

NEW YORK STATE DENTAL ASSOCIATION

NYSIDA

ETHICS MANUAL

October 2004

INTRODUCTION

The *Ethics Manual* has been prepared by the Council on Ethics of the New York State Dental Association (NYSDA) to set forth uniform guidelines and procedures for the investigation of ethics complaints and for the conduct of NYSDA disciplinary proceedings pursuant to the NYSDA *Constitution and Bylaws*. Component societies and ethics council members are required to follow the manual to ensure fairness and consistency, and to meet the requirements of the *Constitution and Bylaws* of NYSDA and the American Dental Association, and applicable state and federal laws. Any questions that arise should be directed to NYSDA general counsel.

TABLE OF CONTENTS

Introduction.....	(i)
Table of Contents.....	(ii)
Confidentiality.....	1
The Scope of Discipline.....	2
The Investigation Process.....	3
Receipt and Documentation of Complaints.....	4
Component Dental Society Ethics Investigation Meeting Procedures.....	5
The Decision.....	5
How to Refer a Case to the NYSDA Council on Ethics.....	5
Council on Ethics Screening Panel.....	6
Checklist for Violation of the Code of Ethics.....	8
The NYSDA Hearing Process for Direct Complaints.....	10
NYSDA Hearing Process for Referral Cases.....	11
Peer Review Referrals.....	12
Ethics Procedure Flow Chart.....	13

CONFIDENTIALITY

It is very important that confidentiality is maintained throughout the ethics investigation and any disciplinary proceeding. Information regarding allegations and potential hearings should not be discussed with, nor information disseminated to, anyone, including members, except to the extent necessary to conduct a thorough investigation and hearing. The investigation must be conducted in a manner that will protect the rights of the member-dentist involved. In this way, NYSDA demonstrates that it is capable of responsibly disciplining its members.

If any discipline is imposed, such discipline is a matter of public record. The decision will be kept on file and noted on the NYSDA member database. The ADA and component society will be notified of the disciplinary action. In addition, a summary of any disciplinary action will be published in the *New York State Dental Journal*. In the event that charges are dismissed without imposing discipline against a member, the investigation and hearing will remain confidential and no information regarding the matter will be made public.

THE SCOPE OF DISCIPLINE

Pursuant to NYSDA Bylaws chapter 1, section 50, paragraph A, a member may be disciplined by NYSDA or by a member's component for:

1. having been found guilty of a felony;
2. having been found guilty of unprofessional conduct as defined by the laws and regulations of any state; or
3. violating the Bylaws or Principles of Ethics and Code of Professional Conduct of NYSDA, the American Dental Association or a component society.

Direct Complaint

In the event a complaint is received which alleges an ethics violation by a member, NYSDA general counsel will review the matter to determine if it is within the scope of discipline. Billing disputes, contractual legal disputes, employment disputes, or personal dentist-to-dentist disputes are not within the scope of the NYSDA Ethics Council. The NYSDA Ethics Council reserves the right to refuse to investigate a complaint that involves facts that occurred more than 2 ½ years ago; that is subject to ongoing civil litigation; that is subject to an ongoing OPD or other governmental investigation; or that involves allegations whose full investigation is beyond the resources of the NYSDA Ethics Council. The investigation of any complaint that falls within the scope of NYSDA discipline will be conducted by the component society.

In the event a complaint is received that involves both the quality of treatment and ethics violations, the complaint will be referred first to the peer review committee for resolution. Following the peer review resolution, the parties should be advised in the decision letter that any ethics violations may then be brought to the Ethics Council.

Direct Referral from OPD

Pursuant to NYSDA Bylaws chapter 1, section 50, and paragraph A-1, any member found guilty of, or disciplined for, professional misconduct shall have the case referred directly to the Council on Ethics. Such action is a per se violation under the NYSDA Bylaws. The entire official evidentiary record of the professional discipline case obtained from the New York State Education Department will be screened by a committee of the NYSDA Ethics Council to determine whether or not the matter should be referred to the entire NYSDA Ethics Council for review. In the event that the matter is referred to the entire Council, the only issue to be determined is the penalty, if any, to be imposed for having been found guilty of, or disciplined for, professional misconduct by the New York State Board of Regents. Such proceedings will be conducted in accordance with the procedure set forth in the Bylaws and detailed in this Manual.

THE INVESTIGATION PROCESS

A member who is accused of an ethics violation is presumed innocent until proven guilty and is entitled to a fair investigation and hearing. Once the nature of the complaint has been established and has been received and reviewed by NYSDA general counsel to ensure that it falls within the scope of discipline, a component may proceed with an investigation in accordance with the guidelines set forth in this Manual.

The ADA *Bylaws* empower its constituent and component societies with the authority to adopt and maintain a constitution and bylaws not in conflict with, nor limited to, the ADA *Constitution and Bylaws*. Similar authority is given the societies to adopt and maintain codes of ethics not in conflict with the ADA *Principles of Ethics*. The language establishing these rights can be found in Chapter II, Sections 70 and 80, of the ADA *Bylaws*.

The authority for constituent society discipline of its members is found in: Chapter II, Section 30-D; and Chapter XII, Section 20 of the ADA *Bylaws*; as well as in NYSDA's *Bylaws*, Chapter I, Section 50.

It is important to remember that from a procedural and a substantive point of view, consistency must exist among all governing documents. It is therefore recommended that disciplinary action be attempted only on the state level to assure consistency and fair procedures, and in conjunction with the guidance of legal counsel.

Please direct any questions to the Council on Ethics at the NYSDA headquarters in Albany

The investigative process can be divided into two categories: 1) component investigations; and 2) Screening Panel review. Ideally, the local ethics committee will investigate any complaint and determine if it is valid. The committee should attempt to resolve the complaint, if possible, at the local level. This can often be accomplished through discussion with the parties involved in the complaint.

If local action is unsuccessful, the component should refer the matter to the NYSDA Council on Ethics for additional review and action using the "Checklist for Violations of the Code" (pages 12 & 13). At this point, the Screening Panel will review the case and decide to: 1) recommend additional action be taken by the component ethics committee; or 2) recommend that the case be dropped for lack of substantial documentary evidence, or for failure to establish that a violation of the Code or state law may have occurred; 3) refer the case to the Office of Professional Discipline; or 4) recommend that NYSDA review the case for possible citation to hearing.

The information provided in this section is designed to supply component ethics committee members with guidelines and procedures for reviewing alleged unethical activity and for referring cases to the Council on Ethics.

RECEIPT AND DOCUMENTATION OF COMPLAINTS

Alleged violations of the NYSDA Principles of Ethics and Code of Professional Conduct (hereinafter referred to as *the Code*), New York state law and/or local ordinances may be sent to component ethics committees by patients, dentists, the NYSDA, or any other organization or person inclined to file a complaint against a NYSDA member dentist.

Component Executive Directors should promptly refer all ethics complaints to the component ethics chairperson. Upon receipt of any ethics complaint, the component ethics chairperson should immediately note the date and source. Once the nature of the complaint has been established, which may include the accused dentists' response, NYSDA general counsel should be consulted to determine if the complaint falls within the scope of NYSDA discipline.

If it is an advertising complaint - BE SURE TO MARK THE DATE AND SOURCE OF THE ADVERTISEMENT(S) or it may be rendered useless, as evidence, in subsequent investigations or hearings. In addition, a copy of the subject advertisement must be provided and the complainant should specify in what way it is allegedly false and/or misleading.

Document and verify all information obtained during the course of an investigation, including telephone conversations and all discussions. This can be effectively accomplished through "file memos." Simply make a memo, include the date, and note any action/decisions/results or conversations that took place in the investigative process. Sign the memo and put it in the file. Also be sure to date-stamp any information you receive in the mail and note the source of the material if it is not clear.

Often ethics investigations require meetings with the Ethics Committee, the staff, and possibly with an accused member. Below are suggestions of items that should be included in any ethics meeting documentation:

- a. Date and place of meeting.
- b. Names of persons in attendance.
- c. Purpose of meeting.
- d. If the accused member did not attend, was he/she afforded another opportunity to meet?
- e. Was the accused member provided an opportunity to respond to the accusation?
- f. Provide a synopsis of the questions/answers addressed at the meeting.
- g. Were any follow-up instructions given to the accused member and, if yes, were they completed?

- h. Were any documents produced at the meeting and presented to the ethics committee?
- i. What was the result of the meeting?

COMPONENT DENTAL SOCIETY ETHICS INVESTIGATION MEETING PROCEDURES

After a complaint has been received by the local dental society, the ethics committee may decide to set up a meeting to review the case and obtain input from the accused member. The ethics committee may go as a team, or it may decide to send one committee member. An informal luncheon meeting is often successful, or a telephone call may suffice. No matter how formal or informal these meetings, complete documentation of what occurred should be noted and put into the file. (Refer to Receipt and Documentation of Complaints.)

THE DECISION

A decision must be made by the ethics committee following a thorough investigation of any complaint. If the committee determines that no violations exist, committee members or dental society staff should notify the parties involved that no violations were found.

If the ethics committee determines that a violation exists, it may decide to counsel the accused member without referring it to NYSDA's Council on Ethics. However, the committee may determine that it is not prudent to meet with the accused, OR the committee may have met unsuccessfully with the accused and decided that the case necessitates a review by the Council on Ethics. In such cases, the ethics committee should proceed with referral of the matter to the NYSDA Council on Ethics by completing the "Checklist for Violations of the Code."

HOW TO REFER A CASE TO THE NYSDA COUNCIL ON ETHICS

Once the component ethics committee has determined that an ethics case requires a review by the Council on Ethics, a "Checklist for Violations of the Code" must be completed. This form is intended to provide the Council on Ethics with pertinent information on the complaint and also provide information on actions taken by the local ethics to date. A copy of the Checklist is included in this manual.

Below is a list of items that must be included in any Council on Ethics investigation referral:

1. COMPLETED "Checklist for Violations of the Code."
2. Copies of all current advertisements and promotional material under review. THESE MUST INCLUDE THE PUBLICATION DATE AND SOURCE. (Include photograph of any signs in question.)

3. Documentation of any meetings or conversations held at the local level regarding the complaint/accusation.
4. Copies of original correspondence/complaint if not initiated by the local ethics committee.
5. Copies of any documentation submitted by the accused member.
6. Patient statements or affidavits if pertinent to the case.

COUNCIL ON ETHICS SCREENING PANEL

The Screening Panel of the Council on Ethics is composed of past and present Council members who have no prior knowledge or information regarding the cases they are asked to review. If a member of this panel has prior knowledge of the accused or the situation under review, that member will abstain from participating in the particular case review, and an alternate will participate.

The results of the Screening Panel's review will be documented in a letter sent to the local dental society where the complaint originated. Local dental societies can expect notification of one of the following:

1. Case dropped as no evidence was found to substantiate the charges or charges did not make out a violation of the Code.
2. Request for additional information necessary to make decision.
3. Informal resolution possibly requiring the component to counsel the accused regarding the charges. (Specific violations will be outlined in the Screening Panel's correspondence.)
4. Notification that the case has been referred to the NYSDA prosecutor for consideration of further action. (Citation to hearing.)
5. Notification that the case has been referred to O.P.D.
6. Another course of action deemed appropriate for the purpose of resolving the ethics complaint.

Following receipt of the Screening Panel's decision, the component ethics committee will be required to take action, depending on the results of the investigation as outlined in the Screening Panel's letter. Most of these letters are self-explanatory; however, a few items of importance follow:

1. If the local ethics committee or staff is required to notify the accused member of specific problems, the Screening Panel's correspondence **SHOULD NEVER BE MAILED DIRECTLY TO THE DENTIST BEING INVESTIGATED**. The component should redraft a letter address to the accused, on component dental society letterhead, and inform that member of the areas defined as possible violations of the Code of Ethics or state law. Since any potential violations will be clarified in the correspondence, including excerpts from state law or the Code of Ethics, it is recommended that the component use those same sections and explanations **PARAPHRASED** in the new letter.
2. In ethics investigations, all involved parties are instructed to refrain from any comments or correspondence that allege the dentist **"IS IN VIOLATION"** of the Code of Ethics or state law. Since all parties are innocent of wrongdoing unless found guilty by an authorized hearing panel, all references to problem areas should be cited as **"POSSIBLE VIOLATIONS."**
3. Although components are not prohibited from making reference to Council on Ethics Screening Panel reviews, the Council encourages components to avoid statements such as, **"The Council on Ethics said this is wrong."** Local ethics committees have the authority to review allegations of unethical activity and should exercise that authority in a positive, respectful manner.

As long as the committee states, **"This MAY BE in violation..."**, there will be no problems later if the interpretation is overturned at the NYSDA level.

4. If the Screening Panel has requested that you counsel a dentist, it is very important that you keep written records of that meeting. It is also important to confirm any decisions in a letter to the accused following the meeting. If the dentist does not comply with requests made at the counseling meeting, information on the meeting and copies of correspondence should be forwarded to the Council on Ethics, with a new, completed **"Checklist for Violations of the Code of Ethics."**
5. If components receive notification that a member who was referred to the Screening Panel is being forwarded to the prosecutor for review, the result may be the member's citation to hearing. However, it is important that the member's first notification of citation to hearing arrive from the Council on Ethics. Depending on the caseload, it could be months before charges are actually mailed. Strictest confidentiality should be upheld during this period.

CHECKLIST FOR VIOLATIONS OF THE CODE OF ETHICS

Before you forward a potential violation of the NYSDA *Code of Ethics* to the Council on Ethics for investigation, please review the following steps so that the Council may be apprised of how the component conducted its investigation. Please respond to each question. Thank you.

1. Name of dentist: _____
Address: _____

2. What sections of the NYSDA Code of Ethics do you feel the dentist may have violated?

3. State your reasons: _____

4. How did you learn of the member's conduct? _____

5. Does the member know that the Ethics Committee has conducted an investigation?
Yes _____ No _____ N/A _____

6. What, if any, information has been revealed to the dentist concerning the investigation?

7. Has the Ethics Committee informally met with the member and advised him of the charges against him? Yes _____ No _____ N/A _____

8. Did the committee discuss the possibility of an informal resolution with the member?
Yes _____ No _____ N/A _____

If yes, what was the member's attitude? _____

9. Does a complete packet of documented information accompany this checklist?
Yes _____ No _____ N/A _____

DATE

COMPONENT CHAIR

DATE

NYSDA REPRESENTATIVE

THE NYSDA HEARING PROCESS FOR DIRECT COMPLAINTS

The Council on Ethics holds a hearing when all other remedies have been exhausted concerning alleged violations of the NYSDA *Code of Ethics*. For example, the component dental society has previously attempted to resolve the matter through local subcommittees and counseling, and has not been successful. Also, the member has been informed, upon notification by the NYSDA Council on Ethics that he/she is being cited to hearing, that a settlement agreement may negate the need for the hearing, but no settlement terms were agreed upon.

The Council on Ethics, as the entity charged with enforcing the Society's *Code of Ethics*, provides a procedure similar to the civil courts when citing a member to hearing. This process dictates that formal charges must be issued to the accused and a hearing must be scheduled for the purpose of the accused's defense. The ensuing hearing is held by members of the Council on Ethics at NYSDA's headquarters in Albany.

The authority to hold hearings is provided in Chapter I, Section 50 of the NYSDA *Bylaws*:

Chapter I - Section 50 (C) (a):

HEARING. The accused member shall be entitled to a hearing at which the accused shall be given the opportunity to present a defense to all charges brought against the accused. The society shall permit the accused member to be represented by legal counsel.

The Council on Ethics urges all parties involved in ethics investigations and the hearing process to remember that all individuals are innocent until proven guilty of any charges or complaints filed against them. The final determination of innocence or guilt is entrusted to the hearing panel members who sit in judgment at the hearing.

For specific procedures and guidelines concerning the hearing procedures, please consult the Ethics Hearings Manual.

NYSDA HEARING PROCESS FOR REFERRAL CASES

Pursuant to NYSDA Bylaws Chapter I, Section 50, paragraph A-1, members who have been found guilty of, or disciplined by the New York State Board of Regents, for professional misconduct, are directly referred to a screening panel of the NYSDA Ethics Council to determine if the matter should be referred to the entire Ethics Council. NYSDA will request the official record of all proceedings against any NYSDA member who has been so disciplined by the State Board of Regents. A screening panel of three Ethics Council members will thereafter determine whether or not to refer the case to the entire Council.

Notice shall be provided in accordance with the Bylaws. Specific procedures relating to the hearing are set forth in the NYSDA Ethics Hearings Manual.

The only issue to be decided at the hearing is what penalty, if any, is appropriate. At the hearing, the Official Record that is received from the New York State Education Department will be the primary evidence. The member has the opportunity to appear and/or submit information to the Council in explanation or mitigation. The member is advised to bring witnesses, or other evidence to the Council and prepared to answer questions.

PEER REVIEW REFERRALS

When the component Peer Review committee or the component Executive Director is unable to obtain either: 1) participation of the member dentist in submitting to peer review, or 2) compliance with a peer review decision (e.g. refund or continuing education), the matter should be referred to the component ethics committee. The relevant records of the peer review activity should be provided to the ethics committee. The component ethics committee will determine whether to hear the matter or to refer it to the NYSDA Council on Ethics for a disciplinary hearing.

NYSDA COUNCIL ON ETHICS

