

## **CDPA Assistance Program**

### **Helping you to Protect Your Right to Practice**

The Canadian Dental Protective Association (CDPA) is a non-profit corporation which operates a mutual benefits program using the dues that you pay for membership. As a member you may receive assistance including financial assistance in eligible and appropriate cases, on a discretionary basis, for assistance including legal representation in matters which could challenge your right to practice.

Decisions on whether or not to assist individual members are made by fellow healthcare professionals who understand how the profession works and apply criteria developed through long experience. Our team of Dentist Risk Managers, who are all experienced dentists, provide expert guidance and support to members in difficulty, even (where necessary) 24 hours a day, 7 days a week. In addition, locally based lawyers with experience in dento-legal matters support the in-house advisors in all the Provinces in which we operate.

### **Educational services**

CDPA provides educational material – publications, seminars, and recorded materials - focused on the many aspects of risk management and other issues relating to the dental profession. Risk management education helps to support members' awareness of the potential risks in an increasingly consumer conscious environment found in day-to-day practice.

### **Discretion**

Financial or risk management assistance is discretionarily available to members where CDPA determines that the request is both eligible and appropriate for assistance. We regard discretion-based assistance as an extremely positive feature as it allows a flexibility not to be found in insurance policies. With us, there is no contract of insurance or insurance policy nor as a general rule pre-determined limits on assistance.

### **Our Mission**

The Mission of the CDPA Mutual Benefits Assistance Program is to help our members protect, through CDPA's risk management services, their right to practice dentistry and to that end also to encourage both the honourable and ethical practice of the dental profession. Its purpose is to provide realistic and practical risk management strategies and assistance to members, and where eligible and approved to assist with funding for their legal assistance in dento-legal matters that impact their professional rights to practice dentistry.

### **Assistance Provided**

A request is generally speaking eligible if it is practice related. Generally, this includes the following types of situations:

- (a) an investigation, inquiry, and/or hearing concerning (i) a matter of professional misconduct or incompetence, undertaken by the member's licensing body of which the CDPA member is still a member whether arising out of a complaint or otherwise; (ii) a matter regarding licensing issued by the member's licensing body whether by way of a fitness to practice inquiry or other licensing proceedings which could result in a loss or limitation of the member's existing license to practice; or (iii) subsequent licensing body monitoring activities following imposition by an undertaking signed by the member with the licensing authority or imposed by a Discipline Committee of the licensing body.
- (b) an insurance company investigation or enquiry of billings signed by the member submitted to the insurer for dental services performed by the member or a hygienist employed by the member for either direct payment to the member (assignment) or for reimbursement to the insured by the insurer (but not for any following claim by way of arbitration, civil action or otherwise commenced by the insurer for recovery of amounts paid by the insurer to the member or the member's patients). Such situations are addressed through peer-to-peer consultations.
- (c) an investigation, inquiry and/or hearing concerning the member's existing privileges to practice dentistry at a public hospital where the existing privileges may be at risk of being revoked or limited, due to allegations of competence or professional misconduct or an institutional reduction in availability of facilities (but not where the member seeks to expand the scope of existing privileges).
- (d) a coroner's inquest where the member has been requested by the Crown to give evidence in respect of dental services provided to the deceased (but not where the member's liability insurer has determined that it is in its interest to provide counsel to the member). (As well, in certain types of situations, CDPA requires that the member first report the matter to the liability insurer and seek legal assistance from it in the first instance.)
- (e) criminal charges related to the member's alleged in-office conduct concerning a patient but only on an after-the-fact, and usually on a partial reimbursement, basis – see the section below concerning what is appropriate for assistance for more details on criminal charges.
- (f) appeals or judicial review court proceedings arising out of any of the foregoing.

What is appropriate for assistance, even though it is otherwise an eligible matter, depends very much on the circumstances of each individual request. The following listing addresses many but certainly not all of the sorts of circumstances that can affect whether an otherwise eligible matter is still nevertheless not appropriate for assistance:

- (i) **Assistance requests** are dealt with for discrete stages of proceedings. For example, a request for assistance at the Complaints Committee stage (now known in Ontario as the ICRC stage) if granted provides assistance only for that stage of the proceedings. If allegations are then referred to the Discipline Committee, a separate request must be made and separately evaluated. Similarly, for example, if a review of a Complaints Committee

decision (in Ontario by the Health Professions Appeal and Review Board) is to be requested, a separate request for assistance must be made and evaluated. In essence, assistance at one stage of the process does not necessarily mean assistance at every subsequent stage. Each stage must be requested for and evaluated on its own. In addition, CDPA retains the discretion even where granting assistance to limit the extent and amount of such assistance.

- (ii) **Non-Compliance:** Sometimes a member has acted in such a way concerning the matters in issue that makes CDPA assistance likely of no practical effect or a member in the course of receiving assistance may act, for example without or contrary to legal advice or without having contacted or notified the CDPA, in such a way that makes continued CDPA assistance ineffectual for practical purposes. In such cases, CDPA assistance may not be granted or may be discontinued as it would be inappropriate to devote resources contributed by members for such purposes.
- (iii) **Pre-membership matters** also present special problems. Pre-membership conduct that a member knew or should have known could lead to a request for assistance or a complaint or inquiry by the licensing body, are not appropriate for assistance. CDPA is alert to the potential abuse by a dentist who knows or should know that some issue has arisen that might lead to the sorts of inquiry or proceedings that otherwise might well result in CDPA assistance, and then applies for CDPA membership so that when that contingency later materializes into a reality, that person can then seek assistance from CDPA. For example only, such incidents that were a live issue as recently as within 18 months before the application for membership, are more likely to result in a refusal to assist than if the matter had been a inactive issue for a much longer period of time prior to the application for membership in CDPA.
- (iv) **Other persons in the member's practice:** The member can only seek assistance for the member himself or herself. If for example, the issues involve a partner or associate dentist of the member, then no assistance will be afforded the member or the partner or associate. If the partner or associate involved is also a CDPA member, then that partner or associate may seek assistance on their own. Where allegations involve both the member and a partner or associate who is not a member, assistance may only be sought by the member himself or herself and only to the extent of the alleged involvement of the member. Dental hygienists are a separately licensed profession. Generally speaking, allegations against a dental hygienist utilized in a member's practice are not appropriate for assistance except where the member submitted the billing for the hygienist's work at issue to the patient or insurer and the complaint or enquiry is being undertaken by the member's licensing body, in Ontario the RCDSO.
- (v) **Business matters** are not appropriate for assistance. For example, where the underlying matter that leads to the request for assistance involve business matters or disputes between dental partners or associates, assistance may well not be extended. In the same vein, the following are not appropriate for assistance: tax matters, including those related to practice billings or expenses; and complaints and investigations related to advertising issues.

- (vi) **Discipline Committee Costs;** Even where CDPA is providing financial assistance to a member in proceedings before a Discipline Committee, where that Committee or any other licensing body, tribunal, or court in respect of which assistance is being provided, makes a costs award against a member in favour of any other party to that proceeding, the costs award is neither eligible nor appropriate for financial assistance to the member and is the member's sole responsibility.
- (vii) **Facility permit** issues are not appropriate for assistance. For example, the following types of facility matters are not appropriate for assistance: sedation and/or anesthesia; and CT scanner.
- (viii) **Criminal charges** present special problems. Generally speaking, criminal charges where practice related are not appropriate for assistance and members must deal with these on their own and with their own choice of counsel. CDPA recognizes that sometimes allegations of criminal conduct are unmeritorious and sometimes made by patients or family members for financial or other tactical reasons. As a result, CDPA requires the member to advise CDPA where any such criminal charges are laid and will consider financial assistance once the result in the proceeding is known when the case has concluded with the disposal of those charges either by a verdict of acquittal or a withdrawal of the charges. Members should understand, however, that it is highly likely in these situations that reimbursement if granted may only be on a partial basis. Requests for assistance in these circumstances should be made promptly after the conclusion of the proceedings in question; requests for reimbursement made more than one year after the conclusion of the proceedings may not be successful.
- (ix) **Sexual Impropriety:** Sometimes these sorts of allegations involve conduct that, if it occurred as alleged, was deliberate. As listed for criminal charges above, this type of discipline proceeding may not be appropriate for assistance at the start but may only prove to be appropriate once the result of the proceeding is known when the case has concluded by a finding of no professional misconduct or a withdrawal of the allegations either by the licensing body. Requests for assistance in these circumstances should be made promptly after the conclusion of the proceedings in question; requests for reimbursement made more than one year after the conclusion of the proceedings may not be successful.
- (x) **Fraudulent Billing:** These allegations may raise the same sorts of problems that cases involving criminal charges or allegations of sexual impropriety can raise. CDPA is not unmindful that sometimes allegations of fraud turn out not to involve fraud but a legitimate Fee Guide interpretation dispute between insurer and member. Here too, depending on the ultimate findings made, consideration of reimbursement in whole or in part for legal expenses incurred and paid for by the member may be undertaken once the result and findings in the proceeding are known when the case has concluded. Here too, CDPA must be given notice at the outset by the member that such a proceeding is underway or threatened and that depending on the result, a request for assistance may be made later by the member. Requests for assistance in these circumstances should be made promptly after

the conclusion of the proceedings in question; requests for reimbursement made more than one year after the conclusion of the proceedings may not be successful.

- (xi) **Repeat Complaints:** CDPA has to address situations in which a member attempts to access CDPA assistance repeatedly as a result of a repeated pattern of conduct or repeatedly engages in behaviours or actions that lead to multiple issues related to their practice. In such cases, CDPA assistance may not be granted or may be discontinued as it would be inappropriate to devote resources contributed by members for such purposes.

**A CDPA member must remain a CDPA member to maintain continuing assistance for an uncompleted matter.**