.

I. The primary obligation of the dental practitioner is service to the public, which shall include the rendering of quality care to all patients with full respect for the dignity of each individual regardless of status. Dentists should merit the confidence of their patients by rendering appropriate service and attention, competently and timely, based upon the patient's right of informed self-determination.

II. Professional competence is the just expectation of each patient. It is the duty of each dentist to strive continually to improve knowledge and skill and to make available to all patients and colleagues the benefits of their professional attainments.

III. Trust by the public that serving their true dental needs with appropriate quality care is the heart of the patient-dentist relationship. This concept of trust, imbued with dedicated service, is the hallmark of professionalism and has provided the warrant for self-governance given the dental profession by society.

IV. The dental profession's privilege and responsibility of self-governance demands ethical standards more stringent than those of the market place. These standards include exercising honesty and restraint when making statements or representations about care and skill, both in private discussions with patients and in public announcements.

V. The critical interdependence and good will existing among practitioners, which allows and encourages professional consultations and exchanges necessary for good patient care, can be damaged significantly by inappropriate and/or self-serving behavior. A dentist should seek consultation with patient approval or recommend referral when the welfare of the patient or quality of care will be safeguarded or enhanced thereby.

VI. Communications from and to patients are a matter of high moral significance. A dentist may not reveal the confidences entrusted in the course of professional treatment without patient approval unless required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or the community. Providing patients with a diagnosis and proposed treatment should be done in a manner that is clear and appropriate.

VII. A dentist may choose whom to serve, but such choice shall not be influenced by an individual's particular class or group status. Having undertaken the care of a patient, a dentist may not neglect that patient and, unless discharged by the patient, may discontinue service only after giving adequate notice. In an emergency, however, a dentist should render appropriate care compatible with professional ability and existing circumstances.

VIII. Dentists have the obligation to the patient and to society to be responsible for, and to diligently oversee and direct the activities of allied health personnel within their employ for the optimum benefit of the patient.

IX. A dentist should encourage, support and participate in research and programs or activities which have the purpose of improving the health and well-being of the individual and the community.

X. Reimbursement through public and private entities is a growing feature of the dental practice. These entities and the dentist are in an important relationship, which demands mutual fidelity, and requires each to recognize their obligation to patients and society.

XI. Dentists should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed discipline. They should report dentists deficient in character or competence or who engage in fraud or deception.

XII. A dentist should oppose from all sources any terms, conditions or restraints, which tend to interfere with or impair the free and complete exercise of dental judgment and treatment or cause a deterioration in the quality of dental care.

II. INTRODUCTION.

The dental profession holds a special position of trust within society. As a consequence, society affords the profession certain privileges that are not available to members of the public-at-large. In return, the profession makes a commitment to society that its members will adhere to high ethical standards of conduct. These standards are embodied in the *TDA Principles of Ethics and Code of Professional Conduct (TDA Code)*. The *TDA Code* is, in effect, a written expression of the obligations arising from the implied contract between the dental profession and society. Members of the TDA voluntarily agree to abide by the *TDA Code* as a condition of membership in the Association. They recognize that continued public trust in the dental profession is based on the commitment of individual dentists to high ethical standards of conduct.

The *TDA Code* is mirrored after the American Dental Association (ADA) *Principles of Ethics and Code of Professional Conduct* and has three main components: The **Principles of Ethics**, the **Code of Professional Conduct** and the **Advisory Opinions**. The **Principles of Ethics** are the aspirational goals of the profession. They provide guidance and offer justification for the *Code of Professional Conduct* and the *Advisory Opinions*. There are five fundamental principles that form the foundation of the *TDA Code*: patient autonomy, non-maleficence, beneficence, justice and veracity. Principles can overlap each other as well as compete with each other for priority. More than one principle can justify a given element of the *Code of Professional Conduct*. Principles may at times need to be balanced against each other, but, otherwise, they are the profession's firm guideposts.

The **Code of Professional Conduct** is an expression of specific types of conduct that are either

required or prohibited. The *Code of Professional Conduct* is a product of the TDA's and ADA's legislative system. All elements of the *Code of Professional Conduct* result from resolutions that are adopted by the TDA's and ADA's House of Delegates. The *Code of Professional Conduct* is binding on members of the TDA, and violations may result in disciplinary action. It is the duty of the member to comply with the reasonable request of a duly constituted committee, council or other body of his component society or of this Association necessary or convenient to enable such a body to perform its functions and to abide by the decisions of such body. This *Code* is also necessarily in compliance with and governed by the ADA Bylaws, the TDA Bylaws, the Texas State Board of Dental Examiners Rules and Regulations, the Dental Practice Act, and other pertinent state and local laws.

The **Advisory Opinions** are interpretations that apply the *Code of Professional Conduct* to specific fact situations. They are adopted by the ADA's Council on Ethics, Bylaws and Judicial Affairs to provide guidance to the membership on how the Council might interpret the *Code of Professional Conduct* in a disciplinary proceeding. The *ADA Code* is an evolving document and by its very nature cannot be a complete articulation of all ethical obligations. The *ADA Code* is the result of an ongoing dialogue between the dental profession and society, and as such, is subject to continuous review.

Although ethics and the law are closely related, they are not the same. Ethical obligations may—and often do—exceed legal duties. In resolving any ethical problem not explicitly covered by the *ADA Code*, dentists should consider the ethical principles, the patient's needs and interests, and any applicable laws.

III. PRINCIPLES, CODE OF PROFESSIONAL CONDUCT AND ADVISORY OPINIONS.

Section 1 PRINCIPLE: PATIENT AUTONOMY (“self-governance”). The dentist has a duty to respect the patient's rights to self-determination and confidentiality.

This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of what a reasonable and prudent dentist would do under the same or similar circumstances and in accordance with applicable Texas laws as found in the Dental Practice Act and to protect the patient's confidentiality. Under this principle, the dentist's primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.

CODE OF PROFESSIONAL CONDUCT

1.A. PATIENT INVOLVEMENT.

The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

1.B. PATIENT RECORDS.

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information in accordance with applicable law that will be beneficial for the future treatment of that patient.

ADVISORY OPINIONS

1.B.1. FURNISHING COPIES OF RECORDS.

A dentist has the ethical obligation on request of either the patient or the patient's new dentist to furnish in accordance with applicable law, either gratuitously or for nominal cost, not to exceed the schedule set forth by the TSBDE Rule 108.8 (g), such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

1.B.2. CONFIDENTIALITY OF PATIENT RECORDS.

The dominant theme in Code Section 1.B is the protection of the confidentiality of a patient's records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient's present dentist. There may be circumstances where the former dentist has an ethical obligation to inform the present dentist of certain facts. Code Section 1.B assumes that the dentist releasing relevant information is acting in accordance with applicable law. Dentists should be aware that the laws of the various jurisdictions in the United States are not uniform and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction permit the forwarding of this information, a dentist should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist-patient relationship.

Section 2 PRINCIPLE: NON-MALEFICENCE ("do no harm"). The dentist has a duty to refrain from harming the patient.

This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

CODE OF PROFESSIONAL CONDUCT.

2.A. EDUCATION.

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

2.B. CONSULTATION AND REFERRAL.

Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

- 1.** The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.
- 2.** The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

ADVISORY OPINION

2.B.1. SECOND OPINIONS.

A dentist who has a patient referred by a third party for a “second opinion” regarding a diagnosis or treatment plan recommended by the patient’s treating dentist should render the requested second opinion in accordance with this *Code of Ethics*. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a financial or vested interest in the ensuing recommendation.

2.C. USE OF AUXILIARY PERSONNEL.

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

2.D. PERSONAL IMPAIRMENT.

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the appropriate entity.

ADVISORY OPINION

2.D.1. ABILITY TO PRACTICE.

A dentist who contracts any disease or becomes impaired in any way that might endanger patients or dental staff shall, with consultation and advice from a qualified physician or other authority, limit the activities of practice to those areas that do not endanger patients or dental staff. A dentist who has been advised to limit the activities of his or her practice should monitor the aforementioned disease or impairment and make additional limitations to the activities of the dentist’s practice, as indicated.

2.E. POST EXPOSURE, BLOODBORNE PATHOGENS.

All dentists, regardless of their bloodborne pathogen status, have an ethical obligation to immediately inform any patient who may have been exposed to blood or other potentially infectious material in the dental office of the need for post exposure evaluation and follow-up and to immediately refer the patient to a qualified health care practitioner who can provide post exposure services. The dentist’s ethical obligation in the event of an exposure incident extends to providing information concerning the dentist’s own bloodborne pathogen status to the evaluating health care practitioner, if the dentist is the source individual, and to submitting to testing that will assist in the evaluation of the patient. If a staff member or other third person is the source individual, the dentist should encourage that person to cooperate as needed for the patient’s evaluation.

2.F. PATIENT ABANDONMENT.

Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient’s oral health is not jeopardized in the process.

ADVISORY OPINION

2.F.1. Patients must be dismissed according to all Texas applicable laws including but not limited to Texas State board of Dental Examiners Rule 108.5 Patient Abandonment

2.G. PERSONAL RELATIONSHIPS WITH PATIENTS.

Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.

Section 3 PRINCIPLE: BENEFICENCE (“do good”). The dentist has a duty to promote the patient’s welfare.

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

CODE OF PROFESSIONAL CONDUCT

3.A. COMMUNITY SERVICE.

Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community.

3.B. GOVERNMENT OF A PROFESSION.

Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. Member dentists, therefore have the dual obligation of observing its code of ethics and participating in its governance.

3.C. RESEARCH, DEVELOPMENT, PATENTS AND COPYRIGHTS.

Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public and it is unethical to hold out or imply that such results and benefits are in any way private or exclusive. Patents and copyrights may be secured by dentists, provided they and the remuneration derived from them are not used to restrict research, practice or the benefits of the patented or copyrighted material.

3.E. ABUSE AND NEGLECT.

Dentists shall be obliged to become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.

ADVISORY OPINION

3.E.1. REPORTING ABUSE AND NEGLECT.

The public and the profession are best served by dentists who are familiar with identifying the signs of abuse and neglect and knowledgeable about the appropriate intervention resources for all populations. A dentist’s ethical obligation to identify and report the signs of abuse and neglect is, at a minimum, to be consistent with a dentist’s legal obligation in the jurisdiction where the dentist practices. Dentists, therefore, are ethically obliged to identify and report suspected cases of abuse and neglect to the same extent as they are legally obliged to do so in the jurisdiction where they

practice.

Dentists have a concurrent ethical obligation to respect an adult patient's right to self-determination and confidentiality and to promote the welfare of all patients. Care should be exercised to respect the wishes of an adult patient who asks that a suspected case of abuse and/or neglect not be reported, where such a report is not mandated by law. With the patient's permission, other possible solutions may be sought.

Dentists should be aware that jurisdictional laws vary in their definitions of abuse and neglect, in their reporting requirements and the extent to which immunity is granted to good faith reporters. The variances may raise potential legal and other risks that should be considered, while keeping in mind the duty to put the welfare of the patient first. Therefore a dentist's ethical obligation to identify and report suspected cases of abuse and neglect can vary from one jurisdiction to another.

Dentists are ethically obligated to keep current their knowledge of both identifying abuse and neglect and reporting it in the jurisdiction(s) where they practice.

3.F. PROFESSIONAL DEMEANOR IN THE WORKPLACE.

Dentists have the obligation to provide a workplace environment that supports respectful and collaborative relationships for all those involved in oral health care.

ADVISORY OPINION

3.F.1. Disruptive Behavior in the Workplace .

Dentists are the leaders of the oral healthcare team. As such, their behavior in the workplace is instrumental in establishing and maintaining a practice environment that supports the mutual respect, good communication, and high levels of collaboration among team members required to optimize the quality of patient care provided. Dentists who engage in disruptive behavior in the workplace risk undermining professional relationships among team members, decreasing the quality of patient care provided, and undermining the public's trust and confidence in the profession.

3.G. COURT ACTION AND ASSOCIATION DISCIPLINE

Dentists who are members of The Texas Dental Association shall comply with the laws of the State of Texas relating to the practice of dentistry. Any dentist reprimanded, disciplined or sentenced by final action of any court or other authority of competent jurisdiction, pursuant to the law of the State of Texas governing the practice of dentistry, or who is found by final action of the court guilty of a crime reflecting unfavorably on the dentist or the dental profession, shall there by render himself liable to discipline by the Association.

Section 4 PRINCIPLE: JUSTICE ("fairness"). The dentist has a duty to treat people fairly.

This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.

CODE OF PROFESSIONAL CONDUCT

4.A. PATIENT SELECTION.

While dentists, in serving the public, may exercise reasonable discretion in selecting patients for

their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin.

ADVISORY OPINION

4.A.1. PATIENTS WITH BLOODBORNE PATHOGENS.

A dentist has the general obligation to provide care to those in need. A decision not to provide treatment to an individual because the individual is infected with Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another bloodborne pathogen, based solely on that fact, is unethical. Decisions with regard to the type of dental treatment provided or referrals made or suggested should be made on the same basis as they are made with other patients. As is the case with all patients, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment or experience. The dentist should also determine, after consultation with the patient's physician, if appropriate, if the patient's health status would be significantly compromised by the provision of dental treatment.

4.B. EMERGENCY SERVICE.

Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

4.C. JUSTIFIABLE CRITICISM.

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

ADVISORY OPINION

4.C.1. MEANING OF "JUSTIFIABLE."

Patients are dependent on the expertise of dentists to know their oral health status. Therefore, when informing a patient of the status of his or her oral health, the dentist should exercise care that the comments made are truthful, informed and justifiable. This should, if possible, involve consultation with the previous treating dentist(s), in accordance with applicable law, to determine under what circumstances and conditions the treatment was performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would unjustly imply mistreatment. There will necessarily be cases where it will be difficult to determine whether the comments made are justifiable. The burden shall be on the commenting dentist to produce evidence upon which he based his comments and to establish therefrom that a reasonable dentist would be justified in believing the comments to be true. For the purposes of this section, the word "publication" means any form of communication including, without limitation, the press, radio, television and lecture.

Therefore, this section is phrased to address the discretion of dentists and advises against unknowing or unjustifiable disparaging statements against another dentist. However, it should be noted that, where comments are made which are not supportable and therefore unjustified, such comments can be the basis for the institution of a disciplinary proceeding against the dentist making

such statements.

4.D. EXPERT TESTIMONY.

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

ADVISORY OPINION

4.D.1. CONTINGENT FEES.

It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.

4.E. REBATES AND SPLIT FEES.

Dentists shall not accept or tender “rebates” or “split fees.”

ADVISORY OPINION

4.E.1. SPLIT FEES IN ADVERTISING AND MARKETING SERVICES.

The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists, physicians, and any third party, not just other dentists. A dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. However, discount voucher advertising (e.g., Google Adwords and Groupon) is allowed and does not constitute prohibited fee splitting because the web service neither solicits the patient nor guarantees the purchaser will become a patient. The Texas State Board of Dental Examiners (TSBDE) considers such advertising permissible because the web service is not a professional colleague of the advertising dentist, nor is it providing patient referrals. Refer to the TSBDE's Rules and Regulations, Chapter 108, Subchapter E, Rule 108.58 "Solicitation, Referrals, and Gift Schemes" for further clarification

Section 5 PRINCIPLE: VERACITY (“truthfulness”). The dentist has a duty to communicate truthfully. *This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist’s primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.*

CODE OF PROFESSIONAL CONDUCT

5.A. REPRESENTATION OF CARE.

Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

ADVISORY OPINIONS

5.A.1. DENTAL AMALGAM AND OTHER RESTORATIVE MATERIALS.

Based on current scientific data, the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation of the dentist, is improper and unethical. The same principle of veracity applies to the dentist’s recommendation concerning the removal of any dental restorative material.

5.A.2. UNSUBSTANTIATED REPRESENTATIONS.

A dentist who represents that dental treatment or diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

5.B. REPRESENTATION OF FEES.

Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

ADVISORY OPINIONS

5.B.1. WAIVER OF COPAYMENT.

A dentist who accepts a third party payment under a copayment plan as payment in full without disclosing to the third party that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party that the charge to the patient for services rendered is higher than it actually is.

5.B.2. OVERBILLING.

It is unethical for a dentist to increase a fee to a patient solely because the patient is covered under a dental benefits plan.

5.B.3. FEE DIFFERENTIAL. The fee for a patient without dental benefits shall be considered a dentist's full fee. This is the fee that should be represented to all benefit carriers regardless of any negotiated fee discount.

5.B.4. TREATMENT DATES.

A dentist who submits a claim form to a third party reporting incorrect treatment dates for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaged in making an unethical, false or misleading representation to such third party.

5.B.5. DENTAL PROCEDURES.

A dentist who incorrectly describes on a third party claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party.

5.B.6. UNNECESSARY SERVICES.

A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

5.C. DISCLOSURE OF CONFLICT OF INTEREST.

A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself.

5.D. DEVICES AND THERAPEUTIC METHODS.

Except for formal investigative studies, dentists shall be obliged to prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall have the further obligation of not holding out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

ADVISORY OPINIONS

5.D.1. REPORTING ADVERSE REACTIONS.

A dentist who suspects the occurrence of an adverse reaction to a drug or dental device has an obligation to communicate that information to the broader medical and dental community, including, in the case of a serious adverse event, the Food and Drug Administration (FDA).

5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES.

Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research. Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

5.E. PROFESSIONAL ANNOUNCEMENT.

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.

5.F. ADVERTISING. Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect. All advertising in any form shall comply with the Texas State Board of Dental Examiners Rules and Regulations Chapter 108, Subchapter E, Rules 108.50-108.63.

ADVISORY OPINIONS

5.F.1. PUBLISHED COMMUNICATIONS.

If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.

5.F.2. EXAMPLES OF “FALSE OR MISLEADING.”

The following examples are set forth to provide insight into the meaning of the term “false or misleading in a material respect.” These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation.

Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or misleading in a material respect.

Examples. In addition to the plain and ordinary meaning of the provision set forth throughout these guidelines, additional examples of advertisements that may be false, misleading, deceptive, or not readily subject to verification include but are not limited to:

1. Making a material misrepresentation of fact or omitting a fact necessary to make a statement as a whole not materially misleading;
2. Intimidating or exerting undue pressure or undue influence over a prospective patient;
3. Appealing to an individual's anxiety in an excessive or unfair way;
4. Claiming to provide or perform dental work without pain or discomfort to the patient;
5. Implying or suggesting superiority of materials or performance of professional services;
6. Comparing a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
7. Communicating an implication, prediction or suggestion of any guarantee of future satisfaction or success of a dental service or otherwise creating unjustified expectations concerning the potential result of dental treatment. The communication of a guarantee to return a fee if the patient is not satisfied with the treatment rendered is not considered false, misleading deceptive or not readily subject to verification under this rule;
8. Containing a testimonial from a person who is not a patient of record or that includes false, misleading or deceptive statements, or which is not readily subject to verification, or which fails to include disclosures or warnings as to the identity and credentials of the person making the testimonial;
9. Referring to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;
10. Causing confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;
11. Representing in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional;

12. Failing to make truthful disclosure of the source and authorship of any message published under a dentist's byline;
13. Communicating an implication or suggestion that a service is free or discounted when the fee is built in to a companion procedure provided to the patient and charged to the patient; and
14. Communicating statistical data, representations, or other information that is not subject to reasonable verification by the public.

ADVISORY OPINION

5.F.3. UNEARNED, NON-HEALTH DEGREES

Some organizations grant dentists fellowship status as a credential of membership in the organization or some other form of voluntary association, such as "Fellow of the Academy of General Dentistry" (FAGD), or "Fellow of the American College of Dentists" (FACD). Dentists are permitted to advertise such earned credentials so long as they avoid any communication that may imply specialization in a recognized specialty, or specialization in an area of dentistry that is not recognized as a specialty, or attainment of an earned academic degree.

A listing of credentials shall be separate and clearly distinguishable from the dentist's designation as a dentist. A listing of credentials may not occupy the same line as the dentist's name and designation as a dentist. Any use of abbreviations to designate credentials shall be accompanied by a definition of the acronym immediately following the credential.

ADVISORY OPINION

5.F.4. REFERRAL SERVICES

In accordance with the Dental Practice Act of the Texas Occupations Code (Title 3, Chapter 102.001-102.011 and 259.008(8)) a dentist may not offer, give, dispense, distribute, or make available to any third party or aid or abet another person to do so, any cash, gift, premium, chance, reward, ticket, item, or thing of value for securing or soliciting patients.

A dentist may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient. A dentist is permitted to give to any patient of record any cash premium, chance, reward, ticket, item, or thing of value for the continuation of that relationship as a patient of that dentist. A dentist shall not be involved with a referral service that is based on the volume or value of patient referrals

5.F.5. INFECTIOUS DISEASE TEST RESULTS.

An advertisement or other communication intended to solicit patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

For example, an advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact contains a misleading omission. A dentist could satisfy his or her obligation under this advisory opinion to convey additional information by clearly stating in the advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV."

5.G. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection

process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed forty (40) days.

ADVISORY OPINION

5.G.1. DENTIST LEAVING PRACTICE.

Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for no more than forty (40) days, if, after the forty day grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.

This section and Section 5.1 are designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program. The dental specialties recognized by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics. Dentists who choose to announce specialization should use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced dental specialties, provided at the time of the announcement such dentists have met in each recognized specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association.

Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

GENERAL STANDARDS.

The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate requirements for announcing specialization and limitation of practice:

- 1.** The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.
- 2.** Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or be diplomates of an American Dental Association recognized certifying board. The scope of the individual specialist's practice shall be governed by the educational standards for the specialty in which the specialist is announcing.
- 3.** The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practice announced by the dentist.

STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS.

The educational criterion for announcement of limitation of practice in additional specialty areas is the successful completion of an advanced educational program accredited by the Commission on

Dental Accreditation (or its equivalent if completed prior to 1967) in each area for which the dentist wishes to announce.

ADVISORY OPINIONS

5.H.1. DUAL DEGREED DENTISTS.

Nothing in Section 5.H shall be interpreted to prohibit a dual degreed dentist who practices medicine or osteopathy under a valid state license from announcing to the public as a dental specialist provided the dentist meets the educational, experience and other standards set forth in the *Code* for specialty announcement and further providing that the announcement is truthful and not materially misleading.

5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.

A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles; and
2. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association. Nothing in this advisory opinion affects the right of a properly qualified dentist to announce specialization in an ADA-recognized specialty area(s) as provided for under Section 5.H of this *Code* or the responsibility of such dentist to limit his or her practice exclusively to the special area(s) of dental practice announced. Specialists shall not announce their credentials in a manner that implies specialization in a non-specialty interest area.

5.I. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES.

General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect.

ADVISORY OPINIONS

5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS IN INTEREST AREAS IN GENERAL DENTISTRY.

A general dentist may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;
2. The dentist discloses that he or she is a general dentist; and

3. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.

5.1.2. CREDENTIALS IN GENERAL DENTISTRY.

General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization and the announcement includes the disclaimer that the dentist is a general dentist. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

NOTES:

1. A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.
2. A full fee is the fee for a service that is set by the dentist, which reflects the costs of providing the procedure and the value of the dentist's professional judgment.
3. Advertising, solicitation of patients or business or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Notwithstanding any *ADA Principles of Ethics and Code of Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the *ADA Principles of Ethics and Code of Professional Conduct*.
4. Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced training in one of the other recognized dental specialties prior to 1967.

Section 6 PRINCIPLE: THIRD PARTY PRACTICE AND CONTRACT PRACTICE.

A dentist may enter into an agreement with individuals and/or organizations to provide dental health care provided that the agreement does not permit or compel practices which lead to unethical conduct. In the performance of such contracts the dentist is required to deal fairly with the public and fellow practitioners in the locality.

A dentist who submits any billing for services rendered or to be rendered which are fraudulent, deceitful, or misleading in any way is engaged in unethical conduct.

CODE OF PROFESSIONAL CONDUCT

6.A. CONTRACTING WITH A HEALTH PLAN.

The practice of dentistry under contract with a health plan is not itself unethical unless the health plan's efforts to promote the dental benefits to the public may cause participating dentists to engage in unethical conduct.

6.B. NON-DENTIST OWNERSHIP.

A dentist should not participate in a dental practice arrangement which permits a non-dentist individual or company to own, maintain, or operate any office or place of business where the non-dentist entity employs or engages, under any kind of contract whatsoever, any other person to practice dentistry. Such participation shall be unethical.

6.C. RENDERING SERVICES TIMELY.

It is unethical for a dentist to contract his or her services under conditions that make it impossible to render services to his or her patients in a timely and reasonable manner which exemplifies the standards of his or her professional training, continuing education, years of experience and generally accepted standards of his or her peers. To do so is detrimental to the public and the individual dentist and lowers the dignity of the profession.

6.D. EXERCISING PROFESSIONAL JUDGEMENT AND SKILL.

A dentist shall not provide dental services nor participate in any contract or agreement under terms or conditions which prevent the dentist from freely exercising his or her professional judgment and skill.

IV. INTERPRETATION AND APPLICATION OF PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT.

The foregoing *ADA Principles of Ethics and Code of Professional Conduct* set forth the ethical duties that are binding on members of the American Dental Association.

The component and constituent societies may adopt additional requirements or interpretations not in conflict with the *ADA Code*. Anyone who believes that a member-dentist has acted unethically should bring the matter to the attention of the appropriate constituent (state) or component (local) dental society. Whenever possible, problems involving questions of ethics should be resolved at the state or local level. If a satisfactory resolution cannot be reached, the dental society may decide, after proper investigation, that the matter warrants issuing formal charges and conducting a disciplinary hearing pursuant to the procedures set forth in the *ADA Bylaws*, Chapter XII. PRINCIPLES OF ETHICS AND CODE OF PROFESSIONAL CONDUCT AND JUDICIAL PROCEDURE. The Council on Ethics, Bylaws and Judicial Affairs reminds constituent and component societies that before a dentist can be found to have breached any ethical obligation the dentist is entitled to a fair hearing.

A member who is found guilty of unethical conduct proscribed by the *ADA Code* or code of ethics of the constituent or component society, may be placed under a sentence of censure or suspension or may be expelled from membership in the Association. A member under a sentence of censure, suspension or expulsion has the right to appeal the decision to his or her constituent society and the ADA Council on Ethics, Bylaws and Judicial Affairs, as provided in Chapter XII of the *ADA Bylaws*.

V. JUDICIAL PROCEDURE.

It is strongly urged that all dentists acquaint themselves with the Texas Dental Practice Act, the Rules adopted by the Texas State Board of Dental Examiners and the Texas and American Dental Association's Principles of Ethics and Code of Professional Conduct.

When in doubt about judicial procedure, consult the Judicial Committee of the component society, or the Judicial Council of the Texas Dental Association, or the Council on Bylaws and Judicial Affairs of the American Dental Association. In all instances, Chapter X, Bylaws of the Texas Dental Association and Chapter XI, Bylaws of the American Dental Association, which is the highest authority, shall apply in determining conduct subject to discipline, judicial procedure, appeals and penalties that may be imposed for violation of the Principles of Ethics and Code of Professional Conduct.

APPENDIX

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**CONFIDENTIAL
PEER REVIEW CHECKLIST**

IMPORTANT: THIS IS AN INTERNAL DOCUMENT OF THE COMMITTEE AND SHOULD NOT BE MADE AVAILABLE TO ANY PARTY.

Today's Date: _____

Case Number: _____

Patient(s): _____

Dentist(s): _____

Other Party: _____

1. Date Complaint Received: _____

Date Complaint Forwarded to TDA Central Office: _____

2. Complaint(s): _____

3. Dentist(s) or Other Party Identified in Complaint: _____

4. Type of Complaint:

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Quality of Care | <input type="checkbox"/> Fees |
| <input type="checkbox"/> Appropriateness of Treatment | <input type="checkbox"/> Utilization |

5. Date(s) of Treatment/Care at Issue: _____

Date of Last Treatment from Dentist Made Subject of Complaint: _____

6. Carrier (If Applicable) and Contact Person (If Known)

Company: _____ Contact: _____

7. Records Requested:

- | | | |
|--|------------------------------|-----------------------------|
| a. Dental Records from Dentist at Issue: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Health History: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Consent Forms: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Treatment Plan: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Clinical Notes: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Periodontal Charting: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Lab Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Photographs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

- Radiographs: Yes No
- Models: Yes No
- Financial Records: Yes No
- Insurance Forms: Yes No
- EOBs: Yes No
- Other Documents: Yes No

- b. Dental/Health Records from Others: Yes No
- Health History: Yes No
- Consent Forms: Yes No
- Treatment Plan: Yes No
- Clinical Notes: Yes No
- Periodontal Charting: Yes No
- Prescriptions: Yes No
- Lab Prescriptions: Yes No
- Photographs: Yes No
- Radiographs: Yes No
- Models: Yes No
- Financial Records: Yes No
- Insurance Forms: Yes No
- EOBs: Yes No
- Other Documents: Yes No

- c. Other Records: Yes No

Specify Source and Documents and Information Included: _____

8. Mediator Appointed:

Name: _____ Date: _____

9. Written Notification to Parties Involved:

Date: _____

Patient Carrier
 Dentist Other (Specify) _____

10. Mediation Report:

Date Received: _____

11. Peer Review Panel Appointed (Names):

12. Peer Review Agreement Form:

Patient Other (Specify) _____
 Dentist

13. Clinical Examination:

Necessary: Yes No
Release Signed: Yes No*

*If panel deems examination necessary, and if the patient refuses to consent in writing to the examination, then the case must be closed.

14. Panel Review Process:

Mediator's Report Received by Panel: Yes No
Date Meeting Held: _____
All Parties Notified of Meeting: Yes No
Meeting Held with Patient: Yes No
Meeting Held with Dentist: Yes No
Meeting Held with Other Involved Party(ies): Yes No

Meeting Held with Specialist or Other Experts: Yes No

15. Interviews:*

Mediator: Yes No

Patient: Yes No

Dentist: Yes No

Other Involved Party(ies): Yes No

Prior Dentists/Healthcare Providers: Yes No

Subsequent Dentists/Healthcare Providers: Yes No

*If the panel conducts interviews outside of the meeting, then please see Panel Notes on Interviews for Comments.

16. Concluding Letters Sent:

Patient

Dentist

Carrier

Other (Specify) _____

Forwarded to TDA Central Office

17. Acceptance of Decisions/Recommendations:

Patient

Dentist

Carrier

Other (Specify) _____

18. Release signed and received (If Appropriate):

Patient

Other (Specify) _____

19. Request for Appeal:

Yes (Go to 20)

No (Go to 21)

20. If case is appealed, then:

A. Request for Appeal and Copy of Entire Case Forwarded to TDA Council on Peer Review:

Date Forwarded: _____

B. When appeal is Complete, ADA Individual Case Form is forwarded to the TDA with a copy of the entire case:

Date Forwarded: _____

**CONFIDENTIAL
MEDIATION REQUEST FORM**

IMPORTANT: RESPONSES ON THIS FORM MUST BE TYPEWRITTEN OR LEGIBLY PRINTED IN INK.

The purpose of this form is to give the peer review committee necessary information regarding your complaint. The more clearly you can describe the situation or problem, the more effective the peer review process can be.

1. Patient Information

Name of Patient(s): _____

Address/City/State/Zip: _____

Home Phone: _____ Bus. Phone: _____ Cell Phone: _____

Name of Parent/Guardian if Patient is a Minor: _____

Address/City/State/Zip: _____

Home Phone: _____ Bus. Phone: _____ Cell Phone: _____

2. Dentist Information

Name of Dentist: _____

Address/City/State/Zip: _____

Bus. Phone: _____

If the dentist is a specialist, then please state the specialty: _____

If you were referred to the dentist by another dentist or health care provider, then please identify the referral source by name, address, and phone number: _____

Date treatment by dentist began: _____

Date of last treatment by dentist: _____

What was the date you first felt there was a problem: _____

3. Insurance Information

Did you have dental insurance at the time of the treatment at issue? Yes No

If yes, then please state the name of your insurer: _____

If yes, did your insurer pay for any portion of the treatment at issue? Yes No

If yes, please provide the amount(s) paid by your insurer for the treatment: _____

4. Attempts to Resolve Matter(s)

Have you tried to resolve the matter at issue with the Dentist? Yes No

Please describe any attempts to resolve the matter(s) at issue and the date(s) of any such attempt(s). _____

5. Litigation

Is there litigation pending with regard to the matter(s) at issue? Yes No

If yes, then who initiated the litigation: _____

If yes, then does the litigation relate to the collection of fees? Yes No

6. Other Dentists and Health Care Providers

Have you been examined or treated by any other dentist with regard to the matter(s) at issue in your complaint? Yes No

a. Prior Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom you sought care or treatment or with whom you have consulted with regard to the matter(s) at issue in your complaint **prior to your treatment** with the dentist at issue. Please include the date(s) of any appointments.

b. Subsequent Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom you sought care or treatment or with whom you have consulted with regard to the

8. Understanding of Peer Review

I understand that, among other things: (a) peer review handles only matters relating to quality of care, appropriateness of treatment, fees, and/or utilization that are made within a certain period of time; (b) the peer review committee cannot address requests, or require monetary relief, for loss of monies in excess of the amounts actually paid for service(s) and/or treatment at issue (e.g., peer review cannot compensate for loss of monies associated with time off of work or pain and suffering); and (c) cases that are voluntarily withdrawn cannot be reopened. I also understand that if I initiate litigation, then my case with the TDA will be closed.

I further understand that if a dentist is asked to refund money, then the refund will be limited to the monies paid for the care, treatment, or services at issue. I also understand that if a dentist is asked to refund money, then a release must be signed within the time provided in order for the refund to be issued.

9. Release of Records/Consent to Examination

IN ORDER FOR THE PEER REVIEW COMMITTEE TO REVIEW AND CONSIDER THIS COMPLAINT, I AUTHORIZE THE RELEASE OF, AND HEREBY RELEASE, MY DENTAL RECORDS, MEDICAL RECORDS, AND OTHER HEALTH CARE INFORMATION RELEVANT TO THE MATTERS AT ISSUE TO THE PEER REVIEW COMMITTEE, THE MEDIATOR, THE PEER REVIEW PANEL, AND THE TDA COUNCIL ON PEER REVIEW, AS WELL AS ANY OTHER PERSON APPOINTED TO REVIEW AND/OR EXAMINE MY RECORDS IN CONNECTION WITH THE PEER REVIEW PROCESS. I FURTHER CONSENT TO, AND PERMIT, THE PEER REVIEW PANEL AND THE TDA COUNCIL ON PEER REVIEW, INCLUDING AD HOC CONSULTANTS APPOINTED BY THEM, TO PERFORM A CLINICAL EXAMINATION, IF SUCH AN EXAMINATION IS DEEMED NECESSARY BY THE PEER REVIEW PANEL OR THE TDA COUNCIL ON PEER REVIEW, IN THE EVENT OF AN APPEAL. I UNDERSTAND THAT I CAN REVOKE THIS AUTHORIZATION AT ANY TIME IN WRITING. HOWEVER, IF I REVOKE THIS AUTHORIZATION PRIOR TO THE CONCLUSION OF THE PEER REVIEW PROCESS, THEN I UNDERSTAND THAT ANY CASE OPENED IN CONNECTION WITH THIS COMPLAINT WILL BE CLOSED.

Patient Signature: _____ Date: _____

Parent/Guardian Signature: _____ Date: _____

CONFIDENTIAL
TREATING DENTIST REPLY FORM (MEMBER)

IMPORTANT: RESPONSES ON THIS FORM MUST BE TYPEWRITTEN OR LEGIBLY PRINTED IN INK.

The peer review committee received a complaint relating to the treatment or services you provided to the patient identified below. The purpose of this form is to obtain information from you about the patient, the treatment and services you provided to the patient, and any other relevant information you may have concerning the matters at issue. The effectiveness of the peer review process depends largely on the information received by the committee. The information you provide in this form, therefore, is an important part of the peer review process. **You are required to complete and return this form within 20 business days**, along with copies of: (a) any dental or other records you have relating to dental care or treatment you provided to the patient, including x-rays; (b) financial records relating to the treatment or services at issue; (c) any insurance information you have relating to the treatment or services at issue; and (d) any other records or information you have concerning any prior or subsequent care received by the patient relevant to the matters at issue.

1. Patient Information

Name of Patient(s): _____

Address/City/State/Zip: _____

Phone Number(s): _____

2. Dentist Information

Your name: _____

Address/City/State/Zip: _____

Bus. Phone: _____

If you are a specialist, then please state your specialty: _____

If the patient was referred to you by another dentist or health care provider, then please identify the referral source by name, address, and phone number: _____

Date your treatment of the patient began: _____

Date of patient's last visit to your office: _____

How long did you treat the patient (years, months)? _____

Did you take x-rays? Yes No

Do you have x-rays taken by any other dentist? Yes No

If this is a denture case, then were the dentures: Immediate Conventional

Date of insertion: _____

Has the patient worn dentures before? Yes No

If yes, what is the number of dentures? _____

IMPORTANT: The peer review committee must have an accurate breakdown of the fee charged for each individual procedure at issue. Please provide an itemized statement. Please use additional sheets, if necessary.

<u>Tooth Number/ Procedure Description</u>	<u>Fee for Service</u>	<u>Patient Payment</u>	<u>Insurance Payment</u>	<u>Balance (if any)</u>

3. Insurance Information

Did an insurer pay for any portion of the treatment at issue? Yes No
 If yes, please provide the amount(s) paid by the patient’s insurer for the treatment or services provided: _____

4. Other Dentists and Health Care Providers

a. Prior Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom the patient received care or treatment or with whom the patient consulted with regard to the matter(s) at issue **prior to your treatment**. Please include the date(s) of any care, treatment, or consultations of which you are aware. _____

b. Subsequent Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom the patient received care or treatment or with whom the patient consulted with regard to the matter(s) at issue **since your treatment**. Please include the date(s) of any care,

treatment, or consultations of which you are aware _____

5. Communications regarding the Matter(s) at Issue

Were you aware of the patient's dissatisfaction? Yes No
If yes, then what measures, if any, did you take to satisfy the patient? _____

6. Litigation

Is there litigation pending with regard to the matter(s) at issue? Yes No
If yes, then who initiated the litigation: _____
If yes, then does the litigation relate to the collection of fees? Yes No
If the patient's account was turned over for collection, then please suspend any collection efforts until the peer review committee has completed its review of this matter. If litigation was initiated after the peer review complaint was submitted to the peer review committee, then all efforts regarding the collection of fees should be suspended to the extent possible until the peer review process has concluded.

7. Comments.

Please provide any pertinent comments you have relating to the patient and the matter(s) at issue. Please use additional sheets, if necessary.

As indicated above, in order to facilitate the peer review process, you are required to send **copies** of the dental records you have relating to the patient, including, but not limited to, the records, information, and items identified below, **within 20 business days**. Copies of digital radiographs and digital photographs are required and must be on glossy photographic quality paper. To the extent you have any models relating to the patient at issue, you are required to send the models **within 20 business days**, as well.

- | | | |
|-----------------------|------------------------------|-----------------------------|
| Health History: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Consent Forms: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Treatment Plan: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Clinical Notes: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Periodontal Charting: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Lab Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Photographs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Radiographs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Models: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Financial Records: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Insurance Forms: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| EOBs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other Documents: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPORTANT: All copies of the requested documents and records must be readable and all handwritten notations contained therein must be legible. If the handwriting is not legible, then you must submit a transcription or typewritten version of the handwritten or illegible portions of the records and documents along with the copies of those documents and records.

Dentist Signature: _____ Date: _____

CONFIDENTIAL
TREATING DENTIST REPLY FORM (NON-MEMBER)

IMPORTANT: RESPONSES ON THIS FORM MUST BE TYPEWRITTEN OR LEGIBLY PRINTED IN INK.

The peer review committee received a complaint relating to the treatment or services you provided to the patient identified below. The purpose of this form is to obtain information from you about the patient, the treatment and services you provided to the patient, and any other relevant information you may have concerning the matters at issue. The effectiveness of the peer review process depends largely on the information received by the committee. The information you provide in this form, therefore, is an important part of the peer review process. To the extent you wish to participate in the peer review process, **you must complete and return this form within 20 business days**, along with copies of: (a) any dental or other records you have relating to dental care or treatment you provided to the patient, including x-rays; (b) financial records relating to the treatment or services at issue; (c) any insurance information you have relating to the treatment or services at issue; and (d) any other records or information you have concerning any prior or subsequent care received by the patient relevant to the matters at issue. Failure to complete and return this form or submit copies of the records or information identified herein may result in the termination of this case.

1. Patient Information

Name of Patient(s): _____

Address/City/State/Zip: _____

Phone Number(s): _____

2. Dentist Information

Your name: _____

Address/City/State/Zip: _____

Bus. Phone: _____

If you are a specialist, then please state your specialty: _____

If the patient was referred to you by another dentist or health care provider, then please identify the referral source by name, address, and phone number: _____

Date your treatment of the patient began: _____

Date of patient's last visit to your office: _____

How long did you treat the patient (years, months)? _____

Did you take x-rays? Yes No

Do you have x-rays taken by any other dentist? Yes No

If this is a denture case, then were the dentures: Immediate Conventional

Date of insertion: _____
 Has the patient worn dentures before? Yes No
 If yes, what is the number of dentures? _____

IMPORTANT: The peer review committee must have an accurate breakdown of the fee charged for each individual procedure at issue. Please provide an itemized statement. Please use additional sheets, if necessary.

<u>Tooth Number/ Procedure Description</u>	<u>Fee for Service</u>	<u>Patient Payment</u>	<u>Insurance Payment</u>	<u>Balance (if any)</u>

3. Insurance Information

Did an insurer pay for any portion of the treatment at issue? Yes No
 If yes, please provide the amount(s) paid by the patient’s insurer for the treatment or services provided: _____

4. Other Dentists and Health Care Providers

a. Prior Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom the patient received care or treatment or with whom the patient consulted with regard to the matter(s) at issue **prior to your treatment**. Please include the date(s) of any care, treatment, or consultations of which you are aware. _____

b. Subsequent Providers

Please identify by name, address, and phone number each dentist or other health care provider from whom the patient received care or treatment or with whom the patient consulted with regard to the matter(s) at issue **since your treatment**. Please include the date(s) of any care, treatment, or consultations of which you are aware _____

5. Communications regarding the Matter(s) at Issue

Were you aware of the patient's dissatisfaction? Yes No

If yes, then what measures, if any, did you take to satisfy the patient? _____

6. Litigation

Is there litigation pending with regard to the matter(s) at issue? Yes No

If yes, then who initiated the litigation: _____

If yes, then does the litigation relate to the collection of fees? Yes No

If the patient's account was turned over for collection, then please suspend any collection efforts until the peer review committee has completed its review of this matter. If litigation was initiated after the peer review complaint was submitted to the peer review committee, then all efforts regarding the collection of fees should be suspended to the extent possible until the peer review process has concluded.

7. Comments.

Please provide any pertinent comments you have relating to the patient and the matter(s) at issue. Please use additional sheets, if necessary.

As indicated above, in order to facilitate the peer review process, you are requested to send **copies** of the dental records you have relating to the patient, including, but not limited to, the records, information, and items identified below, **within 20 business days**. Copies of digital radiographs and digital photographs are requested and must be on glossy photographic quality paper. To the extent you have any models relating to the patient at issue, you are encouraged to send the models **within 20 business days**, as well.

- | | | |
|-----------------------|------------------------------|-----------------------------|
| Health History: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Consent Forms: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Treatment Plan: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Clinical Notes: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Periodontal Charting: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Lab Prescriptions: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Photographs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Radiographs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Models: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Financial Records: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Insurance Forms: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| EOBs: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other Documents: | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPORTANT: All copies of the requested documents and records must be readable and all handwritten notations contained therein must be legible. If the handwriting is not legible, then you must submit a transcription or typewritten version of the handwritten or illegible portions of the records and documents along with the copies of those documents and records.

Dentist Signature: _____ Date: _____

**CONFIDENTIAL
PEER REVIEW AGREEMENT FORM**

1. Parties to the Agreement

This agreement is made by and between the following persons:

Patient (or Parent/Guardian if Patient is a Minor): _____

Address/City/State/Zip: _____

Phone Number(s): _____

Dentist: _____

Address/City/State/Zip: _____

Phone Number(s): _____

Other Party: _____

Address/City/State/Zip: _____

Phone Number(s): _____

2. Understanding of Peer Review

The undersigned party to this agreement understands and agrees that peer review is a voluntary program designed to: (a) identify the issues involved in a particular case; (b) determine the facts; (c) facilitate communications between the parties; and (d) make decisions and/or recommendations as to: (i) the quality of care; (ii) appropriateness of treatment; (iii) fees; and/or (iv) utilization.

3. Agreement to Abide by Decisions and Recommendations

The undersigned party to this agreement agrees to submit this case to the peer review process of the _____ Dental Society. He/she/it understands and agrees that the care will be conducted according to the rules and guidelines of the Texas Dental Association and he/she/it agrees to abide by the decisions and/or comply with the recommendations of the panel subject to the right of appeal.

4. Release of Records/Agreement to Produce Records and Information

THE UNDERSIGNED PARTY TO THIS AGREEMENT UNDERSTANDS AND AGREES THAT THE PEER REVIEW PANEL AND ITS STAFF MUST REVIEW COPIES OF ALL DENTAL, MEDICAL, FINANCIAL, AND INSURANCE RECORDS RELATING TO THE MATTER(S) AT ISSUE IN THIS CASE IN ORDER TO ASCERTAIN THE ISSUES AND DETERMINE THE FACTS. THE PATIENT, THEREFORE, GRANTS PERMISSION TO THE DENTIST TO RELEASE COPIES OF HIS/HER RECORDS TO: (A) THE PEER REVIEW COMMITTEE; (B) THE PEER REVIEW PANEL; (C) THE COUNCIL ON PEER REVIEW, IN THE EVENT OF AN APPEAL; AND/OR (D)

OTHER PERSONS ASSISTING IN THE PEER REVIEW PROCESS UNLESS AND UNTIL THE PATIENT REVOKES THE AUTHORIZATION. The dentist agrees to make copies of any and all records or information relevant to the matters at issue available to the peer review committee and the peer review panel, including those records referenced in the Treating Dentist Reply Form. The undersigned party to this agreement understands and agrees that he/she/it may not rely on documents that he/she/it fails to submit to the peer review committee and/or the peer review panel as a basis for appeal. The undersigned party understands and agrees that any documents or information relevant to the care at issue that he/she/it either has or is able to obtain must be considered by the peer review committee and/or peer review panel and be a part of the peer review case file in order for it/them to be considered on appeal.

5. Consent to Examination

THE PATIENT FURTHER CONSENTS TO, AND PERMITS, THE PEER REVIEW PANEL AND THE TDA COUNCIL ON PEER REVIEW, INCLUDING AD HOC CONSULTANTS APPOINTED BY THEM, TO PERFORM A CLINICAL EXAMINATION, IF SUCH AN EXAMINATION IS DEEMED NECESSARY BY THE PEER REVIEW PANEL OR THE TDA COUNCIL ON PEER REVIEW, IN THE EVENT OF AN APPEAL.

6. Confidentiality of Proceedings

Except as otherwise provided by procedure or applicable authority, the proceedings of the peer review panel are kept strictly confidential in order to facilitate communications that help to resolve this case, including, but not limited to: (a) statements of the parties and any witnesses; (b) information and material presented during the proceedings; and (c) any findings, recommendations, evaluations, examinations, opinions, or other actions of the peer review panel and its members, consultants, and staff. The undersigned party to this agreement understands and agrees that if this case becomes the subject of civil litigation, panel members, consultants, and staff shall not be asked to testify, nor shall any proceedings or records of the peer review panel be subject to subpoena.

7. Acceptance of Terms

This signed and dated agreement signifies that the undersigned party has accepted the terms of this agreement and agrees to submit this case to the peer review panel for review and examination, if necessary.

Patient/Parent or Guardian Signature: _____ Date: _____

Dentist Signature: _____ Date: _____

Other Party Signature, if any: _____ Date: _____

RELEASE

I, _____ [Name of Patient], for the consideration of _____
_____, the receipt of which is hereby acknowledged, fully release _____
_____ [Name of Dentist] (the "Released Party"), _____
_____ [Name of Dental Society] and its officers, directors, board members,
employees, agents, and other representatives (collectively, the "Dental Society"), and the Texas Dental
Association and the Council on Peer Review and their respective officers, directors, board members,
employees, agents, attorneys, and any representative of any kind (collectively, the "Texas Dental
Association") of and from any liability or claims of whatever nature, known or unknown, including, without
limitation, claims for personal injury, disability, pain, suffering, mental anguish, loss of income, and/or any
other matter arising out of or relating to the treatment, services, or care at issue in the complaint(s) I filed
with the Dental Society concerning the Released Party.

I hereby acknowledge and agree that the release and discharge expressed herein is a general release and shall be interpreted and enforced as a general release. I expressly waive and assume the risk of any and all claims and rights of action, damages, and costs of every kind now existing but which I do not know of or suspect to exist and which would materially affect my decision to sign this release. It is expressly understood that part of the consideration given hereunder is for the release of existing and unknown claims.

I understand that this release shall bind me and my heirs, legal representatives, and assigns, and that it shall inure to the benefit of: the Released Party and to the Released Party's heirs, representatives, successors, assigns, insurers, partners, practice, and any other person authorized to act on the Released Party's behalf (collectively, the "Released Party"); the Dental Society; and the Texas Dental Association.

I understand that the receipt of the payment referenced above constitutes a final and full release and settlement of any claim I might have against the Released Party, the Dental Society, and the Texas Dental Association and each of them. I also understand that the payment made is not to be construed as an admission of liability on the part of the Released Party by whom liability is expressly denied. I have read this release, understand the terms used in it and their legal significance, and have executed it voluntarily.

Dated this ___ day of _____, 201____
_____ [Name of Patient]

STATE OF TEXAS §
COUNTY OF _____ §

Before me, a notary public, on this day personally appeared _____
[Name of Patient], who proved to me on oath to be the person whose name is subscribed
to the foregoing instrument and acknowledged to me that he/she is _____ [Name
of Patient] and has full authority to execute this document and has executed this
document for the purposes and consideration therein expressed and in the capacity
expressed.

GIVEN UNDER my hand and seal of office this _____ day of _____, 201____.

(Personalized Seal)

Notary Public's Signature

CONFIDENTIAL
WORKSHEET FOR CLINICAL EXAMINATION

IMPORTANT: THIS IS AN INTERNAL DOCUMENT OF THE COMMITTEE AND SHOULD NOT BE MADE AVAILABLE TO ANY PARTY.

Please Print

1. Case Information:

Date: _____

Component: _____

Case Number: _____

Patient: _____

Dentist: _____

Insurance Carrier or Other Party: _____

Initiator of Review: _____

2. Complaints:

1. _____

2. _____

3. _____

4. _____

3. Examination Findings (Areas of Complaint):

1. _____

2. _____

3. _____

4. _____

Health of Patient: _____

Tissue: _____

Bone: _____

Caries: _____

Missing Teeth: _____

Dental Attitude: _____

**CONFIDENTIAL
PEER REVIEW PANEL REPORT**

IMPORTANT: THIS IS AN INTERNAL DOCUMENT OF THE COMMITTEE AND SHOULD NOT BE MADE AVAILABLE TO ANY PARTY.

1. Case Information:

Date: _____

Component: _____

Case Number: _____

Patient: _____

Dentist: _____

Insurance Carrier or Other Party: _____

Initiator of Review: _____

2. Brief Outline of the Problem:

3. Notes/Information Considered:

a. Information Considered:

Mediation Request Form:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Treating Dentist Reply Form:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Mediation Report:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Peer Review Agreement Form:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Records/Info. from Treating Dentist:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Records/Info. from Prior Provider(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Records/Info. from Subsequent Provider(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No

b. Notes regarding Records/Information:

Record/Information Reviewed: _____

Date: _____

Notes: _____

Record/Information Reviewed: _____

Date: _____

Notes: _____

Record/Information Reviewed: _____

Date: _____

Notes: _____

*Attach additional sheets, if necessary

INDIVIDUAL PEER REVIEW CASE FORM: NATIONAL REPORTING SYSTEM

1. Society		2. Case Number			
3. Date Case Initiated:		16. If this is an interjurisdictional case, then please give the name of the other constituency and details.			
4. Case Initiated by:					
<input type="checkbox"/> Patient	<input type="checkbox"/> Carrier _____				
<input type="checkbox"/> Dentist	<input type="checkbox"/> Other _____				
5. Reason for Initiation					
<input type="checkbox"/> Appropriateness of care	<input type="checkbox"/> Fees	17. Any comments?			
<input type="checkbox"/> Quality of Care	<input type="checkbox"/> Other _____				
6. Specialty of Dentist Involved					
<input type="checkbox"/> General Practice	<input type="checkbox"/> Oral pathology				
<input type="checkbox"/> Endodontics	<input type="checkbox"/> Orthodontics				
<input type="checkbox"/> Periodontics	<input type="checkbox"/> Oral Surgery				
<input type="checkbox"/> Pedodontics	<input type="checkbox"/> Dental Public Health				
<input type="checkbox"/> Prosthodontics					
7. Case was: <input type="checkbox"/> Mediated <input type="checkbox"/> Went to Full Panel					
8. Case resolved in favor of:					
<input type="checkbox"/> Patient	<input type="checkbox"/> Dentist	<input type="checkbox"/> Third Party			
9. Case resolved in:					
<input type="checkbox"/> One Week or Less	<input type="checkbox"/> 4 to 6 weeks				
<input type="checkbox"/> Two Weeks	<input type="checkbox"/> 6 or more weeks				
<input type="checkbox"/> Three Weeks					
10. Date Case Closed :		11. Date Case Withdrawn:			
13. Reason for Appeal: _____		14. Decision of Appeal: <input type="checkbox"/> Changed			
_____		<input type="checkbox"/> Upheld			
		12. Date Case Appealed:			
		15. Case Still Pending? <input type="checkbox"/> Yes <input type="checkbox"/> No			

CONFIDENTIAL
PEER REVIEW APPEAL REQUEST FORM

IMPORTANT: RESPONSES ON THIS FORM MUST BE TYPEWRITTEN OR LEGIBLY PRINTED IN INK.

1. Information regarding Party Requesting Appeal

Name: _____

Address/City/State/Zip: _____

Phone Number(s): _____

2. Information regarding Case to be Appealed

Name of Dental Society: _____

Case Number: _____

Name of Party Involved: _____

Address/City/State/Zip: _____

Phone Number(s): _____

Name of Party Involved (if more than one): _____

Address/City/State/Zip: _____

Phone Number(s): _____

3. Basis for Appeal

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

1. Proper procedures were not followed in the peer review process;
2. Additional information has become available, which was not considered by the component peer review panel because the information was not available at the time of the component's review and/or for good cause was not presented to the component; or
3. The decision of the peer review panel appears contrary to the information presented.

Please explain the basis for your appeal with as much specificity as possible.

CONFIDENTIAL
LETTER TO PATIENT – INITIAL RESPONSE

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Complaint regarding Dr. _____

Dear _____

Thank you for contacting us about the dental treatment or services you received from Dr. _____. The peer review system has been developed by our dental society and the Texas Dental Association. The purpose of the peer review system is to help solve problems about dental treatment or services that the dentist and the patient have not been able to resolve on their own. A special committee of dentists, known as the peer review committee, volunteer their time to consider questions about the quality and appropriateness of dental care and/or questions regarding fees. Cases may also be submitted for peer review when there is a question regarding an insurance claim. These are the only types of questions that the committee can address and your complaint must fall within certain time limitations. It is not within the scope of the peer review system to award monetary refunds for more than the amount the patient has paid for treatment or to determine sanctions on fee levels within particular practices. Voluntary withdrawal of a complaint by the patient, at any time during the process, closes the case. These cases can not be reopened. Also, if an attorney becomes actively involved (other than as a consultant) or if formal legal action is taken, then the file will be closed.

The review process begins when a written request for peer review is submitted to the Peer Review Committee on the Mediation Request Form. The completed Mediation Request Form should include all necessary information and be accompanied by documentation that would help to clarify or support the circumstances. This should include the names of other dentists or health care providers who have knowledge of your dental care and/or treatment and may have knowledge of the matters at issue and records from those providers. The chairman of the peer review committee reviews the request for appropriateness and appoints one member of the committee to attempt to mediate the problem after the peer review committee receives a completed Treating Dentist Reply Form from the dentist at issue. If the matter is successfully mediated, then a written report is submitted to the committee chairman and the case is closed. If mediation is not successful, then the chairman is accordingly advised and a peer review panel of at least three members is appointed to review the case.

If you decide you want to avail yourself of our services, then please carefully read the enclosed information sheet about peer review and complete and return the enclosed Mediation Request Form to the address provided above along with copies of any dental or other relevant records and information you may have or are able to obtain. The committee urges you to be concise and limit your written comments to the specific complaints that you the committee to consider. Please do not give personal opinions that cannot be used in making a determination in your case.

If you have any questions regarding completion of the forms, then please do not hesitate to contact me at _____ . We look forward to hearing from you soon.

Sincerely,

_____, D.D.S
Chairman, Peer Review Committee

Enclosure: Mediation Request Form

CONFIDENTIAL
LETTER TO THE CARRIER – INITIAL RESPONSE

Date _____

Name (Addressee)

Address

City, State, Zip

Re: _____ [Name of Dentist]

_____ [Name of Patient]

_____ [Insured]

_____ [Insured's Social Security Number and Group ID Number]

Dear _____:

Thank you for contacting the _____ Dental Society's Peer Review Committee concerning a peer review of treatment and/or services provided, or about to be provided, by the dentist identified above. It is imperative that you first attempt to resolve the question directly with the dentist before referring the matter to peer review. If the dentist involved is not a member of the Texas Dental Association, then peer review cannot accept this case. There is a \$1,000.00 non-refundable filing fee assessed to a carrier to defray the administrative cost associated with a peer review matter initiated by a carrier.

If a representative of the carrier wishes to attend any meeting held by the peer review committee with regard to the above-referenced case, then please inform the peer review committee of same and you will be notified of the date, time, and place of the meeting. In order to initiate a review of this matter, the following information must be provided to the peer review committee **within 20 business days**:

1. A description of the problem.
2. The specific question(s) the carrier would like the peer review committee to address.
3. Provide a copy of the dental consultant's evaluation of the situation, if applicable.
4. Provide copies of all correspondence, claim forms, dental records, and radiographs, if available.
5. \$1,000.00 filing fee payable to the Texas Dental Association.

If the information identified above is not provided to the peer review committee **within 20 business days**, then the case will be closed. If you have any questions regarding the peer review process, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO PATIENT – NOTICE OF RECEIPT OF COMPLAINT (MEMBER)

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

This letter is to inform you that we have received your Mediation Request Form concerning Dr. _____. Your case has been assigned the number provided above. A Mediator will be assigned to your file as soon as the committee receives a copy of the completed Treating Dentist Reply Form from the dentist at issue. However, if Dr. _____ fails to complete and return the Treating Dentist Reply Form within the time period provided, then we will inform you of same, the case will be closed, and we will return copies of any documents we have received from you.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO PATIENT – NOTICE OF RECEIPT OF COMPLAINT (NON-MEMBER)

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

This letter is to inform you that we have received your Mediation Request Form concerning Dr. _____. Your case has been assigned the number provided above. Then dentist named in your complaint is not a current member of the _____ Dental Society. Because Dr. _____ is not a current member of the _____ Dental Society, he/she is not required to participate in the peer review process. However, we will inform Dr. _____ that we have received a complaint regarding his/her treatment and/or services and will afford Dr. _____ the opportunity to participate in the peer review process. If your case falls within the scope of peer review, and if Dr. _____ elects to participate in the process and pays the requested fee, then the society will process this case as it would any other case and a mediator will be assigned to the case after the peer review committee receives the completed Treating Dentist Reply Form from the dentist. However, if Dr. _____ does not elect to participate in the process, fails to complete and return the Treating Dentist Reply Form within the time period provided, and/or fails to pay the requested fee, then we will inform you of same, the case will be closed, and we will return copies of any documents we have received from you.

If you have any questions, then please do not hesitate to contact me at. _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO DENTIST – INITIAL LETTER (MEMBER)

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear Dr. _____:

The peer review committee has received a request for mediation from _____ regarding dental treatment or services, which he/she received in your office. Enclosed please find a copy of that request. As you are aware, your participation in the peer review process is a responsibility of your membership in the Texas Dental Association and, as a member, you must comply with the reasonable requests of the committee.

In order to have a more meaningful mediation, we need to have your comments regarding the treatment or services that you provided to above-named patient. Enclosed please find a Treating Dentist Reply Form, which must be returned **within 20 business days**, along with copies of any and all records you have concerning the patient at issue as indicated in the form. The copies of the records must be readable and legible. If the copies are not readable or legible, then you must have the records transcribed or typewritten and you must produce the transcribed or typewritten records along with copies of the original records. Once the committee receives the completed Treating Dentist Reply Form, a mediator will be assigned to this case. The mediator will contact you and the patient in an attempt to amicably resolve the differences of opinion that may exist between you and the patient.

If the case is successfully mediated, then it will be closed. If it is not mediated successfully, then the peer review committee chairman will appoint a peer review panel and you and the patient will be asked to sign a Peer Review Agreement to abide by the decision and/or recommendations of the committee. The panel will make its decision and/or recommendations based on its review of the information obtained concerning this matter, including information obtained from the dental and other records it receives, the interviews conducted, and any examinations of the patient. The maximum out-of-pocket amount that may be awarded to a patient through the peer review process is a refund of monies paid for the treatment or services at issue in the complaint to the extent permitted by law. If an attorney becomes actively involved in the peer review process (other than as consultant) at any time, then the case will no longer be within the scope of peer review and will be closed.

The peer review committee looks forward to working with the parties in an attempt to resolve the matters at issue. If you have any questions regarding the peer review process, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Treating Dentist Reply Form

CONFIDENTIAL
LETTER TO DENTIST – INITIAL LETTER (NON-MEMBER)

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear Dr. _____:

The peer review committee has received a request for mediation from _____ regarding dental treatment or services, which he/she received in your office. Enclosed please find a copy of that request.

Our records show that you are not currently a member of the _____ Dental Society. Although you are not a member, the _____ Dental Society, offers non-member dentists an opportunity to participate in the peer review process. If you wish to participate in the peer review process, then you must (a) remit a non-refundable fee in the amount of \$_____ to defray the administrative costs of peer review and (b) complete and return the Treating Dentist Reply Form along with copies of any and all records you have concerning the patient at issue **within 20 business days** as indicated in the form. The copies of the records must be readable and legible. If the copies are not readable or legible, then you must have the records transcribed or typewritten and you must produce the transcribed or typewritten records along with copies of the original records. If the payment, the completed Treating Dentist Reply Form, and the records requested above are not returned **within 20 business days**, then the _____ Dental Society will assume that you do not wish to participate in the peer review process and the case will be closed.

If you do not elect to participate in the peer review process, then the patient will be notified of same and the case will be closed as indicated above. If you elect to participate in the peer review process, then a mediator will be assigned to this case after the committee receives the completed Treating Dentist Reply Form. The mediator will contact you and the patient in an attempt to amicably resolve the differences of opinion that may exist between you and the patient.

If the case is successfully mediated, then it will be closed. If it is not mediated successfully, then the peer review committee chairman will appoint a peer review panel and you and the patient will be asked to sign a Peer Review Agreement to abide by the decision and/or recommendations of the committee. The committee will make its decision and/or recommendations based on its review of the information obtained concerning this matter, including information obtained from the dental and other records it receives, the interviews conducted, and any examinations of the patient. The maximum out-of-pocket amount that may be awarded to a patient through the peer review process is a refund of monies paid for the treatment or services at issue in the complaint to the extent permitted by law. If an attorney becomes actively involved in the peer review process (other than as consultant) at any time, then the case will no longer be within the scope of peer review and will be closed.

It should be noted that non-member dentists do not become members of _____ Dental Society or the Texas Dental Association by virtue of their participation in the peer review process and/or payment of the fee referenced above. In order to become a member of the _____ Dental Society or the Texas Dental Association, you must apply and be approved for membership and comply with the requirements associated

therewith.

The peer review committee hopes that you will elect to participate in the peer review process and looks forward to the opportunity to work with the parties in an attempt to resolve the matters at issue. If you have any questions regarding the peer review process, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Treating Dentist Reply Form

CONFIDENTIAL
LETTER TO MEDIATOR – ASSIGNMENT OF FILE

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

You have been assigned as the mediator for the case referenced above. Enclosed please find the Mediation Request Form and Treating Dentist Reply Form associated with the case. Please contact the parties involved in this matter **within 10 business days**.

Enclosed please also find a blank Mediation Report. Please complete this form as you are mediating this case and return the completed form to me once mediation has concluded regardless whether mediation was successful or unsuccessful.

It is important to remember that your role as the mediator is to open the lines of communication between the patient and the dentist and to resolve the matters at issue to the satisfaction of both parties. The duty of the mediator is to facilitate a compromise and not to sit in judgment of what has or may have transpired between the parties.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Mediation Report

CONFIDENTIAL
LETTER TO MEDIATOR – STATUS INQUIRY

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

On _____, you were assigned as the mediator in the above-referenced case involving _____ and Dr. _____. To date, our records indicate that this case is unresolved. If you have resolved this case, then please send the completed Report of Mediation and any other backup or relevant information to me as soon as possible. If you are having any problems mediating this matter or if there are any aspects of the complaint that are not clear, then please let me know.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

**CONFIDENTIAL
TERMINATION LETTER**

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

The Peer Review Committee of the _____ Dental Society has decided to terminate any additional action on this above-referenced case for the following reason(s):

- 1.
- 2.
- 3.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO INITIATING PARTY – SUCCESSFUL MEDIATION

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Peer Review Committee of the _____ Dental Society has recently been informed that this case was resolved through mediation. It is our understanding that both you and Dr. _____ have reached the following agreement:

If a refund is being issued, then please add the following paragraph here:

In order to receive the refund from Dr. _____, you must review and sign the enclosed release in front of a notary and return the signed and notarized release **within 20 business days**. If the enclosed release is not signed and notarized and returned **within 20 business days**, then this matter will be closed and no refund will be issued. Likewise, if the refund is not sent to the peer review committee **within 20 business days**, then this matter will be closed and no refund will be issued.

In light of the above-referenced agreement, the _____ Dental Society's Peer Review Committee will consider this matter closed once it receives the signed and notarized release from you and the refund, if any, from the dentist. We appreciate your cooperation in the peer review process.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

Enclosure: Release

CONFIDENTIAL
LETTER TO DENTIST – SUCCESSFUL MEDIATION

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear Dr. _____:

The Peer Review Committee of the _____ Dental Society has recently been informed that this case was resolved through mediation. It is our understanding that both you and _____ have reached the following agreement:

If a refund is being issued, then please add the following paragraph here:

The refund in the amount of \$_____ must be sent to _____ **within 20 business days**. The refund will not be released to the patient unless and until he/she signs a release and returns the signed and notarized release **within 20 business days**. If the release is not signed and notarized and returned **within 20 business days**, and/or if you fail to send the refund in the amount of \$_____ to _____ **within 20 business days**, then this peer review matter will be closed.

If the dentist is a member, then the following sentence should remain in this paragraph:

As a member of the _____ Dental Society, you are required to comply with the reasonable request of the peer review committee. If you fail to send the refund in the amount of \$_____ to the office **within 20 business days**, then this case may be referred to the judicial committee for non-compliance.

Certain matters relating to professional society peer review actions and/or payments made to resolve complaints, among other things, are reportable to the National Practitioner Data Bank and/or the Healthcare Integrity and Protection Data Bank. You should be aware that certain reimbursements of payments and certain medical malpractice payments may be reportable. For information on whether or not action taken in connection with this matter may be reportable, you may refer to www.npdb-hipdb.com or confer with your counsel or your carrier.

In light of the above-referenced agreement, the _____ Dental Society's Peer Review Committee will consider this matter closed once the signed and notarized release and refund are received. We appreciate your cooperation in the peer review process.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO INITIATING PARTY – UNSUCCESSFUL MEDIATION

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

All attempts by the mediator to resolve the matters at issue in the above-referenced case have been unsuccessful. In order for the peer review process to proceed, the peer review committee must receive signed a Peer Review Agreement from you and from Dr. _____ **within 20 business days**. Once the peer review committee receives completed and signed Peer Review Agreement Forms from both parties, I will appoint at least three persons of the peer review committee to serve on the peer review panel. A panel review will be scheduled and you will be notified of the date, time, and place of the panel review meeting and examination, if an examination is deemed necessary in this matter.

The peer review panel will: (a) review the file; (b) conduct the hearing and examination, if necessary; (c) interview the parties separately and any other person who may have knowledge or information relevant to the matters at issue during the hearing; and (d) perform individual clinical examinations, if necessary. Dr. _____ will not be allowed to participate in any examination and will not be present when you are interviewed.

If either you or the dentist elects not to participate in the panel review process, and/or fails to return the Peer Review Agreement Form **within 20 business days**, then the case will be closed.

To the extent you have not already done so, you should provide copies of: (a) any dental or other records you may have or are able to obtain relating to dental care or treatment you received from persons other than Dr. _____ so that the peer review panel and committee will have an opportunity to evaluate the matters at issue more fully; (b) proof of payment of the amounts at issue; and (c) any insurance information you have relating to the treatment or services at issue in your complaint. These documents should accompany the signed Peer Review Agreement and be returned to the office **within 20 business days**. It should be noted that you may not rely on documents that you fail to submit to the peer review committee and/or the peer review panel as a basis for appeal. Any documents or information relevant to the care at issue that you either have or are able to obtain must be considered by the peer review committee and/or peer review panel and be a part of the peer review case file in order for them to be considered on appeal.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Peer Review Agreement Form

CONFIDENTIAL
LETTER TO DENTIST – UNSUCCESSFUL MEDIATION

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear Dr. _____:

All attempts by the mediator to resolve the matters at issue in the above-referenced case have been unsuccessful. In order for the peer review process to proceed, the peer review committee must receive signed a Peer Review Agreement from both the initiating party and you **within 20 business days**. Once the peer review committee receives completed and signed Peer Review Agreement Forms from both parties, I will appoint at least three persons of the peer review committee to serve on the peer review panel. A panel review will be scheduled and you will be notified of the date, time, and place of the panel review meeting and examination, if an examination is deemed necessary in this matter.

The peer review panel will be appointed to: (a) review the file; (b) conduct the hearing and examination, if necessary; (c) interview the parties separately and any other person who may have knowledge or information relevant to the matters at issue during the hearing; (d) perform individual clinical examinations, if necessary; and (e) inform the peer review committee of its findings so that the committee can render a decision and/or make recommendations with which all parties have agreed to abide, subject to appeal.

You are required to attend the peer review panel meeting in order to present information relevant to the resolution of this matter. However, you will not be allowed to participate in any examination and will not be present when the patient is interviewed.

To the extent you have not already done so, you should provide: (a) copies of: (i) any dental or other records you have relating to dental care or treatment you provided to the patient, including x-rays; (ii) financial records relating to the treatment or services at issue; and (iii) any insurance information you have relating to the treatment or services at issue; and (b) a narrative response to the complaint so that the peer review panel and committee will have an opportunity to evaluate the matters at issue more fully. The documents and response should accompany the signed Peer Review Agreement and be returned to the office **within 20 business days**. It should be noted that you may not rely on documents that you fail to submit to the peer review committee and/or the peer review panel as a basis for appeal. Any documents or information relevant to the matters at issue that you either have or are able to obtain must be considered by the peer review committee and/or peer review panel and be a part of the peer review case file in order for them to be considered on appeal.

As you are aware, your participation in the peer review process is a responsibility of your membership in the Texas Dental Association. Failure to cooperate with the requests contained herein may require a referral to the judicial committee and the initiating party will be notified that the peer review process is being terminated as a result of your failure to cooperate.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Peer Review Agreement Form

CONFIDENTIAL
NOTICE OF TIME AND PLACE OF HEARING

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

Pursuant to your request for panel review dated _____, the Peer Review Committee of the _____ Dental Society has scheduled the panel review and examination, if warranted, to take place at _____, beginning at _____ a.m./p.m. on _____, 20____. As you know, parties may not be represented by counsel during the review and/or examination, and no recording may be made of the review and/or examination.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO INITIATING PARTY – CONCLUDING LETTER

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The peer review panel of the _____ Dental Society's Peer Review Committee met on _____, 20__ to consider the matters made subject of the above-referenced case. Both you and Dr. _____ met with the peer review panel.

In your complaint, you alleged that:

- 1.
- 2.
- 3.

After reviewing the case file and the information made available during the peer review process, the peer review committee has decided that:

- 1.
- 2.
- 3.

(If a refund is being requested, then please add the following paragraph here):

Under separate cover, Dr. _____ is being asked to send a refund check in the amount of \$_____ to the peer review committee **within 20 business days from the date of this form**. In order to receive the refund, you must review and sign the enclosed release in front of a notary and return the signed and notarized release to the peer review committee **within 20 business days**. If the signed and notarized release is not returned **within 20 business days**, then the refund will not be released but will be returned to Dr. _____ and this case will be closed. Likewise, if the refund is not returned within **20 business days**, then the peer review case will be closed.

(If a refund is not requested, then the following paragraph may be used, as appropriate):

You must _____
within 20 days. Under separate cover, _____ is being asked to _____
_____.

(If the initiating party is not asked to sign a release, then the release should not be an enclosure).

If you disagree with the decision of the peer review committee, then you have the right to appeal the decision to the TDA Council on Peer Review. An appeal of the decision of the peer review committee must be based on one or more of the following grounds:

1. Proper procedure was not followed in the process;
2. Additional information has become available which was not considered by the peer review committee either because it was not available at the time of the component's review and/or for some good cause was not presented; and/or
3. The decision of the committee appears contrary to the information presented.

In order to appeal the decision of the peer review committee, you must complete and return the enclosed Peer Review Appeal Request Form **within 20 business days from the date of this form**. It should be noted that all decisions of the TDA Council on Peer Review are final within the peer review context.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosures: Release
Peer Review Appeal Request Form

**CONFIDENTIAL
LETTER TO DENTIST – CONCLUDING LETTER**

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear Dr. _____:

The peer review panel of the _____ Dental Society's Peer Review Committee met on _____, 20__ to consider the matters made subject of the above-referenced case. Both you and _____ met with the peer review panel.

In the complaint, it was alleged that you:

- 1.
- 2.
- 3.

After reviewing the case file and the information made available during the peer review process, the peer review committee has decided that:

- 1.
- 2.
- 3.

(If a refund is being requested, then please add the following paragraph here):

The refund in the amount of \$_____ must be made payable to _____ and sent to _____ **within 20 business days**. The refund will not be released to the patient unless and until he/she signs a release and returns the signed and notarized release **within 20 business days from the date of this form**. If the release is not signed and notarized and returned **within 20 business days**, and/or if you fail to send the refund in the amount of \$_____ to _____ **within 20 business days**, then this matter will be closed.

(If the dentist is a member, then the following sentence should remain in this paragraph):

As a member of the _____ Dental Society, you are required to comply with the reasonable request of the peer review committee. If you fail to send the refund in the amount of \$_____ to the office **within 20 business days**, then this case may be referred to the judicial committee for non-compliance.

(If a refund is not requested, then the following paragraph may be used, as appropriate):

You must _____

within 20 business days. Under separate cover, _____ is being asked to sign a release in front of a notary and return same **within 20 business days.** In order to receive a copy of the signed and notarized release, you must _____ **within 20 business days.** If the _____ is not _____ **within 20 business days,** then you will not receive a copy of the release and the case will be closed. Likewise, if the signed and notarized release is not returned **within 20 business days from the date of this form,** then no further action will be required of you and the peer review case will be closed.

Certain matters relating to professional society peer review actions and/or payments made to resolve complaints, among other things, are reportable to the National Practitioner Data Bank and/or the Healthcare Integrity and Protection Data Bank. You should be aware that certain reimbursements of payments and certain medical malpractice payments may be reportable. For information on whether or not action taken in connection with this matter may be reportable, you may refer to www.npdb-hipdb.com or confer with your counsel or your carrier.

If you disagree with the decision of the peer review committee, then you have the right to appeal the decision to the TDA Council on Peer Review. An appeal of the decision of the peer review committee must be based on one or more of the following grounds:

1. Proper procedure was not followed in the process;
2. Additional information has become available which was not considered by the peer review committee either because it was not available at the time of the component's review and/or for some good cause was not presented; and/or
3. The decision of the committee appears contrary to the information presented.

In order to appeal the decision of the peer review committee, you must complete and return the enclosed Peer Review Appeal Request Form **within 20 business days from the date of this form.** It should be noted that all decisions of the TDA Council on Peer Review are final within the peer review context.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosure: Peer Review Appeal Request Form

CONFIDENTIAL
LETTER TO APPEALING PARTY - RECEIPT OF REQUEST FOR APPEAL

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Peer Review Committee of the _____ Dental Society has received your completed Peer Review Appeal Request Form in connection with the above-referenced case. A copy of your Peer Review Appeal Request Form and a copy of the complete case file is being forwarded to the TDA Council on Peer Review. The TDA Council on Peer Review will review the file and will:

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

The TDA Council on Peer Review will notify the parties of its decision regarding the appeal. If the TDA Council on Peer Review decides to hear the appeal case, then it will notify the parties of the date and time of any hearing on this matter.

If you have any questions in the interim, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

CONFIDENTIAL
LETTER TO NON-APPEALING PARTY - RECEIPT OF REQUEST FOR APPEAL

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Peer Review Committee of the _____ Dental Society has received a request for appeal from _____ in connection with the above-referenced case. A copy of the Peer Review Appeal Request Form and a copy of the complete case file is being forwarded to the TDA Council on Peer Review. The TDA Council on Peer Review will review the file and will:

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

The TDA Council on Peer Review will notify the parties of its decision regarding the appeal. If the TDA Council on Peer Review decides to hear the appeal case, then it will notify the parties of the date and time of any hearing on this matter.

If you have any questions in the interim, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.

Chairman, Peer Review Committee

CONFIDENTIAL
DECISION TO AFFIRM (WITHOUT HEARING)
TDA Council only

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Texas Dental Association Council on Peer Review has received a copy of the Peer Review Appeal Request Form and a copy of the case file from the Peer Review Committee of the _____ Dental Society in connection with the above-referenced case. The Council on Peer Review has reviewed the documents and information concerning the above-referenced case and has decided to affirm the decision of the component society. The decision of the TDA Council on Peer Review is final within the peer review context.

Thank you for your participation in the peer review process.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Council

CONFIDENTIAL
DECISION TO HEAR CASE ON APPEAL
TDA Council only

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear _____:

The Texas Dental Association Council on Peer Review has received a copy of the Peer Review Appeal Request Form and a copy of the case file from the Peer Review Committee of the _____ Dental Society in connection with the above-referenced case. The Council on Peer Review has reviewed the documents and information concerning the above-referenced case and has decided to hear the case on appeal.

The appeal will be considered at the next meeting of the TDA Council on Peer Review on _____, 20____, beginning at _____ a.m./p.m. The appeal will be based on the case file received by the Council on Peer Review from the component peer review committee, and no new evidence or information will be considered by the Council.

The Council on Peer Review appreciates your participation in the peer review process.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Council

CONFIDENTIAL
NOTICE TO PARTIES - DECISION TO REFER CASE BACK TO COMPONENT
TDA Council Only

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Texas Dental Association Council on Peer Review has received a copy of the Peer Review Appeal Request Form and a copy of the case file from the Peer Review Committee of the _____ Dental Society in connection with the above-referenced case. The Council on Peer Review has reviewed the documents and information concerning the above-referenced case and has decided to refer the case back to the component peer review committee to review and consider the information (including documents) that was not made available to the peer review committee either because it was not available at the time of the component's review or for good cause was not presented.

The Council on Peer Review will inform the component peer review committee of its decision. The component peer review committee will contact each party in this matter regarding the action to be taken in connection with this case.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Council

CONFIDENTIAL
NOTICE TO COMPONENT - DECISION TO REFER CASE BACK TO COMPONENT
TDA Council Only

Date _____

Name (Addressee)

Address

City, State, Zip

Re: Case No. _____

Dear _____:

The Texas Dental Association Council on Peer Review has received a copy of the Peer Review Appeal Request Form and a copy of the case file from the Peer Review Committee of the _____ Dental Society in connection with the above-referenced case. The Council on Peer Review has reviewed the documents and information concerning the above-referenced case and has decided to refer the case back to the component peer review committee for further review. ***Specifically, the Council on Peer Review feels that the component peer review committee should*** _____

_____.

Please proceed with regard to the case as indicated above and notify the parties as to the actions to be taken in connection with this matter. When notifying the parties of your decision, please be sure to notify the parties of the right to appeal as appropriate.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Council

CONFIDENTIAL
LETTER TO APPEALING PARTY – CONCLUDING LETTER AFTER REFERRAL

Date _____

Name (Addressee) Address
City, State, Zip

Re: Case No. _____

Dear _____:

As you know, the peer review panel of the _____ Dental Society previously decided that _____ after meeting with you and _____.

You appealed that decision to the TDA Council on Peer Review, who referred the case back to the component peer review committee. After reviewing the case further, the peer review panel of the _____ Dental Society has decided _____.

Under separate cover, _____ is being _____ ***[Insert appropriate instruction/guidance from the Concluding Letters regarding refunds, releases, and the NPDB. The release should only be an enclosure to the party who is requested to sign and return same.]***

If you disagree with the decision of the peer review committee, then you have the right to appeal the decision to the TDA Council on Peer Review. An appeal of the decision of the peer review committee must be based on one or more of the following grounds:

1. Proper procedure was not followed in the process;
 2. Additional information has become available which was not considered by the peer review committee either because it was not available at the time of the component's review and/or for some good cause was not presented; and/or
 3. The decision of the committee appears contrary to the information presented.
- In order to appeal the decision of the peer review committee, you must complete and return the enclosed Peer Review Appeal Request Form **within 20 business days**. It should be noted that all decisions of the TDA Council on Peer Review are final within the peer review context.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosures: Release
Peer Review Appeal Request Form

CONFIDENTIAL
LETTER TO NON-APPEALING PARTY – CONCLUDING LETTER AFTER REFERRAL

Date _____

Name (Addressee)
Address
City, State, Zip

Re: Case No. _____

Dear Dr. _____:

As you know, the peer review panel of the _____ Dental Society previously decided that _____ after meeting with you and _____. You appealed that decision to the TDA Council on Peer Review, who referred the case back to the component peer review committee. After reviewing the case further, the peer review panel of the _____ Dental Society has decided _____.

Under separate cover, _____ is being _____ *[Insert appropriate instruction/guidance from the Concluding Letters regarding refunds, releases, and the NPDB. The release should only be an enclosure to the party who is requested to sign and return same.]*

If you disagree with the decision of the peer review committee, then you have the right to appeal the decision to the TDA Council on Peer Review. An appeal of the decision of the peer review committee must be based on one or more of the following grounds:

1. Proper procedure was not followed in the process;
2. Additional information has become available which was not considered by the peer review committee either because it was not available at the time of the component's review and/or for some good cause was not presented; and/or
3. The decision of the committee appears contrary to the information presented.

In order to appeal the decision of the peer review committee, you must complete and return the enclosed Peer Review Appeal Request Form **within 20 business days**. It should be noted that all decisions of the TDA Council on Peer Review are final within the peer review context.

If you have any questions, then please do not hesitate to contact me at _____.

Sincerely,

_____, D.D.S.
Chairman, Peer Review Committee

Enclosures: Release
Peer Review Appeal Request Form