



Peer Review Manual

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1. OVERVIEW OF PEER REVIEW

Peer Review is a binding arbitration process that resolves appropriateness of treatment and quality of care disputes between patients and dentists who are members of the New York State Dental Association (NYSDA). Peer Review is the principal quality assurance mechanism through which the dental profession evaluates the appropriateness of treatment and the quality of care rendered by its members. Impartial clinical assessments by qualified peers provide the basis for its credibility.

This Manual constitutes the NYSDA's uniform policies and procedures for the Peer Review process. The Manual establishes a method for dealing with inappropriate and/or substandard care.

NYSDA has established a Council on Peer Review and Quality Assurance to serve as a central clearinghouse for its component societies. The Council on Peer Review and Quality Assurance serves as the appellate body with respect to decisions of the Peer Review committees of the component societies. Component society Peer Review committees are deemed to be subcommittees of the NYSDA Council on Peer Review and Quality Assurance.

Peer Review deliberations and decisions are based upon the legal duties that are the cornerstone of the dentist-patient relationship. Central to this relationship is an understanding that the dentist is obligated to provide appropriate treatment in accordance with acceptable standards of care. The patient is obligated to cooperate in this treatment and compensate the dentist in accordance with the agreed upon fees.

Peer Review committees are fact-finding adjudicatory bodies whose members serve voluntarily. The committees review and mediate differences among patients and dentists. Peer Review

committees can also review certain matters involving third party payers. The strength of the Peer Review mechanism is its ability to function effectively, fairly, and expeditiously. The goal is to promptly address disagreements via a vigorous, uniform review that safeguards individual rights.

1.1 NYSDA Membership Obligation

Peer Review and Quality Assurance is a membership benefit enjoyed by members of NYSDA and the American Dental Association. In light of NYSDA's commitment to protecting the public and upholding the esteem of the profession, all NYSDA members are required to comply with the requests of the Peer Review committees, to participate in the Peer Review process, and to abide by the decisions of the Peer Review committees. A member who fails to comply will be subject to disciplinary proceedings, as prescribed by the NYSDA Constitution and Bylaws.

1.2 Scope Of Peer Review

Peer Review committees address questions that relate to appropriateness of treatment, utilization of contracts with third-party payers, and quality of diagnosis and treatment. Peer Review will resolve fee disputes associated with quality of care complaints within the context of a Peer Review. (See Section 2.7) Fee disputes that have no relation to quality of care or appropriateness of treatment are outside the purview of Peer Review. They are private financial matters between doctors and their patients and must be resolved independently. Questions of "usual or customary fees" are reviewed in cases involving third-party payers only.

Peer Review consists of the review of disputes between the patient and the dentist, and, in certain cases disputes among the patient, the dentist, and a third-party payer.

1.3 Uniformity And Consistency

Uniformity and consistency assure that all who participate in Peer Review receive a fair and impartial hearing. Peer Review committees must follow the protocols provided in this Manual. It is critical to avoid procedural irregularities in the Peer Review process.

The Council on Peer Review and Quality Assurance develops standardized reporting forms for use at each major step in the process. Each component committee is expected to utilize these forms for every Peer Review matter it addresses.

No component may adopt any procedures or requirements for Peer Review in addition to, or different from, those delineated in the Peer Review Manual and NYSDA policy. Peer Review policy is established by the NYSDA Council on Peer Review and Quality Assurance in accordance with the NYSDA Bylaws.

1.4 Fundamental Aspects of the Process

Peer Review, as a binding arbitration, is an alternative dispute resolution process. It results in the conclusive resolution of the dentist-patient dispute fully enforceable in court if necessary.

The *Agreement to Submit to Peer Review* is a contract in which the parties authorize NYSDA to resolve their dispute, agree to participate in NYSDA's Peer Review process, and to waive any other legal process relating to the issue except to enforce the Peer Review decision and contract.

The parties are urged to consult with an attorney prior to signing the *Agreement*. However, it is not necessary for them to be represented by counsel in the process. All parties are entitled to be represented by an attorney in the process and to have their attorney appear at and participate in the Peer Review hearing if they so choose. Peer Review determinations are based on the quality of the care and treatment provided or omitted as assessed by an impartial committee of three dentists who examine the patient, the available dental records, and any other evidence presented by the parties.

When treatment is found to be inappropriate or not performed in an acceptable manner, the patient's obligation for payment will be abrogated and the dentist is directed to refund all fees paid for the treatment. Peer Review does not make punitive or damage awards.

When treatment is found to be appropriate and the care provided acceptable, all outstanding fees are remitted to the dentist.

There is no charge to either party for Peer Review.

The process is confidential.



2. THE PEER REVIEW PROCESS: INITIAL STEPS

The Peer Review process begins when a patient submits an *Agreement to Submit to Peer Review* to the dental society. The patient and the treating dentist - as well as the dentist's employer or partner/associates - must sign the contract initiating the process. The *Agreement* is a legally binding arbitration contract that sets forth the terms of the process whereby the parties authorize the component dental society Peer Review committee to resolve the patient's complaint. Patients who request the services of the Peer Review committee agree to abide by the decision of the Committee as a binding arbitration.

Peer Review is conducted within the component dental society in which the patient was treated. If, for any reason, the component society Peer Review committee cannot establish an impartial hearing committee, the Peer Review proceeding shall be referred to another component dental society geographically near to the first component society. The second component society shall then conduct the Peer Review proceeding, in accordance with this Manual, at either its own location or the location of the first component society, whichever location is deemed more convenient for the parties.

2.1 Conditions for Accepting Requests for Peer Review

- Submission of a signed *Agreement to Submit to Peer Review*;

- The dentist involved is a member of the New York State Dental Association at the time the *Agreement to Submit to Peer Review* is submitted;
- The matter pertains to appropriateness of treatment or quality of care;
- The dental treatment submitted for Peer Review was performed by the treating dentist or his/her employee(s) within the past 2½ years. If there has been continuous treatment for a condition that resulted from an act, omission or failure, the time for honoring a request for Peer Review will have elapsed two years and six months from the date of the last such treatment;
- The patient has submitted a complaint to the NYS Education Department's Office of Professional Discipline (OPD) and OPD has dismissed the complaint on jurisdictional grounds;
- The Peer Review committee believes it can evaluate the complaint brought before it and render a fair and impartial evaluation from the evidence available.

2.2 Requisite Conditions for Cases Involving Third-Party Payers

In addition, in cases involving third-party payers, the third-party payer must exhaust its internal procedures for resolution of a claim before it will be considered by Peer Review under the protocols for Peer Review for establishing third-party benefits.

2.3 Conditions for Denying Requests for Peer Review

- The dentist involved is not a member of the New York State Dental Association at the time the *Agreement to Submit to Peer Review* is submitted; however, see Section 8 on multi-dentist practices;
- A non-member employer/partner/owner does not sign the *Agreement to Submit to Peer Review*;

- The patient refuses to place any outstanding fee balance in the component dental society's escrow account pending the outcome of the Peer Review;
- The matter involving patient and dentist does not pertain to appropriateness of treatment or quality of care;
- More than 2 ½ years have elapsed since the act, omission or failure upon which the matter submitted for Peer Review is based;
- Any party has commenced litigation against the other, which litigation is either still pending or has been procedurally or substantively resolved, by settlement or order of a court, and the subject of which is the matter submitted for Peer Review or a matter related to the one submitted to Peer Review;
- The patient has submitted a complaint about the same treatment to the New York State Education Department's Office of Professional Discipline and that complaint has not been dismissed on jurisdictional grounds.
- The patient has received a fee refund from the dentist for the treatment that is the subject of the complaint and has signed a release from liability.
- The patient's outstanding balance for the treatment that is the subject of the complaint has been recovered through a collection action resulting in a waiver of future action or a "release from liability." When the dentist has commenced action to recoup the fees for the treatment that is the subject of the patient's complaint, the dentist is required to withdraw/cease the collection action when the patient places the outstanding balance in the dental society's escrow account. The dentist's failure to do so will result in termination of the Peer Review with the dentist being deemed out-of-compliance with the Peer Review process and NYSDA policy.

- Peer Review cannot intervene in disputes where a fee dispute has been brought to a court and resolved either by court order or settlement between the parties.
- The treatment in dispute was performed under the auspices of, and reimbursed through, the New York State Medicaid program or any other state, local, or federal government agency program;
- The treatment in dispute was performed in a hospital, dental school, clinic or other Article 28 facility;

2.4 The Agreement to Submit to Peer Review

The *Agreement to Submit to Peer Review* is the foundation of Peer Review. It is a legal binding arbitration contract between the patient and dentist. In the *Agreement*, each describes his/her position in the dispute and agrees to the conditions contained therein; (i.e., to participate, to accept and to abide by the decision of the Peer Review Committee, and not to disclose information about the Peer Review). It supplements the duty NYSDA member dentists enter into, as a condition of their membership in NYSDA, to participate in Peer Review.

Peer Review is primarily a mechanism for dispute resolution and, as such, the Committee will be responsible for evaluating the merits of complaints and recommending resolutions. These resolutions may include the return of the patient fees and continuing education requirements. Peer Review cannot award payments for “liability damages”.

Patient’s Statement

The completed and signed *Agreement to Submit to Peer Review* must be accompanied by legible copies of all pertinent documentation. The information submitted by the patient should include the following:

- a. Patient contact information.
- b. The name of the dentist who performed the treatment.

- c. The treatment provided.
- d. The specific complaint with the treatment provided.
- e. Date patient last saw the dentist regarding the treatment in question.
- f. Fee for the treatment in question.
- g. Whether payment has been made to the dentist in full and, if not, the amount of the outstanding balance. Outstanding monies must be forwarded to the component dental society and held in an escrow account pending the outcome of the Peer Review. A check is an acceptable form of deposit of such monies. Peer Review cashes all checks upon receipt and deposits the proceeds into the escrow account for distribution after the final decision is issued after a Peer Review hearing, appeal, or successful mediation.
- h. Copies of all pertinent billing, receipts, and insurance statements.
- i. Names of all subsequent or concurrent dentists. Patient authorizes any such dentists to provide copies of all records and radiographs to the Peer Review Committee.

Dentist's Statement

When the component receives a completed *Agreement* from a patient, the *Agreement* is sent to the treating dentist along with copies of all documentation submitted. The dentist is directed to complete the "Dentist's Statement" page of the *Agreement* and return it within two (2) weeks to the component along with copies of the patient's records and all relevant billing and payment information.

If the dentist fails to return the *Agreement* and patient records within two (2) weeks of the date of the notification letter, the dentist must be contacted in writing. The follow-up letter advises the dentist that, if the *Agreement* is not received within five (5) days,

the dentist will be out of compliance and referred to the Ethics Committee.

2.5 Component Functions

The executive directors and office staff of component societies may take much of the burden of administration from the chairperson. The division of administrative responsibilities may vary without affecting the validity of the Peer Review process. Only members of component Peer Review Committees or NYSDA council members may render Peer Review decisions or decisions on related matters.

A copy of the *Agreement* is made by the component and maintained. The original *Agreement to Submit to Peer Review* is sent—along with copies of all materials submitted as evidence by the patient—to the treating dentist for signature and acknowledgment of his/her agreement to abide by the decision of the Peer Review Committee. The dentist will have two (2) weeks from the date of the notification letter to return the signed *Agreement*, copies of patient records, billing information, escrow (if required), etc.

Once the component dental society receives the *Agreement to Submit to Peer Review* and required documentation from all involved, staff will forward the case file to the chairperson of the Peer Review Committee for evaluation and initiation of the Peer Review process. The chairperson will screen the *Agreement* for appropriateness of review, i.e., is the matter within the scope of Peer Review and reviewable? If additional information is needed, the chairperson may direct staff to obtain such materials, including a health statement, billing statements, insurance explanation of benefits forms and receipts.

If the treating dentist refuses to cooperate or abide by the committee's requests, the component society shall notify the initiator and the component Ethics Committee for appropriate action against the treating dentist.

The component will send acknowledgment and copies of the completed *Agreement to Submit to Peer Review* and all evidentiary material submitted by the parties to all involved parties confirming the status of the Peer Review, i.e., notification that mediation will commence or that the matter has been terminated with cause.

2.6 Opening the Case

Once the dentist returns the *Agreement* and records, staff should forward the materials to the Peer Review Committee chairperson. The chairperson will determine whether the complaint complies with the requirements for Peer Review. If the case cannot be reviewed, the chairperson will advise the component staff of the reason and direct a letter to go to all parties closing the case.

If the patient's account is in collection, the dentist will be contacted by mail advising that the collection action must be withdrawn.

The chairperson will next determine whether escrow must be deposited by the patient and/or dentist and direct staff to send escrow notification to the appropriate parties. The chairperson will then determine whether the case is eligible for mediation. If eligible, once all required escrow is deposited, the chairperson will appoint a mediator. The case cannot proceed until all required escrow is deposited.

2.7 Fees, Escrow Requirements, and Monetary Awards

One function of the Peer Review Committee is to establish the dentist's actual fees for the specific treatment under review. When there is a discrepancy between the dentist's and patient's statements about the fees, the Committee will establish the fee based on the documentary evidence submitted by the parties.

Collection Action Initiated by Dentist

When the dentist has commenced a collection action to recoup the fees for the treatment that is the subject of the patient's complaint, the dentist is required to withdraw/cease the collection action when the patient places the outstanding balance in the dental society's escrow account. The dentist's failure to do so will result in termination of the Peer Review with the dentist being deemed out-of-compliance with the Peer Review process and NYSDA policy.

Patient and Dentist Escrow

Patients and dentists are required to place all outstanding fees or fees received for the care under review in an escrow account pending the conclusion of the Peer Review. Either party may satisfy

this requirement by submitting a check for the appropriate amount, including a check from a third party, which check Peer Review shall cash upon receipt and deposit the proceeds into the escrow account for distribution after the final decision is issued after a Peer Review hearing, appeal, or successful mediation. An insurer may submit a check on behalf of either party, or a letter of guaranty of payment, accompanied by the party's authorization to release the funds upon the final decision being issued after a Peer Review hearing or mediation settlement. At any time prior to the final decision being issued after a Peer Review hearing or mediation settlement, a party may submit their own check in substitution for any third party check, which check shall be cashed upon receipt. Peer Review will not proceed beyond the initial screening to mediation until the patient and/or dentist has deposited such outstanding fees or fees received for the care under review in the component's escrow account. Failure to submit such funds will be deemed a violation of the *Agreement*, resulting in the closing of the case.

When a patient or dentist withdraws from Peer Review in violation of the *Agreement to Submit to Peer Review*, all fees for the treatment under review held in escrow by the dental association will be paid over to the non-withdrawing party.

Dentist Escrow

In cases involving multiple dentists, when the practice has collected the fees for the procedure, the component dental society shall collect the fees received to deposit into its escrow account at the initiation of the Peer Review. (See Section 8)

In cases involving an employer/employee relationship, the employer shall be responsible for depositing the fees paid for the treatment under review. Unless either of the doctors deposits such monies, both shall be deemed out-of-compliance and the Peer Review cannot proceed.

Refunds and Financial Awards

All refunds made to patients are paid via the component dental society directly to the patient. If any or all patient fees have been paid by an insurer or other third-party payer, these monies are paid on the patient's behalf and treated as though they had been paid directly by the patient. Patients are responsible for resolving any contractual obligations regarding fee refunds directly with their carriers.

When the dentist has contracted with the patient's dental benefit plan and agreed to accept capitated reimbursement, any patient refund resulting from the Peer Review will be based on the doctor's usual, uncapitated treatment fee as determined by the Peer Review Committee from the relevant evidence submitted by the parties as to that fee.

If the dentist elects to have a deposit made to escrow through his/her liability carrier, such arrangements are private matters between the dentist and the carrier. The dental society shall make no documentation available or communicate about any specific Peer Review case with any outside agency. Such arrangements have no bearing on the dentist's responsibilities to comply with Peer Review directives or time limits.

2.8 Legal Representation

Either or both parties to a Peer Review may be represented by an attorney. Either or both parties may choose not to be represented by an attorney. Once either a patient or dentist notifies the dental society that he/she is represented by an attorney, the dental society should obtain the name and contact information for the attorney. The dental society will then verify that the individual identified is, in fact, an attorney. The dental society will notify the other party(s) and ascertain whether he/she will be represented by an attorney as well.

If one or both parties are represented by an attorney, the attorney receives all correspondence, is involved in the mediation process, and can be present at the Peer Review hearing to represent his or her client. If one of the parties appears at the hearing with an attorney unannounced, the chairperson should verify that the individual is an attorney. The chairperson should advise the other

party and ask whether that party wishes to proceed with the hearing or reschedule to provide an opportunity to obtain representation. If the party elects to proceed with the hearing, the chairperson should note this in the decision letter.

2.9 Emergency Clinical Examinations

The chairperson may determine that the patient requires emergency palliative treatment that might alter the dental care in question.

If such emergency exam is deemed necessary, the chairperson will appoint a committee of three (3) examiners. These doctors shall individually review all available records and radiographs, conduct clinical examinations, and complete examination forms. The treating dentist(s) should be invited to attend the clinical examination. The chairperson should advise the patient to submit copies of records of any subsequent treating dentist(s) received.

Should a hearing be scheduled after unsuccessful mediation, the same three (3) committee members who completed the emergency clinical examination will be assigned to the Peer Review hearing. At the hearing, the committee members will review any new records submitted by the patient following the subsequent treatment and again perform individual clinical examinations.

3. MEDIATION

The first stage in the resolution of a dispute by the Peer Review committee is mediation. The Peer Review committee chairperson shall appoint one member of the Peer Review committee to serve as a pre-hearing mediator. If the matter is not resolved during mediation and proceeds to a hearing, the mediator's report becomes part of the documentation provided to the hearing committee members. The mediator may not serve as a member of the hearing committee.

By being attentive, without being argumentative, the mediator may be able to settle the dispute and reconcile the differences of the parties, in which case the Peer Review process need proceed no further.

The mediation process resolves disputes through the achievement of a consensus between the parties. Unlike a Peer Review hearing, mediation does not result in any adverse or positive findings about the merits of the clinical care.

If the dispute cannot be resolved through mediation in a timely manner, the mediator should expedite the settlement of the dispute by referring the matter for a definitive hearing.

Nothing herein precludes the parties from mutually agreeing to settle the Peer Review case at any time. However, where a settlement is not achieved through the Peer Review mediator, the settlement is not part of the Peer Review process and offers none of the protections and benefits of a Peer Review decision achieved by mediation. The same complaint cannot be raised again by the patient in Peer Review.

3.1 The Mediation Process

The mediator's role is to contact the involved parties by telephone and attempt to resolve the problem. In an effort to resolve the dispute, a mediator may request additional documentation from either party to confirm charges, payments and account balance, etc.

If either party is represented by an attorney, the mediation cannot be resolved until that party has had the opportunity to discuss the mediation offer with their attorney. In situations where either party is represented by an attorney, the mediator should advise the individual to consult with his/her attorney before choosing a settlement or hearing. The mediator should schedule a time to call each party back to complete the mediation.

The mediator must remain neutral. Under no circumstances will the mediator perform a clinical examination of the patient or attempt to determine the validity of the complaint.

If the mediator has negotiated a settlement, he/she will submit a written mediation report* to the Peer Review committee chairperson. The chairperson will send all parties a decision letter and will forward the case materials to NYSDA.

The mediation process ends when the component dental society receives the mediation report. However, the mediator may make an amendment to the report at the request of either party, thereby altering the outcome of the mediation process, if both parties agree to the amendment. The amendment may be made at any time prior to the issuance of the chairperson's final mediation decision letter.

Following a successful mediation, a case is closed to Peer Review and no appeal is possible. A mediation agreement cannot be appealed as it represents a consensus of the parties involved in the Peer Review.

If the case cannot be mediated, the mediator shall complete the mediation report and refer the matter back to the Peer Review committee chairperson and a hearing will be scheduled.

3.2 Fee Refunds

As a condition of settlement, when the dentist agrees to refund all or a part of the fees paid by the patient for the treatment under review, the amount of the refund cannot exceed the amount

actually received by the dentist for the treatment. Fees shall be disbursed from escrow in accordance with the terms of the mediation settlement.

3.3 Peer Review Jurisdiction Over Substandard Care

In its role as the quality assurance mechanism for the New York State Dental Association, Peer Review has the independent authority to review any quality of care complaint brought against a member dentist. Such review shall not be allowed where a full Peer Review hearing has already been held on the same matter. Therefore, when a Peer Review case is settled either through mediation or through mutual agreement of the parties, Peer Review can, at its discretion, require the dentist to appear before a Peer Review hearing committee for review of the quality of care that formed the basis of the patient's complaint even when the dispute with the patient is concluded. The dentist will be notified in writing by Peer Review within thirty (30) days of the final settlement if Peer Review wants to conduct a further review of the dentist's quality of care. Peer Review may request that the patient also appear, but it is not required that the patient do so in order for Peer Review to conduct a quality of care review. Such review can be based on the records already submitted as part of the Peer Review process and an interview of the dentist by the hearing committee. A quality of care review does not require that any dental fees be at issue and does not adjudicate any fee issue. The hearing committee shall issue a decision in writing to the dentist with its requirements, if any, for continuing education coursework and any other recommendations, if any, for quality improvement. Such quality of care review decision shall be confidential to the same extent and manner as a regular Peer Review hearing decision.

* Mediators will complete and submit a NYSDA Mediation Report form at the termination of every mediation.

4. PEER REVIEW HEARINGS

When a dispute cannot be resolved through mediation, the Peer Review Committee will schedule a hearing to evaluate the quality of care or appropriateness of the treatment under review. Impartiality, objectivity, fairness and procedural uniformity are the cornerstones of the hearing process.

The component society Peer Review committee chairperson may serve as the chairperson for individual hearing committees. The chairperson is responsible for the appointment of hearing committees and hearing committee chairs when he/she cannot serve in that capacity at a specific hearing. In components with a district sub-chairperson or co-chairperson, the co-chairperson or sub-chairperson performs these functions.

4.1 Reciprocal Peer Review Arrangements

If the patient has relocated within New York State and is unable to return to the component where treatment was rendered, the patient may agree to the reciprocal process. In this process, the chairperson may arrange for another component Peer Review Committee to perform a clinical examination and report by mail to the Peer Review committee utilizing the Clinical Evaluation Worksheets*.

The protocol for the clinical examination should be conducted in accordance with the requirements of this Manual. The committee performing the clinical examination will report its findings to the original component Peer Review committee. The hearing committee will use these evaluations in rendering a decision in the case under consideration. (See section 9.2)

When the patient fails to attend the hearing, the Peer Review committee shall exercise discretion on rescheduling or deciding the case as deemed appropriate under the circumstances.

4.2 Peer Review Hearing Arrangements

The chairperson and component staff schedules the date and time for the hearing. Components should try to establish a date and time for the hearing that is convenient for all parties. In accordance with NYSDA By-laws, the treating dentist is required to participate in Peer Review; however, the dentist(s) may waive his/her right to be present at the actual hearing. When the patient fails to attend the hearing, the Peer Review committee shall exercise discretion on rescheduling or deciding the case as deemed appropriate under the circumstances.

The chairperson of the component society Peer Review committee shall appoint three (3) members of the standing Peer Review committee to hear the case, and one additional member to serve as chairperson. The chairperson of Peer Review hearing committees do not vote or enter into the discussion in Peer Review; they act solely as presiding officers to ensure that NYSDA procedures are followed and the rights of all parties are protected.

All parties to the dispute, i.e., patient and dentist(s) shall be advised of the hearing date, location and the members of the hearing committee at least two (2) weeks prior to the date of the hearing. Both the treating dentist and the patient are entitled to know the names of the individuals on the Peer Review hearing committee and may request a change for cause. Changes to the hearing date or composition of the committee will be made at the discretion of the chairperson.

Peer Review hearings must be conducted in a neutral location with appropriate facilities to conduct an oral examination, e.g., component society offices, hospitals, or dental schools. Hearings should not be held in a member's dental office.

If an emergency clinical examination was conducted prior to the hearing, the committee will re-evaluate the patient's clinical status at the hearing and allow the treating dentist to verify any restorative care, if necessary.

Hearing Attendees

Only the chairperson, three committee members, dentist(s) and patient, and lay observer attend and participate in a Peer Review hearing.

If any party is represented by an attorney, there is no change in the hearing protocol. Attorneys may attend the Peer Review hearing and represent their clients during the proceeding. All questions are directed through the chairperson. (See Section 2.8)

The chairperson may allow Committee members in training and administrative staff to attend the hearing. At the chairperson's discretion, a translator, interpreter or other aid needed to assist a patient or dentist also may attend. The parties should be advised as to who is present at the hearing and the role, if any, that each will play. The chairperson will note and discuss the resolution of any objections raised in the decision letter.

In special situations, in the event that three (3) examiners are not available at a scheduled hearing, with the assent of the parties, the chairperson may conduct the hearing with two (2) examiners. If a consensus is not reached between the two (2) examiners, a new hearing will be scheduled with three (3) examiners.

The mediator may not serve as a member of the Peer Review hearing committee. It is essential, however, that the mediator's report be part of the evidentiary materials.

Evidence and Documentation

The committee should review all records available from the dentist(s) involved in the Peer Review, as well as records from all concurrent and subsequent treating dentists submitted by the patient. Any original radiographs and records brought to the hearing must be returned to the appropriate parties when the case is closed. In addition, both parties should submit copies of all available documentation of fees and payments made for the treatment in question.

All evidence, including copies of patient records, submitted by the parties must be made available to both parties for their review and comment prior to the hearing.

4.3 Clinical Examinations

Each hearing committee member shall independently conduct a clinical assessment of the patient and record his/her findings on the appropriate NYSDA forms. Hearing committee members shall conduct clinical examinations as they would in any doctor-patient treatment situation. At a Peer Review hearing, patients must be treated in accordance with the same standards of professional conduct, including ethical and clinical considerations, as well as the same level of courtesy and consideration, they would be afforded in the dentists' own offices. All requirements for patient confidentiality, cleanliness and infection control imposed on a clinical practice for the protection of patients and staff apply.

Patient Premedication

Patients are responsible for obtaining and confirming that they have taken any necessary premedication prior to the hearing. The chairperson must review the patient's health history form and confirm that the patient has taken any required medication.

Hearing Protocols

The three (3) Peer Review committee members and the hearing chairperson must be present at the hearing. The presence of a lay observer is recommended.

The hearing chairperson determines who can be present at the hearing. The room should be cleared of any inappropriate parties not authorized by the chairperson to be present.

All parties to the dispute should have an opportunity to be heard.

4.4 The Hearing

The hearing chairperson opens the hearing by calling the session to order. The chairperson introduces all those involved: the parties to the dispute, the committee, lay observer and others who may be present. The chairperson should explain the role of each person present. The chairperson should address and note any objections.

The chairperson explains the procedure for Peer Review, including an explanation of his/her role in the proceedings. He/she should also emphasize the confidentiality requirements of the Peer Review process. The chairperson enumerates the specific issues to be resolved by Peer Review.

Testimony and Review

The chairperson confirms that the patient understands the process, has completed a health survey form and taken any necessary premedication. The chairperson confirms that all necessary documentation is complete and available.

The chairperson determines the need for a fee review when the parties disagree about the fees charged and collected, and in third-party cases. When necessary, the chairperson will appoint a fee review committee.

The chairperson determines the order of presentation of testimony. He/she:

- Explains how participants can make statements and rebut statements made by other parties;

- Informs participants that, after all parties have been heard, the Peer Review hearing committee will go into executive session to reach its decision;

- Explains that parties will receive notification of the committee's decision by mail; and

- Explains confidentiality of proceedings.

The chairperson directs discussion and leads the review. He/she requests and directs all questions and statements by the parties and committee.

It is required that all parties maintain proper decorum throughout the Peer Review process. If the parties are disruptive or uncooperative during the process, the process may be terminated at the discretion of the chairperson.

Clinical Examination of Patient

The clinical examination should only take place after a patient has completed and signed a health survey form and it has been ascertained that no medical contra-indications to the examination are present.

Clinical examinations shall be carried out only by the three (3) members of the hearing committee individually and in a professional manner. The examiners must be objective in their judgment.

During the clinical examination there shall be no discussion of the findings with the patient or the dentist. Each individual committee member will complete the appropriate clinical evaluation worksheet. If multiple types of treatment are under review, separate clinical worksheets must be completed for each type of treatment [e.g., root canal and prosthetics, prosthetics and operative, two quadrants of crown and bridge].

Fee Review

If the fee amount for treatment is disputed by the parties, the Peer Review committee will validate the fees established for the treatment in question.

In cases where the usual fee of the dentist for a given procedure is questioned, i.e., third-party matters, the chairperson may appoint a subcommittee of two (2) or three (3) members to verify the dentist's fees from records brought to the review to determine whether the fees charged in the specific case were or were not usual.

4.5 Adjournment

The chairperson adjourns the Peer Review hearing session and dismisses the parties. He/she explains how the decision will be reached and disseminated and the guidelines for requests of appeal.

4.6 Executive Session

The Peer Review hearing committee reaches a decision in closed session and writes its report. A majority vote shall constitute the decision of the hearing committee. The chairperson shall complete

a “Decision Report Form” to be inserted in the case file. The Decision Report Form should reflect the findings of the individual dentist’s clinical examinations. It is the basis for the decision letter.

The decision of the Peer Review hearing committee should be specific and concise, without editorial comments or prejudicial remarks. Patients, however, must be advised of any condition that may be detrimental to their health.

The chairperson will write a decision letter to be sent to all parties to the Peer Review. The letter will restate the nature of the specific matters considered by the Committee, areas in dispute by the parties, the specific findings of the Committee and sequelae or sanctions based on those findings. In addition, the letter will explain the process for requesting an appeal. Copies of the letter will be sent to all parties involved in the case. (See Section 5)

When the case is closed, all documents, including all records, mediation reports, clinical evaluation worksheets, and Peer Review committee decisions, shall be sent immediately to the Chairperson of the Council on Peer Review and Quality Assurance of the New York State Dental Association. The component shall maintain a copy of all case materials until notified by NYSDA that the original case documents have been received. Once notified by NYSDA that the original case file has been received, the component dental society will destroy its copies. Neither the component dental society nor any member of the Peer Review committee will keep any copies or original case documents on file.

4.7 Notification

The chairperson of the Peer Review committee will notify all the involved parties in writing of the decision and/or recommendations. Notification will be sent by regular mail.

* NYSDA uses standard Clinical Evaluation Worksheets for each type of treatment evaluated. Each of the three clinical examiners individually completes his/her examination and records the findings on the appropriate Clinical Evaluation Worksheet.

5. Decision Letter Guidelines

All Peer Review cases are closed with a decision letter. This includes cases resolved through a hearing, in mediation, or closed because of any other termination or breach of the *Agreement*. Each letter is written on component letterhead, dated, and addressed to the patient and the dentist(s). The same letter is sent to all parties involved in the case, i.e., the patient and all dentists involved in the practice. The decision letter and the *Agreement* are the only materials retained when the case is closed. It is important that these documents record all significant case information, including, the complaint, specific treatment, issues in dispute, how case is resolved, findings, outcome based on those findings, and instructions for appeals. They will help determine whether an appeal should be granted.

5.1 Case Resolved Through A Hearing

If a hearing is conducted, the decision letter should contain these five (5) main paragraphs:

Paragraph 1

“The **XXX District Dental Society’s** Peer Review and Quality Assurance Committee conducted a hearing on **Date** to resolve **Patient’s** complaint regarding **nature of specific complaint**, in accordance with the enclosed *Agreement to Submit to Peer Review*.”

Paragraph 2

INSERT APPROPRIATE LANGUAGE DESCRIBING FEATURES OF THE CASE AND HEARING, INCLUDING, FOR EXAMPLE:

- **The Fees**
 - All parties and the Committee concur on the agreed upon fees for the treatment under review.

- The parties disagreed on the actual fees charged for the treatment under review. The Committee determined the fees based on its review of the documentation submitted and the testimony of the parties.
- **Composition of Hearing Committee**
 - All parties were notified as to the composition of the Peer Review Committee and neither party raised any objection to the composition of the Committee.
 - **Dentist or Patient** objected to **Committee Member** sitting on the Committee because **state reason**. However, there was no basis to assume that **Committee Member** is biased.
- **People at the Hearing**
 - **Dentist** did not attend the hearing.
 - The Chairman permitted **Patient's** wife to attend the hearing to assist her husband due to his hearing problems. She did not participate in the hearing and **Dentist** did not object to her presence. [Or, **Dentist** objected to her presence but the Chairman allowed her to remain at the hearing]
 - **Patient** is represented by **Attorney's Name**. **Attorney's Name** attended the hearing.
- **What Did Committee Review?**
 - The Committee members reviewed treatment records submitted by **Dentist**, records from **Patient's** subsequent treating dentist, financial records submitted by the patient and dentist, etc.
 - **Dentist** failed to submit patient records, financial records or radiographs.
 - All records associated with the treatment under review were available to the Committee for their review.
- **Disputes**
 - **Dentist** contended that the restorative treatment had been removed or altered.

Paragraph 3

- **HOW THE DECISION WAS REACHED**

- The Committee has made a determination based on the physical and documentary evidence available, testimony, and the clinical examination conducted at the hearing. Each member of the Committee individually has conducted an assessment of the treatment in question, and we hereby make the following findings of fact and conclusions concerning the treatment.

Paragraph 4

- **FINDINGS**

The Committee found that the **insert specific treatment in question . . .** [INSERT APPROPRIATE LANGUAGE FROM CHOICES BELOW]

- Was appropriate and meets the acceptable standard of care. Therefore, no refund of fees to the patient is warranted.
- Was appropriate and meets the acceptable standard of care due to **state reason why dental treatment and/or treatment plan was acceptable**. Address specific concerns/arguments by all parties. Therefore, no refund of fees to the patient is warranted. The monies deposited in escrow by **Dentist** will be returned to **him/her** after the period for appeal has expired.
- Was unacceptable due to **state reason why dental treatment and/or treatment plan was unacceptable**. Address specific concerns/arguments by all parties. Therefore, **patient** will receive a refund of **\$\$\$** representing the fees paid for **state specific treatment**. These monies will be held in escrow until the period for appeal has expired.
- Was unacceptable due to **state reason why dental treatment and/or treatment plan was unacceptable**. **Dentist** is directed to complete **XXX** hours of continuing education in **state specific subject area** by **date**.

Paragraph 5

- **APPEALS**

Either party may appeal this decision within 30 days of the date of this letter. Appeals are only granted on the basis of significant new evidence, which could not have been available at the time of the hearing, or a procedural irregularity that would materially affect the decision of the Committee. Requests for an appeal, which include any new evidence or procedural irregularity, should be sent to:

Chairman, Council on Peer Review and Quality Assurance
The New York State Dental Association
20 Corporate Woods Blvd., Ste. 602
Albany, New York 12211

Please be sure to retain your copy of the *Agreement to Submit to Peer Review* and this letter for future reference.

Sincerely,
Chairman of Component Peer Review Committee

5.2 Case Resolved Through Mediation

If the complaint is resolved through mediation, the decision letter should contain these three (3) main paragraphs:

Paragraph 1

You were recently contacted by a mediator from the **XXX District Dental Society's** Peer Review and Quality Assurance Committee in regard to **Patient's** complaint about **state nature of specific complaint**. As a result of that mediation, the Committee has been informed that a settlement acceptable to both of you has been reached.

Paragraph 2

- **SETTLEMENT & HOW REFUND WILL BE EXECUTED**

The Committee has determined that the fee for the treatment under review is **\$\$\$**. It is the Committee's understanding that **DENTIST**

has agreed to return to **PATIENT** the sum of **\$\$\$** for treatment rendered. Therefore, ...

- the **XXX District Dental Society** will forward a check from its escrow account to **Patient** for **\$\$\$**.
- the **XXX District Dental Society** will forward a check from its escrow account to **Patient** for **\$\$\$** and a check to **Dentist** for **\$\$\$**.

Paragraph 3

- **APPEALS**

As this is a joint agreement, no appeal can be made and this matter is now considered closed. Please be sure to retain your copy of the *Agreement to Submit to Peer Review* and this letter for future reference.

Paragraph 4

Dr. _____ is advised that Peer Review may, at its discretion, give notice within thirty (30) days of this letter of the need for a quality of care review to be conducted by a Peer Review hearing committee with Dr. _____.

Sincerely,
Chairman of Component Peer Review Committee

Where a case is resolved by mutual agreement of the parties that is not done through the Peer Review mediator, the case is closed with a letter stating that the settlement is not a Peer Review decision and the case is concluded by mutual cancellation of the Peer Review Agreement effected jointly by the parties. However, just as with a case resolved by mediation, the letter shall also state that Peer Review may, at its discretion, give notice within thirty (30) days to the dentist of the need for a quality of care review to be conducted by Peer Review.

6. SANCTIONS

Once a Peer Review committee completes a hearing, it must delineate the consequences of its findings. In summary, if the committee finds that the treatment under review is appropriate and performed in accordance with its standards for quality of care, all fees held in escrow are returned to the treating dentist. If the committee finds that the treatment under review is not appropriate and/or not performed in accordance with its standards for quality of care, it must direct the return of all fees paid for that treatment and held in escrow to the patient. No distribution of fees will commence until the period for appeal has expired. However, Peer Review cashes all checks upon receipt and deposits the proceeds into the escrow account for distribution after the final decision is issued after a Peer Review hearing, appeal, or successful mediation. In addition, Peer Review committees are encouraged to require dentists to complete specific continuing dental education when appropriate to help assure improvement in their ability to care for patients.

All sanctions imposed [i.e., fee refunds and additional training requirements] following a Peer Review hearing are delineated in the decision letter sent to all of the parties in the Peer Review when the case is closed.

6.1 Monetary Awards

If the hearing committee determines that the treatment under review was inappropriate or does not meet acceptable standards of care, the patient is entitled to a return of fees paid to the dentist for the treatment in dispute. The committee will refund the total fee paid for the treatment. The *Agreement to Submit to Peer Review* addresses the prohibition against awarding patients remuneration

in excess of the actual monies paid as the treatment fee. The maximum the committee is empowered to award is the actual amount paid to the dentist for the treatment in question. Additional fees paid by the patient for other, unrelated treatment cannot be refunded. Partial refunds cannot be awarded because Peer Review hearing committees have no mechanisms to provide a standard assessment of partial value and depreciation. Partial refunds may be imposed in instances where two or more treatments were provided and only one is found to be inappropriate or unacceptable. Partial refunds can be awarded in such cases only when the acceptable treatment can be separated logically from the unacceptable treatment.

No refunds resulting from a Peer Review mediation or hearing will be made directly to a patient by the dentist involved. All refunds will be paid via an escrow account established by the component dental society.

Regardless of how payment was made to the practitioner, i.e., by the patient directly or by a third-party payer, all monies are returned directly to the patient. It is the patient's responsibility to notify his/her insurance or other third-party payer of a refund, if he/she has already received reimbursement from the carrier for the treatment under review.

If the hearing committee determines that the treatment performed is appropriate and of acceptable quality, the maximum the committee is empowered to award to the dentist is the fee actually charged the patient by the dentist for the treatment in question.

6.2 Continuing Education Requirements

If the Peer Review committee determines that treatment is inappropriate and/or does not conform to standards for acceptable treatment, the committee may require the dentist to complete specific continuing education courses within a given time frame in its decision.

Failure to complete the required courses within the defined time limit would result in the dentist being considered out-of-compliance with Peer Review and subject him/her to referral to the NYSDA Council on Ethics.

7. APPEAL PROCEDURES

Any decision of a component Peer Review committee may be appealed to the NYSDA Council on Peer Review and Quality Assurance within thirty (30) days of the date of the decision letter. The appeal request shall be made in writing and shall clearly state the grounds for the appeal, which shall be limited to claiming there was a significant prejudicial procedural irregularity constituting a reversible error or the discovery of significant, material new evidence not available at the time of the hearing. The consideration of an appeal does not invalidate the original decision unless such decision is remanded in whole or in part by the final decision of the NYSDA Council on Peer Review and Quality Assurance.

Following a successful mediation, a case is closed to Peer Review and no appeal is possible. A mediation agreement cannot be appealed as it represents a consensus of the parties involved in the Peer Review.

It is a prerequisite to any appeal that the party seeking the appeal has deposited the appropriate amount of money in escrow. The decision of the NYSDA Council on Peer Review and Quality Assurance on such appeal shall be final. The Council may uphold the decision in whole or in part, remand the decision in whole or in part, remand the case for a new hearing before a different panel, summarily dismiss the appeal for failing to state a valid basis for appeal, or enter any other decision or order appropriate for the particular appeal under review. Parties will be notified in writing of any decision on appeal.

Requests for appeal must be submitted in writing with all documentation, within thirty (30) days of the date of the decision

letter, to the chairperson, Council on Peer Review and Quality Assurance, New York State Dental Association. The Council will confine its deliberations to an evaluation of the procedures followed by the Peer Review hearing committee of the component society to determine that the review was thorough and impartial and that all parties concerned were afforded their full rights.

Alternatively, the Council shall determine whether newly discovered evidence was not available at the time of the hearing and would have been relevant and likely to affect the decision of the Peer Review hearing committee. If so, remand to the component Peer Review committee is mandatory.

Decisions of the Council on Peer Review and Quality Assurance shall be rendered within thirty (30) days of the request for appeal and shall be final. The Council on Peer Review and Quality Assurance or its designated subcommittee on appeals may affirm or set aside and remand the decision of the component society Peer Review hearing committee. If the decision is set aside and remanded, the component society Peer Review committee must reopen the case and designate a second hearing committee to hear the case. The second hearing committee shall be composed of dentists who were not members of the previous hearing committee.

7.1 The Appeal Process

Once the Peer Review hearing committee has rendered its decision, the component society shall send a decision letter to all parties involved in the case. As with all Peer Review correspondence, copies of the same letter are sent to all parties in the Peer Review matter. The decision letter shall stipulate the terms of the hearing committee's decision, the subsequent responsibilities of the parties and the process for requesting an appeal of the decision.

If any party requests an appeal within the thirty (30) day time limit, NYSDA will contact the component to notify it of the appeal and request the original case file. NYSDA will send a letter from the Council on Peer Review and Quality Assurance to both the patient and the dentist, and any third party involved in the case, advising them that a request for an appeal has been received and is being processed.

The component society will retain any fees in escrow. No appeal request will be considered until all fees have been deposited.

The component society will forward the original case file to NYSDA. The component will maintain a copy of pertinent case documents until the case is closed. When the case is closed, the component will destroy all copies kept on file.

The case file contents should include:

1. The Agreement to Submit to Peer Review
2. Copies of relevant correspondence
3. Mediation report
4. Patient health questionnaire
5. Copies of charts, financial and office records
6. Clinical evaluation forms
7. Committee chairperson's hearing decision report
8. Copy of the decision letter

The committee of the Council evaluating the request shall confine its evaluation to whether the material submitted represents new evidence or a procedural irregularity that could significantly impact the decision reached by the hearing committee. The committee of the Council will not evaluate the clinical findings of the original Peer Review committee in its deliberation.

7.2 Procedure When An Appeal Is Granted

When an appeal request is granted, the Council on Peer Review and Quality Assurance will notify the component Peer Review committee and all parties to the Peer Review of the procedural irregularity or new evidence, which warrants a rehearing of the case. The nature of the irregularity or new evidence will be explained. The original decision—or a part of it—is therefore set aside as invalid. The original *Agreement to Submit to Peer Review* is

not voided and conditions of this contract remain in effect even though there is to be a new hearing.

The chairperson should begin by assigning a mediator to attempt to mediate the original complaint. If the issues before the committee can be resolved through mediation, the matter may be closed [see Chapter 3]. If the matter cannot be resolved through mediation, the component Peer Review committee will contact the parties to set up a new hearing. The chairperson will select a new hearing committee consisting of members who were not involved in the original hearing. The original chairperson may chair the new hearing.

When the new hearing is convened, materials for the new hearing will include the original case materials from the first hearing, the additional information made available as part of the appeal request, and any new evidence either party may wish to present. The materials for the new hearing shall not include the clinical evaluation forms from the original hearing as those forms are not evidence submitted by the parties.

At the close of the hearing, the decision will be processed as it was for the first hearing. Either party can appeal the second decision. If no appeal is requested or the second appeal request is denied, the case is closed.

Fee Review Hearings

When an appeal is decided on the basis that the fee in question has not been resolved, an administrative hearing will be conducted to establish the fee. All monies will be held in escrow pending the determination of the actual fee. The chairperson will appoint a subcommittee to make this determination. No clinical hearing is required.

7.3 Procedure When An Appeal Is Denied

If the Council does not receive documentation of a procedural irregularity or new evidence, the appeal will be denied without further review.

If the Council determines that the evidence submitted or the procedural irregularity cited do not constitute significant evidence with respect to the outcome of the committee's deliberation, it will deny the appeal. The Council on Peer Review and Quality Assurance will notify the parties to the Peer Review. No further requests for appeal or reconsideration will be entertained.

The component will distribute any funds held in escrow in accordance with the original decision and close the case.

When the case is closed, the component shall forward all original case documents to NYSDA.

8. PEER REVIEW INVOLVING MULTI-DENTIST PRACTICES

When the dentist involved is an employee, associate or partner, the employer, associates and partner(s) must be included in the Peer Review.

When a refund is awarded in Peer Review cases involving a dentist who practices alone, the question of financial responsibility is clear. If the dentist is an employee and the patient has made payment to a dental professional corporation, dentist or employer, the Peer Review committee must address a set of special considerations. The significant issues include:

- Who is financially involved and responsible?
- Who shares the responsibility for the quality of treatment?
- Are any of the parties members of the New York State Dental Association?

In partnerships and other arrangements where the financial revenues of the practice are shared by more than one dentist, the other partners in the practice must be notified that a member of the practice is involved in a case before Peer Review. Peer Review can only proceed when all legally liable dentists within the practice have signed the *Agreement to Submit to Peer Review*.

8.1 Financial Responsibility and Escrow Requirements

In cases involving multiple dentists, when the practice has collected the fees for the procedure, the component dental society shall

collect the fees received to deposit into its escrow account at the initiation of the Peer Review from any qualified person on behalf of the dental practice the same as it would for a sole practitioner.

In cases involving an employer/employee relationship, the employer shall be responsible for depositing the fees paid for the treatment under review. Unless either of the doctors deposits such monies, both shall be deemed out-of-compliance and the Peer Review cannot proceed.

8.2 Multiple Practice Owners/Partners/Associates

In practices where the treating dentist owns a financial share in the practice, i.e., the dentist is an owner, partner or associate, all members of the practice that shared in the revenues from the fees paid by the patient must be included in the Peer Review.

All dentists included must sign the *Agreement* and the practice must deposit fees received in the dental society's escrow account before the case can commence. All parties receive all related Peer Review communications. They also must be given the opportunity to participate in mediation and the hearing process.

If any of the practice owners is a NYSDA member but one or more of the remaining partners/associates is not, the benefit of Peer Review is extended to the nonmember(s). Should any nonmember elect not to sign the *Agreement*, however, the case cannot proceed.

8.3 Employer-Employee Relationships

In those situations where the dentist involved in a Peer Review complaint is an employee of another dentist, both the dentist-employer and the employee share obligations and liabilities for the fees charged and the quality of the treatment rendered. If the dentist involved is an employee of a professional corporation, then both the dentist and the corporation share obligations and liabilities for the fees charged and the quality of the treatment rendered. Since a professional corporation is not capable of being a NYSDA member, the corporation can only be brought into the Peer Review process if the *Agreement to Submit to Peer Review* is signed by an officer of the corporation entitled and authorized to sign contracts on behalf of the corporation.

If the treating dentist is employed by another dentist(s), one of the following four situations relevant to Peer Review may exist:

**1. Employee is not a NYSDA member.
Employer is not a NYSDA member.**

In cases where neither the treating dentist nor the employer is a NYSDA member, Peer Review cannot hear the case.

**2. Employee is a NYSDA member.
Employer is a NYSDA member.**

In cases where both the treating dentist and the employer are NYSDA members, both are required by NYSDA By-laws to participate in Peer Review. In any case, Peer Review cannot proceed without both the employer's and the treating dentist's signatures on the *Agreement to Submit to Peer Review*.

The employer-dentist and the treating dentist must be included in the mediation and hearing process and provided with copies of the *Agreement* and decision letters.

**3. Employee is not a NYSDA member.
Employer is a NYSDA member.**

In instances where a patient brings a complaint against a dentist who is not a NYSDA member but is employed by a NYSDA member, the benefits of Peer Review can only be extended to the member if the employee agrees to participate in the process and is willing to sign the *Agreement*. Both the employer and employee must sign the *Agreement*. If the employee is unwilling to participate, Peer Review cannot resolve the dispute.

**4. Employee is a NYSDA member.
Employer is not a NYSDA member.**

When a Peer Review complaint is brought against a dentist who is a NYSDA member but who is employed by a non-member, Peer Review cannot be conducted unless both the employer and employee sign the *Agreement*.

8.4 Independent Contractors

In cases in which the treating dentist rents operatory space from a second dentist, the committee should consider whether the dentist-owner has any potential liability based on the financial arrangement between the two dentists. For example, the committee should ask whether each dentist maintains a separate bank account or if there is one account used for both practices.

Peer Review committees should be especially cautious to verify the legal status of the dentist in relation to the practice-owner when a dentist identifies himself/herself as an “independent contractor.” If the relationship is not a true independent contractor arrangement, the owner of the office may actually share responsibility. The responsibility of the practice owner will be based on the legal relationship between the owner and the treating dentist. The tax treatment of the dentist asserting independent contractor status is not necessarily determinative of the actual legal relationship. Determinations of independent contractor vs. employee status can be complex legal issues. Under these circumstances, the committee chairperson should contact NYSDA for assistance before undertaking the case if any questions exist.

9. PEER REVIEW INVOLVING SPECIALISTS AND INTER-JURISDICTIONAL (RECIPROCAL) PEER REVIEW

In all cases, Peer Review evaluations must be performed by professional peers. This means that the Peer Review hearing committee must be composed of dentists who have the same professional standing, i.e., specialist or general practitioner, as the dentist involved in the case, provided that, notwithstanding anything in this Section to the contrary, the chairperson of the component Peer Review Committee has the discretion to name any general dentist or specialist as a hearing committee member when deemed appropriate to do so.

Component Peer Review committees as a whole can be comprised of both general dentists and specialists, but Peer Review hearing committees should be comprised of dentists with relevant knowledge of the matter under review.

9.1 Peer Review Involving Specialists

Hearing committees comprised of three (3) specialists shall typically perform Peer Review of those dentists practicing as a specialist in one of the clinical fields identified by the American Dental Association as specialties of dentistry. The specialists shall typically practice the same specialty as the dentist involved in the Peer Review. The component society Peer Review committee chairperson or his/her designee must still chair these hearing committees. These specialists shall be members of NYSDA. Whenever it is not possible to obtain three specialists from the component society's geographic area, the component society may

use one or more appropriate specialists from a neighboring component society at the discretion of the chairperson.

9.2 Inter-jurisdictional (Reciprocal) Peer Review

When a patient has relocated from the component to a new geographic area distant from the original area of treatment (either out-of-state or to a different area within New York State) and wishes to resolve a dispute with his/her former dentist, the following procedures are available:

If the patient resides outside of New York State, NYSDA requires that patient examinations be performed in New York. If the patient is unwilling to come to New York for the clinical examination, Peer Review cannot proceed.

If the patient resides in New York State, Peer Review will be conducted by the NYSDA component within which treatment was originally performed.

The case will proceed as any other case and, having collected required escrow, preliminary documentation (including a signed *Agreement to Submit to Peer Review*), case records, etc. the case will be referred for mediation.

If mediation is unsuccessful and the patient is unable to return, the Peer Review chairperson will request that the Peer Review committee in the patient's new locale conduct the three independent clinical assessments and return its clinical evaluation forms to the original component hearing committee.

The component society where the original treatment was performed will convene a hearing to review the evidence and clinical findings presented and interview the treating NYSDA dentist. The treating dentist is given the opportunity to present testimony to a Peer Review hearing committee of his/her component society and describe any circumstances that may have a bearing on the case. The Peer Review hearing committee of the treating dentist will make the final decision in the case.

9.3 Other Considerations Requiring Relocation of Peer Review

Peer Review is conducted by the Peer Review committee in the geographic area in which the treatment was performed. However, given the goal of providing an unbiased assessment of treatment, some cases must be transferred from the initial component to a neighboring component. The objective for transferring a case is to avoid any possible bias – either real or perceived.

Complaints can be transferred under the following circumstances:

- Dentist is a current member of the component Peer Review committee
- Dentist is either a current officer or board member
- Dentist is a practice associate or relative of a committee member or officer
- Any situation in which the chairperson feels that there is potentially real or perceived bias.

When an *Agreement* is received from a patient and the complaint pertains to a dentist who is in one of the categories above, component staff should contact the Peer Review committee chairperson prior to mailing the *Agreement* and *Guide* to the treating dentist. If the chair advises that the case be transferred, staff should contact a neighboring component to ask if it can accept the case. The letter sent to the doctor will direct the doctor to return the *Agreement*, records, etc. to the new component.

In many situations, it may not be evident that the complaint will require transfer, until all of the paperwork from the patient and dentist(s) is received. When the chair reviews the materials submitted to determine the eligibility of the complaint for Peer Review, escrow requirements, etc., he/she will initiate the transfer, or will direct staff to do so.

The *Agreement* and all documentation submitted by the patient must be mailed to the component accepting the case. The original component should mail a letter to the patient and dentist(s)

explaining that the case has been transferred to a new component dental society.

The Peer Review process is strictly confidential. Once a case is transferred, the original component is not involved in any way with the case. No staff or volunteers from the original component should contact any of the parties or speak to them regarding the Peer Review. Mediation is conducted only by the new component. The original component should not keep any records pertaining to the matter or make any inquiries about the case or its outcome. The case is conducted entirely by the new component dental society. The original component will have no further contact with either the patient or dentist.

With respect to the site where the hearing is conducted, the new component may select a site in a neutral location within the geographic area of the original component, if necessary; however, the case is heard only by members of the new component's Peer Review committee.

10. ADDITIONAL FUNCTIONS OF THE NYSDA COUNCIL ON PEER REVIEW AND QUALITY ASSURANCE

10.1 Training

One of the purposes of this Manual is to outline to a Peer Review hearing committee how to conduct a hearing to protect the involved parties and hearing committee members. However, experience has shown that training is needed if Peer Review hearing committees are to carry out their assignments with precision, confidence, impartiality and minimal problems. The responsibility for this training lies with the Council on Peer Review and Quality Assurance and with the component society Peer Review committees.

10.2 Public Relations

Peer Review is a service provided by the New York State Dental Association to the public in New York State. If this service is to be effective, the public must know of its availability and be convinced of its credibility. Therefore, the Council on Peer Review and Quality Assurance, in cooperation with the public relations staff of the New York State Dental Association, should regularly inform the public that effective Peer Review exists in New York.

10.3 Quality Assessment And Quality Assurance

The only available determinant of quality is the knowledge and experience contributed by each member of a component society Peer Review committee. The Council on Peer Review and Quality Assurance and the component society Peer Review committees serve as the quality assurance system of the New York State Dental Association.

10.4 Substandard Care

Complaints of substandard care come under the purview of the Council on Peer Review and Quality Assurance and its component society Peer Review committees. Procedures of component society Peer Review committees in these cases will parallel the procedures set forth in this Manual.

In general, in cases of substandard care, the committee should require that the dentist take educational courses, or other corrective action, as approved by the Peer Review hearing committee.

Where the hearing committee observes treatment that does not meet prevailing standards of care, the dentist will be directed to demonstrate satisfactory completion of related continuing education courses.

When a dentist is directed to complete continuing education, the hearing committee should state the nature and level of course(s) required. The hearing committee should also designate the type and specific number of courses and establish a time frame requiring the completion of the continuing education course(s).

NYSDA staff will supervise compliance with continuing education requirements. Staff will verify the source, quality and completion of remedial education, and report back to the Council on Peer Review and Quality Assurance.

Peer Review can, at its discretion, require the dentist to appear before a Peer Review hearing committee for review of the quality of care that formed the basis of a patient's complaint even when the dispute with the patient is concluded. Such review shall not be allowed where a full Peer Review hearing has already been held on the same matter. The dentist will be notified in writing by Peer Review within thirty (30) days of the final settlement if Peer Review wants to conduct a further review of the dentist's quality of care. Peer Review may request that the patient also appear, but it is not required that the patient do so in order for Peer Review to conduct a quality of care review. Such review can be based on the records already submitted as part of the Peer Review process and an interview of the dentist by the hearing committee. A quality of care

review does not require that any dental fees be at issue and does not adjudicate any fee issue. The hearing committee shall issue a decision in writing to the dentist with its requirements, if any, for continuing education coursework and any other recommendations, if any, for quality improvement. Such quality of care review decision shall be confidential to the same extent and manner as a regular Peer Review hearing decision. In this way, the Peer Review Committee will have the opportunity to evaluate the treatment provided by the dentist and require appropriate remedial clinical training and/or continuing education.

11. CONFIDENTIALITY, LIABILITY, AND OUTSIDE AGENCIES

11.1 Confidentiality

All proceedings in Peer Review are confidential. Peer Review committee members, including any lay observers, shall refrain from discussing any cases they have heard.

The *Agreement to Submit to Peer Review* includes language whereby the parties agree that the Peer Review proceedings are to be kept in strict confidence and that they will not disclose any information regarding the proceedings to anyone. They agree to only disclose information about this Peer Review in a court proceeding to enforce the terms of the *Agreement*; a review by the New York State Education Department relating to the underlying facts that were the subject of this Peer Review; a request from the patient's benefit provider requiring payment information; or a request for the information as otherwise mandated by law.

Once the request for review has been accepted, mediated, reviewed and a decision rendered and distributed, all records of the component society Peer Review committee shall be sent to the New York State Dental Association. The New York State Dental Association shall maintain the *Agreement* and decision letter for as long as it deems appropriate, but no less than ten (10) years from the close of the case. The contents of the files shall be confidential except for use in compiling statistical and anonymous aggregate data.

Participants [the parties, i.e., dentist and patient] are encouraged to maintain copies of the *Agreement to Submit to Peer Review* and the decision letter to document the resolution of the complaint.

Section 6529 of the New York State Education Law protects the confidential nature of the Peer Review proceedings.

11.2 Liability of Committee Members

Arbitrators enjoy absolute immunity under New York State law for their functions as arbitrators.

New York State law also protects committee members from having to testify as witnesses in court with respect to the action of their Peer Review committees. The record of the proceedings may not be subpoenaed to ascertain the nature of statements made by members of the committee. Any member receiving a subpoena in a matter relating to a Peer Review, shall contact the New York State Dental Association immediately.

11.3 Peer Review and Outside Agencies

Peer Review is a peer function of NYSDA and, as such, information about Peer Review cases is confined to the dental association and its components. All information about specific Peer Review cases is confidential. The New York State Dental Association does not notify the New York State Education Department's Office of Professional Discipline of the outcomes that are adverse to the dentist. Further, NYSDA does not advise liability carriers or the National Practitioner Data Bank of the outcome of Peer Review mediation or hearings, except as required by law.

Liability Carriers

A dentist's decision about whether or not to notify his/her liability carrier should be based on the terms of that dentist's contract with the carrier. If the dentist's contract does not require that the carrier be notified of Peer Review related actions, the dentist might choose not to notify the carrier or involve the carrier in any refund. Refund payments based on Peer Review decisions made by liability carriers on behalf of dentists are reported by those carriers to both the Office of Professional Discipline and the National Practitioner Data Bank.

National Practitioner Data Bank

With the implementation of the National Practitioner Data Bank in September of 1990, NYSDA analyzed its Peer Review procedures to determine whether members who refund fees to patients as a result of Peer Review decisions must report those refunds to the Data

Bank. Peer Review actions in New York State are not considered reportable to the Data Bank based on an agreement between the American Dental Association [ADA] and the United States Health Resources and Services Administration [HRSA], the agency that administers the Data Bank. HRSA exempts fee refunds made through dental society escrow accounts from the Data Bank reporting requirements. All refunds resulting from Peer Review mediations or hearings in New York are made through component escrow accounts.