



## The Mediation Process — The Ottawa Dental Society Experience

Gary Cousens, DMD, FRCD(C)

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For a number of years now, the Ottawa Dental Society (ODS) has had in place a mediation and ethics committee that is involved in dispute resolution. The services of this committee are available to members of the ODS as well as members in good standing of the Ontario Dental Association. Our experience so far have been very positive in that a very high percentage of the disputes has been resolved to the satisfaction of both patients and dentists.

Participation in the mediation process is voluntary. When patients call the ODS asking for advice with respect to a complaint they have against a member dentist, they are told about the mediation service. The first step in the process consists in having the patient fill in mediation forms and return them to our committee. All of the forms used by our committee are based on the Ontario Dental Association's mediation protocols. Once the patient has properly filled in the forms, letters are sent to the dentists involved, namely the dentist against whom the complaint is being filed and any other dentist who may be providing ongoing patient care.

These letters instruct the dentist named in the complaint to send appropriate records and, if he or she wishes, a brief narrative letter describing the care provided to

the patient. This information will then be forwarded to the mediation committee member assigned the case. Typically, the mediator will call the patient and the dentist to explain the mediation process and to make sure that both parties clearly understand the limitations of this approach. The mediator will try to develop a series of specific terms and conditions that will satisfy the patient, and will also see what the dentist may or may not be willing to offer as a gesture of goodwill in trying to settle the issue. It is always clearly established with the patient that our committee cannot award monies for punitive damages, pain, suffering, etc. It is also clearly stated that there can be no form of reprimand against the dentist through our committee nor can the committee force the dentist to accept the patient's demands.

If an agreement is reached between the two parties, the mediator will then draft a letter of resolution describing the conditions of the settlement and the sum of money involved, if any. Upon receipt of the letter, the patient will be required to sign a release form. At the same time, the dentist will be asked to forward a cheque for the agreed amount to the ODS. Once the signed release form is returned to our office, the ODS will issue a cheque to the patient

for the money, and the dentist will receive the full and final release form for his or her records. All dental records are returned to the appropriate dentist's office and the case is deemed closed.

Occasionally, if the treatment provided was complex, the patient may be encouraged to seek the opinion of a specialist, who will report directly to our mediation committee. The patient is told, however, that any specialist consultations are at his or her own expense, and is encouraged to ask that this cost be part of the final settlement. Recourse to specialists is rare.

In most instances, our committee will reach an agreement that does involve money, either a refund for treatment rendered or a payment for future treatment. The patient is clearly advised that in offering a monetary settlement, the dentist is not admitting to negligence or wrongdoing. In our experience, this type of agreement has satisfied both the patient and the dentist, and has brought closure to what is sometimes a very emotional situation.

For the patient, a successful resolution means he or she can move on and have the problem solved at little, if any, additional expense. For the dentist, a successful outcome means that the matter is taken care of in a discreet, efficient and less stressful

manner, without having to submit to a more official legal process. It also helps minimize the effect on the dentist's professional liability program with respect to increasing deductibles and perhaps additional legal expenses.

As a result of the mediation committee's work, we have been able to raise our members' awareness regarding the dispute resolution process and related issues.

First, when dentists receive our letter informing them of a complaint, they are asked to submit the appropriate information by a certain date. Generally, the dentist directly involved in the dispute is very compliant. Often though, the dentist currently providing the patient's treatment will fail to respond to the letter. We therefore try to encourage all our members to consider that, if some day the shoe were on the other foot, they would appreciate their colleagues' support and prompt response in such situations.

Secondly, the committee has seen several instances when, upon receiving a letter, the dentist involved in the dispute has contacted the patient personally to seek an explanation for the complaint, or attempted to resolve the

issue without our committee's involvement. We are always willing to withdraw our services if a dentist would like to try to negotiate a settlement personally. However, once the letter of dispute is in the hands of the dentist, we ask that he or she not contact the patient directly without first talking to the mediator. If the dentist insists on attempting to reach a private settlement, then the mediator will contact the patient to see if that is acceptable. If the patient refuses, we will then relay the message to the dentist and encourage him or her once again to consider our services. Direct contact between the dentist and the patient can often make things worse. It has been our experience that it only serves to harden the patient's stance with respect to the dentist's treatment.

Lastly, our committee believes that retreatment by the dentist involved in the complaint is not a wise option. In most cases, the patient is not interested in going back to the dentist. We therefore ask the dentist to realize that any care provided after the resolution would be more closely scrutinized since the patient already harbours feelings of mistrust.

Dentists who are named in a patient complaint should consider the possibility of dealing with the dispute through a mediation committee. If no such committee exists, it is possible to develop a dispute resolution process locally. I encourage dental societies throughout the country to organize similar committees if they have not already done so. Our experience at the ODS has proven that it is a worthwhile endeavour for everyone involved and a service that our members have come to appreciate. ■

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*Dr. Cousens is co-chair of the Ottawa Dental Society mediation and ethics committee. He is in private practice in oral and maxillofacial surgery in Ottawa. Adapted from a presentation at the CDA/DCF Canadian Dental Students Conference, June 1998.*

**Reprint requests to:** Dr. Cousens, 239 Argyle Ave., Ottawa, ON K2P 1B8

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