

A Guide to Peer Review

An Impartial Complaint Resolution Binding Arbitration



New York State
Dental Association

NYSDA Council on Peer Review and Quality Assurance

The New York State Dental Association

A constituent of the American Dental Association established by an act of the New York State Legislature in 1868.

“The object of the Association shall be to encourage the improvement of the health of the public, to promote the art and science of dentistry, and to represent the interests of the members of the profession and the public which it serves.”

Peer Review is the quality assurance process for the dental professional association in New York. Members of the New York State Dental Association (NYSDA) are required to participate and to abide by the decisions rendered by the Peer Review Committee.

This guide provides a summary of the policies and procedures for NYSDA’s Peer Review and Quality Assurance program. Additional information regarding the Peer Review process is available from NYSDA and its local component dental societies.

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What You Need to Know:

Peer Review is an alternative way to settle complaints about dental treatment provided by dentists who are NYSDA members. It is a binding arbitration.

Complaint Resolution Option: Peer Review is one of several ways which may be available to resolve a patient's complaint. Peer Review cannot resolve complaints under review or resolved by the courts or other regulatory agencies.

Fair: Peer Review is an impartial, confidential way to resolve complaints about the appropriateness of care and quality of treatment performed by NYSDA member dentists.

Convenient and Timely: Peer Review is provided by each of NYSDA's 13 local component dental societies. This allows patients to participate in the geographic area where treatment was performed.

Uniform Protocols: Peer Review is conducted by committees of volunteer dentists in accordance with the NYSDA Peer Review Manual and the NYSDA Agreement to Submit to Peer Review.

Free: There is no charge for this service.

Decision Based on Quality of Treatment: Peer Review decisions are based on the quality of the treatment provided as determined by an impartial committee of volunteer dentists.

Quality of Care Review: 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.

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The dentist will be notified in writing by Peer Review within thirty (30) days of the final statement 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.

If the Peer Review Committee Finds in Favor of the Patient: The dentist must refund the fees paid for the treatment. No refund can be greater than the amount the patient actually paid for the treatment. If the Peer Review Committee finds that treatment is appropriate and of acceptable quality, the dentist will keep the fees charged.

Fees and Escrow from a Third Party: Patients are required to deposit any outstanding fees owed to the dentist for the treatment under review in an escrow account pending the outcome of the Peer Review. The dentist must do the same for any fees received for the treatment under 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, with a letter of guaranty of payment, accompanied by the party's authorization to release the funds upon 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.

Accounts in Collection: If the dentist has commenced a collection action relating to the fees for the treatment that is the subject of the complaint, the dentist is required to withdraw/cease the collection action. 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 Examinations: Because decisions are based primarily on a clinical evaluation by members of the Peer Review Committee, patients should personally attend the Peer Review Hearing and be examined by members of the Peer Review Committee in New York State. If the patient is unable to attend a Peer Review hearing, the Peer Review Committee shall exercise discretion on rescheduling or deciding the case as deemed appropriate under the circumstances.

The *Agreement to Submit to Peer Review*

- The *Agreement to Submit to Peer Review* is a legally binding contract to arbitrate.
- Peer Review is a binding arbitration. Both patients and dentists agree that the decision and award of the Peer Review Committee shall be binding.
- NYSDA's Peer Review process has been upheld by New York State's courts as a binding arbitration.
- All participants agree to waive the right to sue the other party on the facts or issues that are the subject of the binding arbitration before the Peer Review Committee in any court action or proceedings.
- Please read the *Agreement to Submit to Peer Review* carefully before signing and submitting to the local Dental Society.
- Parties are urged to consult with their attorneys prior to signing the *Agreement to Submit to Peer Review*.

Peer Review Can Resolve My Complaint:

- If the dentist is a member of the New York State Dental Association when the *Agreement to Submit to Peer Review* is submitted.
- If the complaint is about appropriateness of treatment or quality of care.

When Peer Review Cannot Resolve A Complaint:

- The dentist involved or his/her employer-dentist is not a NYSDA member and refuses to participate in the Peer Review process.
- The treatment was performed in a dental school, clinic, or hospital, or other Article 28 facility, or paid for by Medicaid, Medicare, or any other federal, state or local government agency program.
- More than 2½ years have passed since the treatment submitted for Peer Review was completed.
- The complaint is ONLY about the fees charged for the treatment, not the quality of care.
- The patient refuses to place any outstanding balance for the treatment in question in the Dental Society's escrow account pending the outcome of the Peer Review. The same is true if the dentist refuses to place any fees received for the treatment in question in the Dental Society's escrow account pending the outcome of the 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 signed a valid "release from liability" or other waiver of future action relating to the treatment that is the subject of the complaint.
- Either the patient or dentist has commenced litigation against the other, the subject of which is the matter submitted for Peer Review or a matter related to the one submitted to Peer Review, and such litigation is ongoing or resolved.

Confidentiality and Disclosure

Peer Review proceedings are confidential. NYSDA does not report the outcome of a Peer Review to any third party or government agency. Both patients and dentists agree to keep the Peer Review proceedings in strict confidence in accordance with the provisions specified in the *Agreement to Submit to Peer Review*. The confidential nature of the Peer Review proceedings is further protected by New York State Education law, section 6527.

All parties to the Peer Review receive copies of the *Agreement* and decision letter. You should keep these materials for your own records. At the conclusion of a Peer Review, the local Dental Society will send all related case documents to NYSDA. NYSDA will destroy all records with the exception of the *Agreement to Submit to Peer Review* and the decision letter.

Frequently Asked Questions

Q: Is Peer Review fair?

A: Peer Review Committees are impartial and committed to improving the quality of dental treatment.

Q: How does a Peer Review begin?

A: To begin the Peer Review process, the patient must submit an *Agreement to Submit to Peer Review* to the local Dental Society. In the spaces provided for the “Patient’s Statement” on the *Agreement*, the patient explains what dental treatment was performed, who performed the treatment, what the complaint is, how much it cost, and when he/she was treated. The patient should enclose copies of any documentation of the charges and payments (e.g., insurance statements, bills, canceled checks, etc.). If seen by any other dentists, patients should ask those dentists to send copies of related records and x-rays to the Dental Society as these records can be requested by the Dental Society.

Q: What does the Dental Society do when it receives an *Agreement to Submit to Peer Review* from a patient?

A: The Dental Society sends the *Agreement* to the dentist the patient is complaining about for his/her statement and signature. NYSDA member dentists are required to participate in Peer Review. The dentist must return copies of the patient’s treatment records and financial information to the Dental Society with the *Agreement*.

Q: What happens next?

A: The Peer Review Committee then determines whether the complaint can be resolved by Peer Review. If eligible for Peer Review, mediation will be conducted. A mediator will contact both the patient and dentist. If the dentist offers a full refund, the patient will receive the refund and the case will be closed. No refund can be greater than the amount the patient actually paid for the treatment. If the dentist offers less than the fees paid and the offer is acceptable to the patient, the case will be closed. If the complaint is not settled by mediation, a hearing will be held.

Q: Do I need an attorney?

A: *The Agreement to Submit to Peer Review* is a contract to enter into binding arbitration. You are encouraged to have an attorney review the *Agreement* before you sign. You have the right to be represented by a lawyer, but it is not required. Peer Review hearings focus on the Peer Review Committee's evaluation of the dental treatment. Both the patient and dentist waive the right to cross-examine. If you are being represented by an attorney, your attorney must notify the Dental Society. Peer Review will not award money to cover the attorney's charges.

Q: What if the patient owes the dentist money for the treatment or the dentist has already received money for the treatment?

A: If the patient has an outstanding balance for the cost of the treatment, the patient is required to place that amount in the Dental Society's escrow account at the start of Peer Review. The dentist must do the same for any money received for the treatment.

Q: What if the patient wants the dentist to pay for new treatment?

A: If Peer Review settles the complaint, either by mediation or a hearing, the most money the dentist can return to the patient is the actual amount of the fees charged. Peer Review cannot result in awards greater than the fees actually charged.

Q: Who comes to the Peer Review hearing?

A: Peer Review hearings are attended only by the patient, the dentist(s), the Peer Review Committee chairperson, and three examining Committee members. Dental Society support staff and a designated non-dentist lay observer may also attend. If you are represented by an attorney, your attorney may attend and represent you at the hearing. Sometimes, the chairperson may invite others to attend, e.g., translators, personal aides, or committee trainees. These people do not participate in the hearing decision process.

Q: What happens at a Peer Review hearing?

A: Hearings are conducted at the local Dental Society office or another clinic location. You will be notified in writing of the date and time, and who will serve on the Peer Review Committee. You should notify the Dental Society if you have reason to believe any Committee member may not be impartial. The patient should notify the Dental Society if any member of the Committee has treated them.

At the hearing, the patient will explain his or her complaint and the dentist can respond. There is no cross-examination, but questions can be asked through the Peer Review Committee chair as needed. The Peer Review Committee will review all of the records and materials submitted. Each Committee member will examine the patient. After the Peer Review Committee reaches a decision, you will be notified of the decision in writing.

Q: What happens if the Peer Review Committee finds in favor of the patient? What happens if the Peer Review Committee finds in favor of the dentist?

A: If the Committee finds in the patient's favor (the complaint is upheld), the dentist must refund the fees paid for the treatment. No refund can be greater than the amount the patient actually paid for treatment. If the Peer Review Committee finds that treatment is appropriate and of acceptable quality, the dentist will keep the fees charged.

Q: What if the patient's insurance company paid for all or part of the treatment?

A: All fee refunds are made to the patient. If required, the patient is responsible for notifying an insurer of any refund.

Q: What if the patient or dentist decides to withdraw from the Peer Review?

A: If the patient violates the *Agreement to Submit to Peer Review* by withdrawing the complaint, any money in the Dental Society's escrow account will be returned to the treating dentist. If the dentist violates the *Agreement to Submit to Peer Review* by withdrawing from the process, any money in the Dental Society's escrow account will be returned to the patient.

Q: Should the patient or dentist discuss Peer Review with another dentist or person?

A: Peer Review is confidential. However, nothing about this confidentiality requirement is construed to prevent a patient or dentist from obtaining any information necessary to present their case to Peer Review, including requesting records or statements from relevant third parties.

Q: What if you disagree with the Peer Review Committee's decision?

A: The dentist or patient may appeal the decision of the Peer Review Committee within 30 days after the date of the decision letter reporting the findings of the Peer Review Committee. Appeals are considered on the basis of:

- A significant prejudicial, procedural irregularity that would be likely to affect the outcome of the case, or:
- The discovery of significant new evidence that, with due diligence, could not have been available at the time of the hearing and would have been likely to affect the outcome of the case.

Requests for appeal must include documentation of the specific procedural irregularity and/or the actual new evidence upon which the request for appeal is based. Even where an appeal is granted, the prior decision remains in full force and effect until a final decision is rendered on a rehearing.

Requests for appeal are reviewed and granted by the NYSDA Council on Peer Review and Quality Assurance. This Council is composed of a chairperson and one representative from each of the 13 component dental societies.

Requests for appeal are submitted to:

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

Q: After Peer Review, can the patient sue the dentist or the dentist sue the patient?

A: The outcome of the Peer Review is final. Peer Review is based on an *Agreement to Submit to Peer Review* signed by both the patient and dentist. This *Agreement* is a contract. In the contract, both agree to a list of conditions included on the back page of the *Agreement*. You both agree to use Peer Review to resolve the complaint, to accept the decision of the Peer Review Committee, and not to sue the other party.

New York State Dental Association Component Dental Societies

New York County Dental Society

622 Third Avenue, 9th Floor
New York, NY 10017
(212) 573-8500

Second District Dental Society

111 Ft. Greene Place
Brooklyn, NY 11217
(718) 522-3939

- Kings (Brooklyn), Richmond (Staten Island)

Third District Dental Society

950 New Loudon Road, Ste. 108
Latham, NY 12110
(518) 782-1428

- Albany, Columbia, Greene, Rensselaer, Sullivan, Ulster

Fourth District Dental Society

632 Plank Road, Suite 200
Clifton Park, NY 12065
(518) 371-1114

- Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saratoga, Schenectady, Schoharie, Warren, Washington

Fifth District Dental Society

6323 Fly Road, Ste. 3
E. Syracuse, NY 13057
(315) 434-9161

- Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence

Sixth District Dental Society

55 Oak Street
Binghamton, NY 13905
(607) 724-1781

- Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler Tioga, Tompkins

Seventh District Dental Society

255 Woodcliff Drive
Fairport, NY 14450
(585) 385-9550

- Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, Yates

Eighth District Dental Society

3831 Harlem Road
Buffalo, NY 14215
(716) 995-6300

- Allegany , Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming

Ninth District Dental Association

364 Elwood Avenue
Hawthorne, NY 10532
(914) 747-1199

- Dutchess, Orange, Putnam, Rockland, Westchester

Nassau County Dental Society

377 Oak Street, #204
Garden City, NY 11530
(516) 227-1112

Queens County Dental Society

86-90 188th Street
Jamaica, NY 11423
(718) 454-8344

Suffolk County Dental Society

150 Motor Parkway, Suite 105
Hauppauge, NY 11788
(631) 232-1400

Bronx County Dental Society

3201 Grand Concourse, #2N
Bronx, NY 10468
(718) 733-2031

Notes

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Revised 2017 | NYSDA Council on Peer Review and Quality Assurance