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**HOW THE DENTAL PEER REVIEW SYSTEM WORKS AND**

**WHAT YOU EXPECT FROM IT**

***Introduction***

The Mississippi Dental Association’s peer review program is a process to resolve disputes between a patient and a dentist. Approximately 3,000 cases a year, nationwide, are handled through the dentist peer review system. [[1]](#footnote-1) The success of this program is dependent on the commitment and diligence of our state association and our district component peer review committees comprised of our dentist volunteers that carry out the program. Equally important to the success of the peer review program, is that a dentist who participates in peer review as a party in a case is well informed on the process and can knowledgeably participate. The purpose of this information is to explain how the dental peer review system is organized, how it operates, and what can be expected when participating as a party in a case.

Although peer review programs in each state are based on the same principles and ethics, a few of the policies and procedures differ from one state to another. The least significant difference that can be noted is the terminology used in describing the program. The peer review process has 2 phases:

1. the first phase is mediation and
2. the other is review by a committee.

*Note - Some states refer to the entire process as “peer review” and may label the part that entails review by the peer review committee as “arbitration.” Others may call the overall process “patient relations and the review by the committee as “peer review.” The differences in terms does not reflect differences in the purpose and basic conduct of the process, but more often reflects the profession’s historical development of the peer review program. Our MDA terminology mirrors the ADA’s terminology in which the overall process is called “peer review” and the two phases are called “mediation” and “peer review.”*

***Overview of the Peer Review System***

The intent of dentistry’s peer review system is to resolve problems between the dentist and patient expeditiously, fairly and in a confidential manner. The kinds of disputes that may be resolved through the MDA peer review program are:

- complaints about the quality of care, or

- the appropriateness of care.

*Note: The MDA opts not to handle cases that involve fee disputes or the fairness of fees. Also, the MDA peer review program does not handle disputes between a third party payer and a dentist. Third party payers may include an insurance carrier, a dental service corporation, an administrator of a health and welfare trust, an alternative benefit plan, a government agency, or an employer who has implemented a self-funded and self-administered dental plan. Finally, dentist to dentist complaints are also not handled in the MDA peer review program because such complaints could require bringing an otherwise satisfied patient into the dispute.*

Each state association (constituent) and local dental district (component) works with its dentist volunteers to provide a peer review program. Volunteer dentists who serve on peer review committees in each of Mississippi’s six dental district receive the peer review complaint information after the MDA staff gathers the necessary forms and has determined if the case complaint appropriate for the peer review based on our program criteria. MDA office staff generally receive the initial contact by phone or email and then follows up by providing the patient a form to complete that details the complaint. The MDA staff maintains a list of patient names who have requested complaint forms to start the peer review process. Many times, after contacting the MDA office and receiving the form, the patient does not follow up and those potential cases are then removed from the list and no further follow up is conducted. If a completed from is received, the MDA staff then contact the district dentist peer review chairman for the next action. It should be noted that our MDA staff assist our dentist peer review volunteers throughout the entire process. This assistance includes helping the district peer review chairman with correspondence needs and the gathering of all necessary documentation to conduct the first phase of the program - mediation.

If the mediation phase is unsuccessful, the district peer chairman then conducts the peer review phase on the case and makes a decision. Again the MDA has oversight of the operation of the peer review program throughout the state, setting policies on peer review and serving as an appeal body for peer review cases. The MDA’s decision on an appeal is the final decision that is made in the peer review process.

The American Dental Association (ADA) provides recommendations to state and local district societies on how to organize and operate peer review programs in an effort to establish uniform concepts regarding peer review. Also, the ADA updates its guidance as peer review experience is accumulated and as federal laws and regulations affect the process. However, the ADA does not serve as an appeal body and rarely intervenes in individual peer review cases. Furthermore, even though the ADA provides recommendations and general guidance on peer review, each state association has the ultimate authority over its specific peer review policies and cases. This is especially important as each state dental society must know and comply with the laws and regulations in its state. This is another reason why the structure, operation and policies of peer review programs vary from one state to another.

To assist constituent and component societies, the ADA offers peer review workshops and mediation workshops. Members of the Council on Dental Benefit Programs provide the workshops at the request of constituent dental societies. The purpose of the peer review workshops is to explain ADA recommendations on conducting peer review and to provide updates on ADA policy regarding peer review and the factors in the health care and regulatory environment that may have an impact on the peer review process. The workshops provide a valuable forum in which peer review committee members, dental society staff and other interested parties can discuss peer review issues that are of current interest to them. It also provides the ADA with an opportunity to understand trends in patient-dentist disputes and factors that affect them, such as changes in dental practice and the delivery of oral health care, as well as state and local regulations.

In addition to peer review workshops, the ADA offers mediation workshops. The purpose of the mediation workshops is to provide basic training in how to mediate disputes. Thus, a constituent dental society can request either a peer review workshop or a mediation workshop, depending on the needs of its peer review committee members at the time. In most states the peer review system is administratively separate from the state board of dentistry or other regulatory agencies. However, the peer review program works cooperatively with the state agencies, referring some cases to the state agency, accepting referrals from the state agency, or examining the same case for different reasons. In Mississippi, the MDA does contact the Mississippi State Board of Dental Examiners or other state agencies as needed. It is important to note that these agencies also refer individuals to contact the MDA for information or to initiate the peer review process.

***The Peer Review Committee***

Each state and local dental society has a peer review committee. Committee members are dentists who volunteer their time to serve on the committee for a term specified by the constituent society, usually 3-5 years. The terms of members are staggered to ensure continuity of the committee. Members of peer review committees are primarily general dentists who have the qualifications and experience to make decisions that reflect standards and norms of dental practice in the community. The size of the committee should be large enough (generally 5-6 members) so that community norms will be represented.

Impartial decision-making is crucial for an effective and fair peer review process. This means that no member of the peer review committee should have any stake or interest in the outcome of a case. To insure impartiality, committee members should not have professional or social ties to the parties in a peer review case. If a committee member does have ties that would bias his or her decision in a case, the committee member is expected to excuse him or herself from the case.

In states, like Mississippi, that have a small number of dentists it can be more difficult to assure that committee members have no social or professional ties to the parties in a case. In such instances, the committee chairman may opt to request that the case be handled by a different component dental society in the state or by the state association peer review committee.

*Note: In Mississippi, our state peer review committee is comprised of the six district peer review chairmen.*

In addition to general dentists, peer review committees may also include specialists. Additionally, a peer review committee may contact specialists to be available to the committee for consultation, as needed. A dental specialist, when being reviewed as a party in a dispute, may request a committee of like specialists. Also, the peer review committee may choose to include a specialist if it feels such special expertise is needed. Some state societies help to identify individual specialists to be available to the committee; others request that the specialty organizations suggest specialists to assist or serve on the peer review committee. Regardless of how they are chosen, the ADA recommends that the opinion of any member appointed on an ad hoc basis carry the same weight as the opinion of the permanent committee members. Ad hoc members should also be unbiased in the case and have the same general qualifications to serve on the committee as the permanent members.

Prior to a review, either of the parties in the case may ask to know the names of the committee members reviewing the case and may submit a properly documented request that the chair of the peer review committee dismiss a committee member for cause. The chair, with the advice of the peer review committee, may choose to accept or reject the request, considering the reasons for the request. However, parties in the dispute cannot suggest or request specific peer review committee members to handle the case. The chairman of the peer review committee decides who will be on the peer review committee, in all cases.

If either party in a case believes that the decision in the case is in error, either party may appeal the case to the state dental society (usually, within 30 days of receiving the concluding letter from the local dental society’s review). The request for an appeal should be sent in writing to the state society’s peer review committee through the MDA office. The reason for an appeal may be as follows:

1. The matter was not appropriate for peer review.

2. Members of the peer review committee were not qualified to decide the case.

3. Proper procedures were not followed in the process.

4. Additional information has become available which, either because it was not available at the   
 time of the local society’s review, or for some good cause was not presented to the local   
 society, or was not considered by the local committee.

5. The decision of the committee appears contrary to the information presented.

The designated chair of the state peer review committee initiates a review of the appeal. The state committee is asked to consider all the facts in the case and determines from the written request what further action is necessary. The committee may:

1. Decide that an appeal is unwarranted and the local district society committee decision stands.

2. Send the case back to the local district committee for further review if the initial review is   
 considered inadequate or incomplete.

3. Agree to hear the appealed case.

The state peer review committee then uses the same procedures as the local committee in notifying both parties of its decision in the case. The state peer review committee is the final recourse in settling the dispute through the peer review system. Other methods of settling the dispute, such as arbitration or a lawsuit, would be outside of the peer review system.

***Appropriate Issues for Peer Review***

Appropriate issues for peer review are quality of care or appropriateness of care. Quality of care refers to the skill with which a treatment is provided, using the standards which generally prevail within the professional community. Appropriateness of care refers to the professional acceptability of planned or completed treatments, to include necessity and consistency with diagnosis. In evaluating the appropriateness and quality of care, the peer review committee members use their own clinical experience and consider the patient’s oral history, existing medical conditions and the complexity of the case and treatment. The committee may also use quality of care guidelines in deciding on questions of quality and appropriateness of care, but committee members also consider individual patient circumstances that may require deviation from guidelines.

The more time that elapses between the disputed treatment and its presentation to the peer review committee, the greater the possibility that the clinical condition which was the focus of the patient’s complaint may be affected by changes in the patient’s health status, subsequent treatment the patient may have had, or simply the passing of time. For this reason, peer review programs usually define a specific, limited time frame within which a case can be brought to peer review. Therefore, it is advisable that disputes be brought to the peer review committee as soon as possible after the patient or dentist recognizes the problem. Some states use state statutes of limitations as a guide for setting the time frame. For information on specific time limits in any given state, the state dental society should be contacted.

*Note: In Mississippi, complaints that reflect one year or longer from the completion of the dental treatment are considered inappropriate for the peer review process.*

Peer review committees do not accept cases that are in litigation or in which the dentist has reported the case to a collection agency. Peer review is not intended as a court of law and does not use the same rules and procedures as a court of law. For example, peer review committees request both parties in the dispute to provide the committee with relevant information to the case. The committee uses the information in its decision making, but holds the information in confidence. It does not share information provided by party A, with party B, and vice versa. This is very different from the legal system in which each party “discovers” evidence, raises objections and questions regarding the evidence, and builds its case, in part, to counter the evidence of the opposing party. The peer review process focuses directly on the issue at hand and is accomplished through straightforward procedures and reasoning that are immediately understandable by the layperson. It is intended to offer both parties an opportunity to settle the dispute expeditiously, at little or no financial cost.

Sometimes peer review committees accept cases that have been reviewed by another agency, such as an insurance company or state board of dentistry. But, the peer review committee would do so only if it would be reviewing the issue for a different purpose. For example, an insurance company may review a case to determine whether or not care was, in fact, provided, but it may not consider the quality of care. In such a case the peer review committee may accept the case for review to resolve a dispute about the quality of care.

Peer review committees do not accept cases that may involve alleged fraud or violation of the Mississippi Dental Practice Act. Similarly, state dental boards may review a case regarding a question of licensure violation. The peer review committee may then review the same case in order to settle another issue of the case such as the quality of care delivered. In some states, the state dental board may refer cases to the dental society’s peer review committee.

***The Peer Review Process***

As a profession, dentistry is trusted by society to act for the patients’ best interests and to oversee that each member of the profession is held to the ethics and standards of the profession. To fulfill this obligation, the profession voluntarily regulates itself. Peer review is one part of self-regulation. Because self-regulation is fundamental to the integrity of the profession, the MDA strongly encourages its members to participate in the peer review process if he or she becomes the subject of a complaint, however dentists are not mandated to participate if a request is made to do so.

While peer review provides a benefit to patients and society, it also provides a benefit to the dentist. It provides the practicing dentist a measure of risk management in that it may, in some cases, prevent a lawsuit or do much to preserve the reputation and good standing of a dentist in the community. The benefit of peer review has real costs attached to it that are paid through the dues of member dentists of dental societies that administer the peer review programs, and by the dentists serving on peer review committees, who volunteer their time to conduct mediation and peer review. Since it is a benefit to dentists, the MDA offers peer review only to dentists who are members of our state association.

The peer review process starts with a complaint to the MDA office from a patient. The peer review process does not handle complaints from a dentist about another dentist (dentist to dentist complaints) because the investigation of such complaints would often require the cooperation of patients, who might otherwise be satisfied customers. Patients most often initiate complaints; but dentists occasionally initiate complaints as well. A complaint initiated by a dentist typically arises after the dentist has discussed a problem with the patient, but was unable to resolve it. The dentist may then suggest to the patient that it be settled through peer review. If the patient agrees, the dentist will then initiate the process.

The state dental society staff receives the complaint through a phone call from the complaining party and screens the call to determine its appropriateness for peer review. The MDA staff then directs the complainant (the patient or dentist, as the case may be) to submit a written request to initiate the peer review process. The written request requires the complainant to write a description of the dispute. The request also includes authorization from the patient to release his or her records to the chairman of peer review committee and the mediator. The MDA staff then delegates the case to the appropriate local district society for follow-up by forwarding the written request to the chairman of the peer review committee. Per the direction of the local district society peer review committee chairman, both parties in the dispute receive a letter from the state association to acknowledge that the complaint has been made. The person against whom the complaint is made (usually the dentist) is asked to submit in writing their comments about the complaint.

The dentist is also requested to submit any necessary treatment records for the peer review committee’s consideration. When the case is terminated, the records are returned to the dentist. The peer review process, in most states, consists of two phases: mediation and review by the peer review committee.

**The mediation phase.** The first phase of the peer review process in almost all states is mediation and it is distinct from the review done by the peer review committee. Mediation is an attempt to settle the dispute through negotiation between the parties. The objective is to have the parties, themselves, decide and agree on a settlement of the case. The mediator facilitates the process. After the chairman receives the complaint, he or she personally handles the case or appoints a mediator for the case generally within 10 days after receiving the complaint. The mediator is a volunteer dentist who contacts each of the parties involved. Many times, the local district peer review committee members serve as mediator for cases on a rotating basis. If both parties agree to participate in mediation, the mediator then begins work towards resolving the dispute by facilitating negotiation between the two parties. The mediator keeps notes on his or her discussions with each of the parties. These later become part of the mediator’s report, which is submitted to the peer review committee, if the case continues on to peer review.

In most cases, the parties come to an agreement through mediation. Each party is then sent a letter of agreement describing the resolution. If the resolution involves an exchange of money, it is noted specifically in the letter and a form for release and satisfaction of claims accompanies the letter.

If the parties are unable to reach an agreement through mediation, both parties will receive a letter stating that mediation was unsuccessful and the case can then proceed to peer review. With the letter, both parties also receive an agreement to submit the case to peer review and to release the patient records for peer review. The dentist is not be obligated to continue with peer review and the patient always has the option of declining to participate in either mediation or peer review.

**The peer review phase.** The peer review phase is similar to an arbitration process in that a neutral third party, the state peer review committee, gathers the facts of the case and makes the decision on the case. Some states, in fact, call this peer review phase “arbitration.” In reviewing the case, the state peer review committee may meet to discuss the case, may examine clinical records, talk to the patient and dentist and, if necessary, arrange for a clinical examination of the patient by one or more of the committee members, independently. Although the state peer review committee will receive a report from the mediator, the mediator will not participate on the peer review committee. Before examining the patient, the committee must obtain written permission from the patient.

Should an examination of the patient be conducted, and in keeping with dental professional ethics, the state committee members do not comment to the patient on the patient’s overall oral health status or on findings during the exam. Also, the content of the examination is limited as much as possible to the teeth or oral health issue presented in the peer review complaint.

The peer review committee member (members) conducting the examination submits a written report of his or her findings regarding the patient examination to the designated state committee chair. The report(s) may be shared with the committee as a whole for the committee’s decision making. The final decision of the committee is the majority decision of the committee or its consensus.

All parties in the case are notified of the peer review committee’s decision and recommendations in writing. However, peer review committees do not provide the parties in the case with the individual recommendations made by each member of the committee or with any of the peer review committee’s notes or records of the case. The parties in the case receive only the final committee decision.

The total peer review process, including mediation, is generally completed within 60-90 days. Any records obtained from the dentist’s office are returned to the dentist and the documentation of the case is sent for file to the state dental society. The constituent dental society maintains the record for the length of time required by state laws, which is seven years in Mississippi.

Each party is expected to abide by the decision of the peer review committee. If either of the parties is not satisfied with the decision and can show a just cause for an appeal, the case can be appealed to the state association. Just cause for an appeal may revolve around questions of whether the proper procedures were followed, whether additional material has become available for the committee, or whether bias or discrimination were evident. However, the state association level is the final level of appeal. The American Dental Association does not conduct peer review or intervene in the work of peer review committees. All information regarding a particular case is kept strictly confidential. All records obtained from dental offices are returned to those offices.

***Peer Review Decision Making***

After review of the documentation and completion of the interview, the committee, in closed session, considers the information it has gathered and makes its decision. Peer review committees limit the review to only the treatment in question and do not review or comment on the patient’s general oral health status or any other dental work. Each member of the peer review committee is expected to use his or her own professional knowledge in forming a decision. For this reason, the ADA recommends that peer review committee members be practicing dentists, even if practicing on a part time basis. Committee members may also include a specialist on the committee for any case that involves the work of a specialist.

Finally, committee members may also consult practice guidelines in forming a decision. A majority opinion constitutes the decision of the committee. Usually a minority opinion is also permitted and may be included with the final report. The peer review report is an internal document of the committee and is not sent to any of the involved parties. It is used to help the committee reach a consensus and decision. A letter is then sent to the involved parties, informing them of the committee’s decision.

The ADA’s statistics on the outcomes of cases indicate that peer review committees are unbiased in their decision-making. In 2002, approximately 59.9 % of peer review cases were settled in favor of the patient; 40.1% were settled in favor of the dentist; and the remainder was categorized as a compromise or involved other parties such as insurance companies.

When a decision is in favor of the patient, the remedy may involve an adjustment of the fees. The dentist may be asked to refund or waive a fee or a portion of a fee. Sometimes, the remedy is to have the dentist redo the dental work, if the patient and dentist are comfortable with the idea of working together. Also, depending on the findings of the peer review committee, the peer review committee’s recommendation may include asking the dentist to improve his knowledge and skills such as attending continuing education. Most peer review programs do not provide compensation for pain and suffering.

All parties are notified of the peer review committee’s final decision and informed of their right to appeal usually within 30 days of the peer review examination. If the decision specifies an exchange of money, the return of money, or a fee waiver, and the disputing parties accept the recommendation, an agreement in a written release form should be used.

The form generally releases the dentist from any further liability upon returning the stipulated amount of money, or it cancels a remaining balance. The form will be accompanied by a concluding letter outlining or restating the financial arrangements, and must be signed by all parties in triplicate, one copy for the patient, one for the dentist and one for the constituent society records. Often the dentist’s malpractice carrier will want to use its own form. For this reason, the dentist is advised to inform the malpractice carrier when he or she will be a party in a peer review case.

In some cases, the peer review committee may become aware of ethical issues, particularly egregious behavior, or a pattern of possibly faulty treatment. For example, the peer review committee may notice that a dentist has repeatedly been the party in peer review cases and has a pattern of repeated adverse decisions by a peer review committee or the case at hand may be a particularly serious treatment error. In such cases, the committee may refer the issue to the state board of dentistry. A committee gives very careful consideration to its decision in such cases and generally bases its decision on pre-established criteria developed by the dental society, such as a certain number of complaints within a certain time period.

***Compliance with Peer Review***

After a peer review decision is made, both parties in the dispute are expected to comply with the decision and are requested to sign the release forms indicating their acceptance of the decision. The dental society has no leverage in requesting patients to comply with a peer review decision. An arbitration agreement is a legally binding contract between two or more parties to submit their dispute to an impartial third party. A contract to enter into an arbitration agreement is only enforceable if it meets the requirements of state law. Most state law is to the effect that signing such an agreement relinquishes any right to initiate a legal action. Noncompliance with the peer review decision in light of this agreement may constitute a breach of contract. In states with mandatory binding arbitration laws, the dentist would also be held to such an agreement.

As a practical matter, when the peer review committee decides in favor of the dentist, the patient will be requested to pay the fee for service if that was of issue. Sometimes patients have been asked to return a dental appliance, denture or other oral health device to the dentist as part of the agreement. Most typically, the patient is requested to consider the agreement as final closure on the issue. However, the dental society has no leverage to enforce the patient’s compliance beyond this.

When cases are decided in favor of the patient, the patient is sometimes due a fee refund, waiver or some adjustment of the fee. If the dentist does not comply, it should be understood by the dentist that the attempt to avoid litigation may be significantly compromised.

There is also a possibility that one or both of the parties will renege on the signed peer review agreement and initiate a lawsuit. This has rarely occurred subsequent to closure of a peer review case, but in such a case a court may either consider the case anew, without consideration of the peer review decision or it may consider the case in light of the peer review decision and the individual’s breach of the peer review agreement. How the peer review decision is regarded is the option of the court.

***National Practitioner Data Bank***

The National Practitioner Data Bank (NPDB) is a repository for information on malpractice cases involving dentists, physicians and other health care practitioners. The NPBD is used by licensing boards, hospitals, and certain other health care organizations that have responsibility for the patient care that is provided by practitioners which it employs or with whom it has a contractual agreement for providing services.

A medical malpractice payment as interpreted by the U.S. Department of Health and Human

Services (HHS) is defined in such a way that the refunds provided to patients in some peer review cases can fall within the HHS definition. The definition of medical malpractice payments is any payment of money; by an entity (such as the dental practice or corporation); for or for the benefit of a health care practitioner; resulting from a written claim or demand for payment; and based on the provisions of, or failure to provide, services.

Each of these reporting elements must be present in order for a reporting obligation to exist. If all these elements apply in a particular peer review case, then the case is reportable to the NPDB.

Whoever pays the money to the patient is responsible for reporting the action to the NPDB.

If the dentist pays the money, it is his or her duty to report it; if the dental society refunds the patient from an escrow account or other source, the dental society has the obligation to report it; if the dentist’s insurance company refunds the money to the patient, the insurance company has the obligation to report it. More information about the National Practitioner Data Bank can be located online at www.npdb-hipdb.com.

***Conclusion***

Peer review offers recourse for the patient and dentist in disputes that would not constitute a legal case, because of either the nature of the complaint or the small amount of money in dispute. It also avoids the high cost of litigation for both the dentist and patient. Using peer review, the dentist may preserve his or her good reputation and integrity in the community.

Peer review is also a very credible system in that the parties in the dispute have an opportunity to speak for themselves directly and so gain satisfaction that his or her side of the story has been accurately presented. Also, with the mediator and peer review committee being dentists, the parties in the dispute can be confident that the oral health issue at hand is well understood by the mediator and committee.

In addition to its practical value, peer review is another route by which the dental profession demonstrates its accountability to the public and fulfills its responsibility, as a profession, to regulate itself. Through peer review the profession demonstrates that it gives its valuable time, free of charge, to resolve complaints about oral health care.

Peer review, however, is not a static system. It is continually shaped by health care legislation and ongoing developments in the profession, as well as the growing sophistication of patients and dentists. As state and local district societies gain experience and expertise with peer review, the policies that guide peer review are continually refined and developed.

Statistics on the peer review system, the “National Peer Review Reporting System Survey”, can be purchased from the American Dental Association Survey Center. Copies of the American Dental Association’s peer review manual, Peer Review in Focus, can be purchased from the American Dental Association’s Council on Dental Benefit Programs.

*Last updated 4/4/2014*

1. *American Dental Association Survey Center. 2002 National Peer Review Reporting System Survey. Chicago:American Dental Association, 2003.* [↑](#footnote-ref-1)