

Policy Statement 5.4 – Complaints Resolution¹

1. Position Summary

- 1.1. Conciliation should be the first option to deal with complaints concerning all dentists. The ADA should provide a mechanism to resolve such complaints the dentist's conduct, performance or standards in the provision of services. That conciliation mechanism would usually be provided by the member's Branch taking into account that the interests of the patient must always be paramount. When conciliation mechanisms fail to resolve a dispute then then it may proceed to adjudication utilising peer review, an appropriate statutory authority, or the Dental Board of Australia.

2. Background

- 2.1. The Australian Dental Association (ADA) and its Branches have Codes of Ethics.
- 2.2. The commencement of the National Law regulating dental registration has removed jurisdictional differences in the major regulatory requirements for dentists.
- 2.3. ADA recognises it has a number of obligations with respect to complaints concerning professional behaviour of its members including conduct, performance and standards in the provision of dental services.
- 2.4. In keeping with the regulatory model, where complaints are dealt with at a State and Territory locality, it remains appropriate and practical for complaints and disciplinary processes to be managed by the Branches.
- 2.5. Where Branches have entered into a Corporate Authorised Representative relationship with insurers, and where issues are the subject of professional indemnity policies, Branches cannot deal with complaints involving members who are not covered by the Branches' indemnity scheme.
- 2.6. Depending on the nature of the complaints or notifications, the matter may be dealt with informally by the Branches or formally referred to either a statutory authority or to the Board.

Definitions

- 2.7. ADJUDICATION/ARBITRATION is a formal process by a court or tribunal to settle a dispute between a patient and their dentist.
- 2.8. BOARD is the Dental Board of Australia.
- 2.9. CONCILIATION is a voluntary process which attempts to resolve differences between dentists and complainants without recourse to adjudication or arbitration.
- 2.10. NATIONAL LAW is the Health Practitioner Regulation National Law Act 2009 as in force in each state and territory.
- 2.11. STATUTORY AUTHORITIES are Federal, State or Territory regulatory bodies that deal with complaints and conciliate and adjudicate on professional dental behaviour.

3. Position

- 3.1. The interests of the patient must always be paramount.
- 3.2. Self-regulation by the dental profession should be preserved and promoted.
- 3.3. When conciliation mechanisms fail to resolve a dispute, then the matter may proceed to adjudication utilising peer review, appropriate statutory authorities or the Board.

¹ This Policy Statement is linked to other Policy Statement: 5.5 Funding Agencies, 5.7 Professional Indemnity, 5.8 Dental Acts, the National Law and Boards, 5.15 Consent to Treatment, 5.16 Informed Financial Consent & 6.5.2 Professional Boundaries

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- 3.4. The ADA should maintain mechanisms which aim to ensure that its members practise dentistry at the highest possible standard.
 - 3.5. The means for conciliation should be made available by the Branches as a primary response to a formal written complaint.
 - 3.6. In the first instance, the ADA should provide a mechanism to resolve a dispute where a dentist, who is also a member of the ADA and is insured by the relevant Branch's recommended indemnity scheme, is the subject of a potential or actual formal complaint about that member's conduct, performance or standards in the provision of services.
 - 3.7. On matters of general advice, ethical issues and other disputes not involving professional indemnity, ADA advice should be available to all members.
 - 3.8. The ADA, through its Branches, may provide an avenue for conciliation in addition to or in liaison with the Board and other statutory authorities.
 - 3.9. The conciliatory mechanism should use the services of experienced dentists.
 - 3.10. In matters requiring adjudication, preference should be given to peer review mechanisms (see Appendix), which allow qualified assessment of the appropriateness and quality of care.

Policy Statement 5.4

Adopted by ADA Federal Council, November 21/22, 2002.

Amended by ADA Federal Council, November 15/16, 2007.

Amended by ADA Federal Council, November 17/18, 2011.

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Amended by ADA Federal Council, August 17/18, 2017.

Appendix to Policy Statement 5.4 – Principles of Peer Review

1. Peer Review is a system by which the dental profession assumes a responsibility for reviewing matters concerning the performance of a dentist in carrying out professional duties, upon receipt of a formal complaint.
2. Appropriate matters for assessment by Peer Review might include (but are not limited to):
 - 2.1. propriety of treatment;
 - 2.2. appropriateness of care;
 - 2.3. quality of services rendered;
 - 2.4. reasonableness of fees;
 - 2.5. questions of overall provider competency.
3. The following guidelines should apply to the operation of Peer Review:
 - 3.1. Assessment of a complaint against a practitioner must be made by a committee composed of the practitioner's peers.
 - 3.2. All parties concerned should agree to recognise the authority and finding of a Peer Review Committee.
 - 3.3. A Peer Review Committee should employ established parameters for the assessment of clinical quality and professional performance.
 - 3.4. Clinical assessment may be made only with the consent of both patient and practitioner.
 - 3.5. Where clinical assessment of a patient is undertaken, a Peer Review Committee may engage independent consultants who should be remunerated.
 - 3.6. A consultant's report must be in writing, limited to facts, and must only be submitted to the Peer Review Committee.
 - 3.7. Members of a Peer Review Committee and its consultants must be indemnified against litigation arising from their participation in the review.
 - 3.8. Where either party initiates legal proceedings in connection with a complaint, the review must be terminated.
4. Dentists subject to Peer Review should be afforded procedural fairness including the right to be heard.