I. Introduction

In keeping with its obligation of service to the public, the California Dental Association (CDA) has established a statewide system for resolving disputes that may arise in the delivery of dental services to the public by CDA member dentists regarding the quality and/or the appropriateness of dental treatment rendered. The service is provided at no cost to the patient or member dentist.

The Council on Peer Review (council) is charged with the responsibility of monitoring and guiding the peer review system.

This CDA Peer Review Manual has been developed by CDA and the Council on Peer Review to describe the policies for the consistent management of disputes between dentists and patients. These policies are designed to provide for a fair system for the involved parties.

The peer review system is considered by CDA to be an equitable alternative to legal proceedings. As such, the parties shall not be represented by legal counsel or have the ability to conduct discovery or question the opposing party.

Peer review cases may be initiated by a patient or CDA member dentist. The peer review system may involve up to two phases: mediation and evaluative peer review.

A. General Information

There are certain requirements for cases to be eligible for the peer review system:

1. The dentist who provided the treatment in question must be a member of CDA.
2. The dispute must involve a question about the quality and/or appropriateness of dental treatment rendered.
   - **Quality.** Cases submitted for a review of the quality of care will be concerned with the functional and/or aesthetic character of dental treatment.
   - **Appropriateness.** Cases submitted for an appropriateness review will be concerned with whether the treatment was suitable for the patient, the condition or occasion, i.e. whether the treatment was proper.
   - Cases can also be initiated regarding an insurance company’s determination on quality or appropriateness of treatment or whether a carrier has properly interpreted its contract.

The following types of complaints are not within the scope of the peer review system:

1. Cases which do not meet time criteria. Since passage of time alters clinical conditions and makes recollection of details and procedures difficult, patient-initiated inquiries must be received within three years from the date of completion, or within one year from the date the initiator of review became aware of the alleged problem, whichever occurs first. An exception in this instance would be if, upon recognition of the problem, the patient returned for correction of the problem to the dentist against whom the complaint is filed. Then the longest amount of time that could transpire would be one year between the last date of treatment and receipt of the complaint by CDA.

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1 In 1976, the CDA peer review system was established with the passage by the CDA House of Delegates of HR15-1976-H. This resolution mandated the formation of a uniform statewide CDA system for resolving disputes regarding dental care.
2. Cases in litigation. No inquiry will be accepted if either party has initiated litigation (including small claims court), and/or has initiated or has gone through an arbitration process concerning any aspects of the dental services which might otherwise be reviewed. In addition, should legal action or arbitration be initiated by the patient involved after the peer review process begins, including the appeal process, the peer review action will cease immediately. A 90-day notice of intent to file suit is to be construed as litigation. If an arbitration agreement was signed, and the dentist elects to invoke the arbitration agreement upon notice of the peer review, the peer review process will cease immediately. If a dentist initiates litigation or arbitration against a patient during the review, the dentist will be asked to withdraw the legal proceedings.


4. Communication issues. Questions concerning matters other than dental treatment (e.g., communication, attitude, demeanor, office staff, collection procedures, appointment scheduling, etc.) are outside the scope of the peer review system.

5. Second opinions. It is not within the scope of peer review to provide second opinions with regard to a diagnosis or recommended treatment plan.

6. Treatment covered by Denti-Cal. Requests for review regarding treatment covered by Denti-Cal will not be evaluated. Patients seeking to initiate a complaint about treatment covered by Denti-Cal should contact the Denti-Cal office directly.

Cases that appear inappropriate for peer review will be closed. It is possible that a case may initially appear to meet the criteria for review, but may be closed following discovery of information which makes the case inappropriate for review.

II. Patient-Initiated Cases

To initiate a case, the following forms must be completed: Request for Peer Review Form, Agreement to CDA Peer Review System, and Authorization for Use and Disclosure of Health Information Form. The open date is the date that all the completed, unaltered, and legible forms are received by CDA from the initiating party. Incomplete forms may result in the inability to accept the case. Request for review forms, including the written complaint and relevant attachments, will be provided to the dentist under review.

The utilization of peer review does not stop, interrupt, or suspend the running of the time period for filing a civil suit against the dentist in question. The filing of such actions is governed by California Code of Civil Procedure Section 340.5. This law may preclude a patient from filing a suit against the dentist after peer review is concluded because the time may have run out.

A. Informal Mediation

The first phase in the resolution of a dispute is mediation. For purposes of peer review, mediation is an informal process in which a CDA staff mediator facilitates communication between the parties to assist them in identifying a mutually acceptable agreement. The mediator does not decide the solution to the dispute; each party voluntarily participates in and agrees to the solution. This process is conducted via phone.

Once CDA has received a patient’s completed paperwork, and if it appears that the case is appropriate for the peer review system, the case will be assigned to a CDA staff mediator who will attempt to assist the parties to reach a resolution.

Should an agreement be reached during the mediation phase, the patient will be required to sign a Settlement Agreement and Release prior to receipt of any refund. In mediation, if the dentist under review
offers a refund for the amount paid for the treatment in question and the treatment is such that further harm is not probable, the case may not be eligible for evaluative peer review.

All communications between the parties and documents prepared for and during the mediation phase are confidential per California Evidence Code Sections 1115-1128.

If the dispute is not resolved through mediation, it may be eligible for evaluative peer review, described below. It is possible that some cases may be eligible for mediation, but may not be eligible for evaluative peer review based on the available information. Cases that are not resolved in mediation and are not eligible for evaluative review will be closed.

B. Evaluative Peer Review

If the dispute is not resolved through mediation, treatment records will be requested and the case will be screened to determine whether the case is appropriate for evaluative peer review. Cases which appear inappropriate for evaluative peer review will be closed.

After records have been gathered, and if it appears that the case is appropriate for evaluative peer review, a special committee of dentists, known as a peer review committee, volunteers its time to conduct the review regarding the quality and appropriateness of dental care.

i. Requesting Records

Treating and consulting/subsequent dentists are requested to provide records. Records and information requested includes:

a. Treating/Consulting Dentist Reply Form and Records Checklist
b. Copies of original treatment records
c. Typed verbatim transcript of treatment records
d. Single patient account ledger
e. Study models (of diagnostic quality and identifiable by date)
f. Radiographs (x-rays) and photographs (of diagnostic quality and identifiable by date)
g. Any additional information that will assist the committee with its review

If applicable, records will be requested from the patient’s insurance carrier.

There is no charge for the peer review service; however, any unusual costs sustained in conducting the peer review, including but not limited to duplicating radiographs, study models or treatment records, will be paid by the party initiating the review.

ii. Committee Meeting

The Peer Review Committee will evaluate all available evidence to make a determination, which will be provided in a letter of resolution. The committee will not discuss the findings with the parties during the committee meeting. Cases will be assigned to a Peer Review Committee located as closely as possible to where the treatment was rendered. However, cases may be transferred to other committees for reasons including potential conflict of interest, to distribute caseload, or so the case can be reviewed by the appropriate specialists.

The Peer Review Committee will be comprised of at least three CDA member dentists (licensed to practice dentistry in the State of California) who have received training on the policies and procedures of peer
review. Cases will be reviewed by a committee comprised of a minimum of three dentists, and one or more specialists may be included in the review. Cases involving treatment rendered by a dentist who completed a specialty program recognized and accredited by the applicable commission of the American Dental Association, in an area in which the dentist holds specialty training, will be reviewed by a minimum of one specialist of the same area.

The patient will be given an opportunity to be examined by (if necessary) or interviewed by the committee. The dentist will be given an opportunity to be interviewed by the committee separately. If a patient fails to appear at a committee meeting without notice, the case may be closed, unless a determination can be made with the available evidence. If a dentist fails to appear at the committee interview without notice, the review may proceed without additional opportunities for an interview. An additional opportunity to meet with the committee may be granted at the sole discretion of the council.

If the treatment in question has been altered prior to the committee meeting, the case may be reviewed if there is conclusive evidence (radiographs, photos, models, etc.) to evaluate the treatment.

iii. Conflict of Interest

Volunteer committee members may not review a case that they are involved in as the treating or subsequent treating dentist or if they are a close friend, family member, or close business associate of the patient or dentist under review. Parties should notify the Council on Peer Review immediately if either believes a conflict of interest may exist. Committee members may not accept a patient in their practice for a minimum of one year following the finalization of the case.

iv. Potential Outcomes

The committee will evaluate all available evidence to make a determination in the form of a letter of resolution. Potential outcomes of a peer review evaluation are:

- **Treatment is acceptable/appropriate.** No refund will be awarded.
- **Treatment is unacceptable/inappropriate.** A refund to the patient and/or insurance carrier will be awarded for the amount paid toward unacceptable or inappropriate treatment.
- **Corrective treatment (further harm was caused, necessitating additional treatment).** The amount estimated will be awarded to correct the problem. The patient will be requested to obtain a corrective treatment estimate for review and approval by the committee.
- **Acceptable, but incomplete.** A refund will be awarded for the amount of the treatment that is incomplete.
- **No determination (insufficient evidence to render a decision).** The committee will not make a determination about the case.

The only monetary award the Peer Review Committee can recommend is a refund for the dental treatment in question, or the cost of corrective dental treatment. It is not within the scope of the peer review system to handle complaints for time lost from work or pain suffered as a result of treatment, and the decision of the peer review system cannot compensate for any damages of this nature. Additionally, it is not within the scope of the peer review system to evaluate the need for medical treatment or recommend compensation for the cost of corrective medical treatment.

It is possible that peer review may be unable to come to a conclusion regarding all or a portion of a complaint based on the available evidence. If only a portion of a complaint is appropriate for review, the committee will consider only that portion of the complaint which is reviewable.
The treating dentist shall be financially responsible for any adverse peer review decisions regarding the quality and/or appropriateness of treatment rendered regardless of his or her employment status.

If a dentist receives three or more adverse peer review decisions in cases initiated in a 24-month period, or a finding of grossly inadequate or grossly inappropriate treatment, or fraud or billing irregularities, the dentist may be referred to the CDA Judicial Council for investigation of possible ethical violations.

Should the committee determine compensation is in order, the dentist will be requested to submit the compensation to CDA. Upon receipt of the compensation from the dentist, a Release of All Claims form will be sent to the patient for signature. Upon receipt of the signed Release of All Claims form, the compensation will be forwarded to the patient and/or insurance carrier. If the Release of All Claims form is not returned within the timeframe requested, the compensation will be returned to the dentist and the case will be considered closed.

v. Appeals

The appeal process has been established to ensure that the evaluative peer review process has been administered correctly by the Peer Review Committees. Either party may appeal the decision or the approved corrective treatment cost estimate to the CDA Council on Peer Review Appeals Panel. Instructions and criteria for filing an appeal will be provided with the letter of resolution. If an appeal review is deemed appropriate, the panel will review the policies followed and whether the decision is supported by evidence.

Should the panel determine that none of the issues raised by the appellant meet the applicable appeal criteria, the appeal request will be denied and the matter will be considered closed. However, if the panel deems it necessary, it may remand the case to the Peer Review Committee for further review. Once a decision is made on appeal, it is final and binding.

Non-Appealable Issues
1. Cases that are inappropriate for review, or which result in a “non-resolution” letter, are not appealable.
2. For treatment that was determined to be acceptable but incomplete, no appeal shall be granted that solely disputes the amount of the refund.

Appealable Issues
1. The dentist or patient requested to meet with the Peer Review Committee but was not given the opportunity to do so.
2. The Peer Review Committee did not perform a clinical evaluation. A clinical evaluation encompasses written statements, patient records and clinical evidence (such as radiographs, clinical examination, if applicable, etc.).
3. Relevant information or evidence exists which, in the exercise of reasonable diligence, was not considered or could not have been presented to the Peer Review Committee prior to the clinical examination and/or dentist interview. Evidence must be submitted with the appeal request.
4. The resolution of the case appears contrary to the information presented. The Peer Review Committee made a policy error in evaluating the case.

Corrective Treatment Appealable Issues
1. Relevant information or evidence exists which, in the exercise of reasonable diligence, was not considered or could not have been presented to the Peer Review Committee prior to the
submission of the original corrective treatment plan and cost estimate to the committee. Evidence must be submitted with the appeal request.

2. The corrective treatment plan and/or cost estimate approved by the Peer Review Committee appear to be inconsistent with the corrective procedures as listed in the final resolution.

vi. Obligations to Cooperate

All parties to the peer review are expected to cooperate and abide by the decision of the Peer Review Committee.

Membership in CDA requires agreement by the dentist to abide by the association’s Code of Ethics (www.cda.org/about-cda/cda-code-of-ethics). The Code of Ethics requires a member to “comply with the reasonable requests of a duly constituted committee, council or other body of the component society or of this association . . . and to abide by the decisions of such body.” Should a dentist fail to comply with a request or recommendation of a Peer Review Committee or the Council on Peer Review, the dentist may be referred to the CDA Judicial Council for investigation. However, CDA has no authority to compel the dentist to comply with the decision beyond their membership agreement. Should the dentist choose not to abide by the decision, CDA can take action against the dentist’s membership status, subjecting them to expulsion from CDA and loss of access to all member benefits. In the event a dentist withdraws membership in CDA during a review, it may not be possible to proceed with the resolution of the matter.

Should the committee find in favor of the dentist, it is expected that the patient pay the dentist under review any outstanding balance for the treatment in question.

Should the committee determine that a refund is in order and the patient’s account ledger shows an outstanding balance, the refund will first be taken from the outstanding balance. If the amount of the remaining balance on the account ledger is less than the refund amount, the remaining refund amount will be made in the form of a check.

If there is an outstanding balance for the treatment in question, the dentist is asked to hold in abeyance any collection procedures until the committee has completed its review.

CDA may terminate the review process if, in CDA’s sole discretion, it determines that either party of a case becomes abusive, disruptive, or poses a threat or risk for harm to the dental society, CDA, or any of their members and employees.

For disputes involving a minor patient (under 18 years old), the dentist may withdraw from participation in the review upon notification of the case. For cases that resolve with compensation for a minor patient, the patient’s guardian will be required to obtain court approval of settlement. This process may involve incurring legal expenses, which will be the responsibility of the patient’s guardian. If a settlement is agreed upon in mediation or if a refund is awarded in evaluative review, and the patient’s guardian does not complete the minor’s compromise process, the dentist will not be required by CDA to abide by the decision.

III. Dentist-Initiated Cases

Dentists may initiate cases to appeal an insurance carrier’s decision about the quality or appropriateness of treatment rendered or to obtain benefits for a patient. A dentist cannot initiate a peer review concerning the quality of his/her own treatment except in these instances. A dentist cannot initiate a case against another dentist.
The Dentist Request for Review Information Form must be completed for a dentist-initiated review. The open date is the date that all the completed, unaltered, and legible forms are received by CDA. Incomplete forms may result in the inability to accept the case. Upon receipt of a dentist-initiated request for review, the patient will be contacted to obtain consent to proceed with the case. If the patient does not sign an Authorization for Use and Disclosure of Health Information, the case will be closed. A committee is unable to request the carrier to allow benefits which are specifically excluded in a patient’s policy.

In that the peer review service can sometimes be over-utilized (over three dentist-initiated cases in any rolling twelve month period), CDA or the Peer Review Committee may charge a reasonable fee to the initiator to cover the administrative expenses for each additional peer review case. Any over-utilization fees and policies will be established in advance.

IV. Protection From Discovery of Records and Proceedings

By virtue of the California Evidence Code Section 1157, neither the records nor any proceedings relating to this matter of the dental society’s Peer Review Committee or of the CDA’s Council on Peer Review can be provided or used to reveal information in any manner.