

VI. Referrals to the Judicial Council

Dentist Non-Compliance with the Final Decision

In the event a member elects not to comply with the final decision, the CDA Council on Peer Review will refer the matter to the CDA Judicial Council for violation of Section 3 of the CDA Code of Ethics.

1. Procedures to be followed by CDA peer review staff:
 - a. Send the dentist, **by certified mail return receipt mail**, the Dentist Non-Compliance with Resolution Decision Letter (Form #52 - first notice).
 - b. Recall file in ten (10) working days.
 - c. If the dentist complies within the specified time frame, proceed with the case review.
 - d. If the dentist fails to comply by the specific date, staff must contact the dentist by telephone to confirm that the dentist has received the request for the refund.
 - e. If the dentist fails to respond by the specified date, send the dentist, **by certified return receipt mail**, the Dentist Non-Compliance with Resolution Letter (Form #53) – second notice).
 - f. Recall the file in ten (10) working days.
 - g. If the dentist fails to respond by the recall date, send the Council on Peer Review the “Memo Requesting Approval for Referral to Judicial Council.” If the Council on Peer Review approves the referral, send the dentist the CDA Notification to Dentist Referral to CDA Judicial Council (Form #53A).
 - h. If the Council on Peer Review does not approve the referral to the Judicial Council, the case will be returned to staff with instructions about procedures to be followed.
 - i. If the dentist complies with the request at any time prior to the referral to the Judicial Council, the file will be closed and no further action will be taken.
 - j. No further action will be taken by the Council on Peer Review unless otherwise requested by the Judicial Council.

Patterns Of Practice

To identify and process pattern of practice cases, the following procedures will be utilized:

1. When a potential pattern of practice becomes apparent, the Council on Peer Review will consider the case files for only the following:
 - appropriateness for review
 - procedural integrity
 - decision "not arbitrary"
2. As a general guideline, if there are at least three adverse decisions for cases initiated within a twenty-four (24) month period, the pattern is appropriate for referral and the Council on Peer Review will forward the CDA Judicial Council copies of the complaints, resolution letters and resolution addenda.
3. The CDA Council on Peer Review will advise the dentist and the component of the action taken.
4. The CDA Judicial Council may refer the case to the Dental Board of California for its investigation.
5. This process does not apply to utilization cases.

Grossly Inadequate/Inappropriate Treatment

Grossly Inadequate Treatment: Dentistry provided to a patient which does not correct the pathological condition it was intended to correct, or fails prematurely under normal conditions of use, or fails to meet acceptable esthetic standards, or facilitates and/or contributes to the worsening of the patient’s dental health, and/or leaves a disease entirely untreated or undiagnosed. However, for the purpose of referral to the CDA Judicial Council, the above

definition should not be so narrowly enforced as to base a referral on only one tooth but rather on the overall evaluation of the work performed or unperformed by the treating dentist.

Grossly Inappropriate Treatment: Dentistry performed that is unnecessary and/or unwarranted. The quality of the treatment need not be in question. This type of treatment can include, but is not limited to; dentistry performed solely for profit; dentistry performed for which the treating dentist is inadequately trained; dentistry performed that leads to a pathological condition that did not exist prior to treatment; and dentistry performed when a prognosis is so poor that immediate failure is readily apparent; or treatment which endangers the patient's general health.

In a situation involving a single case of grossly inadequate or inappropriate treatment, the following procedural steps are as follows:

1. When a peer review committee determines that a single peer review case demonstrates "grossly inadequate or grossly inappropriate treatment," a separate letter regarding possible endorsement of the CDA Code of Ethics should be directed from the peer review committee to the CDA Council on Peer Review at the time the proposed letter of resolution is drafted. A copy of the case file must be forwarded, with the draft resolution letter and resolution addendum, to the CDA Council on Peer Review outlining the basis of the committee's request for referral.
2. Following the expiration of the appeal period or the determination of any appeal of the decision, the CDA Council on Peer Review will review the file. If the CDA Council on Peer Review concurs, the council will forward the CDA Judicial Council a copy of the complaint, resolution letter and resolution addendum.
3. If the component/specialty committee fails to identify and advise the Council on Peer Review of the "grossly inadequate or grossly inappropriate treatment," the Council on Peer Review may refer the case directly to the Judicial Council for possible enforcement of the CDA Code of Ethics, following the expiration of the appeal period or the determination of any appeal of the decision.
4. The Council on Peer Review will inform the dentist and the component of the action taken.
5. The CDA Judicial Council may refer the case to the Dental Board of California for its investigation.

False or Fraudulent Insurance/Health Care Benefit Claims/Alleged Fraud or Billing Irregularities

False or Fraudulent Insurance/Health Care Benefit Claims: In Section 1871(a) of the California Insurance Code, the legislature has declared:

- “(a) The business of insurance involves many transactions that have the potential for abuse and illegal activities. There are numerous law enforcement agencies on the state and local levels charged with the responsibility for investigating and prosecuting fraudulent activity. This chapter is intended to permit the full utilization of the expertise of the commissioner and the department so that they may more effectively investigate and discover insurance frauds, halt fraudulent activities, and assist and receive assistance from federal, state, local and administrative law enforcement agencies in the prosecution of persons who are parties in insurance frauds.
- (h) Health insurance fraud is a particular problem for health insurance policyholders. Although there are no precise figures, it is believed that fraudulent activities account for billions of dollars annually in added health care costs nationally. Health care fraud causes losses in premium dollars and increases health care costs unnecessarily.”

To deal with the health care fraud, the Legislature has added a section to the Penal Code, making it a crime to engage in health care fraud. Under Section 550 of the Penal Code, it is a felony to knowingly present false or fraudulent claims to an insurer, including a health care insurer; to knowingly make multiple claims for the same loss or injury; to knowingly make or prepare an oral or written statement with intent to use the same in support of any false or fraudulent claim; or to conceal or knowingly fail to disclose the occurrence of an event that affects any person's initial or continued right to any insurance benefit.

Every person who violates Section 550 may be punished by imprisonment for two to five years and by a fine of up to \$50,000, except a public offense involving a claim of \$400 or less, is only punishable by imprisonment in the county jail not to exceed six months and by a fine not to exceed \$1,000 or both.

Section 810 of the California Business and Professions Code provides:

- “(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:
- (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.
 - (2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim.
- (b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.
- (d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.”

If the exact language of these sections of the code is required, it may be obtained from the CDA Legal Department.

Alleged Fraud Or Billing Irregularities

Irregular billing includes billing for services in a manner which is fraudulent, deceitful, or misleading according to state law and applicable codes [Section 1871.1 of the California Insurance Code and the ADA Principles of Ethics and Code of Professional Conduct (Section 5.B. Advisory Opinions; 5.B.1. Waiver of co-payment; 5.B.2. Overbilling; 5.B.4. Treatment Dates; 5.B.5. Dental Procedures; and 5.B.6. Unnecessary Services.)].

No case will be accepted as a peer review case until all the proper forms have been completed by the party initiating review and delivered to CDA. All forms must be legible and capable of being reproduced clearly.

Examples of irregular billing include submitting a claim to a carrier for treatment not yet completed or for procedures not provided or billing a patient for procedures not provided.

In such instances where alleged fraud or billing irregularities, or false or fraudulent insurance/health care benefit claims are suspected, these procedures should be followed:

1. When a peer review committee determines that a peer review case demonstrates possible fraud or a billing irregularity, or false or fraudulent insurance/health care benefit claims, a letter should be directed from the peer review committee to the CDA Council on Peer Review at the time the letter of resolution is drafted. The letter should outline the basis of the peer review committee's request for referral for possible enforcement of the CDA Code of Ethics. A copy of the case file should be forwarded to the CDA Council on Peer Review.
2. Following the expiration of the appeal period or the determination of any appeal of the decision, the CDA Council on Peer Review will review the file. If the CDA Council on Peer Review concurs with the peer review committee's recommendations, the council will forward to CDA Judicial Council a copy of the complaint, resolution letter and resolution addendum.
3. If the component/specialty committee fails to identify and advise the Council on Peer Review of the alleged fraud or billing irregularities or false or fraudulent insurance/health care benefit claims, the Council on Peer Review may refer the case directly to the CDA Judicial Council for possible enforcement of the CDA Code of Ethics, following the expiration of the appeal period or the determination of any appeal of the decision.
4. The Council on Peer Review will advise the dentist and the component of the action taken (Form #53A).
5. The CDA Judicial Council may refer the case to the Dental Board of California for its investigation.

Dentist Drops Membership During Review

In the event a member drops membership during the peer review process, the Council on Peer Review will refer the matter to CDA Judicial Council for compliance with possible reporting requirements to the Dental Board of California. In these instances, the following procedures should be followed:

1. Procedures to be followed by the CDA peer review staff:
 - a. Upon discovering that the dentist under review has dropped his or her membership, CDA peer review staff must notify the patient immediately that the dentist has dropped membership with Notification to Patient of Dentist Dropping Membership (Form #48).
2. Procedures to be followed by the Council on Peer Review:
 - a. The Council on Peer Review will promptly refer the case to the CDA Judicial Council.
 - b. No further action will be taken by the CDA Council on Peer Review unless otherwise requested by the CDA Judicial Council.