

# Policy Statement 5.20 – Dental Certificates, Giving Evidence, and Witnessing Documents

## Position Summary

Dentists who provide certification of oral health status and treatment, witness a document, or are witnesses in courts and tribunals, must comply with all legislative requirements. When giving evidence to a court or tribunal, the dentist's first obligation must be to the court or tribunal.

### 1. Background

- 1.1. Dentists may be asked to provide certificates for a variety of reasons, including sick leave and other absences from work or study, confirmation of treatment for reimbursement, insurance or other claims or certification of oral health status.
- 1.2. Dentists may be subpoenaed as witnesses in courts and tribunals and be requested to give evidence.
- 1.3. Dentists may be asked to witness a variety of documents.
- 1.4. In undertaking these roles as a dentist, the dentist must comply with the *Code of conduct for registered health practitioners* issued by the Dental Board of Australia.
- 1.5. Depending on the nature of the request, the dentist may be subject to other regulatory requirements in relation to meeting or addressing the request.

#### Definition

- 1.6. PATIENT is a person receiving health care or any substitute authorised decision maker for those who do not have the capacity to make their own decisions.

### 2. Position

#### Dental Certificates

- 2.1. Generally, dentists should only provide certificates where this arises out of the treatment provided to the patient by the dentist.
- 2.2. It is important that obligations or requests to complete certificates be attended to accurately and in a timely way.
- 2.3. The privacy, confidentiality and sensitivity of patient information should be respected, and the scope and detail of information provided on a certificate should be limited to what is reasonably required. Diagnosis is usually not required and it is not appropriate to include sensitive healthcare information in an attendance and/or incapacity certificate.
- 2.4. The collection, use and disclosure of personal information (including health information) of patients is subject to privacy laws.
- 2.5. Dentists are one of the groups of registered health professionals authorised in most jurisdictions to witness a variety of documents. The dentist may need to ensure that the person concerned is known to them and that in witnessing the document the dentist is not in conflict with their professional responsibilities as a dentist or their duty to another patient.
- 2.6. When giving evidence to a court or tribunal, the dentist's first obligation is to the court or tribunal.
- 2.7. Dentists should ensure that the information contained in a dental certificate is clear, concise and able to be understood by the intended recipient. Unnecessary abbreviations and health professional "jargon" should be avoided.

*This Policy Statement is linked to other Policy Statements: 1.2 ADA Privacy Policy, 5.1 Dentistry and Third Parties, 5.5 Funding Agencies, 5.7 Professional Indemnity, 5.8 Dental Acts, the National Law and Boards, 5.14 Dentistry and the Legal System, 5.17 Dental Records & 5.21 Regulatory Authorities.*

- 2.8. Dental certificates should be factual and supported by the patient's clinical and practice records. Dentists have a professional responsibility to obtain and make a record of sufficient factual information through history and examination to issue a dental certificate. The dentist must provide only information that they know, or reasonably believe, is true.
- 2.9. It is recommended that attendance and incapacity certificates include:
- the name and address of the dentist issuing the certificate (preferably on formal stationery);
  - the name of the patient;
  - the date of attendance and/or related clinical examination of the patient;
  - the date on which the certificate was actually written and issued;
  - the date(s) or period, that in the dentist's professional opinion, the patient is unfit for work, study or other responsibilities; and
  - supplementary information reasonably required by the patient for the purpose of the certificate.
- 2.10. Dentists should refuse a request for a dental certificate where the dentist does not have the information, knowledge and/or expertise required to support the content requested.

### **Giving Evidence**

- 2.11. In giving evidence, the overriding duty of the dentist is to the court or tribunal and to tell the truth and not knowingly mislead the court or tribunal. Dentists should not act as advocates for their patients or for parties in litigation.
- 2.12. Dentists should give evidence under the protection of a subpoena issued by the court or tribunal requiring them to give evidence.
- 2.13. Evidence will generally be given under oath or an affirmation,
- 2.14. Dentists when giving evidence should
- take reasonable steps to familiarise themselves with the proceedings and issues on which they will be giving evidence, including referral back to treatment and other practice records;
  - ensure they do not mislead or confuse the court;
  - stay within their areas of knowledge, experience and expertise;
  - clearly indicate if they do not have the knowledge on, or cannot recall, a matter; and
  - seek clarification of questions before answering if not understood.

### **Witnessing Documents**

- 2.15. Dentists should generally restrict witnessing of documents for persons known to them or others able to prove their identity.
- 2.16. Dentists should not comment on the intent or legal implications of the document they are witnessing.
- 2.17. When witnessing the signing of legal documents dentists should not comment on the intent or legal implications of the document.
- 2.18. A statutory declaration is used as a means of proving or evidencing matters of fact and is a written statement of facts which is signed and sworn or affirmed to be true by the person making the declaration.
- 2.19. The dentist is not attesting to the accuracy of the contents of the document but is merely witnessing the fact that the document was signed by the person making the declaration.

- 2.20. There are statutory provisions under Commonwealth, state and territory laws governing the making and taking of statutory declarations.<sup>1</sup> These laws are similar across all jurisdictions, but dentists should be familiar with the specific forms and requirements in their particular jurisdiction, and whether a Commonwealth, state or territory declaration is required.
- 2.21. A statutory declaration must be signed by the person making it in the presence of the dentist.
- 2.22. The dentist should verify that the signature on the document belongs to the person with that name before the dentist signs the statutory declaration.
- 2.23. A statutory declaration can be made in relation to any matter.

### Policy Statement 5.20

Adopted by ADA Federal Council, November 15/16, 2012.

Amended by ADA Federal Council, August 25/26, 2016.

Amended by ADA Federal Council, November 22, 2019.

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<sup>1</sup> When witnessing a statutory declaration, dentists must comply with the following:

- (i) for Commonwealth matters, the *Statutory Declarations Act 1959* (Cth);
- (ii) in relation to state or territory matters, the *Oaths Act 1936* (SA); the *Oaths Act 1900* (NSW); the *Evidence Act 1958* (Vic); the *Oaths Act 1867* (QLD); the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA); the *Oaths, Affidavits and Declarations Act 2010* (NT); or the *Oaths and Affirmations Act 1984* (ACT).