

# **Professional Liability Claims Review Guidelines New York State Dental Association Council on Professional Liability Insurance October, 2019**

## **Chapter I: PURPOSE**

Since 1975, the New York State Dental Association (NYSDA) has conducted a formal review process of professional liability claims brought against NYSDA members. The Association has established local Professional Liability Claims Committees to function as officially constituted subcommittees of the NYSDA Council on Professional Liability Insurance. This structure was instituted to assist the profession, the defendant dentists, and the professional liability insurance carriers that insure them. Its purpose is to provide an impartial case review by fellow professionals in an effort to best assess whether the said case should be defended by the insurer, or whether settlement should be sought. This program exists as a member benefit to assist members in difficult circumstances and help them achieve the best outcome possible. It ensures a proper claims handling in accordance with the professional assessment of dentists, not insurance professionals.

In the past, many carriers of dental professional liability insurance in New York State have sought and accepted the review of cases as provided by this process. Now, however, only those carriers endorsed by NYSDA or its component societies typically require this process through their policy language.

These Guidelines were developed and revised in an effort to provide consistency statewide. They provide the framework in which the structure and format of the Professional Liability Claims Committees shall function. Local discretion is allowed but should not violate the substantive tenets of these Guidelines.

## **Chapter II: JURISDICTION**

### **Section 10. Professional Liability Insurance Carrier:**

These Guidelines pertain to dental professional liability claims submitted to an insurance carrier ("insurer") which is:

- 1) admitted to sell such coverage in the State of New York and
- 2) whose policies contain a contractual provision vesting the exclusive right of settlement for any claim in a Professional Liability Claims Committee of the New York State Dental Association, and
- 3) involves a dentist ("the insured") who was a member in good standing of NYSDA,
  - a. at the time of the alleged occurrence of the incident or
  - b. at the inception of the first such policy issued to the member by that carrier.

Furthermore, only a professional liability insurance carrier whose policy language includes such a contractual provision shall be permitted to utilize the procedures outlined in these Guidelines. And furthermore, such carrier is not required to bring a case to the claims committees if they are pursuing a defense of the case.

**Section 20. Professional Liability Claims Committee:** Hearings shall regularly be conducted by the Professional Liability Claims Committee convened in the component society in which the insured maintains membership. When arranging a hearing, the insurance carrier should inform the insured of the members that comprise that claims committee. If there is cause, a request may be made to move a hearing to another component. Such request needs the approval of the NYSDA Council on Professional Liability Insurance Chairperson who will also decide which component will hear the case.

### **Chapter III: COMMITTEE STRUCTURE**

**Section 10. *Composition:*** The composition of the Professional Liability Claims Committees shall be determined by the individual component society of NYSDA subject to the approval of the NYSDA Council on Professional Liability Insurance. It shall, however, consist of no less than a chairperson and five (5) additional members appointed by the component society in a manner of its choosing. In addition, the chairperson shall be the official representative of the component society to the NYSDA Council on Professional Liability Insurance.

**Section 20. *Eligibility:*** Only an active, life or retired member with actively-registered New York State dental licenses and who are in good standing with the component society and NYSDA, shall be eligible to serve on a Professional Liability Claims Committee. Members that regularly serve as expert witnesses in cases involving dentists should refrain from serving on these Committees. No person who serves on a Committee shall subsequently serve as an expert witness in the case.

**Section 30. *Chairperson:*** One member of the committee shall be appointed by the component to serve as chairperson of the component committee and as the representative to the NYSDA Council on Professional Liability Insurance. In addition, a vice-chairperson shall be designated by the chairperson, from among the remaining committee members, to act as chairperson pro tem in the event the chairperson unavailable to render a decision as provided for in Section 70E of this Chapter of the Guidelines.

**Section 40. *Consultants and Secretaries:***

- A. The committee chairperson shall have the discretionary power to appoint a consulting member(s) to the committee without the right to vote.
- B. The committee chairperson may appoint a secretary from among the members of the committees.

**Section 50. *Term of Office:*** It is recommended that committee members be appointed by the component society in a manner of its choosing. The representative of the component society to the NYSDA Council on Professional Liability Insurance shall at least serve on the committee for a term concurrent with his or her appointment to the Council.

**Section 60. *Quorum:*** A majority of the members of the committee shall constitute a quorum.

**Section 70. *Duties:*** The duties of the Professional Liability Claims Committee shall be:

- A. To ensure participating carriers have a current roster of all committee members.
- B. To meet in a timely manner at the request of professional liability insurance carriers to evaluate and review claims that fall under its jurisdiction.
- C. To provide the insurance carrier with a recommendation to either defend or settle a case.
- D. To focus their examination on the dental practice aspects of the case while being sensitive to other factors that could impact a successful legal defense.
- E. To function in a manner that provides an objective, clear, reasoned and impartial review.
- F. To operate in a professional, polite, cordial, and collegial manner, always mindful that while the defendant's professional work and judgment are being evaluated, they are not to be judged personally. Members shall restrain themselves from strong emotions, and rude or derisive comments. Questioning shall be non-confrontational and the defendant dentist shall be treated with the dignity and respect of a peer.

- G. To meet again if requested by the carrier to reconsider a previous claim decision in light of new information.
- H. To allow the chairperson, or in the event the chairperson is unavailable, the vice-chairperson of the committee, to change a decision on behalf of the committee upon the recommendation of the carrier or its representative, if conditions warrant such an action by a significant and material change in circumstances.
- I. To keep all information of the case and its proceedings private and confidential. Details of the proceedings, deliberations, or decisions shall only be shared with Committee members, the carrier, and association staff.

## **Chapter IV: MEETINGS**

### **Section 10. *Meetings:***

- A. The Professional Liability Claims Committee shall meet as needed at the call of the chairperson at the request of the carrier. All meetings shall be held in executive session, attended only by members of the committee and other individuals either invited or directed to appear.
- B. Where necessary, members of the Professional Liability Claims Committees may participate in and act at a meeting of the committee called by the chairperson through the use of conferences via telephone or other available methods. Such conferences and any actions taken shall be governed by these **Guidelines**. Telephone conferencing should only be utilized under extenuating circumstances and in cases where the insured has chosen not to participate or attend. Telephone conferencing should not be used when the insured is in attendance.

### **Section 20. *Pre-Hearing Procedures:*** The following procedures shall be employed prior to meetings of the Professional Liability Claims Committee:

- A. The professional liability insurance carrier or its representative shall notify the chairperson of the Professional Liability Claims Committee where its review is required in any action involving a member of NYSDA
- B. Upon confirmation that the involved dentist is eligible for claims review in accordance with Chapter II, Section 10 of these Guidelines, all pertinent data regarding the action shall be submitted to the committee.
- C. Following review of the data, the chairpersons, in cooperation with the insurer or its representative, shall select the meeting of the committee at which the case is to be heard, whereupon all pertinent data regarding the action shall be distributed to members of the committee in advance of the selected meeting.
- D. All case information shall be transmitted among the committee via a secure medium.

### **Section 30. *Official Records and Reports:***

A report shall be made of all Committee meetings with such report considering the privileged and confidential nature of all proceedings. The report shall simply include the meeting attendance, the clinical category of the case, and their decision whether to defend or settle the case. No additional information or commentary shall be reported.

- a) Committee reports shall be transmitted to the NYSDA Office for the exclusive and confidential use of the chairperson of the Council on Professional Liability Insurance and to the appropriate professional liability insurance carrier of its.
- b) Such reports shall be maintained by NYSDA for a period of ten (10) years and neither organization shall record the names of the parties in computerized format.

- c) Periodic statistical reports may be rendered to the NYSDA Council on Professional Liability Insurance and other association leadership as requested.

**Section 40. Participation:** Participation at meetings of the Professional Liability Claims Committee shall be governed by the following procedures:

- A. Committee Members: All official members of the committee are invited to participate in meetings except that members shall recuse themselves from any cases where they serve as a consultant or expert witness for either party. Members must also disclose any relationship they have with an insured or patient in an event being heard by a committee, and they must recuse themselves if that relationship is compelling. Committee members who practice with either the insured defendant dentist or a subsequent treating dentist in the case being heard, should recuse themselves from hearing that case. Recusal in this section means the committee member is not in the room for any part of the case presentation, deliberation, or vote.
- B. Defendants:
  - a) The insured shall be requested and strongly encouraged to attend any meeting of the committee at which an action involving him or her is heard. Such request can be made by telephone by a representative of the committee or the insurer, and confirmed in writing.
  - b) If the insured fails to appear at the scheduled meeting of the committee, the hearing may be postponed to a future meeting of the committee one additional time. In that instance, the insured shall be sent a second request by *certified mail delivery*.
  - c) Should the insured fail to appear at the rescheduled hearing, the committee should proceed with the review and determination in his or her absence.
- C. Professional Liability Insurance Carrier: The professional liability insurance carrier or its representative, when requested by the committee, must attend the scheduled meeting of the Professional Liability Claims Committee.
- D. Others: Other individuals invited to observe the deliberations of the Professional Liability Claims Committee shall do so only with the express consent of the Council Chairperson, the insured and the professional liability insurance carrier or its representative, and shall abide by the confidentiality requirements stipulated in these **Guidelines**.

**Section 50. Determinations:** The following procedures shall govern the reports of the Professional Liability Claims Committees:

- A. In every case in which a review and determination has been made, the Professional Liability Claims Committee shall submit a report as provided in Chapter IV, Section 30B of these **Guidelines**, within ten (10) business days of the decision.
- B. In arriving at its determination, the committee shall ensure that the insured dentist has received a full and courteous hearing, with the opportunity to present supporting material and information that may be pertinent.
- C. Once a Committee makes its decision, the defendant dentist shall be invited back into the meeting and informed of the decision in order to immediately address any questions or concerns the defendant may have with the decision. If the defendant appears hostile, the Chairman may elect to defer notification to the usual written notice sent by the insurer subsequent to the meeting.

## **Chapter V: PROFESSIONAL LIABILITY INSURANCE CARRIERS**

The obligations of professional liability insurance carriers, as defined in Chapter II of these **Guidelines**, participating in hearings conducted by a Professional Liability Claims Committee shall be as follows:

- A. to submit cases for review to the committee and categorize each case by their nature; i.e. their “cause of loss”.
- B. to be bound by the findings and recommendations of the committee within the limits of the agreement stated in the applicable professional liability insurance policy.
- C. to make every reasonable attempt to inform the chairperson of the Professional Liability Claims Committee of a change in circumstances that may alter the committee’s decision.
- D. to securely supply complete copies of all records to every member of the committee in advance of the meeting.
- E. for each case, submit a copy of the closure letter containing the case disposition to NYSDA.
- F. To inform the insured of the composition of the claims review committee in advance of the meeting to avoid any potential conflicts of interest.

#### **Chapter VI: INDEMNIFICATION**

Each member of a Professional Liability Claims Committee shall be held harmless and indemnified in accordance with Chapter XIII of the **Bylaws** of the New York State Dental Association, provided the committee abides by the procedures set forth in these **Guidelines**.

#### **Chapter VII: FEES**

The review of claims by the Professional Liability Claims Committee is a benefit of membership and accordingly is available without charge.

#### **Chapter VIII: INTERPRETATIONS**

Any disputes regarding the interpretation of the terms of these **Guidelines** shall be decided by the NYSDA Council on Professional Liability Insurance.

# **NYSDA Professional Liability Claims Committee Report Form**

## **Claim Categories**

- 1 Allergic Reaction
- 2 Anesthesia - Enteral/Inhalation
- 3 Anesthesia - Local
- 4 Anesthesia - Parenteral
- 5 Chemical Burn/Laceration
- 6 Cosmetic
- 7 Endocarditis
- 8 Endodontics
- 9 Extractions
- 10 Implants
- 11 Infection
- 12 Misconduct Defense (OPD)
- 13 Orthodontics
- 14 Paresthesia
- 15 Periodontics
- 16 Prosthodontics (fixed & removable)
- 17 Radiography
- 18 Restorative Dentistry
- 19 TMD/Trigeminal Nerve
- 20 Oral Pathology
- 21 Miscellaneous