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## DISCIPLINARY PROCEDURES BY LAW

As approved by ADA NSW Board August 2019

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## DEFINITIONS

**ADA NSW:** Australian Dental Association (NSW Branch) Ltd

**ADA NSW subsidiary companies:** any wholly-owned Company of ADA NSW Branch Ltd.

**Branch Council:** the elected Council of Australian Dental Association (NSW Branch) Ltd

**Branch Board:** the elected Board of Australian Dental Association (NSW Branch) Ltd

**CEO:** the Chief Executive Officer of the Australian Dental Association (NSW Branch) Ltd

**The Code:** ADA NSW Code of Ethics

**Complainant:** Person or entity that makes a complaint under the Code.

**Committee of Council or Board:** A committee constituted under the Australian Dental Association (NSW Branch) Ltd Constitution

**Established Dentist:** The dentist a patient normally attends for treatment; 'normal', 'usual', and 'regular' are synonyms.

**Ethics Panel:** Panel of members of over 10 years standing appointed by the Branch Council

**General Practitioner (dentist)/General Dentist:** A dentist registered as such with the Dental Board of Australia

**Member:** a financial member of the Australian Dental Association (NSW Branch) Ltd

**President:** the chairman of the Board of Australian Dental Association (NSW Branch) Ltd

**Respondent:** the Member against whom a complaint is made.

**Chair of the Ethics Panel:** Ethics Panel member appointed to co-ordinate the processes of an Ethics Panel.

**Specialist Practitioner (dentist)/Specialist:** A dentist registered as such with the Dental Board of Australia, under the listed Specialities.

## INTRODUCTION

1. The Branch is not to commence or proceed with consideration or investigation of a complaint if another investigation about the same matter is in progress or likely to commence in a court of law, statutory authority, regulator or other legally constituted tribunal.
2. If a complaint concerns a matter which triggers a requirement under mandatory reporting legislation or regulations, the matter must be immediately referred to the appropriate authority.
3. The Code provides a framework for Members to use when exercising their judgment in the practice of dentistry. It is not intended to be nor should it be interpreted as an exhaustive list of the situations and circumstances which may comprise compliance and non-compliance with the Code of Ethics. If asked, members are expected to justify any departure from both the provisions and spirit of the Code. Ethical dental practice requires judgment, interpretation and balanced decision-making in an appropriate context. The Australian Dental Association recognises that, while our ethical values and principles are enduring, standards of acceptable conduct are not permanently fixed. Community standards and the requirements and aspirations of dental practice develop and change over time. What constitutes acceptable conduct may also depend on the nature of individual circumstances. Allegations of non-compliance will be evaluated on a case-by-case basis and administered in accordance with these disciplinary procedures.

## DISCIPLINARY PROCEDURES

### Who can make a complaint?

## DISCIPLINARY PROCEDURES

### Who can make a complaint?

- 1 The following may make a complaint against a Member:
  - 1.1 Another Member
  - 1.2 The Branch;
  - 1.3 The CEO;
  - 1.4 Staff of ADA NSW, who must lodge the Complaint through the CEO
  - 1.5 A member of the public
- 2
  - a. Where the Branch decides to make a complaint, the CEO lodges the complaint on advice by resolution on behalf of the Board or Council.
  - b. Where a member of the public makes a complaint, the CEO lodges the complaint on their behalf.

### How is the complaint made?

- 3 The form of the complaint shall be: “that the Member has breached an Obligation(s) listed (in the code)”.
- 4 The CEO receives the Complaint. Where the CEO originates the complaint, they should immediately provide a copy to the President and the Chair of the Ethics Panel.
- 5 Complaints must be in writing. The complaint should refer to the section of the Code which it is alleged has been breached. The Complaint must include all relevant evidence at the time the complaint is lodged. If the complaint is formed on the basis that the Code has been breached after a decision by another authority, those details must be included in the complaint.
- 6 Where the Complainant is not a Member, the Branch or the CEO, the CEO must immediately ensure the Complainant has a copy of the Code.
- 7 Where a complaint is made by a non-member, the CEO will ask the Ethics Panel to assess the complaint and determine the most appropriate way to process the complaint: this may include conducting an investigation, or a recommendation to proceed with the process described here. This decision must be made and acted upon within twenty-one (21) days of receiving the complaint for assessment.
- 8 The written details of the complaint must be delivered directly to the Member (the **Respondent**). The Respondent must reply in writing to the Complainant within twenty-

one (21) days, either rebutting the complaint, answering the complaint, or seeking additional information from the Complainant.

- 9 If a complaint is made directly only to the CEO, the CEO must immediately forward all details of the complaint, along with a copy of this Code, to the Respondent, with a letter requesting a response to the Complainant and the CEO within 21 days.
- 10 On receipt of the reply, the Complainant may either:
  - 10.1 accept the Respondent's reply and withdraw the complaint;
  - 10.2 revise the complaint and ask the Respondent to reply within twenty-one days;
  - 10.3 ask for the complaint to be accepted by the CEO and determined in accordance with the process described here.
- 11 If the second option (above, 10.2) is followed, the CEO must monitor the exchange to its natural conclusion, provided no reply takes more than twenty-one days to deliver.
- 12 If the Complainant does not reply within twenty-one (21) days following the Respondent's reply, the complaint is deemed withdrawn. If the Respondent fails to reply, the CEO must accept the complaint for determination.

### **How is the complaint determined?**

- 13 When the CEO accepts a complaint, they must be satisfied that the principles of natural justice have been observed. The complaint must be clear, it must refer to a breach of this Code either directly or indirectly and the Respondent must have been given the opportunity to provide a response.
- 14 Vexatious complaints will be deemed a breach of the Code.
- 15 The misleading of a complaint inquiry, investigation or hearing by a Respondent constitutes a breach of the Code

### **Duties of the CEO**

- 16 On accepting the complaint, the CEO will consult with the President and **Chair of the Ethics Panel** and determine if:
  - 16.1 the complaint is likely to be valid;
  - 16.2 sufficient evidence has been provided to uphold the complaint.
- 17 If after consultation, the complaint is found not likely to be valid, or there is insufficient evidence to uphold the complaint, the CEO will be directed by the President and **Chair of the Ethics Panel**, to
  - 17.1 dismiss the complaint;
  - 17.2 ask the Complainant to amend or withdraw the complaint;
  - 17.3 ask the Complainant for more information.

At the conclusion of this process, the CEO will re-confer with the President and **Chair of the Ethics Panel** until a clear decision as listed here, is available.

- 18 The consultation process undertaken by the CEO with the President and **Chair of the Ethics Panel** should take no longer than thirty (30) days.
- 19 If after consultation, the complaint is found to be valid, and there is sufficient evidence to uphold the complaint, the CEO will immediately refer the complaint to the Ethics Panel for assessment.

## **Duties of the Ethics Panel**

- 20 On accepting the complaint for assessment, the Ethics Panel will review the material provided, conduct any other necessary investigations, and make a recommendation to Branch Board.
- 21 The Ethics Panel may interview the Complainant and Respondent as part of their investigations.
- 22 The Respondent will be provided with copies of all information considered by the Ethics Panel, and invited to make written submissions to the panel in response to this information explaining their case or rebutting the complaint.
- 23 The Respondent may also make an oral or written submission to the Ethics Panel on any other matter relevant to the complaint.
- 24 The Ethics Panel should conclude their assessment within thirty (30) days of having accepted the complaint. The panel must make a finding about the complaint. The majority decision of the panel shall be their finding; their finding will form the basis of their recommendation to Branch Board.
- 25 Following their assessment the Ethics Panel will inform the CEO of the decision, and make one of the following recommendations to Branch Board:
  - 25.1 That the complaint be dismissed.
  - 25.2 That the complaint be upheld.
- 26 The Ethics Panel may also make a recommendation to the Board:
  - 26.1 That the Member be expelled from ADA NSW;
  - 26.2 That the Member be suspended from membership of ADA NSW for such period as the Branch Board may determine;
  - 26.3 That the Member be reprimanded;
  - 26.4 That the Member be cautioned;
  - 26.5 That the Member be excused;

## **CEO and Branch Council's Response to the Recommendation from the Ethics Panel**

- 27 The CEO will immediately advise the respondent in writing of the decision reached by the Ethics Panel.
- 28 If the recommendation of the Ethics Panel is that the complaint be upheld, the President will give notice of a Special Meeting of Board to consider the recommendations of the Ethics Panel.
- 29 If the recommendation of the Ethics Panel is that the complaint be dismissed, the CEO will immediately inform the complainant and the respondent. The CEO will present the recommendation and details of the complaint to the next ordinary meeting of the Board for review. At the ordinary meeting, at which no fewer than five members thereof are present, the Board shall determine by a simple majority a resolution to accept, reject or modify the recommendation of the Ethics Panel. If the recommendation to dismiss the complaint is rejected, the President must cease debate, and follow the procedure here to call a Special Meeting of the Board to consider the complaint.
- 30 The Member concerned shall be given not less than fourteen (14) days' notice of the Special Meeting of the Board and of the recommendation of the Ethics Panel to be considered at that meeting. The Member shall be entitled and requested to attend the meeting, to be heard in their defence of the charges, and be invited to make a written submission to Board but shall not be present at the voting or be entitled to participate in the proceedings unless the Board otherwise determines.
- 31 At the Special Meeting, at which no fewer than five members thereof are present, Board shall determine by a simple majority a resolution to accept, reject or modify the recommendation of the Ethics Panel.
- 32 Board may determine:
- 32.1 That the Member be expelled from ADA NSW;
  - 32.2 That the Member be suspended from membership of ADA NSW for such period as the Branch Board may determine;
  - 32.3 That the Member be reprimanded;
  - 32.4 That the Member be cautioned;
  - 32.5 That the Member be excused;

## **Appeals**

- 33 A member who is so expelled, suspended, reprimanded or cautioned may within seven (7) days after receiving notice of the Branch Board's decision, appeal this decision to ADA NSW Council, by first giving notice to the Branch Board. This meeting shall be convened by ADA NSW as soon as practicable after receipt by the President of the member's written notice of appeal



- 34 Any punitive action will be suspended pending the outcome of the member’s appeal.
- 35 An Extraordinary Council Meeting of ADA NSW shall by resolution of those members present and voting have the power to annul or vary any of the Branch Board’s decisions.

### **General principles**

- 36 All Members of ADA NSW shall assist in the complaints process when requested.
- 37 Any member of the Ethics Panel or Branch Board or Council, who has some personal interest or bias in the process for determining a complaint must not participate in any discussion, debate, or vote relating to that complaint.
- 38 Even where not expressly mentioned, the principles of natural justice, and tenets of administrative law, will apply to the resolution of complaint