

## Expectations for clinical and ethical practice

# Confidentiality Clauses in Settlement Agreements

Applies to Dentists

There are three main ways that the BC College of Oral Health Professionals protects the public:



The British Columbia College of Oral Health Professionals (BCCOHP) was created on September 1, 2022 through the amalgamation of four health regulatory colleges: the College of Dental Hygienists of BC, the College of Dental Surgeons of BC, the College of Dental Technicians of BC, and the College of Denturists of BC. All current requirements for standards of clinical and ethical practice issued by the four colleges remain in place upon amalgamation. This document was created by the College of Dental Surgeons of BC and will be updated to reflect the amalgamation.

## Confidentiality Clauses in Settlement Agreements

*The purpose of this information sheet is to provide clarity to registrants and the public about the issue of settlement agreements and complaints to the College.*

For a variety of reasons, patients are occasionally dissatisfied with service received from their dentist. In the majority of cases, these situations are resolved quickly by an open and respectful discussion. A small percentage of concerns, however, may result in a complaint to CDSBC and/or a demand for compensation from the dentist, leading to a lawsuit or the threat of a lawsuit.

In some cases, a dentist or their malpractice insurer will make an offer to settle the lawsuit or threatened lawsuit against the dentist in exchange for a sum of money. Usually the offer will be accompanied by a "release" or "waiver." Some agreements prohibit a patient from making a complaint to CDSBC, or force a patient to withdraw a complaint that has already been made. CDSBC has been asked whether settlement agreements can do this.

**The answer is no.** A settlement can't affect a patient's right to make or pursue a complaint with CDSBC. Even if the settlement document purports to do so, that part is unenforceable at law.

### CDSBC Policy

A registrant cannot dissuade or prohibit a member of the public from making a complaint or communicating with the College. Any clause in a settlement agreement that attempts to do so is inappropriate and unenforceable.

### What this means for registrants

If you are negotiating a settlement with a patient, you should not prohibit them from making a complaint or dissuade them from participating in an open complaint.



When your insurer negotiates a settlement with a patient, this process is separate from the CDSBC's regulatory role. If your insurer reaches a financial resolution with the patient, the patient remains entitled to make a complaint about any underlying professional conduct issues.

While CDSBC appreciates that registrants can't dictate the terms of a settlement to their insurer, a registrant who actively attempts to dissuade or prohibit a member of the public from making a complaint or communicating with us may be committing professional misconduct.

### What this means for the public

It is CDSBC's position that members of the public are entitled to make or continue a complaint about a dentist regardless of any settlement agreement reached with a dentist or their insurer.

That said, CDSBC strongly encourages dentists and patients to work together to solve minor problems whenever possible. Many of the complaints we receive are the result of simple miscommunication, and turning to the complaints process may adversely affect a positive longstanding relationship between dentist and patient.

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## Background

A core function of CDSBC, or any regulator, is to take remedial action if a registrant is not practising to the appropriate standard, or to take action if a registrant's practice represents a risk to the public. If patients were prevented from bringing these situations to CDSBC's attention, this task would be impossible.

This would undermine the concept of accountability that defines registered professionals. Most importantly it would not serve or protect the public – which is the duty of each healthcare regulator under the *Health Professions Act*.

This has been confirmed in several legal decisions. In the case of *Hung v. Gardiner*, the BC Court of Appeal stated as follows:

*At issue in this appeal is whether a person who provides information to a professional disciplinary body about the conduct of one of its members is liable in an action brought by that member. The clear answer is that the communication of the information is subject to absolute privilege, which provides a defence to all claims.*

*There are important public policy reasons for this finding. Absolute privilege allows a member of the public to raise a concern about the conduct of a professional person, without fear of reprisal. In this way, the immunity afforded by absolute privilege protects both professionals and the public.*

Therefore, regardless of the terms of any settlement agreement, members of the public have an absolute right to submit or continue a complaint with a professional regulator, such as CDSBC. It is not open to a registrant to dissuade them from doing so.