

Code of Complaints & Disciplinary Procedures

Introduction

The ethics committee of the APA has an ongoing role in promoting high standards of ethical and professional conduct. It continues to reassess Ayurvedic practice in the light of current good practice in health professions and the wider society. It is responsible for reviewing and updating the APA Code of Ethics and Professional Conduct and the APA Code of Complaints and Disciplinary Procedures, and for advising members on the same.

The APA Code of Complaints and Disciplinary Procedures sets out the procedures and framework by which the APA implements and enforces the rules set out in the APA Code of Ethics and Professional Conduct. The purpose of these rules and procedures is to ensure that complaints against members of the APA are examined and dealt with in a clear and impartial manner. They are intended to clarify what happens once the formal process of complaint has been initiated. It is particularly important that the APA acts both to further the interests of its members but also, as far as possible, to ensure that the interests of the public are protected in any dealings with the professional membership of the APA.

The APA encourages both potential complainants and practitioners/therapists to do whatever is possible through informal mediation to resolve differences and difficulties before initiating formal procedures. It recognises, however, that it would be unreasonable to ask this of either party in circumstances where the seriousness of the alleged offence or the breakdown in mutual trust makes mediation unlikely to achieve a satisfactory resolution. Accordingly, the route of mediation is not compulsory.

In framing these rules and procedures, therefore, the APA has tried to ensure that the interests of both practitioners/therapists and the public are properly and adequately represented and that its processes are straightforward and transparent.

1. Infringement of the APA Code of Ethics and Professional Conduct

Any infringement of the APA Code of Ethics and Professional Conduct may render practitioners/therapists liable to disciplinary action with subsequent loss of the privileges and benefits of APA membership.

A complaint against a practitioner/therapist can only be upheld when his/her actions or decisions are shown to be in breach of the APA Code of Ethics and Professional Conduct. However, as this code is not exhaustive, it is the principle of ethical professional conduct which informs discussion of allegations made against practitioners/therapists. The latter must therefore always be prepared to explain and justify their actions and decisions.

2. Complaints Procedure

2.1. Professional Conduct Committee (PCC)

The APA executive committee shall set up a permanent PCC to be on hand in the event of a complaint. The PCC shall:

- be responsible for implementation of the complaints and disciplinary procedures
- ensure that the strictest confidentiality is maintained at all parts of any procedure
- ensure that the time taken to make decisions is reasonable
- ensure that any relevant written or oral evidence is provided.

2.2. Composition of the Professional Conduct Committee (PCC)

The PCC shall consist of minimum five, maximum seven members. The composition of the PCC shall include at least three representatives of the profession and at least two appointed non-practitioners, of which one shall be a legal representative and one a layperson. The PCC chair shall be the member of the executive committee responsible for ethical and professional conduct (i.e. APA ethics committee director).

Any person about whose conduct a complaint has been made or who has lodged a complaint against a member or is likely to be called upon to give evidence in relation to any such complaint or who is directly interested in its outcome shall not be eligible to sit on the PCC at which any such complaint is considered.

2.3. Professional Conduct Officer (PCO)

The PCC shall appoint a PCO who shall be responsible to the PCC for implementation of the complaints and disciplinary procedure. The PCO shall be responsible for ensuring the progress of cases.

2.4. Verbal Complaints

When an executive committee officer receives a verbal complaint, it must be passed immediately to the PCO. The name, address and telephone number of the complainant shall be noted, and the PCO shall call the complainant within 48 hours. The PCO may:

- record the complaint in an action log and contact the practitioner/therapist concerned verbally in an effort to resolve the complaint. A system to deal with some complaints informally and verbally can be supportive to all parties.
- request that the complaint be submitted in writing and send to the complainant a pack including a summary of the APA complaints procedure and, where necessary, the APA Code of Ethics and Professional Conduct, a form on which to give a statement and a form giving permission for an investigation
- where the complainant insists on remaining anonymous, enquire whether the complainant wants to speak to a mediator appointed by the executive committee
- where the practitioner/therapist is not on the register of the APA, advise the complainant how to pursue the matter.

2.5. Written Complaints

When an executive committee officer receives a written complaint, it must be passed immediately to the PCO and replied to in writing within four days. The PCO may:

- record the complaint in an action log and contact the complainant and the practitioner/therapist concerned by phone in an effort to resolve the complaint.
- request further details and send to the complainant a pack including a summary of the APA complaints procedure and, where necessary, the APA Code of Ethics and Professional Conduct, a form on which to give a statement and a form giving permission for an investigation.

- refer the complaint directly to the PCC. The PCO shall be able to refer immediately to specialised legal advice where it appears that the complaint may have to be passed straight to the disciplinary procedure.

2.6. Progress of Complaints

The PCO, with reference to the Code of Ethics and Professional Conduct and related APA documents, will be able to resolve some complaints. The PCO must submit an annual anonymised report to the PCC of all complaints dealt with during the year. The PCC will review the decisions and recommendations of the PCO.

When a complaint is resolved, whether verbally or by correspondence, the action log and any relevant documents must be kept on file for seven years.

2.7. Referral to the Professional Conduct Committee (PCC)

When the PCO refers a complaint to the PCC, the complainant must be kept informed of progress and of the next meeting date of the PCC. The PCC reviews all written complaints and has the authority to decide whether a case has been made.

If the PCC finds that a case has not been made, it shall dismiss the complaint and record the reason for so concluding in an action log. If it finds that a case has been made, it has the authority to:

- investigate whether the health of the practitioner/therapist poses a risk to patients
- complete the complaints procedure and, for example, reprimand the practitioner/therapist or advise the practitioner/therapist to take further training or advice
- refer any complaint to be dealt with according to the disciplinary procedure
- advise the executive committee to make an interim order suspending registration for a specified period, while the disciplinary procedure is completed
- advise that, where any practitioner/therapist against whom a complaint has been made which is under investigation tenders his/her resignation or allows his/her registration to lapse by not renewing the subscription, the resignation will be received and placed on file but not accepted until the complaints and disciplinary procedure is completed.

The PCC shall, within seven days of any decision, serve on the practitioner/ therapist and also on the complainant a written notice of the decision made and the reasoning thereof.

Non-compliance by the practitioner/therapist may result in a further allegation of unacceptable professional conduct.

When the executive committee refers a complaint to the PCC because a practitioner/therapist has been refused APA annual membership renewal due to a relevant criminal offence, ill health or failure to fulfil the requirements for APA membership renewal, the disciplinary procedure shall be invoked.

3. Disciplinary Procedure

3.1. Professional Conduct Committee (PCC)

When the PCC decides to further investigate an allegation of unacceptable professional conduct, it has the authority to invoke the disciplinary procedure.

If, after the first hearing, the membership of the PCC shall fall below five, for any reason whatsoever, the remainder of the members of the PCC who sat at the first hearing shall be deemed to be a properly constituted PCC for further or adjourned hearings, provided that their number does not fall below three.

3.2. Notice to Practitioner/Therapist

The PCC shall, within seven days of the decision to refer the complaint to the disciplinary procedure, serve on the practitioner/therapist concerned a written notice of the allegation made against him/her including:

- full details of the complaint made against him/her
- the date, time and place of the first hearing of the PCC, which shall be not less than 15 days after the date of service of the notice
- notification of his/her right to submit a full written statement of evidence on his/her behalf
- notification of his/her right to submit a written request to give oral evidence on his/her behalf if s/he wishes to do so
- notification that such statement and/or request must be served on the PCC not more than 12 days after service on him/her of the notice specified in this clause
- notification of the practitioner's/therapist's right to seek legal representation.

3.3. Postponement of Hearing and Request for Further Evidence

The practitioner/therapist concerned may, not less than seven days before the date of the hearing notified to him/her (but not an adjourned or postponed hearing), serve on the PCC a request for further time in which to prepare his/her case. The PCC shall, on receipt of such a request, adjourn or postpone the hearing for a period of at least 15 days from the date of the request for further time.

The PCC may call for such further evidence as it may require to be submitted before the first or subsequent hearings (or any adjournment or postponement), provided that it serves on the practitioner/therapist concerned a written notice including reasonably full details of such further evidence and notifying him/her of his/her right to submit:

- a written reply to such further evidence
- a written request to give oral evidence in reply to such further evidence.

Such reply and/or request is to be served on the PCC not more than 14 days after service on the practitioner/therapist concerned of such notice of further evidence. If there are less than 14 clear days between the service of such a notice of further evidence and the date (or adjourned or postponed date) of the first or subsequent hearing, the PCC shall postpone or adjourn such hearing and give notice thereof at the same time as it serves the notice of further evidence specified in this section.

3.4. Conduct of the Enquiry

The decision whether to accept oral evidence at the first hearing shall be at the absolute discretion of the PCC who shall, before the date of the first hearing, or any adjourned or postponed date, serve on the practitioner/therapist notice of such decision.

If the practitioner/therapist concerned shall fail to serve a statement and/or reply and/or notice in accordance with 3.2. or 3.3., the PCC may, after expiry of time for

service permitted by such clause, proceed to the first hearing without considering any written evidence, which would have been included in such statement and/or reply and/or notice and in the absence of the practitioner/therapist concerned.

The PCC may adjourn or postpone (more than once, if necessary) any hearing for such period as it thinks fit, provided that at least 15 days before the new date fixed for such hearing it serves written notice of the new date, time and place for such hearing on the practitioner/therapist concerned.

3.5. Decision of the Professional Conduct Committee (PCC)

The PCC shall, at the time and place and on the date notified for the first hearing, or of any duly notified postponement or adjournment thereof, meet to decide whether a case of unacceptable professional conduct has been made out against the practitioner/therapist concerned.

If it finds that a case has not been made out against the practitioner/therapist concerned, the PCC shall dismiss the allegation. If it finds that a case has been made out, it shall hear the matter and, if it finds the case proved, it shall decide on appropriate action and may:

- admonish the practitioner/therapist
- make the practitioner/therapist subject to a conditions of practice order for up to three years or a suspension order for up to one year
- advise the executive committee to remove the name of the practitioner/therapist from the APA register.

The PCC shall, within 28 days, submit a written case report to the executive committee and serve written notice of the PCC decision both on the practitioner/therapist concerned and the complainant. The notice for the practitioner/therapist shall include information about his/her right to appeal and of the details of the appeal procedure.

3.6. Appeal by the Practitioner/Therapist

If the practitioner/therapist concerned intends to appeal against either the finding of the PCC or the disciplinary action imposed, he/she shall appeal not more than 28 days after service on him/her of written notice of the decision of the PCC. If the practitioner/therapist concerned fails to serve such notice within such time, his/her right to appeal shall be lost. If the PCC shall have received notice of appeal, it shall, within 14 days, notify the practitioner/therapist of the date that the appeal procedure will begin.

3.7. Service of Notices

Notices to be served in connection with any procedure relating to unacceptable professional conduct shall be served in accordance with the following procedure:

- A notice may be served by the executive committee or any sub-committee upon any practitioner/therapist either personally or by letter, sending it by first class recorded delivery post addressed to the practitioner/therapist at his last registered address.
- A notice so sent through the post shall be deemed to have been served five days following that on which the letter containing the same was posted.

- Any notice, requisition or other document, which is to be served on the executive committee, any sub-committee or any officer thereof, may be served by sending it by first class postal delivery to the registered office of the APA.

3.8. Professional Ethics Appeal Committee (PEAC)

Any appeal will be heard by the PEAC. The PEAC shall have vested in it all the powers and discretions conferred upon the executive committee by the APA Constitution or by these clauses so far as they relate to any disciplinary action to be taken against a practitioner/therapist or the reason therefore.

3.9. Composition of the Professional Ethics Appeal Committee (PEAC)

The PEAC shall consist of six to seven members, including at least two laypersons and a legal assessor who shall be a barrister or solicitor. The PEAC is appointed by the executive committee, with the advice of the PCC, using appropriate procedures. If sufficient members of the PEAC are not available or eligible to form a quorum, sufficient additional persons may be appointed by the executive committee as members of the PEAC to constitute such quorum.

A minimum of four members of the PEAC must be Ayurvedic practitioners. No more than two members of the PEAC should be a member of the PCC or the executive committee.

The persons composing the PEAC shall have played no part in previous investigations or hearings in relation to the case being heard.

3.10. Notice to the Practitioner/Therapist

The PEAC shall serve on the practitioner/therapist concerned written notice informing him/her of the hearing, which shall be not less than 15 days after the date of service of such notice, and notifying the member concerned of his/her right to submit notice of his/her intention to be heard in person or by his/her counsel, solicitor or lay representative. Such notice or statement shall be served on the PEAC not more than 14 days after service on the practitioner/therapist concerned of the notice specified in this clause.

The practitioner/therapist concerned may, not less than seven days before the date of the hearing (but not an adjourned or postponed hearing) notified to him/her, serve on the PEAC a request for further time in which to prepare his/her case. The PEAC shall, on receipt of such a request, adjourn or postpone the hearing for a period of at least 15 days from the date of the request for further time.

3.11. Decision of the Professional Ethics Appeal Committee (PEAC)

The PEAC shall, at the time and place and on the date notified for the hearing or any duly notified postponement or adjournment thereof, meet to determine the case. In considering the case, a conviction of any offence or any finding of fact by a court or competent jurisdiction or of any other relevant professional tribunal shall be binding on the PEAC. PEAC and executive committee are obliged to accept such findings and are not able to re-open an investigation of facts, which led to a conviction. They will consider only the seriousness of a conviction and any surrounding circumstances in mitigation. Practitioners/therapists should thus treat with caution any encouragement to plead guilty to an offence and should take appropriate legal advice.

After hearing all the evidence presented for and against the practitioner/therapist concerned, the PEAC shall determine if he/she has been guilty of unacceptable professional conduct. If the PEAC finds that he/she has not been guilty, it shall dismiss the case. If it finds that he/she has been guilty of unacceptable professional conduct, the PEAC shall have the authority to:

- admonish the practitioner/therapist
- make the practitioner/therapist subject to a conditions of practice order for up to three years or suspension order for one year
- advise the executive committee to remove the name of the practitioner/therapist from the APA register.

The PEAC shall, not more than 14 days after the final hearing, serve written notice of its decision both on the practitioner/therapist concerned and the complainant, which will be final and binding on all parties, and shall submit a written report to the executive committee.

The final decision to remove the name of the practitioner/therapist from the APA register must be ratified at a meeting of the executive committee.

3.12. Reinstatement onto the APA Register

A person who has been removed from the APA register, or whose membership has been terminated, may apply for re-admission to the register, provided that such application is made after any period (as prescribed by the executive committee), during which no application for reinstatement of the person concerned shall be considered.

4. Variation in Rules

The executive committee, having been advised by the PCC, shall have power to make or vary rules for any matters or procedures relating to unacceptable professional conduct, which are not covered by these clauses.

Acknowledgment

For creating the APA Code of Complaints and Disciplinary Procedure, the APA has drawn on similar publications from other regulatory bodies for healthcare professionals. We are grateful to those who contributed to the development of our code and provided helpful feedback and comments on the text.