

## **Code of Ethics and Disciplinary Procedures.**

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**Australian Dental Association**

(NEW SOUTH WALES BRANCH) LIMITED · ABN 34 000 021 232

**Australian Dental Association NSW Branch**  
**educating**  
**advocating**  
**innovating**



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ADA NSW

Committed to you

Committed to ethical practice





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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 Board of the Australian Dental Association (NSW Branch) Ltd

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

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

**Constitution, Legislation and Ethics Committee (CLE):** The committee of the Australian Dental Association (NSW Branch) Ltd charged with oversight of this Code

**Committee of Council:** 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.

**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 the Australian Dental Association (NSW Branch) Ltd

**Respondent:** The Member against whom a complaint is made

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

## Introduction

1. This document has been created to guide Members in their professional lives. Where specific elements of behaviour are detailed, they mandate the way that Members of the Australian Dental Association (NSW Branch) Ltd (ADA NSW) must practice. These elements are referred to as the ADA NSW Branch Code of Ethics (the Code).
2. If Members breach this Code, they may be required to answer a complaint brought against them.
3. This document also describes the process of making, adjudicating and deciding a complaint, as well as the actions the Branch can take if a complaint is made.
4. Many matters of conduct are covered by acts of parliament, the Dental Board of Australia and government legislation and regulations. In considering complaints, specific provisions of these other authorities in relation to dentists will override any specific provision of this Code.

5. 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.
6. If a complaint concerns a matter that triggers a requirement under mandatory reporting legislation or regulations, the matter must be immediately referred to the appropriate authority.
7. 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 that 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.

## Ethical Principles

### Professional Behaviour

8. As dentists, we use our knowledge and skills for the benefit of the community to maintain and enhance the dental health of our patients and the general population. In doing so, we are committed to serving the community ahead of personal or sectional interests. Our Code of Ethics defines the values and principles that shape the decisions we make in dental practice. The whole Code provides a framework for members of the Branch to use when exercising their judgment in the practice of Dentistry. As members of the Australian Dental Association, we commit to practise in accordance with the Code of Ethics and accept that we will be held accountable for our conduct under the Australian Dental Association (NSW Branch) disciplinary regulations.
9. When treating patients, dentists must consider many factors. In deciding individual treatment choices, consideration of the four principles of medical ethics listed in this Code will assist a Member determining which alternative is likely to deliver the best outcome for a particular situation. Members should consider the scope of application of each Principle; the degree to which each is important, and where Principles conflict with each another, the path which delivers the best outcome for their patients.

**9.1 Autonomy.** Respect for the autonomy of dental patients has many implications. Autonomy means 'self-rule' and requires that patients have the ability and the right to make their own decisions; that they have the information to do so and that they are able to implement the decisions. Specific considerations for dental professionals include a requirement to consult fully with our patients, to communicate the entirety of their choice in accepting or rejecting treatment and to gain valid consent for treatment. True 'self-rule' is not possible when there is deceit, and autonomy also requires maintenance of confidentiality in our dealings with patients. Dentists need to be sensitive to an individual's personal preferences in deciding about health care, so that recognising when patients require dentists to make their decisions for them is of equal importance with respecting a patient's treatment choice. It requires a dentist to be fully engaged in all aspects of communication with their patients and their carers or guardians.

**9.2 Beneficence and non-maleficence** are often considered together in health care and so it is in dentistry. The traditional moral obligation in health care is to provide a net benefit with minimal harm, or beneficence with non-maleficence. Dentists need to make certain we can provide the benefits we profess (and thus, be 'professional'). To do this, we need rigorous and effective education and training before and during our professional lives. The balance between harm and help needs to be determined by application of skills and knowledge, and an understanding of the effects of treatment for an individual patient. Risks and benefits of treatment must be clearly communicated before treatment decisions are implemented. By combining a consideration for beneficence and respect for autonomy, dentists deliver empowerment to their patients.

**9.3 Justice.** In its purest evocation, this Principle is about fairness. In dentistry, the practical applications are found in respect for people's rights, and respect for morally acceptable laws. While dentists face far fewer moral conflicts than other health care professions in offering and carrying out treatment for their patients, as health care professionals we observe laws relating to confidentiality and balance those with a requirement to report certain suspicions or confirmed instances where patients have broken the law. Dentists must also apply the principle of justice when deciding whether to offer or withhold treatment based on personal lifestyle or health choices our patients make.

# Ethical Obligations

## Obligations to Patients

10. Members must always consider the health and safety of their patients as their first duty.
11. Members are entitled to refuse any patient for treatment. If they decide to cease treating a patient, they must offer an appropriate referral to another practitioner.
12. Members must observe the requirements of anti-discrimination legislation.
13. Members should perform treatment only within their competence, and be prepared to offer their patients a referral for advice or treatment when appropriate.
14. Members accept responsibility for treatment undertaken by themselves and by auxiliaries acting under their supervision, direction and control.
15. Members must delegate to auxiliaries only that treatment permitted by relevant legislation and regulations.
16. Members must ensure that privacy of patients under relevant legislation is preserved both by themselves and their staff.
17. Members must ensure that professional confidentiality is observed in a way consistent with the legal and ethical demands of the dentist–patient relationship both by themselves and their staff, unless they are legally required to disclose confidential information.
18. In giving professional advice, Members must take reasonable steps to offer their patients clear information about their dental health, treatment options and costs, so that patients can provide valid consent to any proposed treatment.

## Obligations to Employees

19. Members employed by others must always observe the tenets of this Code. Members who practise in such a way that clinical decisions are influenced by third parties, whether these are dentists, non-dentists or corporate employers, retain the obligation to always consider the health and safety of their patients as their first duty.
20. Members acknowledge that the profession of dentistry operates within a civic legal framework, and contracts of employment exist where a Member is a principal, partner, associate, employee or sub-contractor, even if they are not recorded in a written form.
21. Members have an obligation to observe the legal requirements of both Employment and Competition law; contracts made outside this framework are a breach of this Code.



## Obligations to other Members

22. Members should build their professional reputation on merit.
23. Members should be willing to assist their colleagues professionally.
24. Members should be prepared to contribute to the advancement of the scientific, clinical or technical knowledge available to the profession.
25. Referred Patients
  - 25.1 Where patients are referred for an opinion to a Specialist or another General Dentist by their established dentist, the Member consulted will provide full information to the patient's established dentist with details of diagnoses, treatment or further investigations. Where on-referral is offered to another dentist or medical practitioner, the established dentist should first be consulted.
  - 25.2 Where a patient with an established dentist seeks an opinion from a Specialist, or another General Dentist without a referral from their established dentist, that Member should, with the consent of the patient, inform the patient's established dentist of the result of the consultation.
  - 25.3 Specialists who refer patients to other specialists should first consult with the patient's established general dental practitioner.
  - 25.4 Where a patient seeks an opinion from a Member, whether by referral from their established dentist or not, the Member consulted while observing the health and safety of the patient as their first duty, shall not call into question the professional integrity of their established dentist.
  - 25.5 If a Member is consulted by a patient of another dentist in an emergency, the Member so consulted should provide information to the patient so that the patient's established dentist has details of that treatment.
  - 25.6 Members consulted by patients who seek emergency treatment should not alter the treatment plan provided by the patient's established dentist, unless a change in clinical or social circumstances, which was clearly not anticipated, has occurred.

## Obligations to the Dental Profession

26. Members should always uphold and enhance the integrity and dignity of the profession.
27. Members should maintain professional competence throughout their careers by active advancement of their knowledge of scientific, clinical and technical developments.

28. Members shall advertise only in accordance with the Guidelines published by the Dental Board of Australia.

### Obligations to the Australian Dental Association (NSW Branch) Ltd

29. Except with the express authority of the Branch Council, Members shall not permit the publishing, or be a party to publishing, in any medium including all forms of social media, of:
  - 29.1 Any communication whatsoever between them (or any other Member) or any Division or Metropolitan Dental Group, and ADA NSW or the Branch Council or any Committee of ADA NSW.
  - 29.2 Any rule, minute, decision or proceedings of ADA NSW or of the Branch Council or of a Committee of ADA NSW or any Council or any other like matter.

The Branch Council will authorise office bearers of ADA NSW to speak on behalf of ADA NSW where necessary.

30. Members giving any testimonial or laudatory certificate to any medical, surgical or dental material; appliance or apparatus; or drug or medicinal or dental preparation, shall state it is their personal opinion and not that of ADA NSW without the prior written consent of ADA NSW.
31. During any public address or lecture to a lay audience on dental matters or in an interview for the mass media or the Internet, Members should not claim they are representing the views or policy of ADA NSW without the prior written consent of ADA NSW.
32. Members are required to accept the authority of the Chief Executive Officer (CEO) of ADA NSW or their nominee when dealing with employees of the ADA NSW and its subsidiary companies and in their use of the facilities of the ADA NSW. Members should ensure that ADA Branch employees are treated with courtesy at all times.

## Disciplinary Procedures

### Who can make a Complaint?

33. The following may make a complaint against a Member:
  - 33.1 Another Member
  - 33.2 The Branch
  - 33.3 The CEO
  - 33.4 Staff of ADA NSW, who must lodge the Complaint through the CEO.
34. Where the Branch decides to make a complaint, the President lodges the complaint on advice by resolution on behalf of the Council.

## How is the complaint made?

35. The form of the complaint shall be: 'that the Member has breached an Obligation(s) listed (in this code)'.
36. The CEO receives the complaint. Where the CEO originates the complaint, they should immediately provide a copy to the President and the Constitution, Legislation and Ethics Committee (CLE).
37. Complaints must be in writing. The complaint should refer to the section of the Code alleged to have 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.
38. Where the Complainant is not a Member, the Branch or the CEO, the CEO must immediately ensure the Complainant has a copy of this Code.
39. Where a complaint is made by a non-member, the CEO will ask CLE 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.
40. 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.
41. 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 twenty-one (21) days.
42. On receipt of the reply, the Complainant may either:
  - 42.1 accept the Respondent's reply and withdraw the complaint
  - 42.2 revise the complaint and ask the Respondent to reply within twenty-one (21) days
  - 42.3 ask for the complaint to be accepted by the CEO and determined in accordance with the process described here.
43. If the second option (above, 42.2) is followed, the CEO must monitor the exchange to its natural conclusion, provided no reply takes more than twenty-one (21) days to deliver.
44. 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?

45. 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.

46. Vexatious complaints will be deemed a breach of this Code.
47. The misleading of a complaint inquiry, investigation or hearing by a Respondent constitutes a breach of this Code.

## Duties of the CEO

48. On accepting the complaint, the CEO will consult with the President and Chair of the CLE. The President and Chair will determine if:
  - 48.1 the complaint is likely to be valid
  - 48.2 sufficient evidence has been provided to uphold the complaint.
49. 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, CLE, to:
  - 49.1 dismiss the complaint;
  - 49.2 ask the Complainant to amend or withdraw the complaint;
  - 49.3 ask the Complainant for more information.

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

50. The consultation process undertaken by the CEO with the President and Chair should take no longer than thirty (30) days.
51. 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 CLE for assessment.

## Duties of the CLE

52. On accepting the complaint for assessment, the Chair and members of CLE will review the material provided, conduct any other necessary investigations, and make a recommendation to Branch Council.
53. CLE may interview the Complainant and Respondent as part of their investigations.
54. The Respondent will be provided with copies of all information considered by CLE, and invited to make written submissions to the committee in response to this information explaining their case or rebutting the complaint.
55. The Respondent may also make an oral or written submission to CLE on any other matter relevant to the complaint.
56. CLE should conclude their assessment within ninety (90) days of having accepted the complaint. The committee must make a finding about the complaint. The majority decision of the committee shall be their finding; their finding will form the basis of their recommendation to Branch Council.
57. Following their assessment, CLE will inform the CEO of the decision, and make one of the following recommendations to Branch Council:
  - 57.1 That the complaint be dismissed;
  - 57.2 That the complaint be upheld.

58. CLE may also make a recommendation to the Council:
  - 58.1. That the Member be expelled from ADA NSW;
  - 58.2. That the Member be suspended from membership of ADA NSW for such period as the Branch Council may determine;
  - 58.3 That the Member be reprimanded;
  - 58.4 That the Member be cautioned;
  - 58.5 That the Member be excused.

#### CEO and Branch Council's Response to the Recommendation from CLE

59. The CEO will immediately advise the respondent in writing of the decision reached by CLE.
60. If the recommendation of CLE is that the complaint be upheld, the President will give notice of a Special Meeting of Council to consider the recommendations of CLE.
61. If the recommendation of CLE 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 Council for review. At the ordinary meeting, at which no fewer than ten (10) Members thereof are present, Council shall determine by a simple majority a resolution to accept, reject or modify the recommendation by CLE. 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 Council to consider the complaint.
62. The Member concerned shall be given not less than fourteen (14) days' notice of the Special Meeting of the Council and of the recommendation of CLE 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 Council but shall not be present at the voting or be entitled to participate in the proceedings unless the Council otherwise determines.
63. At the Special Meeting, at which no fewer than ten (10) Members thereof are present, Council shall determine by a simple majority a resolution to accept, reject or modify the recommendation by CLE.
64. Council may determine:
  - 64.1. That the Member be expelled from ADA NSW;
  - 64.2 That the Member be suspended from membership of ADA NSW for such period as the Branch Council may determine;
  - 64.3 That the Member be reprimanded;
  - 64.4 That the Member be cautioned;
  - 64.5 That the Member be excused.

## Appeals

65. A Member who is so expelled, suspended, reprimanded or cautioned may within seven (7) days after receiving notice of the Branch Council's decision, appeal this decision at an Extraordinary General Meeting of ADA NSW, by first giving notice to the Branch Council. 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.
66. Any punitive action will be suspended pending the outcome of the Member's appeal.
67. An Extraordinary General Meeting of ADA NSW shall by resolution of those Members present and voting have the power to annul or vary any of the Branch Council's decisions.

## General Principles

68. All Members of ADA NSW shall assist in the complaints process when requested.
69. Any member of the CLE, or Branch 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.
70. Even where not expressly mentioned, the principles of natural justice, and tenets of administrative law, will apply to the resolution of complaint.

## Notes

