



Federation of Chiropractic Licensing Boards

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*Protecting the public and serving our member boards
by promoting excellence in chiropractic regulation.*

A Fresh Look at ADA & Your Board

Notes from the presentation on Alternative Dispute Resolution
by Vernon Temple, D.C., and Rick Cole, D.C.

WHAT IS ADR?

Alternative Dispute Resolution

Adds additional tools to the board's disciplinary kit:

Sometimes called -

- Negotiation
- Mediation
- Arbitration
- Conciliation

*We don't need a shotgun
to zap a mosquito*

WHY SHOULD BOARDS USE ADR?

- Saves money
(each formal hearing costs \$1500+)
- Saves time
avoids backlog of cases
- Keeps full board resources focused on serious cases
- Because the feds and state may say so -
streamline government
- Small issues don't get out of hand

- More satisfactory process

Complainant

- directly involved, feels heard
- sees the board "at work" to protect the public

Licensee

- Feels heard
- Not as threatened as formal process
- Sees emotional impact of the problem on consumer

KEY COMPONENTS TO ADR

- Participation is voluntary by licensee
Does not jeopardize right to immediate or future formal hearing processes.
- Not appropriate for serious infractions
- Board has clear criteria about types of cases that qualify for ADR
- Must have professionals, trained in ***conflict resolution***
- Accountability must be preserved - record of the outcome
- Board should approve final consent agreement
- Opinions differ on how "public" the record should be
 - If it's public record, it should be reported to CIN-BAD, even if minor.
 - Use the "sticky note" feature on CIN-BAD to explain special circumstances.

HOW DO YOU KNOW IF ADR WORKS?

1. Parties have procedural satisfaction

- *Feel comfortable enough with process to support the outcome*

2. Parties have substantive satisfaction

- *Not necessarily delighted with outcome but view it as better than alternatives*
- *something they can and will support*

3. Parties feel **psychological satisfaction**

- *resulting from being treated well during the process*

HOW IT WORKS - SOME OPTIONS:

IN ADVANCE

1. Board determines criteria for cases to qualify for ADR with legal counsel
Assess the categories of cases coming before the board
2. Board and counsel determine criteria for "public record"
ALL cases which are public record should be reported to CIN-BAD
3. Board and counsel outline detailed process for ADR
 - Mediation Unit or technical advisor determines whether cases they qualify for ADR
 - Decide whether investigators are involved
 - Establish ranges of sanctions or remedial actions that can be applied
 - Determine target time frame to resolve cases (example, 90 days)

PROCESS

1. Complaint reviewed by a technical advisor to see if it meets the board's standards to qualify for voluntary ADR
2. Parties contacted
 - Licensee advised of nature of complaint
 - Parties offered option of ADR, with explanation of process
3. Board determines who (if anyone) from the board participates
4. At any point, ADR process can be stopped
 - The licensee's right to traditional hearing process is upheld
5. Process undertaken with appropriate notice

TWO MODELS: BOTH HAVE CONFLICT RESOLUTION SPECIALIST ON TEAM

- - Board representative - speaking for the public interest
- Licensee
- - Consumer

- Licensee

NOTE: Attorneys generally not included - tends to raise tension level

6. Consent order drafted

Consequences of failure to comply with any requirements are included

7. Public actions reported to CIN-BAD

8. Follow-up

- Have terms as agreed upon been completed?
- What was the satisfaction level of the parties? (They didn't have to like the outcome, just feel the process was fair)

9. Document the number of cases and estimate cost savings to report to legislature, governor, and the press.

CRITICISMS AND CAUTIONS

1. Are the remedies lighter than could be expected under a more formal process?
2. Not to be undertaken unless professionals skilled in conflict resolution are on the team
3. Clear criteria in place to determine which types of cases qualify

May be excellent option for fee disputes

Not appropriate for:

- revocation of license
- possible criminal or civil actions

4. Must never be mandatory

5. Board must determine role of consumer

- in some cases: consumer is not represented in the process as "it is the state that has the compelling interest in who is licensed"

6. The issue of confidentiality is complex

- need **clear communication** about whether information gathered in ADR process can be used in any subsequent formal hearing processes if ADR is unsuccessful
- need **clear communication** about whether the outcome of ADR will be public record

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